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TABLE OF CONTENTS.

	PAGE
Govt. Notice No. 230—The Civil Procedure Ordinance, 1924—Notice .. .. .	.. .. .
„ „ „ 231—The Civil Procedure Ordinance, 1924—The Civil Procedure Rules, 1927 .. .. .	.. .. .

# Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No. 230.

## THE CIVIL PROCEDURE ORDINANCE, 1924.

### NOTICE.

IN EXERCISE of the powers conferred upon him by section 1 (2) of the Civil Procedure Ordinance, 1924, His Excellency the Acting Governor has been pleased to declare that the said Ordinance shall come into force on the first day of August, 1927.

By command of His Excellency the Acting Governor.

Nairobi,

This 28th day of January, 1927.

J. E. S. MERRICK,  
*for Acting Colonial Secretary.*

GOVERNMENT NOTICE No. 231.

## THE CIVIL PROCEDURE ORDINANCE, 1924.

### RULES.

IN EXERCISE of the powers conferred upon them by section 83 of the Civil Procedure Ordinance, 1924, the following rules are made by the Rules Committee :—

### PRELIMINARY.

1. The following Orders and Rules may be cited as "the Civil Procedure Rules, 1927." They shall come into operation on the first day of August, 1927, and shall also apply, as far as practicable, and unless otherwise expressly provided, to all matters arising and to all proceedings taken on any matters under the Ordinance, or any Ordinance amending the same, on or after the said day.

Short title and  
commence-  
ment.

2. (1) Unless the context or subject-matter otherwise requires, the terms and expressions defined in the Ordinance shall, in these Rules, have the meanings thereby assigned to them.

Interpretation.

(2) The term "Ordinance" shall mean the Civil Procedure Ordinance, 1924.

## GOVERNMENT NOTICE NO.

## THE CIVIL PROCEDURE RULES.

## ORDER I.

## PARTIES TO SUITS.

O. I. r. 1.  
Who may be  
joined as  
plaintiffs.

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

O. I. r. 2.  
Power of Court  
to order  
separate trials.

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

O. I. r. 3.  
Who may be  
joined as  
defendants.

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

O. I. r. 4.  
Court may give  
judgment for  
or against one  
or more of  
joint parties.

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 entitled to;

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

O. I. r. 5.  
Defendant need  
not be interested  
in all the relief  
claimed.

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

O. I. r. 6.  
Joinder of  
parties liable  
on same  
contract.

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

O. I. r. 7.  
When plaintiff  
in doubt from  
whom redress  
to be sought.

7. Where the plaintiff is in doubt as to the persons 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.

O. I. r. 8.  
One person may  
sue or defend  
on behalf of all  
in same interest.

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

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

9. 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.

O. I. r. 9.  
Misjoinder and  
non-joinder.

10. (1) Where a suit has been instituted in the name of the wrong persons 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.

O. I. r. 10.  
Suit in name of  
wrong plaintiff.

(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.

Court may  
strike out or  
add parties.

(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 in writing thereto.

(4) Where a defendant is added or substituted, 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.

Where  
defendant  
added plaint  
to be amended.

(5) Subject to the provisions of section 22 of the Indian Limitation Act of 1877, as applied to the Colony, the proceedings as against any person added or substituted as defendant shall be deemed to have begun only on the service of the summons.

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

O. I. r. 11.  
Conduct of  
suit.

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorised 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 authorised by any other of them to appear, plead, or act for such other in any proceeding.

O. I. r. 12.  
Appearance of  
one of several  
plaintiffs of  
defendants for  
others.

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

13. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court at any time before trial by motion or summons or at the trial of the suit in a summary manner.

O. I. r. 13.  
Practice.

14. Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit he may, by leave of the Court, issue a notice (hereinafter called a third-party notice) to that effect; such leave shall be applied for by summons in chambers *ex parte* supported by affidavit. A copy of such notice shall be filed and shall be served on such person according to the rules relating to the service of a summons. The notice shall state the nature and

O. I. r. 14.  
Notice to third  
party.



grounds of the claim, and shall, unless otherwise ordered by the Court be filed within the time limited for filing his defence. Such notice shall be in or to the effect of the Form No. 23 in Appendix A with such variations as circumstances require, and a copy of the plaint shall be served therewith.

O. I. r. 15.  
Default of  
appearance by  
third party.

15. If a person not a party to the suit who is served as mentioned in Rule 14 (hereinafter called the "third party") desires to dispute the plaintiffs claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the suit on or before the day specified in the notice. In default of his so doing he shall be deemed to admit the validity of the decree obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice: Provided always, that a person so served and failing to enter an appearance within the period fixed in the notice, may apply to the Court for leave to enter an appearance, and for good cause such leave may be given upon such terms, if any, as the Court shall think fit.

O. I. r. 16.  
Judgment  
against third  
party in  
default.

16. Where a third party makes default in entering an appearance in the suit, in case the defendant giving the notice suffer judgment by default, such defendant shall be entitled, after causing the satisfaction of the decree against himself to be entered upon the record, to judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice; the Court may upon the application of the defendant pass such judgment against the third party before such defendant has satisfied the decree passed against him: Provided that it shall be lawful for the Court to set aside or vary any judgment passed under this rule upon such terms as may seem just.

O. I. r. 17.  
Judgment after  
trial against  
third party in  
default.

17. Where a third party makes default in entering an appearance in the suit, in case the suit is tried and results in favour of the plaintiff, the Court may either at or after the trial enter such judgment as the nature of the suit may require for the defendant giving notice against the third party; Provided that execution thereof be not issued without leave of the Court, until after satisfaction by such defendant of the decree against him, And if the suit is finally decided in the plaintiff's favour, otherwise than by trial, the Court may, upon application *ex parte* supported by affidavit, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the decree obtained by the plaintiff against him.

O. I. r. 18.  
Appearance of  
third party,  
directions.

18. If a third party enters an appearance pursuant to the third-party notice, the defendant giving the notice may apply to the Court by summons in chambers for directions, and the Court upon the hearing of such application, may, if satisfied that there is a proper question to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the suit, as the Court may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

19. The Court may decide all questions of costs between a third party and the other parties to the suit, and may make such orders as to costs as the justice of the case may require.

O. I. r. 19.  
Costs.

20. Where a person served with a third-party notice by a defendant or by a third party claims to be entitled to contribution or indemnity over against any person not a party to the suit, he may by leave of the Court issue a third-party notice to that effect; and the preceding rules as to third party procedure shall apply *mutatis mutandis* to every notice so issued.

O. I. r. 20.  
Notice served  
by third party.

21. Where a defendant claims to be entitled to contribution or indemnity against any other defendant in the suit, a notice may be issued and the same procedure adopted for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the plaintiff against any defendant in the suit.

O. I. r. 21.  
Defendant  
claiming against  
co-defendant.

## ORDER II.

### FRAME OF SUIT.

1. (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.

O. II. r. 1.  
Suit to include  
the whole  
claim.

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

Relinquish-  
ment of part  
of claim.

(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.

Omission to  
sue for one of  
several reliefs.

2. (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.

O. II. r. 2.  
Joinder of  
causes of  
action.

(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.

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

O. II. r. 3.  
Only certain  
claims to be  
joined for  
recovery of  
immovable  
property.

- (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;
- (c) claims for damages for any wrong or injury to the premises claimed; and

(d) 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, and such suit for foreclosure or redemption and for such delivery of possession shall not be deemed a suit for the recovery of immovable property within the meaning of these rules.

O. II. r. 4.  
Claims by or  
against  
executor,  
administrator  
or heir.

4. No claim by or against an executor or administrator, 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 or administrator, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

O. II. r. 5.  
Power of Court  
to order  
separate trials.

5. 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. 6.  
Objections as  
to misjoinder.

6. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of together.

If, on the hearing of such application, it shall appear to the Court that the causes of action are such as cannot all be conveniently disposed of together, the Court may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

### ORDER III.

#### RECOGNISED AGENTS AND ADVOCATES.

O. III. r. 1.  
Appearances,  
etc., may be  
in person, by  
recognised agent  
or advocate.

1. Any application to or appearance or act in any Court required or authorised 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 recognised agent, or by an advocate 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.  
Recognised  
agents.

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

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

3. (1) Processes served on the recognised 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.

O. III. r. 3.  
Service of  
process on  
recognised  
agent.

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

4. Any process served on the advocate of any party or left at the office or ordinary residence of such advocate, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the advocate 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.

O. III. r. 4.  
Service of  
process on  
advocate.

5. (1) Besides the recognised agents described in Rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

O. III. r. 5.  
Agent to  
accept service.

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

#### ORDER IV.

##### INSTITUTION OF SUITS.

1. (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 VII so far as they are applicable.

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

O. IV. r. 2.  
Register of  
suits.

#### ORDER V.

##### ISSUE AND SERVICE OF SUMMONS.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant—

O. V. r. 1.  
Summons.

(a) ordering him to enter appearance within a time to be specified therein; or

(b) ordering him to appear and answer the claim on a day to be therein specified.

(2) A defendant to whom a summons has been issued under sub-rule (1) may enter appearance or appear in manner hereinafter provided—

(a) in person;

(b) by a recognised agent; or

(c) by an advocate duly instructed.

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

O. V. r. 2.  
Copy plaint  
with summons.

2. Every summons shall be accompanied by a copy of the plaint.

O. V. r. 3.  
Order that  
plaintiff or  
defendant  
appear in  
person.

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

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

O. V. r. 4.  
No party to be  
ordered to  
appear in  
person unless  
resident within  
certain limits.

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

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

O. V. r. 5.  
Summons to be  
either for orders  
or for final  
disposal.

5. In the case of subordinate courts, 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.

O. V. r. 6.  
Fixing day for  
appearance of  
defendant.

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

O. V. r. 7.  
Where sum-  
mons is for  
final disposal,  
defendant to  
be directed to  
produce  
evidence.

7. In the case of subordinate courts 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 whom he intends to call.

O. V. r. 8.  
Delivery or  
transmission of  
summons for  
service.

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

- (a) to any person for the time being duly authorised by the Court;
- (b) to an advocate of the Supreme Court, or an advocate's clerk approved by the 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 of any of its proceedings with regard thereto.

O. V. r. 9.  
Mode of  
service.

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

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

O. V. r. 10.  
Service on  
several  
defendants.

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

O. V. r. 11.  
Service to be  
on defendant  
in person or  
on his agent.

**12.** (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.

O. V. r. 12.  
Service on  
agent by  
whom defendant  
carries on  
business.

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

**13.** Where, in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, it may be made on an agent of the defendant empowered to accept service or on the agent of the defendant in charge of the property.

O. V. r. 13.  
Service on  
agent in  
charge in suits  
for immovable  
property.

**14.** Where in any suit the defendant cannot be found, service may be made on an agent of the defendant empowered to accept service or on any adult member of the family of the defendant who is residing with him.

O. V. r. 14.  
Where service  
may be on  
male member  
or defendant's  
family.

**15.** Where a duplicate 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. 15.  
Person served  
to sign  
acknowledg-  
ment.

Provided that if the Court be satisfied that the defendant has refused so to endorse, the Court may declare the summons to have been duly served.

**16.** Where the serving officer, after using all due and reasonable diligence, cannot find the defendant, or any 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.

O. V. r. 16.  
Procedure  
when defendant  
refuses to  
accept service  
or cannot be  
found.

**17.** 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.

O. V. r. 18.  
Examination of  
serving officer.

**18.** 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 inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

O. V. r. 19.  
Substituted  
service.

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

Effect of  
substituted  
service.

(2) Substituted service under an order of the Court shall be as effectual as if it had been made on the defendant personally.

Time of  
appearance to  
be fixed.

(3) Where the Court makes an order for substituted service it shall fix such time for the appearance of the defendant as the case may require.

O. V. r. 20.  
Service on  
defendant in  
prison.

**20.** 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. 21.  
Service on  
public officers  
and soldiers.

**21.** (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.

(2) Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer, together with a copy to be retained by the defendant. For the purposes of this rule, the term "soldier" shall not include an officer.

O. V. r. 22.  
Duty on person  
to whom the  
summons is  
sent.

**22.** (1) Where a summons is delivered or sent to any person for service under Rule 20 or Rule 21, such person shall be bound to serve it, if possible, and to return it under his signature with a written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

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

O. V. r. 23.  
In certain  
cases service of  
the writ, etc.,  
allowed out of  
jurisdiction.

**23.** Service out of the jurisdiction of a summons or notice of a summons may be allowed by the Court whenever—

- (a) the whole subject-matter of the action is immovable property situate within the jurisdiction (with or without rents and profits);
- (b) any act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action;

- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction;
- (d) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of the Colony;
- (e) the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction;
- (f) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

**24.** In probate suits, service of a summons or notice of a summons may by leave of the Court be allowed out of the jurisdiction. O. V, r. 24.  
Probate  
actions.

**25.** Every application for leave to serve such summons or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or British protected person or not, and the grounds on which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this order. O. V, r. 25.  
Application to  
be supported  
by evidence.

**26.** Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance; such time to depend on the place or country where or within which the summons is to be served or the notice given. O. V, r. 26.  
Order to fix  
time for filing  
written state-  
ment.

**27.** Where leave to serve a summons out of the jurisdiction has been granted under Rule 23 and the defendant is a British subject or British protected person or resides in the United Kingdom or in any British Dominion or Protectorate or mandated territory out of the Colony, the summons shall be addressed to the defendant at the place where he is residing and send to him by registered post, if there is postal communication between such place and the place where the Court is situate. O. V. r. 27.  
Service where  
defendant  
resides out of  
Colony.

**28.** Where the defendant is neither a British subject nor British protected person and is not in British dominions or in any British Protectorate or mandated territory, notice of the summons and not the summons itself is to be served upon him. O. V. r. 28.  
Notice in lieu  
of writ.



O. V, r. 29.  
Service in a  
foreign country.

**29.** Where leave is given to serve notice of summons in any foreign country to which this rule may by order of the Chief Justice from time to time be applied, the following procedure shall be adopted :—

- (1) The notice to be served shall be sealed with the seal of the Supreme Court for use out of the jurisdiction, and shall be forwarded by the Registrar to the Governor for transmission to His Majesty's Secretary of State for the Colonies together with a copy thereof translated into the language of the country in which service is to be effected, and with a request for the further transmission of the same through the diplomatic channel to the Government of the country in which leave to serve notice of the summons has been given. Such request shall be in Form No. 10 of Appendix A with such variations as circumstances may require.
- (2) The party bespeaking a copy notice of summons for service under this rule shall, at the time of bespeaking the same, file a *prœcipe* in Form No. 11 of Appendix A.
- (3) An official certificate, or declaration upon oath, or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this rule applies, to the Supreme Court shall, provided that it certifies or declares the notice of the summons to have been personally served, or to have been duly served upon the defendant in accordance with the law of such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these rules in that behalf.
- (4) Where an official certificate or declaration, transmitted to the Supreme Court in manner provided in the last preceding section of this rule, certifies or declares that efforts to serve a notice of summons have been without effect, the Court may, upon the *ex parte* application of the plaintiff, order that the plaintiff be at liberty to bespeak a request for substituted service of such notice. Such order shall be in Form 12 of Appendix A, with such variations as circumstances may require.
- (5) A request for substituted service of a notice of summons under this rule may be bespoken by the plaintiff at the department where summonses are issued upon filing a *prœcipe* in Form No. 11 of Appendix A, and the notice of summons and copy of the same, and the order, shall be sealed and transmitted to the Governor in manner aforesaid together with a request in Form No. 13 of Appendix A. with such variations as circumstances may require.

O. V, r. 30.  
Extension of  
procedure to  
any order or  
notice.

**30.** The Court may direct that any summons, order or notice shall be served on any party or person in a foreign country, and the procedure prescribed by Rule 29, with reference to service of notice of a summons, shall apply to service of any summons, order or notice so directed to be served.

## SERVICE OF FOREIGN LEGAL PROCESS IN KENYA.

**31.** Where in any civil or commercial matter pending before a Court or tribunal of a foreign country a letter of request from such Court or tribunal for service on any person in the Colony of any process or citation in such matter is transmitted to the Supreme Court by His Majesty's Secretary of State for the Colonies, with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted :—

O. V, r. 31.  
Procedure.

- (1) The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process of citation to be served, and two copies thereof in the English language.
- (2) Service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the rules and practice of the Supreme Court of Kenya regulating service of persons.
- (3) After service has been effected the process server shall return the Registrar of the Supreme Court one copy of the process together with the evidence of service by affidavit of the person effecting the service verified by a magistrate and particulars of charges for the cost of effecting such service.
- (4) The particulars of charges for the cost of effecting service shall be submitted to the Registrar of the Supreme Court, who shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service.
- (5) The Registrar shall transmit to His Majesty's Secretary of State for the Colonies the Letter of Request for service received from the foreign country, together with the evidence of service with a certificate appended thereto duly sealed with the seal of the Supreme Court for use out of the jurisdiction. Such certificate shall be in the Form No. 14 of Appendix A.

**32.** Upon the application of the Attorney-General the Court may make all such orders for substituted service or otherwise as may be necessary to give effect to Rule 31.

O. V, r. 32.  
General powers  
of the Court.

## ORDER VI.

## PLEADINGS GENERALLY.

**1.** 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.

O. VI, r. 1.  
Pleading to  
state material  
facts and not  
evidence.

O. VI, r. 2.  
Particulars to  
be given where  
necessary.

2. 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.

O. VI, r. 3.  
Further and  
better statement  
or particulars.

3. 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.

O. VI, r. 4.  
Condition  
precedent.

4. 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.

O. VI, r. 5.  
New fact must  
be specially  
pleaded.

5. 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.

O. VI, r. 6.  
Departure.

6. No pleading shall, not being a petition or application, 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.

O. VI, r. 7.  
Denial to be  
specific.

7. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his written statement in 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.

O. VI, r. 8.  
Joinder of  
issue.

8. 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.

O. VI, r. 9.  
Evasive denial.

9. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so 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.

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

O. VI, r. 10.  
Denial of contract.

**11.** 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. 11.  
Effect of document to be stated.

**12.** 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. 12.  
Malice, knowledge, etc.

**13.** 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. 13.  
Notice.

**14.** 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. 14.  
Implied contract or relation.

**15.** 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. 15.  
Presumptions of law.

**16.** No technical objection shall be raised to any pleading on the ground of any alleged want of form.

O. VI, r. 16.  
Technical objection.

**17.** The Court 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 it shall think fit, order the costs of the application to be paid as between advocate and client.

O. VI, r. 17.  
Striking out pleadings.

**18.** 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. 18.  
Amendment of pleadings.

**19.** A plaintiff may without leave amend his plaint once at any time within 21 days from the date specified in the summons for the appearance of or the entering of an appearance by the defendant; or, where a written statement of defence is filed, then within 14 days from the filing of the written statement of defence or the last of such written statements.

O. VI, r. 19.  
Plaintiff may amend without leave.

O. VI, r. 20.  
Defendant  
amending  
without leave.

**20.** A defendant who has set up any counterclaim or set-off may without leave amend such counterclaim or set-off at any time within 28 days of the filing of such counterclaim or set-off; or where the plaintiff files a written statement in reply to such counterclaim or set-off, then within 14 days from the filing of such written statement in reply.

O. VI, r. 21.  
Disallowance  
of amendment.

**21.** Where a party has amended his pleading under either of the last two preceding rules, the opposite party may within 15 days from the date of service upon or delivery to him of the duplicate of the amended document apply to the Court to disallow the amendment or any part thereof, and the Court may, if satisfied that the justice of the case require it, disallow the same or allow it subject to such terms as to costs or otherwise as may be just.

O. VI, r. 22.  
Amendment to  
be filed and  
served.

**22.** Whenever any pleading is amended, such amended document shall be filed within the time allowed for amending the same; and where such filing occurs before the date specified in the summons for the appearance of or the entering of appearance by the defendant, then a duplicate of the amended document shall be served upon the opposite party in the manner provided for the service of a summons, but where the amended document is filed after such date, a duplicate thereof shall be delivered to the opposite party by the party filing.

O. VI, r. 23.  
Reply to  
amendment.

**23.** Where any party has amended his pleading under Rule 19 or 20 the opposite party shall plead to the amended pleading or amend his pleading within the time he then has to plead, or within 15 days of the service or delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the service or delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

O. VI, r. 24.  
Failure to  
amend after  
order.

**24.** 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 maybe, unless the time is extended by the Court.

O. VI, r. 25.  
Pleading to be  
signed.

**25.** Every pleading shall be signed by an advocate or by the party if he sues or defends in person.

O. VI, r. 26.  
Pleadings in  
Subordinate  
Courts.

**26.** Suits in a subordinate Court may be instituted by lodging a plaint and may be tried without further pleadings unless the Court otherwise orders: Provided that in a suit so tried issues shall be framed in accordance with Order XIII.

## ORDER VII.

### PLAINT.

O. VII, r. 1.  
Particulars to  
be contained in  
plaint.

**1.** (1) The plaint shall contain the following particulars:—

- (a) The name of the Court in which the suit is brought.
- (b) The name, description, and place of residence of the plaintiff, and an address for service.
- (c) The name, description and place of residence of the defendant, so far as they can be ascertained.

- (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 it arose.
- (f) The facts showing that the Court has jurisdiction.
- (g) The relief which the plaintiff claims.
- (h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.
- (i) A statement of the value of the subject-matter of the suit so far as the case admits.

2. Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed. Except 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.

O. VII. r. 2.  
In money suits.

3. Where the subject matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it.

O. VII. r. 3.  
Where the subject matter of the suit is immovable property.

4. Where the plaintiff sues in a representative character the plaintiff 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.

O. VII. r. 4.  
When plaintiff sues as representative.

5. The plaintiff 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.

O. VII. r. 5.  
Defendant's interest and liability to be shown.

6. 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. VII. r. 6.  
Grounds of exemption from limitations.

7. 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 claimed to be stated.

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

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

9. (1) The plaintiff shall present as many copies of the plaintiff as there are defendants, unless the Court, by reason of the length of the plaintiff, 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 plaintiff.

(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 of copies or statements, if, on examination, he finds them to be correct.

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

**10.** (1) The plaint may 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.

**11.** 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 ;
- (e) Where the suit is shown by the plaint to be frivolous or vexatious.

O. VII. r. 12.  
Procedure on  
rejecting plaint.

**12.** Where a plaint is rejected the Judge shall record an order to the effect with the reasons for such order.

O. VII. r. 13.  
Where rejection  
of plaint does  
not preclude  
presentation of  
fresh plaint.

**13.** The rejection of the plaint on any grounds herein-before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

## ORDER VIII.

### DEFENCE AND COUNTERCLAIM.

O. VIII. r. 1.  
Written  
statement.

**1.** The defendant may, and if so required by the Court at the time of issue of the summons or at any time thereafter shall, at or before the first hearing or within such time as the Court may prescribe, file his defence.

Where a defendant has been served with a summons in the form provided by Order V, Rule 1 (a), he shall, unless some other or further order be made by the Court, file his defence within fifteen days after he has entered an appearance in the suit.

O. VIII. r. 2.  
Set-off and  
counterclaim.

**2.** 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 Court may on the application of the plaintiff before trial, if in the opinion of the Court such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to defendant to avail himself thereof.

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

O. VIII. r. 3.  
Specific denial.

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

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

O. VIII. r. 4.  
Pleading to damage.

**5.** 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.

O. VIII. r. 5.  
Persons in representative capacity.

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

O. VIII. r. 6.  
Proper admission not made.

**7.** 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. 7.  
Set-off and counterclaim.

**8.** Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff together 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, and shall deliver to the Court his defence for service on such of them as are parties to the action together with his defence for service on the plaintiff within the period within which he is required to file his defence.

O. VIII. r. 8.  
Title of counterclaim.

**9.** Where any such person as in the last preceding rule mentioned is not a party to the suit, he shall be summoned to appear 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. 9.  
Claim against person not party.

**10.** Any person not already a party to the suit 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 the suit.

O. VIII. r. 10.  
Appearance by added parties.

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

O. VIII. r. 11.  
Reply to counterclaim.



O. VIII. r. 12.  
Exclusion of  
counterclaim.

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

O. VIII. r. 13.  
Discontinuance.

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

O. VIII. r. 14.  
Judgment for  
balance.

**14.** Where in any suit a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court may if the balance 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. 15.  
Plea of  
possession.

**15.** No defendant in a suit for the recovery of immovable property 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 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 he can prove except as hereinbefore mentioned.

O. VIII. r. 16.  
Defence or  
set-off founded  
on separate  
grounds.

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

O. VIII. r. 17.  
New ground of  
defence.

**17.** Any ground of defence which has arisen after the institution of the suit or the filing of a defence claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his pleading.

O. VIII. r. 18.  
Subsequent  
pleadings.

**18.** No pleading subsequent to the defence of a defendant other than by way of defence to a counterclaim or set-off shall be filed, except by the leave of the Court and upon such terms as the Court thinks fit.

O. VIII. r. 19.  
Filing of  
defence.

**19.** Subject to the provisions contained in Rule 8 of this Order a defendant shall file his defence and either party shall file any pleading subsequent thereto by delivering the defence or other pleading to the Court for placing upon the record and by delivering a duplicate thereof at the address for service of the opposite party.

## ORDER IX.

### APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

O. IX. r. 1.  
Mode of  
entering  
appearance.

**1.** A defendant on or before the day fixed in the summons for him to enter an appearance shall enter such appearance by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's advocate, or stating that the defendant defends in

person and also the defendant's address for service. In such case he shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal; the duplicate memorandum shall, in addition to being sealed, be endorsed with a notice requiring the defendant to file his defence within fifteen days:

Memorandum  
and duplicate.

The defendant shall, on the day on which he enters an appearance to a summons, give notice of his appearance to the plaintiff's advocate, or if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a summons issued out of a District Registry, must be an address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

Notice of  
Appearance.

2. Where no appearance has been entered on or before the day fixed in the summons for a defendant who is an infant or a person of unsound mind the plaintiff shall before further proceeding with the suit apply to the Court for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the action. But no such order shall be made unless it appears upon the hearing of such application that the summons was duly served and that all the requirements as to notice of the application contained in O. XXIX r. 3 (4) have been complied with unless the Court at the hearing of such application shall dispense with any notice required thereby.

O. IX. r. 2.  
Suits against  
infants and  
lunatics.

3. Where any defendant fails to enter an appearance on or before the day fixed in the summons and the plaintiff is desirous of proceeding upon default of entry of appearance under any of the rules of this Order he shall cause an affidavit of service of the summons to be filed upon the record.

O. IX. r. 3.  
Affidavit of  
service upon  
non-appearance.

4. Where the plaintiff is drawn claiming a liquidated demand and the defendant fails to enter an appearance on or before the day fixed in the summons or all the defendants if more than one fail to enter an appearance, the Court may, subject to the provisions of Rule 3 hereof, pass judgment for any sum not exceeding the sum claimed in the plaintiff together with interest at the rate specified (if any), or (if no rate be specified) at the rate of eight per cent. per annum to the date of judgment and costs.

O. IX. r. 4.  
Judgment upon  
a liquidated  
demand.

5. Where the plaintiff is drawn claiming a liquidated demand and there are several defendants of whom one or more enters an appearance on or before the day fixed in the summons, and another or others of them fail to enter an appearance, the Court may, subject to the provisions of Rule 3 hereof pass judgment as in the last preceding rule against such as have not entered an appearance and execution may issue upon such judgment and decree without prejudice to the plaintiff's right to proceed with the action against such as have appeared.

O. IX. r. 5.  
Liquidated  
demand against  
several  
defendants.

O. IX. r. 6.  
Assessment of  
damages.

6. Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all the defendants, if more than one, fail to enter an appearance on or before the day fixed in the summons the plaintiff may, subject to the provisions of Rule 3 hereof, set down the suit for assessment by the Court of the value of the goods and damages or the damages only as the case may be in respect of the various claims set out in the plaint, and the Court may proceed to pass judgment for the amount found to be due in the course of such assessment.

O. IX. r. 7.  
Assessment  
where some  
defendants have  
entered  
appearance.

7. Where the plaint is drawn as in the last preceding rule mentioned and there are several defendants of whom one or more enter an appearance, and another or others fail to enter an appearance on or before the day fixed in the summons, the Court subject to the provisions of Rule 3 hereof may assess the value of the goods and the damages or either of them as the case may be as against the defendant or defendants who have not entered an appearance at the same time as the trial of the suit against the other defendant or defendants and may proceed to pass judgment in accordance with such assessment.

O. IX. r. 8.  
General rule  
where no  
appearance  
entered.

8. In all suits not by the rules of this Order otherwise specifically provided for in case the party served with a summons does not enter an appearance on or before the day fixed therein and upon a compliance with the provisions of Rule 3 hereof, the suit may proceed as if such party had entered an appearance.

O. IX. r. 9.  
Setting aside  
*ex parte*  
judgment.

9. Where judgment has been passed pursuant to any of the preceding rules of this Order it shall be lawful for the Court to set aside or vary such judgment upon such terms as may be just.

O. IX. r. 10.  
Step in suit  
after appearance  
entered.

10. Where a defendant has entered an appearance under Rule 1 hereof the plaintiff may set down the suit for hearing in Court with notice to the opposite party, after the expiration of the time allowed to a defendant for filing a defence, or the last of the defences.

O. IX. r. 11.  
Appearance by  
defendant in  
answer to a  
summons.

11. Where a day has been fixed in a summons for the defendant to appear and answer the claim, the parties shall be in attendance at the Court House in person, or by their respective advocates or recognised agents and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

O. IX. r. 12.  
Defendant to  
give an address  
for service.

12. Each defendant upon whom a summons requiring him to appear and answer a claim has been served shall at or before the first attendance under Rule 11 hereof file a memorandum giving an address for service and shall deliver a duplicate thereof to the opposite party.

O. IX. r. 13.  
Suit dismissed  
upon failure to  
pay fees.

13. Where on the day fixed for entering an appearance or to appear and answer 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.

O. IX. r. 14.  
When neither  
party appears  
suit dismissed.

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

15. Where a suit is dismissed under Rule 13 or Rule 14 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. 15.  
Plaintiff may bring fresh suit or Court may restore suit to file.

16. (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. 16.  
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.

17. Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing—

O. IX. r. 17.  
Procedure when only plaintiff appears.

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

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

(c) if the Court is satisfied that the summons or notice of hearing was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed or that the defendant was for other sufficient cause 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 or notice of hearing was not duly served or was not served in sufficient time the Court may order the plaintiff to pay the costs occasioned by postponement.

18. 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. 18.  
Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

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

O. IX. r. 19.  
Procedure when defendant only appears.

O. IX, r. 20.  
Decree against  
plaintiff by  
default bars  
fresh suit.

**20.** (1) Where a suit is wholly or partly dismissed, under Rule 19 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.

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

O. IX, r. 21.  
Procedure in  
case of non-  
attendance of  
one or more  
of several  
plaintiffs.

**21.** 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.

O. IX, r. 22.  
Procedure in  
case of non-  
attendance of  
one or more  
of several  
defendants.

**22.** 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.

O. IX, r. 23.  
Consequence of  
non-attendance,  
without suffi-  
cient cause  
shown, of party  
ordered to  
appear in  
person.

**23.** 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 to appear, he shall be subjected to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

O. IX, r. 24.  
Setting aside  
decree *ex*  
*parte* against  
defendant.

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

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

O. IX, r. 25.  
No decree to  
be set aside  
without notice  
to opposite  
party.

**25.** No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

## ORDER X.

### INTERROGATORIES, DISCOVERY AND INSPECTION.

O. X, r. 1.  
Discovery by  
interrogatories.

**1.** In any suit the plaintiff or defendant, by leave of the Court, may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

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

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

2. 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.

3. In adjusting the costs of the suit inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for 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.

4. Interrogatories shall be in the Form No. 2 in Appendix B, with such variations as circumstances may require.

O. X, r. 4.  
Form of  
interrogatories.

5. 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. 5.  
Corporations.

6. 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. 6.  
Objections to  
interrogatories  
by answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for the purpose may be made within seven days after service of the interrogatories.

O. X, r. 7.  
Setting aside  
and striking  
out interro-  
gatories.

8. 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. 8.  
Affidavit in  
answer, filing.

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

O. X, r. 9.  
Form of  
affidavit in  
answer.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

O. X, r. 10.  
No exception  
to be taken.

O. X, r. 11.  
Order to  
answer or  
answer  
further.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for 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. 12.  
Application for  
discovery of  
documents.

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

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

O. X, r. 13.  
Affidavit of  
documents.

13. The affidavit to be made by a party against whom such order as is mentioned in Rule 12 has been made shall specify which if any of the documents therein mentioned he objects to produce and shall be in Form No. 5 of Appendix B with such variation as the case may require.

O. X, r. 14.  
Production  
of documents.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

O. X, r. 15.  
Inspection of  
documents  
referred to  
in pleadings  
or affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his advocate, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

O. X, r. 16.  
Notice to  
produce for  
inspection.

16. Notice to any party to produce for inspection any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix B, with such variations as circumstances may require.

O. X, r. 17.  
Time for  
inspection  
when notice  
given.

17. The party to whom such notice is given shall within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his 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, at their usual place of custody, and stating which if any of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix B with such variations as the case may require.

**18.** (1) Where the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his 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 :

O. X, r. 18.  
Order for  
inspection.

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

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

**19.** (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations :

O. X, r. 19.  
Verified copies.

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit, at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power ; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

**20.** Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it

O. X, r. 20.  
Premature  
discovery.



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. 21.  
Non-compliance  
with order for  
discovery.

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

O. X, r. 22.  
Using answers  
to interrogatories  
at trial.

**22.** Any party may, at the trial of a suit, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others or the whole of such answer :

Provided always that in such case the Court may look at the whole of the answers, and, if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

O. X, r. 23.  
Order to apply  
to minors.

**23.** This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

## ORDER XI.

### ADMISSIONS.

O. XI, r. 1.  
Notice of  
admission  
of case.

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

O. XI, r. 2.  
Notice to  
admit  
documents.

**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. 3.  
Form of  
notice.

**3.** A notice to admit documents shall be in Form 9 in Appendix B, with such variations as circumstances may require.

O. XI, r. 4.  
Notice to  
admit facts.

**4.** Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the cost of providing such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs :

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice :

Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. A notice to admit facts shall be in Form No. 10 in Appendix B, and admission of facts shall be in Form No. 11 in Appendix B, with such variations as circumstances may require. O. XI, r. 5.  
Form of admission.

6. 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. 6.  
Judgment on admissions.

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

8. Notice to produce documents shall be in Form No. 12 in Appendix B, with such variations as circumstances may require. An affidavit of the advocate or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. O. XI, r. 8.  
Notice to produce documents in Court.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. O. XI, r. 9.  
Costs.

## ORDER XII.

### PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

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— O. XII, r. 1.  
Endorsements on documents admitted in evidence.

(a) the number and title of the suit;

(b) the party producing the document;

(c) the date on which it was produced;

and the endorsement shall be signed or initialled by an officer of the Court.

(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.

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.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book, or account is produced on behalf of a party, then by that party; or

(b) where the record, book, or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party:

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified, mark the entry, and cause the book, account, or record in which it occurs to be returned to the person producing it:

Provided that the Court may accept, 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.

(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.

O. XII, r. 4.  
Court may  
order any  
document to be  
impounded.

4. Notwithstanding anything hereinbefore contained, 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.

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—

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

(b) if any appeal has been filed, 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 in writing 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.

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

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

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

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

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.

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 a defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : issues of fact and issues of law.

(5) At the hearing of the suit the Court shall, after reading the pleadings, if any, and after such examination of the parties or their advocates as may appear necessary, ascertain upon what material propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the hearing of the suit makes no defence, or where issue has been joined upon the pleadings.

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.

O. XIII, r. 2.  
Issues of law and of fact.

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

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

- (a) Allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of such parties.
- (b) Allegations made in the pleadings or in answers to interrogatories delivered in the suit.
- (c) The contents of documents produced by either party.

O. XIII, r. 4.  
Court may  
examine  
witnesses or  
documents  
before framing  
issues.

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

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

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

(2) The Court may also at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced.

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 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.

## SUMMONING AND ATTENDANCE OF WITNESSES.

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. XIV, r. 1.  
Summons to attend to give evidence or produce documents.

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.

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

(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 Supreme 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. XIV, 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 into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

O. XIV, r. 4.  
Procedure where insufficient sum paid in. Expenses of witnesses detained more than one day.

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

5. 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.

O. XIV, r. 5.  
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. XIV, r. 6.  
Summons to produce documents.

O. XIV, r. 7.  
Power to  
require persons  
present in  
Court to give  
evidence or  
produce  
document.

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

O. XIV, r. 8.  
Summons, how  
served.

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

O. XIV, r. 9.  
Time for  
serving  
summons.

**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.

(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.

O. XIV, r. 10.  
Procedure  
where witness  
fails to comply  
with summons.

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

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

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

O. XIV, 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
- (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.

O. XIV, 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 fifty pounds, as it thinks fit, having regard to his condition in life and all the circumstances of the

case, and may order his property, or any part thereof, to be attached and sold, or, if already attached under Rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

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

**13.** 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. O. XIV, r. 13.  
Mode of attachment.

**14.** 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. O. XIV, r. 14.  
Duty of persons summoned to give evidence or produce document.

**15.** (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of. O. XIV, r. 15.  
When they may depart.

(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.

**16.** 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 15. O. XIV, r. 16.  
Application of Rules 10 to 13.

**17.** 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. XIV, r. 17.  
Procedure where witness apprehended cannot give evidence or produce document.

**18.** No one shall be ordered to attend in person to give evidence or to produce any document unless he resides— O. XIV, r. 18.  
No witness to be ordered to appear in person unless resident within certain limits.

(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.

**19.** 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. XIV, r. 19.  
Consequence of refusal of a party to give evidence when called on by the Court.

**20.** 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. XIV, r. 20.  
Rules as to witnesses to apply to parties summoned.



## ORDER XV.

## PROSECUTION OF SUITS AND ADJOURNMENTS.

O. XV, r. 1.

Court may  
grant time and  
adjourn  
hearing.Costs of  
adjournment.

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, or may adjourn the hearing generally, and may make such order as it thinks fit with respect to the costs occasioned by such 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.

O. XV, r. 2.

Procedure  
where no  
application is  
made to restore  
suit adjourned  
generally.

2. Where the hearing of a suit has been adjourned generally, the Court may, if no application as aforesaid is made within twelve months of the last adjournment, give notice to the parties to show cause why the suit should not be dismissed. If cause be not shown to the satisfaction of the Court, the suit shall be dismissed.

O. XV, r. 3.

Procedure if  
parties fail to  
appear on day  
fixed.

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. XV, r. 4.

Court may  
proceed not-  
withstanding  
either party  
fails to produce  
evidence.

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. XV, r. 5.

Dismissal of  
suit for want  
of prosecution.

5. If the plaintiff does not within eight weeks from the delivery of any defence, or, where a counterclaim is pleaded, then within ten weeks from the delivery thereof, set down the suit for hearing, then the defendant may either set down the suit for hearing or apply to the Court to dismiss the suit for want of prosecution, and on the hearing of such application the Court may order the suit to be dismissed accordingly, or may make such other order, and on such terms, as to the Court may seem just.

## ORDER XVI.

## HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

O. XVI, r. 1.

Right to begin.

1. The plaintiff shall have 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 shall have the right to begin.

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

O. XVI, r. 2.  
Statement and  
production of  
evidence.

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

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

Provided that in cases in which evidence is tendered by the party beginning only he shall have no right to reply.

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 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. XVI, r. 3.  
Evidence where  
several issues.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence of and under the personal direction and superintendence of the Judge.

O. XVI, r. 4.  
Witnesses to  
be examined in  
open Court.

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 completed shall be signed by the Judge.

O. XVI, r. 5.  
How evidence  
to be recorded.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall when completed be interpreted to him in the language in which it was given :

O. XVI, r. 6.  
When  
deposition to  
be interpreted  
and read over.

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

7. The Court may, of its own motion or on the application of any party or his advocate, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

O. XVI, r. 7.  
Any particular  
question and  
answer may be  
taken down.

8. Where any question put to a witness is objected to by a party or his advocate, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it.

O. XVI, r. 8.  
Questions  
objected to and  
allowed by  
Court.

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

O. XVI, r. 9.  
Remarks on  
demeanour of  
witness.

10. (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 direction under the said rules, and may proceed with the suit from the stage at which his predecessor left it.

O. XVI, r. 10.  
Power to deal  
with evidence  
taken before  
another Judge.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Ordinance.

O. XVI, r. 11.  
Power to  
examine  
witness  
immediately.

**11.** (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

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

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

O. XVI, r. 12.  
Court may  
recall and  
examine  
witness.

**12.** 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.

O. XVI, r. 13.  
Power of Court  
to inspect.

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

## ORDER XVII.

### AFFIDAVITS.

O. XVII, r. 1.  
Power to order  
any point to  
be proved by  
affidavit.

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

Provided that, where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

O. XVII, r. 2.  
Power to order  
attendance of  
deponent for  
cross-  
examination.

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

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

O. XVII, r. 3.  
Matters to  
which affidavits  
shall be  
confined.

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

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## ORDER XVIII.

## JUDGMENT AND DECREE.

1. In suits where a hearing is necessary, 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. XVIII, r. 1.  
Judgment,  
when  
pronounced.
2. (1) A Judge may pronounce a judgment written and signed but not pronounced by his predecessor. O. XVIII, r. 2.  
Power to  
pronounce  
judgment  
written by  
another Judge.  
(2) A Judge of the Supreme Court may pronounce a judgment written and signed but not pronounced by another Judge of the Supreme Court.
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. O. XVIII, r. 3.  
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.  
(3) A judgment once signed shall not afterwards be altered or added to save as provided by section 100 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. XVIII, r. 4.  
Contents of  
judgment.
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. XVIII, r. 5.  
Court to state  
its decision on  
each issue.
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. O. XVIII, r. 6.  
Contents of  
decree.  
(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 proportion such costs are to be paid.  
(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.
7. 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. O. XVIII, r. 7.  
Date of 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. O. XVIII, r. 8.  
Procedure  
where Judge  
has vacated  
office or is  
unable to  
sign decree.  
(2) Where a Judge of the Supreme 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 Supreme Court.
9. Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and, where such property can be identified by boundaries or by numbers in a government record or survey, the decree shall specify such boundaries or numbers. O. XVIII, r. 9.  
Decree for  
recovery of  
immovable  
property.

O. XVIII,  
r. 10.  
Decree for  
delivery of  
movable  
property.

**10.** Where the suit is in respect of immovable 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. XVIII,  
r. 11.  
Decree may  
direct payment  
by instalments.

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

(2) After the passing of any such decree, the Court may, on the application of the judgment-debtor, and with the consent of the decree-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.

O. XVIII,  
r. 12.  
Decree for  
possession and  
mesne profits.

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

- (a) for the possession of the property;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
- (c) directing an inquiry as to rent or mesne profits from the institution of such suit until—
  - (i) the delivery of possession to the decree-holder,
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
  - (iii) the expiration of three years from the date of the decree, whichever event first occurs.

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

O. XVIII,  
r. 13.  
Decree in  
administration  
suit.

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

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, respectively, as may be in force for the time being 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.

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.

O. XVIII,  
r. 14.  
Decree in suit  
for dissolution  
of partnership.

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.

O. XVIII,  
r. 15.  
Decree in suit  
for account  
between  
principal and  
agent.

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.

O. XVIII,  
r. 16.  
Special  
directions as  
to accounts.

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 inquiry, pass a preliminary decree declaring the rights of the parties interested in the property and giving such further directions as may be required.

O. XVIII,  
r. 17.  
Decree in suit  
for partition of  
property or  
separate  
possession of  
a share.

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.

O. XVIII,  
r. 18.  
Decree where  
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 2, or otherwise.

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

O. XVIII,  
r. 19.  
Certified copies  
of judgment  
and decree to  
be furnished.

## ORDER XIX.

### EXECUTION OF DECREES AND ORDERS.

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

O. XIX, r. 1.  
Modes of  
paying money  
under decree.

- (a) Into the Court whose duty it is to execute the decree.
- (b) Direct to the decree-holder; or
- (c) Otherwise as the Court which made the decree directs.

Where any payment is made under (a), notice of such payment shall be given to the decree-holder.

O. XIX, r. 2.  
Payment out of  
Court to  
decree holder.

2. (1) Where any money payable under a decree of any kind is paid direct to the decree-holder or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

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

O. XIX, r. 3.  
Lands situate  
in more than  
one jurisdiction.

3. Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

O. XIX, r. 4.  
Procedure  
where Court  
desires that  
its own decree  
shall be  
executed by  
another Court.

4. The Court sending a decree for execution by another Court shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains 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. XIX, r. 5.  
Court receiving  
copies of decree  
to file same  
without proof.

5. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

O. XIX, r. 6.  
Execution or  
transfer by  
Supreme Court  
of transferred  
decree.

6. Where the Court to which the decree is sent for execution is the Supreme 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.

O. XIX, r. 7.  
Application for  
execution.

7. 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. XIX, r. 8.  
Oral  
application.

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

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

Written application.

- (a) The number of the suit.
  - (b) The names of the parties.
  - (c) The date of the decree.
  - (d) Whether any appeal has been preferred from the decree.
  - (e) Whether any, and, if any, what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree.
  - (f) Whether any, and, if any, what, previous applications have been made for the execution of the decree, the dates of such applications, and their results.
  - (g) The amount with interest, if any, due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed.
  - (h) The amount of the costs, if any, awarded.
  - (i) The name of the person against whom execution of the decree is sought; and
  - (j) The mode in which the assistance of the Court is required, whether—
    - (i) by the delivery of any property specifically decreed;
    - (ii) by the attachment and sale, or by the sale without attachment, of any property;
    - (iii) by the arrest and detention in prison of any person;
    - (iv) by the appointment of a receiver;
    - (v) otherwise, as the nature of the relief granted may require.
- (3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

9. Where an application is made for the attachment of any movable property belonging to a judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

O. XIX, r. 9.  
Application for attachment of movable property not in judgment-debtor's possession.

10. Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot—

O. XIX, r. 10  
Application for attachment of immovable property to contain certain particulars.

- (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
- (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. XIX, r. 11.  
Power to  
require certified  
extract from  
Land Registries  
in certain cases.

**11.** Where an application is made for the attachment of any land which is registered in the Land Registries, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing, any transferable interest in the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

O. XIX, r. 12.  
Application for  
execution by  
joint decree-  
holder.

**12.** (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

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

O. XIX, r. 13.  
Application for  
execution by  
transferee  
of decree.

**13.** Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections, if any, to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

O. XIX, r. 14.  
Procedure on  
receiving an  
application  
for execution  
of decree.

**14.** (1) On receiving an application for the execution of a decree as provided by Rule 8 sub-rule (2), the Court shall ascertain whether such of the requirements of Rules 8 to 10 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or 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 :

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.

**15.** (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—

O. XIX, r. 15.  
Execution in  
case of cross  
decrees.

- (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and
- (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

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

- (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and
- (b) the sums 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.

**16.** 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—

O. XIX, r. 16.  
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.

**17.** The provisions contained in Rules 15 and 16 shall apply to decrees for sale in enforcement of a mortgage or charge.

O. XIX, r. 17.  
Cross-decrees  
and cross-claims  
in mortgage  
suits.

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

O. XIX, r. 18.  
Simultaneous  
execution.

**19.** (1) Where an application for execution is made—

O. XIX, r. 19.  
Notice to show  
cause against  
execution in  
certain cases.

- (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 :

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 the 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. XIX, r. 20.  
Procedure after  
issue of notice.

**20.** (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

O. XIX, r. 21  
Process for  
execution.

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

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

O. XIX, r. 22.  
Endorsement  
on process.

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

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court 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. XIX, r. 23.  
When Court  
may stay  
execution.

**23.** (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 the Court of first instance, or appellate Court if execution has been issued thereby, or if application for execution has been made thereto.

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

**24.** No order of restitution or discharge under Rule 23 shall prevent the property or person of a judgment-debtor from being re-taken in execution of the decree sent for execution.

O. XIX, r. 24.  
Liability of judgment-debtor discharged.

**25.** 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 is sent for execution.

O. XIX, r. 25.  
Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.

**26.** Where a suit is pending in any Court against the holder of a decree of such Court in the name 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.

O. XIX, r. 26.  
Stay of execution pending suit between decree-holder and judgment-debtor.

**27.** Every decree for the payment of money, including a decree for the payment of money as an 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.

O. XIX, r. 27.  
Decree for payment of money.

**28.** (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or 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.

O. XIX, r. 28.  
Decree for specific movable property.

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

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

**29.** (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.

O. XIX, r. 29.  
Decree for specific performance, for restitution of conjugal rights, or for an injunction.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation the decree may be enforced by the attachment of the property of the corporation, or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 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 such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

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

O. XIX, r. 30.  
Discretion of  
Court in  
executing  
decrees for  
restitution of  
conjugal  
rights.

**30.** (1) Notwithstanding anything in Rule 29, the Court, either at the time of passing a decree for the restitution of 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 fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part, as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

O. XIX, r. 31.  
Decree for  
execution of  
document or  
endorsement of  
negotiable  
instrument.

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

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

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed, and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :—

“ C.D., Judge of the.....Court at.....,  
for A.B., in a suit by E.F. against A.B. (or as the case  
may be).”

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

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

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

O. XIX, r. 32.  
Decree for  
immovable  
property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property.

(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 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.

**33.** Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property and notifying the occupant in such manner as may be suitable the substance of the decree in regard to the property.

O. XIX, r. 33.  
Decree for  
delivery of  
immovable  
property  
when in  
occupancy of  
tenant.

**34.** (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 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.

O. XIX, r. 34.  
Discretionary  
power to  
permit judg-  
ment-debtor to  
show cause  
against  
detention in  
prison.

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

O. XIX, r. 35.  
Warrant for  
arrest to direct  
judgment-  
debtor to be  
brought up.

**35.** Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

O. XIX, r. 36,  
Subsistence  
allowance.

**36.** (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 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 41 of the Ordinance, or, where no such scales have been 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 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 :

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

O. XIX, r. 37.  
Proceedings on  
appearance of  
judgment-  
debtor in  
obedience to  
notice or after  
arrest.

**37.** (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under Rule 34, 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.

(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.

**38.** 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 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.

**39.** 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.

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

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once; and further that when the property seized is livestock the Court may make such arrangement for the custody and maintenance thereof as it may deem sufficient.

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

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

O. XIX, r. 38.  
Examination  
of judgment-  
debtor as to  
his property.

O. XIX, r. 39.  
Attachment in  
case of decree  
for rent, or  
mesne profits,  
or other  
matter, amount  
of which to be  
subsequently  
determined.

O. XIX, r. 40.  
Attachment of  
movable  
property other  
than agricul-  
tural produce,  
in possession  
of judgment-  
debtor.

O. XIX, r. 41.  
Attachment of  
agricultural  
produce



- (b) where such produce has been cut or gathered, on the barn, stock, 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 or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

O. XIX, r. 42.  
Provisions as  
to agricultural  
produce under  
attachment.

**42.** (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient, and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf, either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

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

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

O. XIX, r. 43.  
Attachment of  
debt, share,  
and other  
property not in  
possession of  
judgment-  
debtor.

**43.** (1) In the case of—

- (a) a share in the capital of a corporation;
- (b) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of any Court, the attachment shall be made by a written order prohibiting—
  - (i) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
  - (ii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the Court House, and another copy shall be sent, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

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

O. XIX, r. 44.  
Attachment of  
share in  
movables.

45. (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, or of any person privately employed, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 44 of the Ordinance, 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 under the order, or the monthly instalments, as the case may be.

O. XIX, r. 45.  
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 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 a railway company, or local authority, or private employer, 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 Colony revenues or the funds of a railway company carrying on business in any part of the Colony, or local authority in the Colony; and the Government or the railway company or local authority or employer, as the case may be, shall be liable for any sum paid in contravention of this rule.

46. (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.

O. XIX, r. 46.  
Attachment of  
partnership  
property.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or, in the case of a sale being directed, to purchase the same.

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

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within the Colony.

(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. XIX, r. 47.  
Execution of  
decree against  
firm.

**47.** (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 XXVII 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 section 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 (a) 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.

O. XIX, r. 48.  
Attachment of  
negotiable  
instrument.

**48.** Where the property to be attached 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. XIX, r. 49.  
Attachment of  
property in  
custody of  
Court or  
public officer.

**49.** 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.

50. (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—

O. XIX, r. 50.  
Attachment of  
decree.

(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 recognised by any Court so long as the attachment remains in force.

O. XIX, r. 51.  
Attachment of  
immovable  
property.

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

(2) A copy of the order shall be affixed on a conspicuous part of the property and upon a conspicuous part of the Court House.

O. XIX, r. 52.  
Removal of  
attachment  
after satisfac-  
tion of decree.

**52.** Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or satisfaction of the decree is otherwise made through the Court or is certified by the Court; or

(b) the decree is set aside or reversed;

the attachment shall be deemed to be withdrawn, and, in the case of immovable property the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

O. XIX, r. 53.  
Order for  
payment of coin  
or currency  
notes to party  
entitled under  
decree.

**53.** 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.

O. XIX, r. 54.  
Determination  
of attachment.

**54.** 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.

O. XIX, r. 55.  
Investigation  
of claims to,  
and objections  
to attachment  
of, attached  
property.

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

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly 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. XIX, r. 56.  
Evidence to be  
adduced by  
claimant.

**56.** The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in the property attached.

O. XIX, r. 57.  
Release of  
property from  
attachment.

**57.** 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.

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

O. XIX, r. 58.  
Disallowance of claim to property attached.

**59.** 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.

O. XIX, r. 59.  
Continuance of attachment subject to claim of incumbrancer.

**60.** 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.

O. XIX, r. 60.  
Saving of suits to establish right to attached property.

**61.** 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.

O. XIX, r. 61.  
Power to order property attached to be sold and proceeds to be paid to person entitled.

**62.** 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.

O. XIX, r. 62.  
Sales, by whom conducted and how made.

**63.** (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.

O. XIX, r. 63.  
Notification of sales by public auction.

(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—

- (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; 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 in the manner hereinbefore prescribed for the signing of pleadings and containing, so far as they are known to or can be ascertained by the person so signing, the matters required by sub-rule (2) to be specified in the public notice.

(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.

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

O. XIX, r. 64.  
Time of sale.

**64.** Save in the case of property of the kind described in the proviso to Rule 40, no sale hereunder shall without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the public notice has been affixed on the Court House of the Judge ordering the sale.

O. XIX, r. 65.  
Adjournment  
or stoppage of  
sale.

**65.** (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Provided that where the sale is made in, or within the precincts of, the Court House no such adjournment shall be made without 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. XIX, r. 66.  
Defaulting  
purchaser  
answerable for  
loss on re-sale.

**66.** 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.

O. XIX, r. 67.  
Decree-holder  
not to bid for  
or buy  
property  
without  
permission.

**67.** (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of section 50 of the Ordinance 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.

**68.** 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.

O. XIX, r. 68.  
Restriction on bidding or purchase by officers.

**69.** 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, authorise the sale of such instrument or share through a broker.

O. XIX, r. 69.  
Negotiable instruments and shares in corporations.

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

O. XIX, r. 70.  
Sales 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 movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

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

O. XIX, r. 71.  
Irregularity not to vitiate sale, but any person injured may sue.

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

O. XIX, r. 72.  
Delivery of movable property, debts and shares.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession ordering him to deliver possession of the property to the purchaser.

(3) Where the property sold is a share in a corporation, the delivery thereof shall be made by a written order of the Court 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.

**73.** (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document, or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

O. XIX, r. 73.  
Transfer of negotiable instruments and shares.



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

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. Any interest or dividend so received shall be paid into Court.

O. XIX, r. 74.  
Vesting order  
in case of other  
property.

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

O. XIX, r. 75.  
Sale of  
immovable  
property.

**75.** Sales of immovable property in execution of decrees may be ordered by any Court.

O. XIX, r. 76.  
Postponement  
of sale to  
enable judg-  
ment-debtor to  
raise amount  
of decree.

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

(2) In such case the Court shall grant a certificate to the judgment-debtor authorising him, within a period to be mentioned therein and notwithstanding anything contained in section 47 of the Ordinance 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 67, into Court :

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

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

O. XIX, r. 77.  
Deposit by  
purchaser and  
re-sale on  
default.

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

(2) Where the decree-holder is the purchaser, and is entitled to set off the purchase-money under Rule 67, the Court may dispense with the requirements of this rule.

O. XIX, r. 78.  
Time for  
payment in full  
of purchase  
money.

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

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 67.

**79.** 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 and shall be allocated to be satisfaction of the decree, 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.

O. XIX, r. 79.  
Procedure in  
default of  
payment.

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

O. XIX, r. 80.  
Notification on  
re-sale.

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

O. XIX, r. 81.  
Bid of co-  
sharer to have  
preference.

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

O. XIX, r. 82.  
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 83 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

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

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

O. XIX, r. 83.  
Application to  
set aside sale  
on ground of  
irregularity  
or fraud.

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.

**84.** 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. XIX, r. 84.  
Application by  
purchaser to  
set aside sale  
on ground of  
judgment-  
debtor having  
no saleable  
interest.

O. XIX, r. 85.  
Sale, when to  
become  
absolute or be  
set aside.

**85.** (1) Where no application is made under Rule 82, Rule 83, or Rule 84, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under Rule 82, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

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

O. XIX, r. 86.  
Return of  
purchase-  
money in  
certain cases.

**86.** Where a sale of immovable property is set aside under Rule 85, the purchaser shall be entitled to an order for payment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

O. XIX, r. 87.  
Certificate to  
purchaser.

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

O. XIX, r. 88  
Delivery of  
property in  
occupancy of  
judgment-  
debtor.

**88.** Where the immovable property sold is in the occupancy of the judgment-debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under Rule 87, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

O. XIX, r. 89.  
Delivery of  
property in  
occupancy of  
tenant.

**89.** 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 87, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and 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. XIX, r. 90.  
Resistance or  
obstruction to  
possession of  
immovable  
property.

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

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

O. XIX, r. 91.  
Resistance or  
obstruction by  
judgment-  
debtor.

**91.** Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor, or by some other person at his instigation, it shall direct that the applicant be put into possession of the

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

92. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make such order as it may deem to be just.

O. XIX, r. 92.  
Resistance or  
obstruction by  
*bona fide*  
claimant.

93. Nothing in Rule 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. XIX, 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 91 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. XIX, r. 94.  
Order  
conclusive  
subject to  
regular suit.

## ORDER XX.

### ATTACHMENT OF DEBTS.

1. A Court may, upon the *ex parte* application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts owing from such third person (hereinafter called "the garnishee") to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid. At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor. Service on the judgment-debtor may be made either at the address for service if the judgment-debtor has appeared in the suit and given an address for service, or on his advocate if he has appeared by advocate, or if there has been no appearance then by leaving the order at his usual residence or place of business or in such other manner as the Court may direct. The order nisi shall be in the Form No. 16 in Appendix D.

O. XX, r. 1.  
Order for the  
attachment  
of debts.

2. Service of an order that debts due to a judgment-debtor liable under a decree shall be attached, or notice thereof to the garnishee in such manner, as the Court may direct, shall bind such debts in his hands.

O. XX, r. 2.  
Effect of  
garnishee  
order.

O. XX, r. 3.  
Execution  
against  
garnishee.

3. If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the Court may order execution against the person and goods and the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings.

O. XX, r. 4.  
Trial of  
liability of  
garnishee.

4. If the garnishee disputes his liability, the Court, instead of making an order that execution be levied, may order that any issue or question necessary for determining his indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.

O. XX, r. 5.  
Claim of third  
person.

5. Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court may order such third person to appear, and state the nature and particulars of his claim upon such debt.

O. XX, r. 6.  
Trial of claim  
of third  
persons.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, or of any other person who by the same or any subsequent order the Court may order to appear, or in case of such third person not appearing when ordered, the Court may order execution for levying the amount due from the garnishee, together with the costs of the garnishee proceedings, or order any issue or question to be tried or determined according to the preceding rules of this order, and may bar the claim of such third person or make such other order as the Court shall think fit.

O. XX, r. 7.  
Payment by or  
execution on  
the garnishee  
is a valid  
discharge.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceeding or order may be set aside or the decree reversed.

O. XX, r. 8.  
Record of  
proceedings.

8. Proceedings under this order shall be filed upon the record of the suit in which the decree sought to be enforced was obtained.

O. XX, r. 9.  
Costs of  
proceedings.

9. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court, and the costs of the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount due under the decree.

## ORDER XXI.

### DEATH, INSOLVENCY AND MARRIAGE OF PARTIES.

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

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

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

2. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues 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.

3. (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, 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 subrule (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.

4. (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, 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.

O. XXI, r. 4.  
Procedure in  
case of death  
of one of  
several  
defendants or  
of sole  
defendant.

(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 subrule (1), the suit shall abate as against the deceased defendant.

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. 5.  
Determination  
of question  
as to legal  
representative.

6. (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.

O. XXI, r. 6.  
Suit not abated  
by marriage of  
female party.

(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.

7. (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.

O. XXI, r. 7.  
When  
plaintiff's  
insolvency  
bars suit.

(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. 8.  
Effect of  
abatement or  
dismissal.

**8.** (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 revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such 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 subrule (2).

O. XXI, r. 9.  
Procedure in  
case of  
assignment  
before final  
order in suit.

**9.** (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 subrule (1).

O. XXI, r. 10.  
Application of  
orders to  
appeals.

**10.** 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. 11.  
Application of  
order to  
proceedings.

**11.** Nothing in Rules 3, 4, and 8 shall apply to proceedings in execution of a decree or order.

O. XXI, r. 12.  
Practice  
under this  
order.

**12.** Any application to the Court under Rules 3, 4, 5, 6, 7, 8 and 9 shall be by motion and any application under Rule 2 shall be by chamber summons.

## ORDER XXII.

### WITHDRAWAL AND ADJUSTMENT OF SUITS.

O. XXII, r. 1.  
Withdrawal of  
suit by  
plaintiff.  
Withdrawal by  
defendant.

**1.** The plaintiff may at any time before the delivery of the defendants defence, or after the receipt thereof before taking any other proceeding in the suit (save any application in chambers) by notice in writing wholly discontinue his suit against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendants costs of the suit, or if the suit be not wholly discontinued the costs occasioned by the matter so withdrawn. Upon the filing of such notice of discontinuance such costs shall be taxed, but such discontinuance or withdrawal as the case may be, shall not be a defence to any subsequent action.

Save as in this rule otherwise provided it shall not be competent for the plaintiff to withdraw or discontinue a suit without leave of the Court, but the Court may, before, or at, or after the hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out.

The Court, may in like manner, and with the like discretion as to terms, upon the application of a defendant order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence or any part thereof without such leave.

2. When a suit has been set down for hearing it may be withdrawn prior to the hearing by either plaintiff or defendant upon filing a consent signed by all the parties. O. XXII, r. 2. Withdrawal by consent.

3. Any defendant may enter judgment for the costs of the suit if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued. O. XXII, r. 3. Decree may be issued for costs.

4. If any subsequent suit shall be brought before payment of the costs of a discontinued suit, upon the same, or substantially the same, cause of action, the Court may order a stay of such subsequent suit until such costs shall have been paid. O. XXII, r. 4. Stay of subsequent suit.

5. In any fresh suit instituted subject to terms imposed by the Court under Rule 1 hereof, the plaintiff shall be bound by the law of limitation in the same manner as if the former suit had not been instituted. O. XXII, r. 5. Limitation in subsequent suit.

6. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court 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. O. XXII, r. 6. Compromise of a suit.

### ORDER XXIII.

#### SECURITY FOR COSTS.

1. The Court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant. O. XXIII, r. 1. Security for the costs of a defendant.

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. O. XXIII, r. 2. Effect of failure to furnish security.

(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) Any application under this rule shall be made by motion on notice.



## ORDER XXIV.

## PAYMENT INTO COURT AND TENDER.

O. XXIV, r. 1.  
Defendant may  
pay money into  
Court in  
satisfaction or  
denying  
liability.

1. Where any suit is brought to recover a debt or damages, any defendant may before or at the time of filing his defence, or at any later time by leave of the Court, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may with a defence denying liability (except in suits or counterclaims for libel or slander) pay money into Court which shall be subject to the provisions of Rule 6: Provided that in a suit or a bond payment into Court shall be admissible in respect of particular breaches only, and not of the whole suit.

O. XXIV, r. 2.  
Defence to  
state payment  
in.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

O. XXIV, r. 3.  
Defence of  
tender before  
suit.

3. With a defence setting up a tender before suit the sum of money alleged to have been tendered must be brought into Court.

O. XXIV, r. 4.  
Payment in  
before defence.

4. If the defendant pays money into Court before filing his defence, he shall serve upon the plaintiff a notice specifying the fact of such payment into Court and the claim or cause of action in respect of which such payment has been made. The notice shall aver that the sum of money paid into Court is sufficient to satisfy the specified claim or cause of action.

O. XXIV, r. 5.  
Payment out  
to plaintiff in  
certain cases.

5. In the following cases of payment into Court under this order, viz—

- (a) when payment into Court is made before filing a defence;
- (b) when the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence;
- (c) when payment into Court is made with a defence setting up a tender of the sum paid;

the money paid into Court shall be paid out to the plaintiff on his request or to his advocate on the plaintiffs written authority, unless the Court shall otherwise order.

O. XXIV, r. 6.  
Where defence  
denies liability.

6. When the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply :—

- (a) The plaintiff may within the time limited in Rule 7 accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendants denial of liability, whereupon all further proceedings in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned.

- (b) If the plaintiff accepts the money so paid in, he shall after service of such notice as is described in Rule 7, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request or to his advocate on the plaintiff's written authority, unless the Court shall otherwise order.
- (c) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the suit in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court, and shall not be paid out of Court except in pursuance of an order. Such order may be made at any time before or at or after the trial of the suit. If the plaintiff proceeds with the suit in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall, subject to the set-off of costs hereinafter provided for, be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and of any costs awarded to the plaintiff, and the balance (if any) shall under such order be repaid or credited to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid or credited to him.

The order for payment out of the money so in Court shall not except on special grounds, be made until after the taxation of the costs of the suit, and the money shall then be paid out to the party or parties entitled after setting off damages and the costs allowed to either party and after proper credits have been given for all sums recovered by or ordered to be paid to either of the parties in the suit or counterclaim (if any). A plaintiff who does not accept money paid into Court with a denial of liability but proceeds to trial and does not recover more than the sum paid into Court shall not be allowed his costs of the issues as to liability unless the Court is satisfied that there were reasonable grounds for not accepting the sum paid in.

**7.** The plaintiff, when payment into Court is made before the defence is filed, may within seven days after the receipt of notice of such payment, or when such payment is first signified in a defence, may, before reply, or where no reply is ordered, within ten days from filing of defence or the last of the defences, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant that he accepts the sum paid into Court in satisfaction of the claim in respect of which it was paid in, and shall be at liberty in case the entire claim or cause of action is thereby satisfied to tax his costs after the expiration of seven days from the service of such notice, unless the Court shall otherwise order, and in case of nonpayment of the costs within forty-eight hours after such taxation, to issue a decree for his costs so taxed.

O. XXIV, r. 7.  
Plaintiff  
accepting in  
satisfaction.

**8.** When in a suit against two or more defendants money is paid into Court by one or some but not all of them in respect of a cause of action for which the defendants are sued jointly and the plaintiff accepts the sum so paid in he shall in addition to giving the notice described in Rule 7, give notice to the other

O. XXIV, r. 8.  
Payment in by  
one of several  
defendants.

defendants of his having accepted the money so paid in, and thereupon all further proceedings in respect of the joint cause of action, except as to costs, shall be stayed, and the Court may upon application by any party make such order as may appear just as to the costs of the plaintiff and of the defendants (other than the defendant or defendants who has or have made the payment into Court) incurred in respect of the cause of action satisfied by such payment. If the plaintiff does not accept the money so paid in by one or two or more defendants in respect of a joint cause of action, but proceeds to trial and recovers less than the amount paid into Court, the Court may make such order as may appear just in respect of the costs of the joint cause of action as between the plaintiffs and the defendants other than the defendant or defendants who has or have made the payment.

O. XXIV, r. 9.  
Counterclaim.

9. A plaintiff or any person made defendant to a counterclaim may, in answer to a counterclaim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

O. XXIV,  
r. 10.  
Money paid in  
under order.

10. Money paid into Court under an order of the Court shall not be paid out except in pursuance of an order of the Court: Provided that, where before the filing of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XXXIII, he may (unless the Court shall order otherwise) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary to the whole or any specified portion of the plaintiff's claim, or if he pleads a tender, may appropriate the whole or any part of the money in Court as payment into Court of the money alleged to have been tendered; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this Order relating to money paid into Court with a plea of tender, as the case may be, and shall be subject in all respects thereto.

O. XXIV,  
r. 11.  
Monies  
recovered by  
infant or  
person of  
unsound mind.

11. In any cause or matter in the Supreme Court in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind but not found upon inquiry to be incapable of managing his own affairs, suing either alone or in conjunction with other parties, no settlement or compromise or acceptance of money paid into Court, whether before or at or after the hearing, shall, as regards the claims of any such infant or person of unsound mind, be valid without the sanction of the Court, and no money or damages recovered or awarded in any such cause or matter in respect of the claims of any such infant or person of unsound mind, whether by judgment or by settlement, compromise, payment into Court or otherwise, before or at or after the hearing, shall be paid to the next friend of the plaintiff or to the plaintiff's advocate, unless the Court shall so direct. All money or damages so recovered or awarded shall, unless the Court shall otherwise direct, be paid to the Public Trustee, and shall, subject to any general or special directions of the Court, be held and applied by him in such manner as he shall think fit for the maintenance and education or otherwise for the benefit of such infant or person of unsound mind: Provided always that the Public Trustee may pay out of the decretal amount such costs as the plaintiff may have incurred in the institution and conduct of the cause or matter in which the decree shall have been issued.

## ORDER XXV.

## COMMISSIONS.

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. O. XXV, r. 1.  
Cases in which  
Court may  
issue  
commission to  
examine  
witnesses.
2. An order for the issue of a commission for the examination of a witness may be made by the Court on application supported by affidavit. O. XXV, r. 2.  
Order for  
commission.
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. 3.  
Where witness  
resides within  
Court's  
jurisdiction.
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 Supreme 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. O. XXV, r. 4.  
Persons for  
whose  
examination  
commission  
may issue.
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 Colony is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request. O. XXV, r. 5.  
Request to  
examine  
witness abroad.
6. Every Court within the Colony receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto. O. XXV, r. 6.  
Court to  
examine  
witness  
pursuant to  
commission.
7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit. O. XXV, r. 7.  
Return of  
commission  
with deposition  
of witness.
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—  
  - (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; orO. XXV, r. 8.  
When  
depositions may  
be read in  
evidence.

- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorises 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.

O. XXV, r. 9.  
Commissions  
to make local  
investigations.

**9.** In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

O. XXV, r. 10.  
Procedure of  
Commissioner.

**10.** (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

Report and  
depositions to  
be evidence.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceeding of the commissioner, it may direct such further inquiry to be made as it shall think fit.

O. XXV, r. 11.  
Referee to  
examine  
accounts.

**11.** In any suit in which an examination of accounts is necessary the Court may refer the accounts to such person as it thinks fit, directing him to make such examination.

O. XXV, r. 12.  
Court to give  
referee  
necessary  
instructions.  
Proceedings  
and report to  
be evidence.

**12.** (1) The Court shall furnish a referee appointed under the foregoing rule with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the referee shall be evidence in the suit, but where the Court has reason to be dissatisfied with them it may direct such further inquiry as it shall think fit.

O. XXV, r. 13.  
Partition of  
immovable  
property.

**13.** Where a preliminary decree for partition has been passed, the Court may appoint such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

O. XXV, r. 14.  
Procedure upon  
partition.

**14.** (1) The person appointed shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which he was appointed, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares.

(2) He shall then prepare and sign a report, or, where more than one person was appointed, and they cannot agree, they shall prepare and sign separate reports, appointing the share of each party and distinguishing each share (if so directed by the said order) by measurements and boundaries. Such report or reports shall be annexed to the appointments, 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 make such order as it shall think fit.

**15.** Before issuing any commission, reference or appointment under this order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission, reference or inquiry, to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission, reference or appointment is issued.

O. XXV, r. 15.  
Expenses of  
commission to  
be paid into  
Court.

**16.** Any person appointed under this Order may, unless otherwise directed by the order of appointment—

O. XXV, r. 16.  
Powers of  
Commissioner.

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the person appointed thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of the inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

**17.** (1) The provisions of the Ordinance and these Rules 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 any person appointed under this Order shall be deemed to be a judge.

O. XXV, r. 17.  
Attendance  
and examina-  
tion of  
witnesses  
before  
Commissioner.

(2) A commissioner appointed under the Ordinance may apply to the Court which has appointed him for the issue of any process which he may find it necessary to issue to or against any witness who resides within the local limits of the jurisdiction of such Court, and such Court may in its discretion issue such process as it considers reasonable and proper.

**18.** (1) Where a commission is issued under the preceding rules, the Court shall direct that the parties to the suit shall appear before the commissioner in person or by their agents or advocates.

O. XXV, r. 18.  
Parties to  
appear before  
Commissioner.

(2) Where all or any of the parties do not so appear, the person executing the commission may proceed in their absence.

**19.** The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

O. XXV, r. 19.  
Commissions  
issued by  
foreign Courts.

- (a) Courts situated in any part of the British Empire other than Colony and Protectorate of Kenya;
- (b) Courts of any foreign country for the time being in alliance with His Majesty.

## ORDER XXVI.

## SUITS BY OR AGAINST CORPORATIONS.

O. XXVI, r. 1.  
Subscription  
and verification  
of pleading.

1. In suit by or against a corporation any pleading may be signed 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.

O. XXVI, r. 2.  
Service on  
corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

- (a) on the secretary, or on any director or other principal officer of the corporation; or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

## ORDER XXVII.

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON  
BUSINESS IN NAMES OTHER THAN THEIR OWN.

O. XXVII,  
r. 1.  
Suing in  
partners in  
name of firm.

1. Any two or more persons claiming or being liable as partners and carrying on business in the Colony 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. XXVII,  
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. XXVII,  
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 Colony 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 Colony:

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 Colony whom it is sought to make liable.

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.

O. XXVII,  
r. 4.  
Right of suit  
on death of  
partner.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit; or

(b) to enforce any claim against the survivor or survivors.

5. 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.

O. XXVII,  
r. 5.  
Notice in what  
capacity served.

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.

O. XXVII,  
r. 6.  
Appearance of  
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. XXVII,  
r. 7.  
No appearance  
except by  
partners.

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.

O. XXVII,  
r. 8.  
Appearance  
under protest.

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 such directions given as may be just.

O. XXVII,  
r. 9.  
Suits between  
co-partners.

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.

O. XXVII,  
r. 10.  
Suit against  
person carrying  
on business in  
name other  
than his own.

11. Applications under this Order should be made by summons in chambers, save in the case of applications under Rule 4 (2), which should be made by motion on notice.

O. XXVII,  
r. 11.  
Practice under  
this order.



## ORDER XXVIII.

## SUITS BY OR AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

O. XXVIII,  
r. 1.  
Representation  
of beneficiaries  
in suits  
concerning  
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.

O. XXVIII,  
r. 2.  
Joinder of  
trustees,  
executors, and  
administrators.

2. Where there are several trustees, excutors, 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 Colony, need not be made parties.

O. XXVIII,  
r. 3.  
Husband of  
married  
executrix 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 XXIX.

## SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

O. XXIX, 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.

Authority to  
use name as  
next friend  
to be filed.

Before the name of any person shall be used in any action as next friend of any infant where the suit is instituted by an advocate, such person shall sign a written authority to the advocate for that purpose, and the authority shall be presented together with the plaint and shall be filed on the record.

O. XXIX, r. 2.  
Where suit is  
instituted  
without next  
friend, plaint  
to be taken  
off file.

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.

(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.

O. XXIX, r. 3.  
Guardian for  
the suit to be  
appointed by  
Court for  
minor  
defendant.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian *ad litem* of such minor.

(2) An order for the appointment of a guardian *ad litem* may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in 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 minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian, to the person in whose care 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 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 *ad litem* :

O. XXIX, r. 4.  
Who may act  
as next friend  
or be appointed  
guardian for  
the suit.

Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian *ad litem*, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian *ad litem*, 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 a guardian *ad litem*.

(4) Where there is no other person fit and willing to act as guardian *ad litem*, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the payment or allowance of such costs as justice and the circumstances of the case may require.

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 *ad litem*.

O. XXIX, 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 affected, without such minor being represented by a next friend or guardian *ad litem*, 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.

6. (1) A next friend or guardian *ad litem* shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor, either—

O. XXIX, 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 *ad litem* has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the

Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

O. XXIX, r. 7.  
Agreement or  
compromise by  
next friend or  
guardian for  
the suit.

7. (1) No next friend or guardian *ad litem* shall, without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

O. XXIX, 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.

O. XXIX, 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 Colony, 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 the costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

O. XXIX,  
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.

(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.

O. XXIX,  
r. 11.  
Retirement,  
removal, or  
death of  
guardian for  
the suit.

11. (1) Where the guardian *ad litem* 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 *ad litem* retires, dies, or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

**12.** (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.

O. XXIX,  
r. 12.  
Course to be  
followed by  
minor plaintiff  
or applicant on  
attaining  
majority.

(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* by summons in chambers; 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.

**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.

O. XXIX,  
r. 13.  
Where minor  
co-plaintiff  
attaining  
majority  
desires to  
repudiate suit.

(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 to such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

**14.** (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.

O. XXIX,  
r. 14.  
Unreasonable  
or improper  
suit.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

**15.** The provisions contained in Rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

O. XXIX,  
r. 15.  
Application of  
rules to  
persons of  
unsound mind.

**16.** Save as otherwise provided, any application under this Order shall be made by motion on notice.

O. XXIX,  
r. 16.  
Practice under  
this order.

## ORDER XXX.

## SUITS BY PAUPERS.

O. XXX, r. 1.  
Suits may be  
instituted in  
*forma pauperis*.

1. Subject to the following provisions, any suit may be instituted by a pauper.

For the purposes of this Order 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.

O. XXX, r. 2.  
Contents of  
application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits, together with a statement that the pauper is unable to pay the fee prescribed in such suit, and the whole shall be signed in the manner prescribed for the signing of pleadings.

O. XXX, r. 3.  
Presentation of  
application.

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 84 of the Ordinance, in which case the application may be presented by authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

O. XXX, r. 4.  
Examination  
of applicant.

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. XXX, 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
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper; or
- (d) where his allegations do not show a cause of action; or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

O. XXX, r. 6.  
Notice of day  
for receiving  
evidence of  
applicant's  
pauperism.

6. Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Attorney General) for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof.

O. XXX, r. 7.  
Procedure at  
hearing.

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

**8.** Where the application is granted, it shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any Court fee. O. XXX, r. 8.  
Procedure if  
application  
admitted.

**9.** 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-paupered. O. XXX, r. 9.  
Dispaupering.

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement, with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

**10.** Where the plaintiff succeeds in the suit, the Court shall calculate the amount of the Court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the 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. XXX, r. 10.  
Costs where  
pauper  
succeeds.

**11.** Where the plaintiff fails in the suit or is dispaupered 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. O. XXX, r. 11.  
Procedure  
where pauper  
fails.

**12.** The Government shall have the right at any time to apply to the Court to make an order for the payment of Court fees under Rule 10 or Rule 11. O. XXX, r. 12.  
Government  
may apply for  
payment of  
Court fees.

**13.** All matters arising between the Government and any party to the suit under Rule 10, Rule 11 or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 34 of the Ordinance. O. XXX, r. 13.  
Government to  
be deemed a  
party.

**14.** An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper. O. XXX, r. 14.  
Refusal to  
allow applicant  
to sue as  
pauper to bar  
subsequent  
application of  
like nature.

**15.** The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit. O. XXX, r. 15.  
Costs.

## ORDER XXXI.

## INTERPLEADER.

O. XXXI, r. 1.  
Practice under  
this order.

1. Interpleader proceedings may be instituted—

- (a) in a case where no suit is pending by an originating summons;
- (b) in a case where a suit is pending by motion on notice in that action.

O. XXXI, r. 2.  
Averments to  
be proved by  
applicant.

2. In every suit of or application by way of interpleader the applicant shall satisfy the Court by way of affidavit or otherwise—

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) that there is no collusion between the applicant and any of the claimants;
- (c) that the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court may direct.

O. XXXI, r. 3.  
Stay of suit.

3. If the application is made by a defendant in a suit the Court may stay all further proceedings in the suit.

O. XXXI, r. 4.  
Order upon  
summons.

4. If the claimants appear in pursuance of the summons, the Court may order either that any claimant be made a defendant in any suit already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the plaintiffs is to be the plaintiff and which defendant.

O. XXXI, r. 5.  
Summary  
procedure.

5. The Court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable to do so, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

O. XXXI, r. 6.  
Provision for  
applicant's  
costs.

6. Where the application is properly made the Court may provide for the costs of the applicant by giving him a charge on the thing claimed, or in some other effectual way.

O. XXXI, r. 7.  
Order upon a  
claimant's  
failure to  
appear.

7. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or having appeared neglects or refuses to comply with any order made after his appearance, the Court may make an order declaring him and all persons claiming under him for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

## ORDER XXXII.

## PROCEEDINGS BY AGREEMENT OF PARTIES.

O. XXXII,  
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—

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where 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 specified act has reference, shall be stated in the agreement. O. XXXII, r. 2. Where value of subject-matter must be stated.

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. XXXII, 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 is presented.

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. XXXII, r. 4. Parties to be subject to Court's jurisdiction.

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. O. XXXII, r. 5. Hearing and disposal of case.

(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 XXXIII.

##### SUMMARY PROCEDURE ON SPECIALLY ENDORSED PLAINT.

1. This Order shall apply to—

(a) the Supreme Court;

(b) the Courts of Resident Magistrates.

O. XXXIII, r. 1. Application of order.

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—

O. XXXIII, r. 2. Special endorsement on plaint.

(a) upon a contract, expressed 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 written for payment of a liquidated amount of money; or
- (c) on a guaranty where the claim against the principal is in respect of a debt or liquidated amount 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 XXXIII," and accompanied by an affidavit made by the plaintiff, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the suit.

O. XXXIII,  
r. 3.  
Judgment in  
default of  
application for  
leave to  
defend.

3. Upon the filing of an endorsed plaint and an affidavit as in Rule 2 hereof provided, the Court shall cause to be served upon the defendant a summons in the form No. 4 of Appendix A, or in such other form as may be prescribed, and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the Court.

In default of such application by the defendant or by any of the defendants (if more than one) within the period fixed by the summons served upon him, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the plaint, together with interest (if any), or for the recovery of the land (with or without mesne profits), as the case may be, and costs against the defendant or such of the defendants as have failed to apply for leave to appear and defend the suit.

O. XXXIII,  
r. 4.  
Application to  
be supported  
by affidavit and  
served on  
plaintiff.

4. An application by a defendant served with a summons in form No. 4 of Appendix A for leave to appear and defend the suit shall be supported by affidavit, which shall state whether the defence alleged goes to the whole or to part only, and, if so, to what part of the plaintiff's claim, and the Court also may allow the defendant making the application to be examined on oath. For this purpose the Court may order the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined upon oath, or to produce any lease, deeds, books, or documents, or copies of or extracts therefrom. The plaintiff shall be served with notice of the application and with a copy of the affidavit filed by a defendant.

O. XXXIII,  
r. 5.  
Judgment upon  
refusal to give  
leave.

5. Where, after hearing an application by a defendant for leave to appear and defend the suit, the Court refuses to grant such leave, the plaintiff shall be entitled as against such defendant to a decree such as is described in Rule 3.

O. XXXIII,  
r. 6.  
Judgment for  
part of claim,  
defence as to  
residue.

6. If it appears that the defence set up by a defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall be entitled to a decree forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or the payment of any

amount realised by attachment into Court, the taxation of costs or otherwise, as the Court may think fit. And the defendant may be allowed to appear and defend as to the residue of the plaintiff's claim.

7. If it appears to the Court that any defendant has a good defence to or ought to be permitted to appear and defend the suit, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to appear and defend, and the plaintiff shall be entitled to issue a decree against the latter, and may issue execution upon such decree without prejudice to his right to proceed with his suit against the former.

O. XXXIII,  
r. 7.  
Judgment  
one of several  
defendants.

8. Leave to appear and defend the suit may be given unconditionally, or subject to such terms as to the payment of monies into Court, giving security, or time or mode of trial or otherwise, as the Court may think fit.

O. XXXIII,  
r. 8.  
Leave to defend  
may be  
conditional.

9. Upon the hearing of the application, with the consent of the parties, the suit may be finally disposed of without appeal in a summary manner.

O. XXXIII,  
r. 9.  
Summary  
hearing by  
consent.

10. Where leave, whether conditional or unconditional, is given to appear and defend, the Court shall have power to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or may order the suit to be forthwith set down for hearing.

O. XXXIII,  
r. 10.  
Orders for  
further conduct  
of suit.

11. After the decree the Court may, if satisfied that the service of the summons was not effective, or for any other good cause, which shall be recorded, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

O. XXXIII,  
r. 11.  
Setting aside  
decree.

#### ORDER XXXIV.

##### ORIGINATING SUMMONS.

1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as *cestui que trust* under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a Judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions :—

O. XXXIV,  
r. 1.  
Who may take  
out originating  
summons and  
in respect of  
what matters.

- (a) Any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or *cestui que trust*;
- (b) The ascertainment of any class of creditors, devisees, legatees, heirs, or others;

- (c) The furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- (d) The payment into Court of any money in the hands of the executors, administrators or trustees;
- (e) Directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- (f) The approval of a sale, purchase, compromise, or other transaction;
- (g) The determination of any question arising directly out of the administration of the estate or trust.

O. XXXIV,  
r. 2.  
Order for  
administration  
of estate or  
trust.

2. Any of the persons named in the last preceding rule may in like manner apply for and obtain an order for—

- (a) the administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

O. XXXIV,  
r. 3.  
Summons by  
vendor or  
purchaser of  
land.

3. A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the Judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).

O. XXXIV,  
r. 4.  
Summons by a  
member of a  
partnership.

4. When the existence of a partnership, or the right to a partnership, or the fact of the dissolution thereof, is not in dispute, any partner in a firm or his representatives may take out an originating summons returnable before the Judge sitting in chambers against his partners or former partners or their representatives (if any) for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of and winding up such partnership.

O. XXXIV,  
r. 5.  
Summons by  
persons  
interested in  
deeds or wills.

5. Any person claiming to be interested under a deed, will, or other written instrument, may apply in chambers by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the person interested.

O. XXXIV,  
r. 6.  
Discretion upon  
summons for  
construction of  
document.

6. The Judge shall not be bound to determine any such question of construction if, in his opinion, it ought not to be determined on originating summons.

O. XXXIV,  
r. 7.  
Practice upon  
application for  
summons.

7. An originating summons shall be in the form No. 13 in Appendix B, and shall specify the relief sought. The person entitled to apply shall present it *ex parte* to the Judge sitting in chambers with an affidavit setting forth concisely the facts upon which the right to the relief sought by the summons is founded, and the Judge, if satisfied that the facts as alleged are sufficient and the case is a proper one to be dealt with on originating summons, shall sign the summons and give such directions for service upon persons or classes of persons and upon other matters as may then appear necessary.

O. XXXIV,  
r. 8.  
Summons to be  
filed and  
registered.

8. The originating summons when so signed, shall be filed, and entered in the register of suits, but after the serial number the letters "O.S." shall be placed to distinguish it from complaints filed in ordinary suits.

9. On the hearing of the summons, if the parties do not agree to the correctness and sufficiency of the facts set forth in the summons and affidavit, the Judge may order the summons to be supported by such further evidence as he may deem necessary, and may give such directions as he may think just for the trial of any issues arising thereupon, and may make any amendments necessary to make the summons accord with existing facts, and to raise the matters in issue between the parties.

O. XXXIV,  
r. 9.  
Evidence and  
directions upon  
hearing of  
summons.

10. The Judge hearing an originating summons may, if he thinks fit, adjourn the same into Court for taking evidence *viva voce* or hearing arguments; and if it appears to him that the matters in respect of which relief is sought cannot properly be disposed of in a summary manner, may refuse to pass any order on the summons, and may dismiss the same, referring the parties to a suit in the ordinary course, making such orders as to costs as may appear to be just.

O. XXXIV,  
r. 10.  
Powers of  
Court upon  
hearing of  
summons.

11. If an originating summons be adjourned into Court, the Judge may, if he thinks the question to be determined is of sufficient importance, order that the costs be taxed on the scale applicable to suits. In all other cases the Judge may make such orders as to the costs of the parties as he considers to be just.

O. XXXIV,  
r. 11.  
Court may  
make orders as  
to costs  
incurred by  
any party.

#### ORDER XXXV.

##### SELECTION OF TEST SUIT.

1. Where two or more persons have instituted suits against the same defendant and such persons under the provisions of Order I, Rule 1, could have been joined as co-plaintiffs in one suit, upon the application of any of the parties the Court may, if satisfied that the issues to be tried in each suit are precisely similar, make an order directing that one of the suits be tried as a test case, and staying all steps in the other suits until the selected suit shall have been determined, or shall have failed to be a real trial of the issues.

O. XXXV,  
r. 1.  
Staying several  
suits against  
the same  
defendant.

2. Where a plaintiff has instituted two or more suits, and under the provisions contained in Order I, Rule 3, the several defendants could properly have been joined as co-defendants in one suit, the Court, if satisfied upon the application of a defendant that the issues to be tried in the suit to which he is a party are precisely similar to the issues to be determined in another of such suits, may order that the suit to which such defendant is a party be stayed until such other suit shall have been determined or shall have failed to be a real trial of the issues.

O. XXXV,  
r. 2.  
Staying similar  
suits upon  
application by  
defendant.

#### ORDER XXXVI.

##### ARREST AND ATTACHMENT BEFORE JUDGMENT.

1. Where at any stage of a suit, other than a suit of the nature referred to in section 12 of the Ordinance, paragraphs (a) to (d), the Court is satisfied by affidavit or otherwise—

O. XXXVI,  
r. 1.  
Where  
defendant may  
be called upon  
to furnish  
security for  
appearance.

(a) that the defendant with intent to delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him—

(i) has absconded or left the local limits of the jurisdiction of the Court; or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court; or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof; or

(b) that the defendant is about to leave the Colony under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit;

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

O. XXXVI,  
r. 2.  
Security.

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

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 a surety to be discharged from his obligation.

(2) On such application being made the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation and shall call upon the defendant to find fresh security.

O. XXXVI,  
r. 4.  
Procedure  
where  
defendant fails  
to furnish  
security or find  
fresh security.

4. Where the defendant fails to comply with any order under Rule 2 or Rule 3, the Court may commit him to prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed five pounds :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

5. (1) Where at any stage of a suit the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him—

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court;

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

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 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 for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

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 the property.

12. Applications under this Order shall be by summons in chambers.

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.

O. XXXVI,  
r. 12.  
Practice under  
this order.

## ORDER XXXVII.

## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

O. XXXVII,  
r. 1.Cases in which  
temporary  
injunction may  
be granted.

1. Where in any suit it is proved by affidavit or other-

wise—

(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 complained of, or  
any 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 inquiry 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.

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 movable 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. 6.  
Power to order  
interim sale.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit—

O. XXXVII,  
r. 7.  
Detention,  
preservation,  
inspection, etc.,  
of suit.

- (a) make an order for the detention, preservation, or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and
- (c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply *mutatis mutandis* to persons authorised to enter under this rule.

8. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

O. XXXVII,  
r. 8.  
Deposit of  
money, etc.,  
in Court.

9. Applications under Rules 1 and 2 shall be by summons in chambers; all other applications under this Order shall be by motion on notice.

O. XXXVII,  
r. 9.  
Practice under  
this order.

## ORDER XXXVIII.

### APPOINTMENT OF RECEIVERS.

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;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody, or management of the receiver; and
- (d) confer upon the receiver all such powers as to bringing and defending suits and for the realisation, 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 such documents as the owner himself has, or such of those powers as the Court thinks fit.



(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

O. XXXVIII,  
r. 2.  
Remuneration.

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. 3.  
Duties.

3. Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts as 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.

O. XXXVIII,  
r. 4.  
Enforcement of  
receiver's  
duties.

4. Where a receiver—

- (a) fails to submit his accounts at such period and in such form as the Court directs; or
- (b) fails to pay the amount due from him as the Court directs; or
- (c) occasions loss to the property by his wilful default or gross negligence;

the Court may direct his property to be attached, and may sell such property, and may apply the proceeds to make good any amount found to be due from him, or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

## ORDER XXXIX.

### APPEALS TO THE SUPREME COURT.

O. XXXIX,  
r. 1.  
Form of appeal.  
What to  
accompany  
memorandum.

1. (1) Every appeal to the Supreme 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 shall appoint in that behalf.

(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 Supreme Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Supreme 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.

3. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Supreme Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

O. XXXIX,  
r. 3.  
One of several  
plaintiffs or  
defendants may  
obtain reversal  
of whole decree  
where it  
proceeds on  
ground common  
to all.

4. (1) An appeal to the Supreme Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Supreme Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Supreme Court may for sufficient cause order stay of execution of such decree.

O. XXXIX,  
r. 4.  
Stay by  
Supreme Court.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

Stay by Court  
which passed  
decree.

(3) No order for stay of execution shall be made under sub-rule (1) or sub rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

(5) Applications under sub-sections (1), (2) and (3) of this rule shall be motion on notice; an *ex parte* order under sub-section (4) may be made on a summons in chambers.

5. (1) Where an order is made for the execution of a decree from which an appeal is pending the Court which passed the decree or the Supreme Court 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 Supreme Court.

O. XXXIX,  
r. 5.  
Security in  
case of order  
for execution  
of decree  
appealed from.

(2) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, or to the Supreme Court, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

6. No such security as is mentioned in Rules 4 and 5 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.

O. XXXIX,  
r. 6.  
No security to  
be required  
from the  
Government.

O. XXXIX,  
r. 7.  
Exercise of  
powers in  
appeal from  
order made  
in execution of  
decree.

7. The powers conferred by Rules 4 and 5 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.  
Registry of  
memorandum  
of appeal.

8. Where a memorandum of appeal is lodged, the Supreme Court then shall cause to be endorsed thereon the date of presentation, and the appeal shall be entered in a book to be kept for that purpose, to be called the Register of Appeals.

O. XXXIX,  
r. 9.  
Supreme Court  
may require  
appellant to  
furnish  
security for  
costs.

9. (1) The Supreme Court may in its discretion, at any time after an appeal is lodged, demand from the appellant security for the costs of the appeal :

Provided that the Court shall demand such security in all cases in which the appellant is residing out of the Colony, and is not possessed of any sufficient immovable property within the Colony 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 dismiss the appeal.

O. XXXIX,  
r. 10.  
Supreme Court  
to give notice  
to Court where  
decree  
appealed from.

10. (1) When a memorandum of appeal is lodged, the Supreme 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 Supreme Court.

(3) Either party may on application and at his own expense obtain copies of any such papers as aforesaid.

O. XXXIX,  
r. 11.  
Service of  
notice of day  
for hearing  
appeal.

11. Notice of the day fixed for hearing of the appeal shall be served on the respondent or on his advocate in the manner provided for the service on a defendant of a summons to enter appearance; 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. 12.  
Contents of  
notice.

12. The notice to the respondent shall declare that, if he does not appear in the Supreme Court on the day so fixed, the appeal may be heard *ex parte*.

O. XXXIX,  
r. 13.  
Right to begin.

13 (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. 14.  
Dismissal of  
appeal for  
appellant's  
default.

14. (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 may be heard *ex parte*.

15. 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 :

O. XXXIX,  
r. 15.  
Dismissal of  
appeal where  
notice not  
served in  
consequence of  
appellant's  
failure to  
deposit costs.

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.

16. Where an appeal is dismissed under Rule 14 or Rule 15, the appellant may apply to the Supreme 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.

O. XXXIX,  
r. 16.  
Re-admission  
of appeal  
dismissed for  
default.

17. 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.

O. XXXIX,  
r. 17.  
Power to  
adjourn  
hearing and  
direct persons  
appearing  
interested  
to be made  
respondents.

18. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Supreme 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.

O. XXXIX,  
r. 18.  
Re-hearing on  
application of  
respondent  
against whom  
*ex parte* decree  
made.

19. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point, and the decree is reversed on appeal, the Supreme 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.

O. XXXIX,  
r. 19.  
Remand of  
cases by  
Supreme Court.

20. Where the evidence upon the record is sufficient to enable the Supreme Court to pronounce judgment, the Supreme 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 Supreme Court proceeds.

O. XXXIX,  
r. 20.  
Where evidence  
on record  
sufficient  
Supreme Court  
may determine  
case finally.

21. If upon the hearing of an appeal it shall appear to the Supreme Court that a new trial ought to be had, it shall be lawful for the said Supreme Court, if it shall think fit, to order that the judgment and decree shall be set aside, and that a new trial shall be had.

O. XXXIX,  
r. 21.  
Power to order  
new trial.

O. XXXIX,  
r. 22.  
Production of  
additional  
evidence in  
Supreme Court.

**22.** (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Supreme 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 Supreme 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 Supreme 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 Supreme Court the Court shall record the reason for its admission.

O. XXXIX,  
r. 23.  
Mode of taking  
additional  
evidence.

**23.** Wherever additional evidence is allowed to be produced, the Supreme 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 Supreme Court.

O. XXXIX,  
r. 24.  
Points to be  
defined and  
recorded.

**24.** Where additional evidence is directed or allowed to be taken the Supreme Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

O. XXXIX,  
r. 25.  
Where Court  
consists of two  
or more Judges.

**25.** (1) When the Court consists of more Judges than one, the decree of the Court shall be drawn in accordance with the findings of the majority.

(2) When the Court is equally divided in opinion the appeal shall be dismissed.

O. XXXIX,  
r. 26.  
What judgment  
may direct.

**26.** 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 Supreme Court may pass a decree or make an order accordingly.

O. XXXIX,  
r. 27.  
Power of  
Supreme Court  
on appeal.

**27.** The Supreme 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 although such respondents may not have filed any appeal or cross-appeal.

O. XXXIX,  
r. 28.  
Date and  
contents of  
decree.

**28.** (1) The decree of the Supreme Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Registrar.

**29.** Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Supreme Court and at their expense.

O. XXXIX,  
r. 29.  
Copies of  
judgment and  
decree to be  
furnished to  
parties.

**30.** A copy of the judgment and of the decree, certified by the Supreme 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 Supreme Court shall be made in the register of civil suits.

O. XXXIX,  
r. 30.  
Certified copy  
of decree to be  
sent to Court  
whose decree  
appealed from.

## ORDER XL.

### APPEAL FROM ORDERS.

**1.** (1) An appeal shall lie as of from the following orders under the provisions of section 75 of the Ordinance, namely :—

O. XL, r. 1.  
Appeals from  
orders.

- (a) An order under Rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) An order made under Rule 20 of Order IX rejecting an application for an order to set aside the dismissal of a suit;
- (c) An order under Rule 24 of Order IX rejecting an application for an order to set aside a decree passed *ex parte*;
- (d) An order made under Rule 21 of Order X;
- (e) An order under Rule 10 of Order XIV for the attachment of property;
- (f) An order under Rule 19 of Order XIV pronouncing judgment against a party;
- (g) An order under Rule 31 of Order XIX on an objection to the draft of a document or of an endorsement;
- (h) An order under Rule 67 or Rule 85 of Order XIX setting aside or refusing to set aside a sale;
- (i) An order that execution be levied made under Rule 6 of Order XX;
- (j) An order under Rule 8 of Order XXI, refusing to set aside the abatement or dismissal of a suit;
- (k) An order under Rule 9 of Order XXI giving or refusing to give leave;
- (l) An order under Rule 6 of Order XXII recording or refusing to record an agreement, compromise, or satisfaction;
- (m) An order under Rule 2 of Order XXIII rejecting an application for an order to set aside the dismissal of a suit;
- (n) Orders in interpleader suits under Rule 3, Rule 6 or Rule 7 of Order XXXI;
- (o) An order made upon the hearing of an originating summons under Order XXXIV;
- (p) An order made under Rule 2, Rule 3, or Rule 6 of Order XXXVI;
- (q) An order made under Rule 1, Rule 2, Rule 4, Rule 8 of Order XXXVII;
- (r) An order under Rule 1 or Rule 4 of Order XXXVIII;
- (s) An order of refusal under Rule 16 of Order XXXIX to re-admit or under Rule 18 to re-hear an appeal;

(t) An order under Rule 4 of Order XLIII granting an application for review;

(u) An order made in an interlocutory matter by a District Registrar.

(2) An appeal under these rules shall not lie from any other order save with leave of the Court making the order or of the Court to which an appeal would lie if leave were given.

(3) Applications for leave to appeal shall in the first instance be made to the Court making the order sought to be appealed from.

(4) Application for leave to appeal shall be by motion on notice.

O. XL, r. 2.  
Procedure.

2. The rules of Order XXXIX shall apply, so far as may be, to appeals from orders.

### ORDER XLI.

#### PAUPER APPEALS.

O. XLI, r. 1.  
Who may  
appeal as  
pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject in all matters, including the presentation of such application, to the provisions relating to suits by paupers in so far as those provisions are applicable :

Procedure on  
application for  
admission of  
appeal.

Provided that the Court shall dismiss the application unless upon a perusal of the memorandum of appeal and of the record of the lower Court, it sees reason to think that the decree is contrary to law, or against the weight of the evidence.

O. XLI, r. 2.  
Inquiry into  
pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the Supreme Court or under the orders of the Supreme Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further enquiry in respect of his pauperism shall be necessary, unless the Supreme Court sees cause to direct such inquiry.

O. XLI, r. 3.

3. Applications under this Order shall be made *ex parte* by summons in chambers.

### ORDER XLII.

#### REVIEW.

O. XLII, r. 1.  
Application for  
review of  
judgment.

1. Any person considering himself aggrieved—

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

(b) by a decree or order from which no appeal is hereby allowed ;

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 for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. An application for review of a decree or 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.

O. XLII, r. 2.  
To whom  
applications for  
review may  
be made.

3. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall dismiss the application.

O. XLII, r. 3.  
Application  
where rejected.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same :

Application  
where granted.

Provided that 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.

4. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

O. XLII, r. 4.  
Application for  
review to be to  
same Judge  
or Judges.

5. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided the application shall be dismissed.

O. XLII, r. 5.  
Application  
where rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

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. 6.  
Re-hearing  
upon applica-  
tion granted.

7. No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.

O. XLII, r. 7.  
Bar of  
subsequent  
applications.

8. Applications under this Order shall be by motion with notice.

O. XLII, r. 8.  
Practice.



## ORDER XLIII.

## ARBITRATION UNDER ORDER OF A COURT.

O. XLIII, r. 1.  
Parties to a  
suit may  
apply for  
arbitration.

1. (1) Where in any suit all the parties interested who are not under disability, agree that any matter in difference between them in such suit shall be referred to arbitration, they may, at any time before judgment is pronounced apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

O. XLIII, r. 2.  
Appointment of  
arbitrator.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

O. XLIII, r. 3.  
Form of order.

3. (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 at it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Order, deal with such matter in the suit.

O. XLIII, r. 4.  
Provisions  
where two or  
more  
arbitrators.

4. (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—

- (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.

O. XLIII, r. 5.  
Power to  
appoint  
arbitrator.

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 the arbitrator or umpire—
  - (i) dies, or
  - (ii) refuses or neglects to act or becomes incapable of acting, or
  - (iii) leaves the Colony in circumstances showing that he will probably not return at any early date, or
- (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.

6. Every arbitrator or umpire appointed under Rule 4 or Rule 5 shall have the like powers as if his name had been inserted in the order of reference.

O. XLIII, r. 6.  
Power of arbitrator or umpire appointed by Court.

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.

O. XLIII, r. 7.  
Summoning witnesses and default.

(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.

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.

O. XLIII, r. 8.  
Extension of time for making award.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

O. XLIII, r. 9.  
Where umpire may arbitrate in lieu of arbitrators.

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

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.

O. XLIII, r. 10.  
Award to be signed and filed.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, and shall if so directed by 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.

O. XLIII, r. 11.  
Statement of special case by arbitrators or umpire.

12. The Court may, by order, modify or correct an award—

O. XLIII, r. 12.  
Power to modify or correct award.

- (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
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

O. XLIII,  
r. 13.  
Order as to  
costs of  
arbitration.

**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 whether the award purports to contain a sufficient provision concerning them or not.

O. XLIII,  
r. 14.  
Where award  
or matter  
referred to  
arbitration may  
be remitted.

**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—

- (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;
- (c) where an objection to the legality of the award is apparent upon the face of it.

O. XLIII,  
r. 15.  
Grounds for  
setting aside  
award.

**15.** (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds namely—

- (a) corruption or misconduct of the arbitrator or umpire;
- (b) either party having been 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.

(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.

Proceedings under this rule shall be by motion with notice.

O. XLIII,  
r. 16.  
Judgment to be  
according to  
award.

**16.** (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration 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.

(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.

O. XLIII,  
r. 17.  
Forms.

**17.** The forms Nos. 12 to 16 set forth in the Appendix G with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

## ORDER XLIV.

## DISTRICT REGISTRIES.

1. Every suit in the Supreme Court may be instituted at the Central Office of that Court situate in Nairobi or in a District Registry.

O. XLIV, r. 1.  
Institution of  
suits in  
Supreme Court.

2. There shall be District Registries and District Registrars of the Supreme Court at the places and for the areas set out in the Schedule appended to this rule.

O. XLIV, r. 2.  
Schedule of  
District  
Registries and  
Areas.

## SCHEDULE.

<i>Area</i>	<i>Place of Registry.</i>	<i>District Registrar.</i>
Kenya Protectorate ...	Mombasa ...	Deputy Registrar.
Nakuru and Naivasha		
Districts ...	Nakuru ...	Resident Commissioner.
Nyanza Province ...	Kisumu ...	District Commissioner.
Eldoret and Kitale		
Districts ...	Eldoret ...	Resident Commissioner.

3. Suits filed in a District Registry shall be intituled as suits in "His Majesty's Supreme Court of Kenya at\*..... District Registry," and shall be serially numbered in that Registry.

O. XLIV, r. 3.  
Title of suits  
filed in a  
District  
Registry.

4. Where the defendant, or all the defendants (if more than one) reside and carry on business within the area in the District Registry whereof a suit has been instituted, all proceedings shall be taken in such Registry subject to any order fixing the place of trial made by the Court under Rule 8.

O. XLIV, r. 4.  
Suits filed in a  
Registry  
remain there  
when all  
defendants  
reside within  
that area.

5. Where a defendant neither resides nor carries on business within the area in the District Registry whereof the suit has been instituted, there shall be a statement endorsed on the face of the summons served upon such defendant that he may during the time allowed to him for filing his defence, cause the suit to be removed from the District Registry in which the suit has been instituted to the Central Office of the Supreme Court at Nairobi, by filing with the District Registrar a notice requiring him to transfer the record of such suit to the Registrar of the Supreme Court, and by causing all other parties to the suit to be served with a copy of such notice.

O. XLIV, r. 5.  
A defendant not  
resident in the  
area may cause  
the removal of  
the suit to the  
central office.

Where no such notice is filed by such defendant with the District Registrar, all proceedings in the suit shall be taken in such Registry subject to any order fixing the place of trial made by the Court under Rule 8.

Where such a defendant files a notice pursuant to the provisions of this rule, the District Registrar shall transfer the record of the suit to the Registrar of the Supreme Court, and thereafter all proceedings in the suit shall be taken as though the suit had been instituted at the Central Office.

6. In a suit proceeding in a District Registry all formal steps preliminary to the trial and all interlocutory applications shall, in the absence of a judge, be made and taken before the District Registrar; and when such suit is ready for trial it may be set down for hearing before a judge sitting at the place of the Registry.

O. XLIV, r. 6.  
All preliminary  
steps taken  
before the  
District  
Registrar.

\* Insert name of district.

O. XLIV, r. 7.  
Appeal from  
decision of  
District  
Registrar.

7. Any person affected by any order or decision of a District Registrar made in any preliminary step or upon an interlocutory application may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the District Registrar had jurisdiction only by consent. Such appeal shall be by way of indorsement upon the record by the District Registrar at the request of any party within fourteen days from the making of such order or decision. The record bearing such indorsement shall forthwith be sent to the Registrar of the Supreme Court who shall give such directions for the hearing of the appeal as he may consider reasonable. The hearing shall be before a judge sitting in chambers.

O. XLIV, r. 8.  
Place of trial  
fixed by the  
Court.

8. There shall be no local venue for the trial of any suit, cause or issue, except where expressly provided by Ordinance, but in every suit, cause or issue the place of trial shall be fixed by the Court.

In fixing the place for trial the Court may move upon its own motion or upon the application of any party to the suit, cause or issue, and shall have regard to the convenience of the parties, and their witnesses, and the date at which the trial can take place, and, when a view may be desirable, the locality of the object to be viewed, and to the other circumstances of the case, including the wishes of and the expense to the parties and the relative facilities for persons attending the trial.

O. XLIV, r. 9.  
Taxations in  
District  
Registries.

9. A District Registrar with regard to suits entered in his Registry shall have the same power of taxing costs as the Registrar has as a taxing officer under any Rules of Court, and all such rules shall apply to the taxation of costs by a District Registrar.

O. XLIV,  
r. 10.  
Appeals from  
subordinate  
Courts.

10. An appeal from a decree or order of a subordinate court or a subordinate native court to the Supreme Court may be filed in the District Registry within the area of which such subordinate court or subordinate native court is situate; and the District Registrar shall (upon the payment to him of all fees) endorse the date of filing upon the memorandum of appeal, and send forward the papers to the Registrar of the Supreme Court. The Registrar will give such directions for the hearing and disposal of such appeal as he may consider reasonable, having regard to the convenience of the parties and the date at which a hearing can take place.

## ORDER XLV.

### MISCELLANEOUS.

O. XLV, r. 1.  
Process to be  
served at  
expense of  
party issuing.  
Costs of  
service.

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.

(2) The Court fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

O. XLV, 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 to be found in the Appendices to the Schedule, and such other forms as may be from time to time approved by the Supreme Court.

O. XLV, r. 3.  
Use of forms.

4. Any special rules of procedure not contained in these rules which may have been or may be made by the Supreme Court shall, where they conflict with these rules, prevail and be deemed to govern the procedure in the matter therein mentioned.

O. XLV, r. 4.  
Rules of procedure not contained in these rules.

5. Where a limited time has been fixed in these rules or by an order of the Court under these rules for doing any act or taking any proceedings, the Court shall upon application have power to enlarge such time upon such terms (if any) as the justice of the case may require and such enlargement may be ordered although the application for the same is not made until after the expiration of such limited time.

O. XLV, r. 5.  
Power to enlarge time fixed under these rules.

#### ORDER XLVI.

##### SPECIAL POWERS OF REGISTRARS.

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.

O. XLVI, r. 1.  
Registrar to be ministerial officer.

2. 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.

O. XLVI, r. 2.  
Judgment, when may be entered by Registrar.

3. Formal orders for attachment and sale of property in execution of a decree of the Supreme 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. Such objection shall be taken by motion on notice.

O. XLVI, r. 3.  
Execution may be ordered by Registrar.

4. For the purposes of Rules 2 and 3 a Registrar shall be deemed to be a Civil Court.

O. XLVI, r. 4.  
Registrar a Civil Court.

#### APPENDIX A.

##### PROCESS.

###### No. 1.

SUMMONS FOR DISPOSAL OF SUIT. (O. V, rr. 1, 5.)

(Title.)

To (Name, description and place of residence).

WHEREAS .....  
has instituted a suit against you for.....  
you are summoned to appear in this Court in person or by a  
advocate duly instructed, and able to answer all material  
questions relating to the suit, or who shall be accompanied by  
some person able to answer all such questions, on the.....  
day of.....19..., at .....o'clock in the.....  
noon, to answer the claim; and as the day fixed for your  
appearance is appointed for the final disposal of the suit, you  
must be prepared to produce on that day all the witnesses upon  
whose evidence and all the documents upon which you intend  
to rely in support of your defence.

No. 5.

App. A. NOTICE TO PERSON WHOM, THE COURT CONSIDERS, SHOULD BE  
ADDED AS CO-PLAINTIFF. (O. I, r. 10.)

(Title.)

To (Name, description and place of residence)

WHEREAS .....  
has instituted the above suit against.....for  
.....and whereas it appears necessary that you  
should be added as a plaintiff in the said suit in order to enable  
the Court effectually and completely to adjudicate upon and  
settle all the questions involved.

Take notice that you should on or before the.....  
day of..... 19..., signify to this Court whether  
you consent to be so added.

Given under my hand and the seal of the Court, this  
.....day of..... 19....

..... Judge.

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED  
DEFENDANT. (O. XXI, r. 4.)

(Title.)

To.....

WHEREAS the plaintiff.....instituted a suit in  
this Court on the.....day of..... 19...,  
against the defendant.....who has since died, and  
whereas the said plaintiff has made an application to this Court  
alleging that you are the legal representative of the said.....  
....., deceased, and desiring that you be made  
the defendant in his stead.

You are hereby summoned to attend in this Court on the  
.....day of.....19..., at ..... a.m. to  
defend the said suit and, in default of your appearance on the  
day specified, the said suit will be heard and determined in  
your absence.

Given under hand and the seal of the Court, this.....  
day of..... 19...

..... Judge.

No. 7.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A  
PRISONER. (O. V, r. 20.)

(Title.)

To

The Superintendent of the Jail at.....

UNDER the provisions of Order V, Rule 20, of the Civil  
Procedure Rules, 1927, a summons in duplicate is herewith  
forwarded for service on the defendant who is a prisoner  
in jail. You are requested to cause a copy of the said  
summons to be served upon the said defendant and to return  
the original to this Court signed by the said defendant, with  
a statement of service endorsed thereon by you.

..... Judge.

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A App. A.  
PUBLIC SERVANT OR SOLDIER. (O. V, r. 21.)

(Title.)

To .....

UNDER the provisions of Order V, Rule 21 (.....)  
of the Civil Procedure Rules, 1927, a summons in duplicate  
is herewith forwarded for service on the defendant.....  
.....who is stated to be serving under you. You  
are requested to cause a copy of the said summons to be  
served upon the said defendant and to return the original to  
this Court signed by the said defendant, with a statement of  
service endorsed thereon by you.

..... Judge.

No. 9.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A  
SUMMONS OR NOTICE. (O. V, r. 17.)

(Title.)

The Affidavit of.....son of.....

make oath

I .....  
affirm

and say as follows :—

(1) I am a process-server of this Court.

(2) On the.....day of..... 19..., I  
summons

received a ..... issued by the Court of.....  
notice

in suit No..... of 19..., in the said Court,  
dated the.....day of .....19..., for service  
on.....

(3) The said.....was at the time

summons

personally known to me, and I served the said .....  
notice

him

on — on the.....day of..... 19..., at about  
her

.....o'clock in the.....noon at.....by

him

his

tendering a copy thereof to — and requiring — signature  
her her

summons

to the original .....  
notice

(a) (Here state whether the person served signed or  
refused to signed the process, and in whose presence.)

(b) (Signature or mark of process server.)

or,

(3) The said.....not being personally known  
to me.....accompanied me to.....  
and pointed out to me a person whom he states to be the said



App. A.

....., and I served the said summons him  
notice her  
 on the.....day of.....19..., at about  
 .....o'clock in the.....noon at..... by tendering  
 a copy thereof to him and requiring his  
her her signature to the  
summons  
 original -----.  
notice

(a) (Here state whether the person served signed or refused to sign the process, and in whose presence.)

(b) (Signature of process server.)

or,

(3) The said.....and the house in which he ordinarily resides being personally known to me, I went to the said house, in..... and thereon the..... day of.....19..., at about.....o'clock in the.....noon, I did not find the said.....

(a) (Enter fully and exactly the manner in which the process was served, with special reference to Order V, Rules 14 and 16.)

(b) (Signature or mark of process server.)

or,

(3) One..... accompanied me to..... and there pointed out to me.....which he said was the house in which.....ordinarily resides. I did not find the said.....there.

(a) (Enter fully and exactly the manner in which the process was served, with special reference to Order V, Rules 14 and 16.)

(b) (Signature or mark of process server.)

or,

If substituted service has been ordered state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn

\_\_\_\_\_ by the said.....before me this  
 Affirmed

.....day of..... 19....

.....  
*Empowered to administer the oath to deponents.*

No. 10.

LETTER FORWARDING REQUEST FOR SERVICE ABROAD.

(O. V, r. 29 (1).)

The Chief Justice of the Supreme Court of Kenya, presents his compliments to His Excellency the Governor and begs to

enclose a notice of a writ of summons issued in an action App. A.

.....  
*versus*  
 .....

pursuant to order, out of the Supreme Court for transmission to the Ministry of Foreign Affairs in (name of country) with the request that the same may be served personally upon (name of defendant to be served) against whom proceedings have been taken in the Supreme Court of Kenya, and with the further request that such evidence of the service of the same upon the defendant may be officially certified to the Supreme Court, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts of (name of country) in proving service of legal process.

The Chief Justice begs further to request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual the Government or Court of the said country be requested to certify the same to the Supreme Court of Kenya.

---

No. 11.

REQUEST FOR SERVICE ABROAD. (O. V, r. 29 (2).)

(Title of Action.)

I (or we), hereby request that a notice of writ of summons in this action be transmitted through the proper channel to (name of country) for service (or substituted service) on the defendant (naming him) at (address of defendant) or elsewhere in (name of country).

And I (or we) hereby personally undertake to be responsible for all expenses incurred in respect of the service hereby requested, and on receiving due notification of the amount of such expenses, I (or we), undertake to pay the same to the Colonial Secretary, and to produce the receipt of such payment to the proper officer of the Supreme Court of Kenya.

Dated this.....day of..... 19...

.....  
 (Signature of Advocate).

---

No. 12.

ORDER TO BESPEAK REQUEST FOR SUBSTITUTED SERVICE

ABROAD. (O. V, r. 29 (4).)

(Title of Action.)

Upon reading the (certificate, declaration, or as the case may be, describing the same).

It is ordered that the plaintiff be at liberty to bespeak a request for substituted service of notice of the writ of summons herein on the defendant.....at..... or elsewhere in (name of country) and that the said defendant have.....days after such substituted service within which to file a written statement.

Dated this.....day of..... 19...

## LETTER FORWARDING REQUEST FOR SUBSTITUTED SERVICE.

(O. V, r. 29 (5).)

The Chief Justice of the Supreme Court of Kenya, presents his compliments to His Excellency the Governor and begs to enclose a notice of a writ of summons in the case of.....  
 .....*versus*..... in which the plaintiff has obtained an order of the Supreme Court of Kenya (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant.....at..... in (name of country).

The Chief Justice requests that the said notice of writ and order may be forwarded to the proper authority in (name of country) with the request that the same may be transmitted by post addressed to the defendant.....at.....  
 (the last known place of abode or the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the Courts of (name of country) for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the Supreme Court of Kenya, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the Courts of (name of country) in proving service of legal process.

## No. 14.

## CERTIFICATE OF SERVICE OF FOREIGN PROCESS.

(O. V, r. 31 (5).)

I.....Registrar of the Supreme Court of Kenya hereby certify that the documents annexed hereto are as follows:—

(1) The original letter of request for service of process received from the Court or Tribunal at.....  
 in the.....of.....in the matter of  
 .....*versus*..... and;

(2) The process received with such letter of request;  
 and

(3) The evidence of service upon.....the person named in such letter of request, together with the verification of a Magistrate.

AND I CERTIFY that such service so proved, and the proof thereof, are such as are required by the law and practice of the Supreme Court of Kenya regulating the service of legal process in the Colony and Protectorate of Kenya and the proof thereof.

AND I CERTIFY that the cost of effecting such service, amounts to the sum of £.....

Dated this.....day of.....19....

## No. 15.

NOTICE TO DEFENDANT. (O. IX, r. 17.)

App. A.

(Title.)

To (Name, description and place of residence)

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the process server it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons.

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the.....day of..... 19..., is now fixed for the hearing of the same and that in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this .....day of..... 19....

..... Judge.

## No. 16.

SUMMONS TO WITNESS. (O. XIV, rr. 1, 5.)

(Title.)

To.....

WHEREAS your attendance is required to..... on behalf of the.....in the above suit you are hereby required (personally) to appear before this Court on the.....day of..... 19..., at..... o'clock in the forenoon, and to bring with you (or to send to this..... Court).

A sum of shillings.....being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 12 of Order XVI of the Civil Procedure Rules, 1927.

Given under my hand and the seal of the Court, this .....day of..... 19....

..... Judge.

NOTICE:—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid a sum of shillings.....will be tendered to you for each day's attendance beyond the day specified.

No. 17.

App. A.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. XIV, r. 10.)

(Title.)

To.....

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas, it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under Rule 10 of Order XIV of the Civil Procedure Rules, 1927, issued requiring the attendance of the witness in this Court on the.....day of..... 19... at.....o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

Given under my hand and the seal of the Court, this  
.....day of..... 19...

..... Judge.

No. 18.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. XV, r. 10.)

(Title.)

To.....

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore under Rule 10 of Order XIV of the Civil Procedure Rules, 1927, issued requiring the attendance of the witness in this Court on the.....day of..... 19..., at.....o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

Given under my hand and the seal of the Court, this  
.....day of..... 19...

..... Judge.

No 19

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS. App. A.

(O. XIV, r. 10.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the witness.....cited  
by.....has not, after the expiration of the  
period limited in the proclamation issued for his attendance,  
appeared in Court: You are hereby directed to hold under  
attachment.....property belonging to the said  
witness to the value of.....and to submit a return,  
accompanied with an inventory thereof, within.....  
days.

Given under my hand and the seal of the Court this  
.....day of....., 19.....

.....Judge.

No. 20.

WARRANT OF ARREST OF WITNESS.

(O. XIV, r. 10.)

(Title.)

To

The Bailiff of the Court.

WHEREAS.....has been duly served with  
a summons but has failed to attend (absconds and keeps out  
of the way for the purpose of avoiding service of a summons):  
You are hereby ordered to arrest and bring the said.....  
before the Court.

You are further ordered to return this warrant on or  
before the.....day of....., 19....., with an  
endorsement certifying the day on and the manner in which it  
has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court this  
.....day of....., 19.....

.....Judge.

No. 21.

WARRANT OF COMMITTAL. (O. XIV, r. 17.)

(Title.)

To

The Officer in Charge of the Jail at.....

WHEREAS the plaintiff (or defendant) in the above(  
named suit has made application to this Court that security  
be taken for the appearance of .....to give evidence  
(or to produce a document), on the.....day of.....  
19....., and whereas the Court has called upon the said.....  
.....to furnish such security, which he has failed  
to do: This is to require you to receive the said.....

App. A.

into your custody in the civil prison and to produce him before this Court at.....on the said day and on such other day or days as may be hereafter ordered.

Given under my hand and the seal of the Court this .....day of....., 19.....

.....Judge.

---

No. 22.

WARRANT OF COMMITTAL. (O. XIV, r. 17.)

(Title.)

To

The Officer in Charge of the Jail at.....

WHEREAS....., whose attendance is required before this Court in the above-named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody, and whereas owing to the absence of the plaintiff (or defendant) the said..... cannot give such evidence (or produce such document), and whereas the Court has called upon the said.....to give security for his appearance on the.....day of ..... , 19....., at....., which he has failed to do: This is to require you to receive the said..... into your custody in the civil prison and to produce him before this Court at.....on the.....day of....., 19.....

Given under my hand and the seal of the Court this .....day of....., 19.....

.....Judge.

---

No. 23.

THIRD PARTY NOTICE. (O. I, r. 14.)

(Title.)

Notice filed on the.....day of....., 19...  
To Mr. X.Y.

Take notice that this suit has been brought by the plaintiff against the defendant (as surety for M.N., upon a bond conditioned for payment of 2,000 pounds and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond; or, also surety for the said M.N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the.....day of ..... , 19.....].

Or (as acceptor of a bill of exchange for 500 pounds, dated the.....day of....., 19....., drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation).

Or (as acceptor of a bill of exchange for 500 pounds, dated App. A. the.....day of....., 19....., drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation).

Or (to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof on the ground that it was made by him on your behalf and as your agent).

*(And the defendant claims to be indemnified by you against liability for any costs which the plaintiff may recover against him in defending this suit to the extent of the whole (or as may be) of such costs, and further claims against you the costs of these third-party proceedings.)*

And take notice that, if you wish to dispute the plaintiff's claim in this suit as against the defendant C.D., or your liability to the defendant C.D., you must cause an appearance to be entered for you within.....days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any decree passed against the defendant C.D., and your own liability to contribute or indemnify to the extent herein claimed.

The appearance is to be entered at.....

(Signed) C.D.

Or M.N.,

Advocate for the defendant C.D.

## APPENDIX B.

App. B.

### DISCOVERY, INSPECTION AND ADMISSION.

#### No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. X, r. 1.)

In the Court of.....

Civil Suit No.....of....., 19.....

A.B.....Plaintiff.

against

C.D., E.F., G.H.....Defendants.

UPON hearing.....and upon reading the affidavit filed with the.....day of....., 19..... : It is ordered that the.....be at liberty to deliver to the.....interrogatories in writing, and that the said.....do answer the interrogatories as prescribed by Order X, Rule 8, and that the cost of this application be.....



No. 2.

App. B.

INTERROGATORIES. (O. X, r. 4.)

(Title as in No. 1, *supra*.)

Interrogatories on behalf of the above-named (*plaintiff or defendant C.D.*) for the examination of the above-named (*defendants E.F. and G.H., or plaintiff*).

1. Did not, etc

2. Has not, etc.

etc., etc., etc.,

(*The defendant E.F. is required to answer the interrogatories numbered.....*)

(*The defendant G.H. is required to answer the interrogatories numbered.....*)

No. 3.

ANSWER TO INTERROGATORIES. (O. X, r. 9.)

(Title as in No. 1, *supra*.)

The answer by the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows :—

1. ) Enter answer to interrogatories in paragraphs

2. ) numbered consecutively.

3. I object to answer the interrogatories numbered on the ground that (*state grounds of objection*).

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. X, r. 12.)

(Title as in No. 1, *supra*.)

UPON hearing..... : It is ordered that the.....do within.....days from the date of this Order answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be.....

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. X, r. 13.)

(Title as in No. 1, *supra*.)

I, the above-named defendant *C.D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto (*state grounds of objection*).

3. I have had, but have not now, in my possession or App. B. power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on (*state when and what has become of them, and in whose possession they now are*).

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them other than and except the documents set forth in the said first and second schedules hereto.

---

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. X, r. 14.)

(Title as in No. 1, *supra*.)

UPON hearing.....and upon reading the affidavit of.....filed the.....day of....., 19.....: It is ordered that the.....do, at all reasonable times, on reasonable notice, produce at....., situate at....., the following documents, .....namely, ....., and that the.....be at liberty to inspect and peruse the documents so produced and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be.....

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. X, r. 16.)

(Title as in No. 1, *supra*.)

Take notice that the (plaintiff or defendant) requires you to produce for his inspection the following documents referred to in your (plaint or written statement or affidavit dated the .....day of....., 19.....).

(*Describe documents required.*)

X.Y., Pleader for the.....

To Z., Pleader for the.....

---

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. X, r. 17.)

(Title as in No. 1, *supra*.)

Take notice that you can inspect the documents mentioned in your notice of the.....day of....., 19..... (except the documents numbered.....in that notice) at (*insert place of inspection*) on Thursday next, the.....instant, between the hours of 12 and 4 o'clock.....

Or, that the (plaintiff or defendant) object to give you inspection of documents mentioned in your notice of the.....day of....., 19..... on the ground that (*state the ground*).

## No. 9.

App. B.

## NOTICE TO ADMIT DOCUMENTS. (O. XI, r. 3.)

(Title as in No. 1, *supra.*)

Take notice that the plaintiff (or defendant) in the suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff), his pleader or agent, at..... on.....between the hours of.....; and the defendant (or plaintiff) is hereby required within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G.H., Pleader (or agent) for plaintiff (or defendant).

To E.F., Pleader (or agent) for defendant (or plaintiff).

(Here describe the documents and specify as to each document whether it is original or a copy.)

## No. 10.

## NOTICE TO ADMIT FACTS. (O. XI, r. 5.)

(Title as in No. 1, *supra.*)

Take notice that the plaintiff (or defendant) in this suit requires the defendant (or plaintiff) to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant (or plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G.H., Pleader (or agent) for plaintiff (or defendant).

To E.F., Pleader (or agent) for defendant (or plaintiff).

The facts, the admission of which is required, are :—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

## No. 11.

## ADMISSION OF FACTS PURSUANT TO NOTICE. (O. XI, r. 5.)

(Title as in No. 1, *supra.*)

The defendant (or plaintiff) in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit ;

Provided that this admission is made for the purposes of App. B. this suit only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion or by any one other than the plaintiff (or defendant, or party requiring the admission).

E.F., Pleader (or agent) for defendant (or plaintiff).

To G.H., Pleader (or agent) for plaintiff (or defendant).

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on 1st January, 1890 ...	1.
2. That he died intestate	2.
3. That N. was his lawful son ... ..	3. But not that he was his only lawful son.
4. That O. died ...	4. But not that he died on the 1st April, 1896.
5. That O. was never married ... ..	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. XI, r. 8.)

(Title as in No. 1, *supra*.)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly.....

G.H., Pleader (or agent) for plaintiff (or defendant).

To E.F., Pleader (or agent) for defendant (or plaintiff).

No. 13.

ORIGINATING SUMMONS (GENERAL FORM). (O. XXXIV, r. 7.)

In the.....Court of.....

Between

A.B.....Plaintiff

and

C.D.....Defendant.

(Entitle the proceedings as arising in the administration of an estate, or of a trust, or out of a sale and purchase of immovables, or of a partnership, or any other matter stated in Order XXXIV, Rules 1, 2, 3, 4 or 5.)

To (state name and address of person to be served).

App. B.

WHEREAS the above-named *A.B.*, ..... of  
 ....., who claims to be interested in the above-named  
 matter (*state nature and particulars of claim*) has applied for  
 the determination of the following questions:—(*State the  
 questions.*)

YOU ARE HEREBY REQUIRED, if you desire to be  
 heard upon the determination of any of the said questions, to  
 appear personally or by advocate at (*state time and place*),  
 when this Court will proceed to make such orders, whether by  
 way of declaration or otherwise, and to direct that such

Dated this.....day of....., 19.....

.....Judge.

SEAL.

App. C.

### APPENDIX C.

#### DECREES.

##### No. 1.

DECREE IN ORIGINAL SUIT. (O. XVIII, rs. 6. 7.)

(*Title.*)

Claim for.....

This suit coming on this day for final disposal before  
 .....in the presence of.....for the  
 plaintiff and of.....for the defendant it is ordered  
 and decreed that.....and that the sum of  
 shillings.....be paid by the.....to the  
 ..... on account of the costs of this suit with  
 interest thereon at the rate of.....per cent. per annum  
 from this date to date of realisation.

Given under my hand and the seal of the Court this  
 .....day of....., 19.....

##### *Particulars.*

1. Principal.
2. Interest.
3. Court fees.
4. Other disbursements.
5. Party and party costs.

##### No. 2.

SIMPLE MONEY DECREE. (Section 26 of the Ordinance.)

(*Title.*)

Claim for.....

This suit coming on this day for final disposal before  
 .....in the presence of.....for the  
 plaintiff and of.....for the defendant it is ordered  
 that the.....do pay to the.....the sum  
 of shillings.....with interest thereon at the rate  
 of.....per cent. per annum from.....to the

date of realisation of the said sum, and do also pay shillings App. C.  
 .....the costs of this suit, with interest thereon  
 at the rate of.....per cent. per annum from this date to  
 the date of realisation.

Given under my hand and the seal of the Court this  
 .....day of....., 19.....

.....Judge.

*Particulars.*

1. Principal.
2. Interest.
3. Court fees.
4. Other disbursements.
5. Party and party costs.

No. 3.

PRELIMINARY DECREE FOR FORECLOSURE.

(Title.)

This suit coming on this day, etc. : It is hereby declared  
 that the amount due to the plaintiff on account of principal,  
 interest, and costs calculated up to the.....day of  
 ....., 19....., is shillings.....

And it is decreed as follows :—

(1) That if the defendant pays into Court the amount so  
 declared due on or before the said.....day of.....,  
 19....., 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. (*Where the plaintiff claims  
 by derived title add " or by those under whom he claims ".*)  
 (*Where the plaintiff is in possession add " and shall put the  
 defendant in possession of the property ".*)

(2) That if such payment is not made on or before the  
 said.....day of....., 19....., the defendant  
 shall be debarred from all right to redeem the property.

*Schedule.*

*Description of the mortgaged property.*

No. 4.

PRELIMINARY DECREE FOR SALE.

(Title.)

This suit coming on this day, etc. : It is hereby declared  
 that the amount due to the plaintiff on account of principal,  
 interest and costs calculated up to the.....day of  
 ....., 19....., is shillings....., and that such  
 amount shall carry interest at the rate of.....per cent. per  
 annum until realisation, and it is decreed as follows :—

(1) That if the defendant pays into Court the amount so  
 declared due on or before the said.....day of.....,  
 the plaintiff shall deliver up to the defendant or to such person  
 as he appoints, all documents in his possession or power relating

App. C.

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. (*Where the plaintiff claims by derived title add " or by those under whom he claims ".*) (*Where the plaintiff is in possession add " and shall put the defendant in possession of the property ".*)

(2) That if such payment is not made on or before the said.....day of....., 19....., 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 to 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.

(3) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

*Schedule.*

*Description of the mortgaged property.*

No. 5.

PRELIMINARY DECREE FOR REDEMPTION.

(Title.)

This suit coming on this day, etc. : It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the.....day of....., 19....., is shillings.....

And it is decreed as follows :—

(1) That if the plaintiff pays into Court the amount so declared due on or before the said.....day of....., 19....., 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. (*Where the defendant claims by derived title add " or by those under whom he claims ".*) (*Where the defendant is in possession add " and shall put the plaintiff in possession of the property ".*)

(2) That if such payment is not made on or before the said.....day of....., 19....., the plaintiff shall be debarred from all right to redeem the property. (*If the mortgage is simple or usufructuary substitute " the property shall be sold ".*)

*Schedule.*

*Description of the mortgaged property.*

## No. 6.

DECREE FOR FORECLOSURE.—FIRST MORTGAGEE V. SECOND App. C.  
MORTGAGEE AND MORTGAGOR.—SUCCESSIVE PERIODS FOR  
REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the .....day of....., 19....., (a) is shillings *x*, and that on the.....day of....., 19....., (b) there will be due to the plaintiff for interest the further sum of shillings....., making in all shillings *y*, and it is further declared that on the.....day of....., 19....., (b) there will be due to the first defendant on account of the principal, interest and costs shillings *z*.

And it is decreed as follows :—

(1) That if the first defendant pays into Court the said sum of shillings *x* on or before the said.....day of....., 19....., (a) the plaintiff shall deliver up, etc. (as in Form No. 3).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and, if the second defendant pays into Court the said sum of shillings *y*, on or before the.....day of....., 19....., (b) the plaintiff shall deliver up, etc. (as in Form No. 3).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of shillings *y* and shillings *z* on or before the .....day of....., 19....., (b) the first defendant shall deliver up, etc. (as in Form No. 3).

(6) That in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem the property. (*Where the second defendant is in possession, "and shall put the first defendant in possession of the property".*)

## No. 7.

DECREE FOR SALE.—FIRST MORTGAGEE V. SECOND MORTGAGEE  
AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the.....day of....., 19....., is shillings *x* and that on the said day there will be due to the first defendant on account of principal, interest and costs shillings *y*.

And it is decreed as follows :—

(1) That if the defendants or either of them pay into Court the said sum of shillings *x* on or before the said.....day of....., 19....., the plaintiff shall deliver up, etc. (as in Form No. 4).



App. C.

(2) That if payment of the said sum is not made on or before the.....day of....., 19....., 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 to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of shillings  $x$  and such subsequent interest and costs as may be allowed by the Court; secondly, in payment to the first defendant of the said sum of shillings  $y$  and such subsequent interest and costs as aforesaid, and that the balance, if any, be paid to the second defendant.

(3) That in case the defendants or either of them shall pay the sum of shillings  $x$  as aforesaid, he or they shall be at liberty to apply to the Court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That if the net proceeds of the sale are insufficient to pay the said sum of shillings  $x$  and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

---

No. 8.

DECREE FOR SALE.—SECOND MORTGAGEE V. FIRST MORTGAGEE  
AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

(Title.)

(Insert declarations of the amounts due to the plaintiff shillings  $y$  and to the first defendant shillings  $x$  as in Form No. 7.)

And it is decreed as follows :—

(1) That if the plaintiff or the second defendant pays into Court the said sum of shillings  $x$  on or before the said .....day of....., 19....., the first defendant shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the.....day of....., 19....., the first defendant shall be at liberty to apply that the suit be dismissed or for the sale of the mortgaged property, and in case he shall apply for a sale of the mortgaged property such property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be paid into Court and applied, first in payment to the first defendant of the said sum of shillings  $x$  and such subsequent interest and costs as may be allowed by the Court; secondly, in payment to the plaintiff of the said sum of shillings  $y$  and such subsequent interest and costs as aforesaid, and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of shillings  $x$  into Court on or before the.....day of....., 19....., the second defendant shall be at liberty to pay into Court the said sum and the sum of shillings  $y$  on or before the.....day of....., 19....., and thereupon the plaintiff shall deliver, etc. (as in Form No. 4).

(4) That if the plaintiff shall pay the said sum as afore- App. C.  
said, but the second defendant shall fail to pay the said sums  
as aforesaid, the mortgaged property, or a sufficient part  
thereof, shall be sold, and the proceeds of the sale (after  
defraying thereout the expenses of the sale) shall be applied in  
payment to the plaintiff of the said sums of shillings *x* and  
shillings *y* and such subsequent interest and costs as may be  
allowed by the Court, and that the balance, if any, be paid to  
the second defendant.

(5) That if the net proceeds of the sale are insufficient to  
pay the said sums, interest and costs in full, the plaintiff shall  
be at liberty to apply for a personal decree for the amount of  
the balance.

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No. 9.

DECREE FOR SALE—SUB-MORTGAGEE v. MORTGAGEE AND  
MORTGAGOR, THE AMOUNT OF THE ORIGINAL MORTGAGE  
EXCEEDING THAT OF THE SUB-MORTGAGE.

(Title.)

(Insert declarations of the amounts due to the plaintiff  
shillings *x* and to the first defendant shillings *y* as in Form  
No. 7.)

And it is decreed as follows :—

(1) The first defendant and the second defendant shall be  
at liberty to pay into Court the said sums of shillings *x* and  
shillings *y* respectively on or before the.....day of.....  
19..., and upon either of the said payments being made the  
plaintiff shall deliver up, etc. (as in Form No. 4), and there-  
upon the sum of shilling *x* shall be paid to the plaintiff.

(2) In the event of payment by the second defendant as  
aforesaid the first defendant shall also deliver up, etc. (as in  
Form No. 4), and thereupon the residue (after payment to the  
plaintiff as aforesaid) shall be paid to the first defendant.

(3) In default of payment by the first and second  
defendant as aforesaid the mortgaged property or a sufficient  
part thereof shall be sold, and the proceeds of the sale (after  
deducting thereout the expenses of the sale) shall be paid into  
Court and applied, first, in payment to the plaintiff of the  
said sum of shillings *x* and such subsequent interest and costs  
as may be allowed by the Court (but so that the aggregate  
amount of principal and interest shall not exceed the amount  
of principal and interest due to the first defendant); secondly,  
in payment to the first defendant of the excess of shillings *y*  
over shillings *x* and such subsequent interest and costs as afore-  
said; and that the balance, if any, be paid to the second  
defendant.

(4) In the event of payment by the first defendant and in  
default of payment by the second defendant as aforesaid, the  
first defendant shall be at liberty to apply for the sale of the  
mortgaged property, and thereupon the same or a sufficient  
part thereof shall be sold and the net sale proceeds shall be  
applied in payment to the first defendant of the said sum of  
shillings *y* and such further interest and costs as may be  
allowed by the Court, and the balance, if any, shall be paid  
to the second defendant.

App. C.

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs, the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

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No. 10.

FINAL DECREE FOR FORECLOSURE.

(Title.)

Upon reading the decree passed in the above suit on the .....day of.....19..., and the application of the plaintiff dated the.....day of.....19..., and after hearing.....pleader for the plaintiff and .....pleader for the defendant, and it appearing that the payment directed by the said decree has not been made :

It is hereby decreed as follows :—

That the defendant and all persons claiming through or under him be debarred from the right to redeem the mortgaged property set out and described in the Schedule hereto annexed. (Where the defendant is in possession add “ and shall put the plaintiff in possession of the said property.”)

SCHEDULE.

*Description of the mortgaged property.*

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No. 11.

DECREE AGAINST MORTGAGOR PERSONALLY.

(Title.)

WHEREAS the net proceeds of the sale held under the final decree for sale passed in this suit on the.....day of .....19..., and note in Court in the credit of this suit, amount to shillings *y*, and there is now due to the plaintiff the sum of shillings *x* mentioned in the said decree together with the further sum of shillings.....interest thereon at the rate of 6 per cent. per annum from the.....day of .....19..., to this day, and also the sum of shillings..... for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of shillings *z*. And whereas it appears to this Court that the defendant is personally liable for the said balance :

It is hereby declared as follows :—

(1) That the said sum of shillings *y* to be paid out of Court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of shillings *z* with interest thereon at the rate of 6 per cent. per annum from this day to the date of realisation of the said sum.

No. 12.

DECREE FOR RECTIFICATION OF INSTRUMENT.

App. C.

(Title.)

It is hereby declared that the....., dated the  
.....day of.....19..., does not truly express  
the intention of the parties to such.....

And it is decreed that the said.....be rectified  
by.....

No. 13.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(Title.)

It is hereby declared that the ....., dated the  
.....day of.....19..., and made between  
.....and.....is void as against  
the plaintiff and all other the creditors, if any, of the defendant.

No. 14.

INJUNCTION AGAINST PRIVATE NUISANCE.

(Title.)

Let the defendant....., his agents, servants  
and workmen, be perpetually restrained from.....  
.....on the defendant's plot of land marked B in  
the annexed plan, so as to occasion a nuisance to the plaintiff  
as the owner or occupier of the dwelling house and garden  
mentioned in the plaint as belonging to and being occupied by  
the plaintiff.

No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(Title.)

Let the defendant....., his contractors,  
agents and workmen, be perpetually restrained from con-  
tinuing to erect upon his premises in.....any house or  
building of a greater height than the buildings which formerly  
stood upon his said premises and which have been recently  
pulled down, so or in such manner as to darken, injure or  
obstruct such of the plaintiff's windows in his said premises  
as are ancient lights.

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

Let the defendant....., his agents, servants and  
workmen, be perpetually restrained from using or permitting to  
be used any part of the lane at....., the soil of  
which belongs to the plaintiff, as a carriage-way for the passage  
of carts, carriages or other vehicles, either going to or from  
the land marked B in the annexed plan or for any purpose  
whatsoever.

## PRELIMINARY DECREE IN AN ADMINISTRATION SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In a creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.

In suits by next of kin—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin (or one of the next-of-kin) of the intestate.

(After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditors' suit.)

4. An account of the funeral and testamentary expenses.

5. An account of the movable property of the deceased come to the hands of the defendants, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the.....day of.....next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the.....\*shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. *E.F.* be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the.....(and shall give security by bond for the due performance of his duties to the amount of.....shillings).

10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts, taken, that is to say—

(a) an inquiry what immovable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased or any part thereof;

---

\* Here insert name of proper officer.

- (c) an account, so far as possible, of what is due to the several incumbrancers, in addition to a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed. App. C.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the judge free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that *G.H.* shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the .....\* and that in case any doubt or difficulty shall arise the papers shall be submitted to the judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the.....\* shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the.....\* to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the.....day of.....and that the.....\* do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

15. And, lastly, it is ordered that this suit (or proceeding) stand adjourned for making the final decree to the.....day of.....

(Such part only of this decree is to be used as is applicable to the particular case.)

#### No. 18.

#### FINAL DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE.

(Title.)

1. It is ordered that the defendant.....do, on or before the.....day of....., pay into Court the sum of shillings.....the balance by the said certificate found to be due from the said defendant on account of the estate of....., the testator, and also the sum of shillings .....for interest, at the rate of shillings.....per cent. per annum from the.....day of.....to the .....day of....., amounting together to the sum of shillings.....

Let the.....\* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of shillings.....ordered to be paid into Court as aforesaid, as follows :—

- (a) The costs of the plaintiff to Mr....., his attorney (or pleader). Or

---

\* Here insert name of proper officer.

App. C.

(b) And (if any debts are due) with the residue of the said sum of shillings.....after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors in the .....Schedule to the certificate of the.....\*, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the.....Schedule together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

---

No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Title.)

1. It is declared that the defendant is personally liable to pay the legacy of shilling.....bequeathed to the plaintiff.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within .....weeks after the date of the certificate of the.....\* pay to the plaintiff the amount of what the.....\* shall certify to be due for principal and interest.

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

---

No. 20.

FINAL DECREE IN AN ADMINISTRATION SUIT BY NEXT-OF-KIN.

(Title.)

1. Let the.....\* of the said Court tax the costs of the plaintiff and defendant in this suit and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of shillings....., the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E.F.*, the intestate, within one week after the taxation of the said costs by the said.....\*, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of shillings.....after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

(a) Let the defendant, within one week after the taxation of the said costs by the.....\* as aforesaid, pay one-third share of the said residue to the plaintiffs *A.B.* and *C.D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E.F.*, the intestate.

---

\* Here insert name of proper officer.

- (b) Let the defendant retain for her own use one other App. C. third share of the said residue, as the mother and one of the next-of-kin of the said *E.F.*, the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the.....\* as aforesaid, pay the remaining one-third share of the said residue to *G.H.*, as the brother and the other next-of-kin of the said *E.F.*, the intestate.

---

No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(Title.)

It is declared that the proportionate shares of the parties in the partnership are as follows :—

It is declared that this partnership shall stand dissolved (or shall be deemed to have been dissolved) as from the..... day of....., and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that.....be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership.
2. An account of the debts and liabilities of the said partnership.
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the.....\* may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all other acts required to be done be completed, before the..... day of....., and that the.....\* do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

And lastly, it is ordered that this suit stand adjourned for making a final decree to the.....day of.....

---

\* Here insert name of proper officer.



## No. 22.

App. C.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP  
AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of shillings....., be applied as follows :—

1. In payment of the debts due by the partnership set forth in the certificate of the.....\* amounting in the whole to shillings.....

2. In payment of the costs of all parties in this suit amounting to shillings.....

(These costs must be ascertained before the decree is drawn up.)

3. In payment of the sum of shillings.....to the plaintiff as his share of the partnership-assets, of the sum of shillings....., being the residue of the said sum of shillings.....now in court, to the defendant as his share of the partnership-assets.

(Or, And that the remainder of the said sum of shillings.....be paid to the said plaintiff..... (or defendant) in part payment of the sum of shillings.....certified to be due to him in respect of the partnership-accounts.)

4. And that the defendant (or plaintiff) do on or before the.....day of.....pay to the plaintiff (or defendant) the sum of shillings.....being the balance of the said sum of shillings.....due to him, which will then remain due.

## No. 23.

## DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

It is hereby declared as follows :—

1. That the defendant do put the plaintiff in possession of the property specified in the Schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of shillings.....with interest thereon at the rate of..... per cent. per annum to the date of realisation on account of mesne profits which have accrued due prior to the institution of the suit.

Or

2. That an inquiry be made as the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until (the delivery of possession to the decree-holder) (the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court) (the expiration of three years from the date of the decree).

\* Here insert name of proper officer.

SCHEDULE.

APPENDIX D.  
EXECUTION.

App. D.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT  
SHOULD NOT BE RECORDED AS CERTIFIED. (O, XIX, r. 2.)

(Title.)

To.....

WHEREAS in execution of the decree in the above-named suit.....has applied to this Court that the sum of shillings.....recoverable under the decree has  
paid  
been ——— and should be recorded as certified, this is to  
adjusted  
give you notice that you are to appear before this Court on the  
payment  
.....day of.....19..., to show cause why the ———  
adjustment  
aforesaid should not be recorded as certified.

Given under my hand and the seal of the Court, this  
.....day of..... 19....

..... Judge.

No. 2.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT.

(O. XIX, r. 4.)

(Title.)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of..... at.....for execution of the decree in the above suit for the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court and it is deemed necessary and proper to send a certificate to the said Court under Order XIX, Rule 4, of the Civil Procedure Rules, 1927.

Ordered.

That a copy of this order be sent to.....with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the.....day of..... 19...

..... Judge.

CERTIFICATE OF NON-SATISFACTION OF DECREE.  
(O. XIX, r. 4.)

Certified that no (1) satisfaction of the decree of this Court in Suit No..... of 19..., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the..... day of..... 19...

..... Judge.

(1) If partial, strike out " no " and state to what extent.

No. 4.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO  
ANOTHER COURT. (O. XIX, r. 4.)

(Title.)

Number of suit and the court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
1.	2.	3.	4.	5.	6.	7.	8.	9.
					Sbs Cts.	Sbs. Cts.		

*Signature of Judge.*

No. 5.

APPLICATION FOR EXECUTION OF DECREE. (O. 19, r. 8.)

In the Court.....

I, ....., decree-holder, hereby apply for execution of the decree herein below set forth :—

789 of 1916.	Name of suit.									
A.B.—Plaintiff. C.D.—Defendant.	Names of parties.									
October 11th, 1916.	Date of decree.									
No.	Whether any appeal preferred, from decree.									
None.	Payment of adjustment made, if any.									
Shillings recorded on application, dated the 4th March, 1927.	Previous application, if any, with date and result.									
Shillings (interest of 6 per cent per annum from date of decree till payment).	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree.									
S. _____ As awarded in the decree .. .. Subsequently incurred .. .. Total ..	Amount of costs, if any, awarded.									
Against the defendant, C.D.	Against whom to be executed.									
Mode in which the assistance of the Court is required.										
10.										
(When attachment and sale of movable property is sought.) I pray that the total amount of shillings (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realized by attachment and sale of defendant's movable property as per annexed list and paid to me.  (When attachment and sale of immovable property is sought.) I pray that the total amount of shillings (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realized by attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.										

App. D.

App. D.

I, ....., declare that what is stated herein is true to the best of my knowledge and belief.

(Signed).....decree-holder.

Dated the.....day of....., 19.....

(When attachment and sale of immovable property is sought :)

Description and Specification of Property :

The undivided one-third share of the judgment-debtor in a house situated in the village of....., value shillings 80 and bounded as follows :—

East by G.'s house; west by H.'s house, south by public road, north by private lane and J.'s house.

I, ....., declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified .

(Signed).....decree-holder.

No. 6.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT  
ISSUE. (O. XIX, r. 19.)

(Title.)

To.....

WHEREAS.....has made application to this Court for execution of decree in Suit No..... of 19....., on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court.....on the .....day of....., 19....., to show cause why execution should not be granted.

Given under my hand and the seal of the Court this .....day of....., 19.....

No. 7.

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN  
EXECUTION OF A DECREE FOR MONEY.

(O. XIX, rr. 27, 40.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS.....was ordered by decree of this Court passed on the.....day of....., 19....,

Decree.....		Sh. Cts.	in Suit No..... of ....., 19...., to pay the plaintiff the sum of shillings as noted in the margin; and whereas the said sum of shillings.....has not been paid: These are to command you to attach the said movable property to the said .....as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said.....,
Principal .....			
Interest .....			
Costs .....			
Costs of execution ...			
Further interest ...			
Total ...			

and unless the said.....shall pay to you the said sum of shillings.....together with shillings.....the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or App. D.  
before the.....day of....., 19....., with an  
endorsement certifying the day on which and manner in  
which it has been executed, or why it has not been executed.

Given under my hand and the seal of the Court, this  
.....day of....., 19.....

.....Judge.

*Schedule.*

No. 8.

WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY  
ADJUDGED BY DECREE. (O. XIX, r. 28.)

To.....

The Bailiff of the Court.

WHEREAS.....was ordered by decree of  
this Court passed on the.....day of.....,  
19....., in Suit No..... of 19....., to deliver to the  
plaintiff the movable property (or a.....share in the  
movable property) specified in the schedule hereunto annexed,  
and whereas the said property (or share) has not been  
delivered :

These are to command you to seize the said movable  
property (or a.....share of the said movable property)  
and to deliver it to the plaintiff or to such person as he may  
appoint in his behalf.

Given under my hand and the seal of the Court this  
.....day of....., 19.....

.....Judge.

*Schedule.*

No. 9.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT.

(O. XIX, r. 31.)

(Title.)

To.....

Take notice that on the.....day of.....,  
19....., ....., the decree-holder in the above suit,  
presented an application to this Court that the Court may  
execute on your behalf a deed of....., whereof a draft  
is hereunto annexed, of the immovable property specified  
hereunder, and that the.....day of....., 19...  
is appointed for the hearing of the said application, and that  
you are at liberty to appear on the said day and to state in  
writing any objections to the said draft.

*Description of property.*

Given under my hand and the seal of the Court, this  
.....day of....., 19.....

.....Judge.

No. 10.

App. D.      WARRANT TO THE BAILLIFF TO GIVE POSSESSION OF LAND, ETC.  
(O. XIX, r. 32.)  
(Title.)

To.....

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of.....has been decreed to....., the plaintiff in this suit, you are hereby directed to put the said .....in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same.

Given under my hand and the seal of the Court, this .....day of....., 19.....

.....Judge.

Schedule.

No. 11.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST  
SHOULD NOT ISSUE. (O. XIX, r. 34.)  
(Title.)

To.....

WHEREAS.....has made application to this Court for execution of decree in Suit No..... of ..... 19....., by arrest and imprisonment of your person, you are hereby required to appear before this Court on the.....day of....., 19....., to show cause why you should not be committed to the civil prison in execution of the said decree.

Given under my hand and the seal of the Court, this .....day of....., 19.....

.....Judge.

No. 12.

WARRANT OF ARREST IN EXECUTION. (O. XIX, r. 35.)  
(Title.)

To.....

The Bailiff of the Court.

WHEREAS.....was adjudged by a decree of the Court in Suit No.....of 19....., dated the.....day of....., 19...., to

	Shs.	Cts.	
Principal .....			pay to the decree-holder the
Interest .....			sum of shillings..... as
Costs .....			noted in the margin, and
Execution .....			whereas the said sum of
			shillings..... has not
			been paid to the said decree-
			holder in satisfaction of the
			said decree: These are to
Total ...			command you to arrest the said
			judgment-debtor and unless the
			said judgment-debtor shall pay

to you the said sum of shillings....., together with shillings.....for the costs of executing this process, to bring the said defendant before the Court with all convenient

speed. You are further commanded to return this warrant App. D.  
on or before the.....day of....., 19....., with  
an endorsement certifying the day on which and manner in  
which it has been executed, or the reason why it has not been  
executed.

Given under my hand and the seal of the Court, this  
.....day of....., 19.....

.....Judge.

---

No. 13.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.

(O. XIX, r. 37.)

(Title.)

To.....

The Officer in Charge of the Jail at.....

WHEREAS....., who has been brought  
before this Court this.....day of....., 19....,  
under a warrant in execution of a decree which was made and  
pronounced by the said Court on the.....day of  
....., 19....., and by which decree it was ordered that  
the said.....should pay.....: And  
whereas the said.....has neither obeyed the decree  
nor satisfied the Court that he is entitled to be discharged from  
custody; you are hereby commanded and required to take and  
receive the said.....into the civil prison and keep  
him imprisoned therein for a period not exceeding.....  
or until the said decree shall be fully satisfied or the said  
.....shall be otherwise entitled to be released  
according to the terms and provisions of section 42 of the  
Civil Procedure Ordinance, 1924, and the Court does hereby  
fix.....cents per diem as the rate of the monthly  
allowance for the subsistence of the said.....  
during his confinement under this warrant of committal.

Given under my hand and the seal of the Court, this  
.....day of....., 19.....

.....Judge.

---

No. 14.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN  
EXECUTION OF A DECREE.

(Sections 42 and 43 of the Ordinance.)

(Title.)

To.....

The Officer in Charge of the Jail at.....

Under orders passed this day, you are hereby directed to  
set free....., judgment-debtor, now in your  
custody.

Dated:

.....Judge.



## No. 15.

App. D.

ATTACHMENT IN EXECUTION.—PROHIBITORY ORDER WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

(O. XIX, r. 43.)

(Title.)

To.....

WHEREAS.....has failed to satisfy a decree passed against.....on the.....day of....., 19....., in Suit No..... of 19....., in favour of..... for shillings.....: It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from the following property in the possession of the said....., that is to say, ..... to which the defendant is entitled, subject to any claim of the said....., and the said.....is hereby prohibited and restrained, until the further order of the Court, from delivering the said property to any person or persons whomsoever.

Given under my hand and the seal of the Court, this.....day of....., 19.....

.....Judge.

## No. 16.

ATTACHMENT OF DEBT. (O. XX, r. 1.)

In the.....Court of.....

Kenya Colony.

Between

A.B.,.....decree-holder

and

C.D.....judgment-debtor

and

X.Y.....garnishee.

Upon reading the affidavit of.....filed the.....day of....., 19....., and.....

It is ordered by....., that all debts owing or accruing due from the above-named garnishee to the above named judgment-debtor be attached to answer a decree recovered against the said judgment-debtor by the above-named decree-holder in the.....Court of.....on the.....day of....., 19....., for the sum of shillings.....debt and shillings.....costs (together with the costs of these garnishee proceedings), on which decree the sum of shillings.....remains due and unpaid.

And it is further ordered that the said garnishee attend App. D.  
at the said.....Court of.....on the.....  
day of....., 19....., at.....o'clock in the.....  
noon, on an application by the decree-holder that the said  
garnishee pay the debt due from him to the said judgment-  
debtor, or so much thereof as may be sufficient to satisfy the  
decree, together with the costs of these garnishee proceedings.

Dated this.....day of....., 19.....

To

The above-named X.Y., garnishee, and the above-named  
C.D., judgment-debtor.

---

No. 17.

ATTACHMENT IN EXECUTION.—PROHIBITORY ORDER WHERE THE  
PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A  
CORPORATION.

(O. XIX, r. 43.)

(Title.)

To

....., defendant, and to.....  
Secretary of.....Corporation.

WHEREAS.....has failed to satisfy a decree  
passed against.....on the.....day of  
....., 19..., in Suit No.....of 19..., in favour of  
....., for shillings.....: It is ordered  
that you, the defendant, be, and you are hereby, prohibited  
and restrained, until the further order of this Court, from  
making any transfer of.....shares in the aforesaid  
Corporation, namely....., or from receiving payment  
of any dividends thereon; and you....., the  
Secretary of the said Corporation, are hereby prohibited and  
restrained from permitting any such transfer or making any  
such payment.

Given under my hand and the seal of the Court, this  
.....day of....., 19....

.....Judge.

---

No. 18.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER.

(O. XIX, r. 45.)

(Title.)

To.....

WHEREAS....., judgment-debtor in the  
above-named case, is a (*describe office of judgment-debtor,*  
receiving his salary (or allowances) at your hands; and whereas  
....., decree-holder in the said case, has applied  
in this Court for an attachment of the salary (or allowances)  
of the said.....to the extent of.....  
due to him under the decree: You are hereby required to  
withhold the said sum of.....from the salary of  
the said.....in monthly instalments of.....  
....., and to remit the said sum (or monthly instalments)  
to this Court.

Given under my hand and the seal of the Court, this  
.....day of....., 19....

.....Judge.

## No. 19.

App. D.

## ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT.

(O. XIX, r. 48.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the.....day of....., 19.... for the attachment of..... : You are hereby directed to seize the said ..... and bring the same into Court.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

## No. 20.

ATTACHMENT.—PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

(O. XIX, r. 49.)

(Title.)

To

Sir,

The plaintiff having applied, under Rule 8 of Order XIX of the Civil Procedure Rules, 1927, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, etc*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient servant,

.....Judge.

Dated the.....day of....., 19...

## No. 21.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT. (O. XIX, r. 50.)

(Title.)

To

The Judge of the Court of.....

Sir,

I have the honour to inform you that the decree obtained in your Court on the.....day of....., 19..., by.....in Suit No.....of 19..., in which he was.....and.....was..... has been attached by this Court on the application of....., the.....in the suit specified above. You are therefore requested to stay the execution of the decree of

your Court until you receive an intimation from this Court App. D. that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

.....Judge.

Dated the.....day of....., 19...

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF  
THE DECREE. (O. XIX, r. 50.)

(Title.)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the.....day of....., 19..., in the Court of.....in Suit No..... of 19..., in which.....was.....and.....was.....: It is ordered that you, the said.....be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

No. 23.

ATTACHMENT IN EXECUTION.—PROHIBITORY ORDER, WHERE THE  
PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

(O. XIX, r. 51.)

(Title.)

To

....., Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the.....day of....., 19..., in Suit No..... of 19..., in favour of.....for shillings.....: It is ordered that you, the said.....be, and you are hereby, prohibited and restrained, until the further order of this Court, .....from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are, hereby prohibited from receiving the same by purchase, gift or otherwise.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

Schedule.

.....Judge.

## No. 24.

App. D.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC.,  
IN THE HANDS OF A THIRD PARTY.

(O. XIX, r. 53.)

(Title.)

To

WHEREAS the following property.....has  
been attached in execution of a decree in Suit No.....of  
....., 19..., passed on the.....day of.....  
19..., in favour of.....for shillings.....:  
It is ordered that the property so attached, consisting of  
shillings.....in money and shillings.....in  
Currency Notes, or a sufficient part thereof to satisfy the said  
decree, shall be paid over by you, the said.....,  
to.....

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

## No. 25.

## NOTICE TO ATTACHING CREDITOR. (O. XIX, r. 55.)

(Title.)

WHEREAS.....has made application to  
this Court for the removal of attachment on.....  
placed at your instance in execution of the decree in Suit No.  
.....of 19..., this is to give you notice to appear before  
this Court on....., the.....day of.....,  
19..., either in person or by a pleader of the Court duly  
instructed to support your claim as attaching creditor.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

## No. 26.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF DECREE FOR  
MONEY. (O. XIX, r. 63.)

(Title.)

To

The Bailiff of the Court.

These are to command you to sell by auction, after giving  
.....days' previous notice, by affixing the same in this  
Court-house, and after making due proclamation, the.....  
.....property attached under a warrant from this Court,  
dated the.....day of....., 19..., in execution  
of a decree in favour of.....in Suit No.....of  
19..., or so much of the said property as shall realise the sum  
of shillings....., being the.....of the said  
decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or  
before the.....day of....., 19..., with an  
endorsement certifying the manner in which it has been  
executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

No. 27.

## NOTICE OF THE DAY FIXED FOR SETTLING A SALE NOTIFICATION. App. D.

(O. XIX, r. 63.)

(Title.)

To

....., judgment-debtor.

WHEREAS in the above-named suit....., the decree-holder has applied for sale of..... : You are hereby informed.....that the..... day of....., 19..., has been fixed for settling the terms of the proclamation of sale.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

No. 28.

## NOTIFICATION OF SALE. (O. XIX, r. 63.)

(Title.)

Notice is hereby given that, under Rule 61 of Order XIX of the Civil Procedure Rules, 1927, an Order has been passed by this Court for the sale of the attached property

(1) Suit No.....of 19..., decided by the..... .....of.....in which .....was plaintiff and.....was defendant.	mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin amounting with costs and interest up to date of sale to the sum of.....
--	--

The sale will be by public auction, and the property will be put up for sale in the lots specified in the..... schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below, and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by..... commencing at..... o'clock on the.....at..... In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid either personally or by duly authorised agent. No bid by or on behalf of the judgment-creditors, above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further conditions of sale :—

App. D.

*Conditions of sale.*

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid and provided it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of Rule 65 of Order XIX.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if such fifteenth day be a Sunday or other holiday, then on the first office day after such fifteenth day.

8. In default of payment of the balance of purchase money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

SCHEDULE OF PROPERTY.

Number of lot.	Description of property to be sold with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Details of any incumbrances to which the property is liable.	Claims, if any which have been put forward to the property and any other known particulars bearing on its nature and value.

No. 29.

ORDER OF THE BAILLIFF FOR CAUSING SERVICE OF PROCLAMATION App. D.  
OF SALE. (O. XIX, r. 63.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the Schedule hereunder annexed, and whereas the.....day of..... 19..., has been fixed for the sale of the said property copies of the proclamation of sale are by this warrant made over to you and you are hereby ordered to have the proclamation published by fixing a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court house, and then to submit to this Court a report showing the dates on which the proclamation have been published.

Dated the.....day of.....19...

SCHEDULE.

..... Judge.

No. 30.

CERTIFICATE BY OFFICERS HOLDING A SALE OF THE DEFICIENCY  
OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE  
PURCHASER'S DEFAULT. (O. XIX, r. 66.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of....., purchaser, there was a deficiency in the price of the said property amounting to shillings..... and that the expenses attending such re-sale amounting to shillings.....making a total shillings.....which sum is recoverable from the defaulter.

Dated the.....day of.....19...

.....  
Officer holding the sale.

No. 31.

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY  
SOLD IN EXECUTION. (O. XIX, r. 72.)

(Title.)

To.....

WHEREAS.....  
has become the purchaser at a public sale in execution of the decree in the above suit of.....  
.....now in your possession,  
you are hereby prohibited from delivering possession of the said.....to any person except the said.....

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.



No. 32.

App. D.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD  
IN EXECUTION. (O. XIX, r. 72.)

(Title.)

To.....

.....and....., Secretary of  
.....Corporation.

WHEREAS ..... has  
become the purchaser at a public sale in execution of the  
decree, in the above suit, of certain shares in the above cor-  
poration, that is to say, of.....  
standing in the name of you.....  
.....it is ordered that  
you.....  
be, and you are hereby, prohibited from making any transfer of  
the said share to any person except the said.....  
the purchaser aforesaid, or from receiving any dividends  
thereon; and you.....Secretary of the said  
Corporation are further prohibited from permitting any such  
transfer or making any such payment to any person except the  
said.....the purchaser aforesaid.

Given under my hand and the seal of the Court, this  
.....day of..... 19...

..... Judge.

No. 33.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO  
MORTGAGE, LEASE, OR SELL PROPERTY.  
(O. XIX, r. 76.)

(Title.)

WHEREAS in execution of the decree passed in the above  
suit an order was made on the.....day of.....  
19..., .....for the sale of the under-mentioned  
property of the judgment-debtor.....and whereas  
the Court has, on the application of the said judgment-debtor,  
postponed the said sale to enable him to raise the amount of  
the decree by mortgage, lease or private sale of the said property  
or of some part thereof.

This is to certify that the Court doth hereby authorise the  
said judgment-debtor to make the proposed mortgage, lease or  
sale within a period of.....from the date of this  
certificate; provided that all monies payable under such  
mortgage lease or sale shall be paid into this Court and not to  
the said judgment-debtor.

*Description of property.*

Given under my hand and the seal of the Court, this  
.....day of..... 19...

..... Judge.

No. 34.

App. D.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET  
ASIDE. (O. XIX, rr. 83 and 85.)

(Title.)

To.....

WHEREAS the under-mentioned property was sold on  
the.....day of.....19... in execution of the  
decree passed in the above-named suit and whereas.....  
the decree-holder (or judgment-debtor), has applied to this  
Court to set aside the sale of the said property on the ground of  
a material irregularity (or fraud) in publishing (or conducting)  
the sale, namely, that.....

Take notice that if you have any cause to show why the  
said application should not be granted, you should appear with  
your proofs in this Court on the.....day of.....19...,  
when the said application will be heard and determined.

Given under my hand and the seal of the Court, this  
.....day of.....19..

..... Judge.

*Description of property.*

No. 35.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET  
ASIDE. (O. XIX, rr. 84 and 85.)

(Title.)

To.....

WHEREAS....., the purchaser  
of the under-mentioned property sold on the.....day of  
..... 19..., in execution of the decree passed in the  
above-named suit, has applied to this Court to set aside the sale  
of the said property on the ground that....., the  
judgment-debtor, had no saleable interest therein.

Take notice that if you have any cause to show why the  
said application should not be granted, you should appear with  
your proofs, in this Court on the.....day of.....19...,  
when the said application will be heard and determined.

Given under my hand and the seal of the Court, this  
.....day of.....19..

..... Judge.

No. 36.

CERTIFICATE OF SALE OF LAND. (O. XIX, r. 87.)

(Title.)

This is to certify that.....has been  
declared the purchaser at a sale by public auction on the.....  
day of.....19..., of..... in execution  
of the decree in this suit, and that the said sale has been duly  
confirmed by this Court.

Given under my hand and the seal of the Court, this  
.....day of.....19..

..... Judge.

No. 37.

App. D.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT  
A SALE IN EXECUTION. (O. XIX, r. 89.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS.....has become the  
certified purchaser of.....at a sale in  
execution of the decree in Suit No..... of 19...; you are  
hereby ordered to put the said.....the  
certified purchaser, as aforesaid, in possession of the same, by  
affixing a copy of the certificate of sale in some conspicuous  
place on the property sold, and by notifying the occupant  
thereof in the following manner :—

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

No. 38.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING  
EXECUTION OF DECREE. (O. XIX, r. 90.)

(Title.)

To.....

WHEREAS....., the  
decree-holder in the above suit, has complained to this Court  
that you have resisted (or obstructed) the officer charged with  
the execution of the warrant for possession.

You are hereby summoned to appear in this Court on the  
.....day of..... 19... at..... a.m. to  
answer the said complaint.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

No. 39.

WARRANT OF COMMITTAL. (O. XIX, r. 91.)

(Title.)

To.....

The Officer-in-Charge of the Jail at.....

WHEREAS the under-mentioned property has been  
decreed to....., the plaintiff in this suit, and whereas  
the Court is satisfied that.....without any  
just cause resisted (or obstructed) and is still resisting (or  
obstructing) the said.....in obtaining possession of  
the property and whereas the said.....has made  
application to this Court that the said.....be committed  
to the civil prison.

You are hereby commanded and required to take and  
receive the said.....into the civil prison and to keep  
him imprisoned therein for the period of.....days.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

APPENDIX E.

App. E.

SUPPLEMENTARY PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. XXXVI, r. 1.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS....., the plaintiff in the above suit, claims the sum of shillings.....as noted in the margin

	Shs.	Cts.
Principal ... ..		
Interest ... ..		
Costs ... ..		
Total ... ..		

and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to

These are to command you to demand and receive from the said.....the sum of shillings.....as

sufficient to satisfy the plaintiff's claim, and unless the said sum of shillings.....is forthwith delivered to you by or on behalf of the said....., to take the said.....into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of shillings.....for his personal appearance before the Court until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

Given under my hand and the seal of the Court, this .....day of.....19...

..... Judge.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O. XXXVI, r. 2.)

To.....

WHEREAS at the instance of....., the plaintiff in the above suit,.....the defendant, has been arrested and brought before the Court.

And whereas on the failure of the said defendant to show cause why he should not furnish security or his appearance, the Court has ordered him to furnish such security.

Therefore I..... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when

App. E.

called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at.....this.....day of  
.....19....

Witness

(1).....

(2).....

..... Signed.

---

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION  
FOR DISCHARGE. (O. XXXVI, r. 3.)

(Title.)

To.....

WHEREAS....., who become surety on the  
.....day of.....19..., for your appearance in the  
above suit, has applied to this Court to be discharged from  
his obligation :

You are hereby summoned to appear at this Court in  
person on the.....day of.....19..., at.....a.m.,  
when the said application will be heard and determined.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

---

No. 4.

ORDER FOR COMMITTAL. (O. XXXVI, r. 4.)

(Title.)

To.....

WHEREAS....., plaintiff in this suit, has  
made application to the Court that security be taken for the  
appearance of....., the defendant, to answer any  
judgment that may be passed against him in the suit; and  
whereas the Court has called upon the defendant to furnish  
such security or to offer a sufficient deposit in lieu of security,  
which he has failed to do; it is ordered that the said defendant  
.....be committed to the civil prison until the  
decision of the suit; or, if judgment be pronounced against  
him, until satisfaction of the decree.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR App. E.  
SECURITY FOR FULFILMENT OF DECREE.  
(O. XXXVI, r. 5.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS.....has proved to the  
satisfaction of the Court that the defendant in the above suit  
.....

These are to command you to call upon the said defendant  
.....on or before the.....day of.....  
19..., either to furnish security for the sum of shillings.....  
to produce and place at the disposal of this Court when required  
.....or the value thereof, or such portion of the  
value as may be sufficient to satisfy any decree that may be  
passed against him; or to appear and show cause why he should  
not furnish security; and you are further ordered to attach the  
said.....and keep the same under safe and secure  
custody until the further order of the Court; and you are  
further commanded to return this warrant on or before the  
.....day of..... 19..., with an endorsement  
certifying the date on which and the manner in which it has  
been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY.  
(O. XXXVI, r. 5.)

(Title.)

WHEREAS at the instance of....., the plaintiff  
in the above suit, .....the defendant has been  
directed by the Court to furnish security in the sum of shillings  
.....to produce and place at the disposal of the Court  
the property specified in the Schedule hereunto annexed.

Therefore I.....have voluntarily become surety and  
do hereby bind myself, my heirs and executors, to the said  
Court, that the said defendant shall produce and place at the  
disposal of the Court, when required, the property specified in  
the said Schedule, or the value of the same, or such portion  
thereof as may be sufficient to satisfy the decree; and in default  
of his so doing, I bind myself, my heirs and executors, to pay  
to the said Court at its order, the said sum of shillings.....  
or such sum not exceeding the said sum as the said Court  
may adjudge.

Witness my hand at.....this..... day of  
.....19...

Witness.

(1).....

(2).....

..... Signed.

No. 7.

App. E.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO  
FURNISH SECURITY. (O. XXXVI, r. 6.)

(Title.)

To.....

The Bailiff of the Court.

WHEREAS....., the plaintiff in  
this suit, has applied to the Court to call upon.....  
the defendant, to furnish security to fulfil any decree that may  
be passed against him in the suit, and whereas the Court has  
called upon the said.....to furnish such security,  
which he has failed to do; these are to command you to attach  
....., the property of the said.....  
and keep the same under safe and secure custody until the  
further order of the Court; and you are further commanded to  
return this warrant on or before the.....day of.....  
19... with an endorsement certifying the date on which and  
the maner in which it has been executed, or the reason why it  
has not been executed.

Given under my hand and the seal of the Court, this  
.....day of.....19...

..... Judge.

No. 8.

TEMPORARY INJUNCTIONS. (O. XXXVII, r. 1.)

(Title.)

Upon the motion made unto this Court by.....  
pleader of (or counsel for) the plaintiff A.B., and upon reading  
the petition of the said plaintiff in this matter filed (this day)  
(or the plaint filed in this suit on the.....day of.....  
or the written statement of the said plaintiff filed on the.....  
day of.....) and upon hearing the evidence of.....  
and in support thereof (if after notice and defendant not  
appearing add, and also the evidence of.....as to service  
of notice of this motion upon the defendant C.D.): This  
Court doth order that an injunction do issue to restrain the  
defendant C.D., his servants, agents and workmen from pulling  
down, or suffering to be pulled down, the house in the plaint  
in the said suit of the plaintiff mentioned (or in the written  
statement, or petition, of the plaintiff and evidence at the hear-  
ing of this motion mentioned), being....., and from  
selling the materials whereof the said house is composed, until  
the hearing of this suit or until the further order of this Court.

Dated this.....day of .....19...

..... Judge.

(Where the injunction is sought to restrain the negotiation  
of a note or bill, the ordering part of the order may run  
thus :—)

.....to restrain the defendants.....and  
.....from parting with the custody  
of them or any of them or endorsing, assigning or negotiating  
the promissory note (or bill of exchange) in question, dated on

or about the....., etc., mentioned in the plaintiff's App. E. plaint (or petition) and the evidence heard at this motion until the hearing of this suit or until the further order of this Court.

(*In copyright cases*) ..... to restrain the defendant C.D., his servants, agents or workmen, from printing, publishing or vending a book, called.....or any part thereof, until the, etc.

(*Where part only of a book is to be restrained*).

.....to restrain the defendant C.D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint (or petition and evidence, etc.) mentioned to have been published by the defendant as hereinafter specified namely that part of the said book which is entitled.....and also that part which is entitled..... (or which is contained in page..... to page..... both inclusive) until....., etc.

(*In patent cases*).....to restrain the defendant C.D., his agents, servants and workmen, from making or vending any perforated bricks (or as the case may be) upon the principle of the inventions in the plaintiff's plaint (or petition, etc., or written statement, etc.) mentioned, belonging to the plaintiffs, or either of them during the remainder of the respective terms of the patents in the plaintiff's plaint (or as the case may be) mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom until the hearing, etc.....

(*In cases of trade marks*).....to restrain the defendant C.D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking (or as the case may be) described as or purporting to be blacking manufactured by the plaintiff A.B., in bottles having affixed thereto such labels as in the plaintiff's plaint (or petition, etc) mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A.B., and from using trade cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A.B., until the, etc.

(*To restrain a partner from in any way interfering in the business*).

.....to restrain the defendant C.D., his agents servants, from entering into any contract and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done any act, in the name or on the credit of the said partnership firm of B. and D. or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.



## No. 9.

App. E.

APPOINTMENT OF A RECEIVER. (O. XXXVIII, r. 1.)

(Title.)

To.....

WHEREAS..... has been attached in execution of a decree passed in the above suit on the.....day of.....19..., in favour of .....; you are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XXXVIII of the Civil Procedure Rules, 1927, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on..... You will be entitled to remuneration at the rate of.....per cent. upon your receipts under the authority of this appointment.

Given under my hand and the seal of the Court, this .....day of..... 19....

..... Judge.

## No. 10.

BOND TO BE GIVEN BY RECEIVER. (O. XXXVIII, r. 3.)

(Title.)

Know all men by these presents, that we,..... and.....and....., are jointly and severally bound to.....of the Court of..... in shillings.....to be paid to the said..... of his successor in office for the time being. For which payment we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this.....day of.....19...

Whereas a plaint has been filed in this Court by..... against.....for the purpose of (here insert the object of the suit.)

And whereas the said.....has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of.....in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden.....shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said..... at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of.....

*Note.*—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

## APPENDIX F.

App. F.

## APPEAL, REFERENCE AND REVIEW.

## No. 1.

MEMORANDUM OF APPEAL. (O. XXXIX, r. 1.)

(Title.)

The.....

.....above-named appeals to the.....  
 Court at.....from the decree of.....  
 in Suit No. .... of 19..., dated the.....day of  
 .....19..., and sets forth the following grounds of  
 objection to the decree appealed from namely :—

## No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY  
 EXECUTION OF DECREE. (O. XXXIX, r. 4.)

(Title.)

To

This security bond on stay of execution of decree executed  
 by.....witnesseth :—

That....., the plaintiff in Suit No.....  
 of 19..., having sued....., the defendant, in this  
 Court, and a decree having been passed on the.....  
 day of....., 19..., in favour of the plaintiff, and the  
 defendant having preferred an appeal from the said decree in  
 the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute  
 the decree, the defendant has made an application praying for  
 stay of execution, and has been called upon to furnish security.  
 Accordingly I, of my own free will, stand security to the  
 extent of shillings....., mortgaging the properties  
 specified in the schedule hereunto annexed, and covenant that  
 if the decree of the first Court be confirmed or varied by the  
 appellate Court the said defendant shall duly act in accordance  
 with the decree of the Appellate Court, and shall pay whatever  
 may be payable by him thereunder, and if he should fail  
 therein then any amount so payable shall be realised from  
 the properties hereby mortgaged, and if the proceeds of the  
 sale of the said properties are insufficient to pay the amount  
 due, I and my legal representatives will be personally liable  
 to pay the balance. To this effect I execute this security  
 bond this.....day of....., 19...

Schedule.

• (Signed).....

Witnessed by :

1. ....
2. ....

## No. 3.

App. F.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF  
APPEAL. (O. XXXIX, r. 5.)

(Title.)

To

This security bond on stay of execution of decree executed  
by.....witnesseth :—

That....., the plaintiff in Suit No.....  
of 19..., having sued....., the defendant, in this  
Court, and a decree having been passed on the.....day  
of....., 19..., in favour of the plaintiff, and the  
defendant having preferred an appeal from the said decree in  
the.....Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution  
of the said decree and has been called upon to furnish security.  
Accordingly I, of my own free will, stand security to the  
extent of shillings....., mortgaging the properties  
specified in the schedule hereto annexed, and covenant that if  
the decree of the first Court be reversed or varied by the  
Appellate Court, the plaintiff shall restore any property which  
may be or has been taken in execution of the said decree,  
and shall duly act in accordance with the decree of the  
Appellate Court and shall pay whatever may be payable by  
him thereunder, and if he should fail therein then any amount  
so payable shall be realised from the properties hereby mort-  
gaged, and if the proceeds of the sale of the said properties  
are insufficient to pay the amount due, I and my legal  
representatives will be personally liable to pay the balance.  
To this effect I execute this security bond this.....  
day of....., 19...

Schedule.

(Signed).....

Witnessed by :

1. ....
2. ....

## No. 4.

## SECURITY FOR COSTS OF APPEAL. (O. XXXIX, r. 9.)

(Title.)

To

This security bond for costs of appeal executed by.....  
.....witnesseth :—

This appellant has preferred an appeal from the decree in  
Suit No..... of 19..., against the respondent, and has been  
called upon to furnish security. Accordingly I, of my own  
free will, stand security for the costs of the appeal, mortgaging  
the properties specified in the schedule hereunto annexed. I  
shall not transfer the said properties or any part thereof, and  
in the event of any default on the part of the appellant, I shall  
duly carry out any order that may be made against me with  
regard to payment of the costs of appeal. Any amount so  
payable shall be realised from the properties hereby mortgaged,  
and if the proceeds of the sale of the said properties are

insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this.....day of ....., 19... App. F.

*Schedule.*

Witnessed by :

1. ....
2. ....

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL.  
(O. XXXIX, r. 10.)

(Title.)

To

You are hereby directed to take notice that the..... in the above suit has preferred an appeal to this Court from the decree passed by you therein on the.....day of ....., 19...

You are requested to send with all practicable despatch all material papers in the suit.

Dated the.....day of....., 19...

.....Judge.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING  
OF THE APPEAL. (O. XXXIX, rr. 11, 12.)

(Title.)

Appeal from the.....of the Court of..... dated the.....day of....., 19...

To

....., respondent.

Take notice that an appeal from the decree of..... in this case has been presented by....., and registered in this Court, and that the.....day of ....., 19..., has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

(Note.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.)

## No. 7.

App. F. NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE  
APPEAL, BUT JOINED BY THE COURT AS A RESPONDENT.  
(O. XXXIX, r. 17.)

(Title.)

To

WHEREAS you were a party to Suit No..... of  
....., 19..., in the Court of....., and whereas  
the..... has preferred an appeal to this Court from  
the decree passed against him in the said suit and it appears  
to this Court that you are interested in the result of the said  
appeal :

This is to give you notice that this Court has directed you  
to be made a respondent in the said appeal and has adjourned  
the hearing thereof till the.....day of.....,  
19..., at.....a.m. If no appearance is made on your  
behalf on the said day and at the said hour the appeal will be  
heard and decided in your absence.

Given under my hand and the seal of the Court, this  
.....day of....., 19...

.....Judge.

## No. 8.

DECREE IN APPEAL. (O. XXXIX, r. 28.)

Appeal No.....of 19..., from the decree of the Court  
of.....dated the.....day of.....

*Memorandum of Appeal.*

....., plaintiff.

....., defendant.

The.....above-named appeal to the  
.....Court at.....from the decree of.....  
.....in the above suit, dated the.....day of  
....., 19..., for the following reasons, namely :—

This appeal coming on for hearing on the.....  
day of....., 19..., before....., in the  
presence of.....for the appellant, and of.....  
.....for the respondent, it is ordered :—

The costs of this appeal, as detailed below, amounting to  
shillings.....are to be paid by..... The  
costs of the original suit are to be paid by.....

Given under my hand this.....day of.....,  
19...

.....Judge.

Costs of Appeal.

App. F.

Appellant.	Amount.		Respondent.	Amount.	
	S.	C.		S.	C.
1 Stamp for Memorandum of appeal .. ..			Stamp for power .. ..		
2 Stamp for power .. ..			Stamp for petition .. ..		
3 Service of processes .. ..			Service of processes .. ..		
4 Pleader's fee on shillings			Pleader's fee on shillings		
Total .. ..			Total .. ..		

No. 9.

APPLICATION TO APPEAL IN *Forma Pauperis*. (O. XLI, r. 1.)  
(Title.)

I, ....., the.....above-named,  
present the accompanying memorandum of appeal from the  
decree in the above suit, and apply to be allowed to appeal  
as a pauper.

Annexed is a full and true schedule of all the movable  
and immovable property belonging to me with the estimated  
value thereof.

Dated the.....day of....., 19...  
(Signed).....

(Note.—Where the application is by the plaintiff he should  
state whether he applied and was allowed to sue in the Court  
of first instance as a pauper.)

No. 10.

NOTICE OF APPEAL IN *Forma Pauperis*. (O. XLI, r. 1.)  
(Title.)

WHEREAS the above-named.....has applied  
to be allowed to appeal as a pauper from.....the  
decree in the above suit dated the.....day of.....  
19..., and whereas the.....day of....., 19...,  
has been fixed for hearing the application: Notice is hereby  
given to you that if you desire to show cause why the  
applicant should not be allowed to appeal as a pauper an  
opportunity will be given you of doing so on the aforementioned  
date.

Given under my hand and the seal of the Court, this  
.....day of....., 19...  
.....Judge.

No. 11.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE  
GRANTED. (O. XLII, r. 3.)  
(Title.)

To  
Take notice that.....has applied to this Court  
for a review of its decree passed on the.....day of  
....., 19..., in the above case. The.....day  
of....., 19..., is fixed for you to show cause why the  
Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this  
.....day of....., 19...  
.....Judge.

APPENDIX G.

MISCELLANEOUS.

No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED.

(O. XIII, r. 6.)

(Title.)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact (or of law) to be decided between us and the point at issue between us is.....

We, therefore, severally bind ourselves that, upon the finding of the Court in the negative (or affirmative) of such issue, .....will pay to the said..... the sum of shillings..... (or such sum as the Court shall hold to be due thereon), and I, the said..... will accept the said sum of shillings..... (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid (or that upon such finding I, the said....., will do or abstain from doing, etc. etc.).

Witness :

1. ....

2. ....

.....plaintiff.

.....defendant.

Dated this.....day of....., 19...

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (Sect. 18 of the Ordinance.)

(Title.)

In the Court of.....

No.....of....., 19...

To

WHEREAS an application dated the.....day of....., 19..., has been made to this Court by....., the.....in Suit No..... of 19... now pending in the Court of the.....at....., in which.....is plaintiff and.....is defendant, for the transfer of the suit for trial to the Court of the.....at..... :-

You are hereby informed that the.....day of....., 19..., has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

Given under my hand and the seal of the Court, this.....day of....., 19...

.....Judge.

No. 3.

NOTICE TO SHOW CAUSE (GENERAL FORM).

App. G.

(Title.)

To

WHEREAS the above-named.....has made application to this Court that.....:

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the.....day of ....., 19..., at.....o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

No. 4.

PLAINTIFF.

LIST OF DOCUMENTS PRODUCED BY

DEFENDANT.

(O. VII, r. 14.)

(Title.)

No.	Description of document.	Date if any, which the document bears	Signature of party or pleader.
1	2	3	4

No. 5.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION.

(O. XVI, r. 11.)

(Title.)

To

....., plaintiff (or defendant).

WHEREAS in the above suit application has been made to the Court by.....that the examination of ....., witness required by the said.....in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause to be stated*):

Take notice that the examination of the said witness .....will be taken by the Court on the.....day of....., 19...

Dated this.....day of....., 19...

.....Judge.



## No. 6.

App. G.

## COMMISSION TO EXAMINE ABSENT WITNESS.

(O. XXV, rr. 4, 18.)

(Title.)

To

WHEREAS the evidence of.....is required by the.....in the above suit; and whereas .....; you are requested to take the evidence on interrogatories (or *viva voce*) of such witness, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents, if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of shillings....., being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

## No. 7.

## COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS. (O. XXV, rr. 9, 11.)

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for.....should be issued: You are hereby appointed Commissioner for the purpose of.....

Process to compel the attendance before you of any witnesses, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of shillings....., being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

## No. 8.

## COMMISSION TO MAKE A PARTITION. (O. XXV, r. 13.)

(Title.)

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court dated the.....day of....., 19...: You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said

property according to the best of your skill and judgment in App. G. the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalising the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of shillings....., being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

#### No. 9.

#### NOTICE TO MINOR DEFENDANT AND GUARDIAN.

(O. XXIX, r. 3.)

(Title.)

To

.....minor defendant.

.....natural guardian.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you..... the said minor, and you <sup>(1)</sup>....., are hereby required to take notice that unless within.....days from the service upon you of this notice an application is made to this Court for the appointment of you <sup>(1)</sup>....., or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as guardian to the minor for the purposes of the said suit.

(1) Here insert name of guardian.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

#### No. 10.

#### NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM. (O. XXX, r. 7.)

(Title.)

To

WHEREAS.....has applied to this Court for permission to institute a suit against..... in *forma pauperis* under Order XXX of the Civil Procedure Rules, 1927, and whereas the Court sees no reason to reject the application, and whereas the.....day of ..... 19..., has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof :

App. G.

Notice is hereby given to you under Rule 7 of Order XXX that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said.....day of....., 19...

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

---

No. 11.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE.

(Section 94 of the Ordinance.)

(Title.)

To

WHEREAS you.....did on..... become liable as surety for the performance of any decree which might be passed against the said....., defendant in the above suit, and whereas a decree was passed on the.....day of....., 19..., against the said defendant for the payment of....., and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required, on or before the.....day of....., 19..., to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

Given under my hand and the seal of the Court, this .....day of....., 19...

.....Judge.

---

No. 12.

APPLICATION FOR AN ORDER OF REFERENCE. (O. XLIII, r. 1.)

(Title.)

1. This suit is instituted for (*state nature of claim*).
2. The matter in difference between the parties is (*state matter of difference*).
3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A.B.

C.D.

Dated the.....day of....., 19...

(Note.—If the parties are agreed as to the arbitrator or arbitrators it should be so stated and a written statement signed by the arbitrator or arbitrators to the effect that he or they are willing to act must be filed.)

No. 13.

ORDER OF REFERENCE. (O. XLIII, rr. 2, 3.)

App. G.

(Title.)

Upon reading the application presented on the.....day of....., 19..., it is ordered that the following matter in difference arising in this suit, namely.....be referred for determination to X and Y, or in case of their not agreeing, then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the.....day of....., 19..., and in case the said arbitrators not agreeing in an award, the said umpire is to make his award in writing within.....months after the time during which it is within the powers of the arbitrators to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the Court, this.....day of....., 19...

.....Judge.

No. 14.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(O. XLIII, r. 5.)

(Title.)

WHEREAS by an order dated the.....day of....., 19..., (*state order of reference and death, refusal, etc., of arbitrator*) it is by consent ordered that Z be appointed in the place of X (deceased, *or as the case may be*) to act as arbitrator, with Y, the surviving arbitrator, under the said order, and it is ordered that the award of the said arbitrators be made on or before the.....day of....., 19...

Given under my hand and the seal of the Court, this.....day of....., 19...

.....Judge.

No. 15.

SPECIAL CASE. (O. XLIII, r. 11.)

(Title.)

In the matter of an arbitration between A.B., of....., and C.D., of....., the following case is stated for the opinion of the Court :—(*Here state the facts concisely in numbered paragraphs.*)

The questions of law for the opinion of the Court are :—

First, whether.....

Secondly, whether.....

X.  
Y.

Dated the.....day of....., 19...

No. 16.

App. G.

AWARD. (O. XLIII, r. 10.)

(Title.)

In the matter of an arbitration between *A.B.*, of.....  
 ....., and *C.D.*, of..... :

WHEREAS in pursuance of an order of reference made  
 by the Court of.....and dated the.....  
 day of....., 19..., the following matter in difference  
 between *A.B.* and *C.D.*, namely.....  
 has been referred to us for determination :

Now we, having duly considered the matter referred to us,  
 do hereby make our award as follows :—

We award—

- (1) That.....
- (2) That.....

X.

Y.

Dated the.....day of....., 19...

J. W. BARTH,  
*Chief Justice.*

J. E. R. STEPHENS,  
*Judge.*

W. C. HUGGARD,  
*Attorney General.*

G. G. ATKINSON,

E. K. FIGGIS,

Nairobi,  
 31st March, 1927.