

CIVIL MANUAL

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INTRODUCTION "1. The Code of civil procedure may appear to some persons to be a vast collection of separate sections ground in a series of Chapters or Orders but without much organic connection. Yet this collection of apparently disconnected item is really animated by a vital theory: and it is essential to appreciate that theory in order to understand the scope and meaning of the separate sections. 2. Apart from the Chapters on Appeals. Reference and Review and Revisions, the Code is concerned with the disposal of suits and the execution of decrees and such proceedings as are incidental thereto. Everything in the Code is provided for the purpose of securing a just and prompt decision of suits and proceedings and effective enforcement of the decrees or orders of the Courts. 3. As regards the disposal of suits the theory of the Code is that the parties shall by their pleadings disclose to the Court and to each other fully and precisely what they allege, but not the evidence which is to prove the allegations. There is not to be a holding back of anything material in order to disclose it later, and so take the other side by surprise and have them at a disadvantage. The contentions between the parties are to be so fully and accurately ascertained by the Court that they can be stated in the form of clear and precise issues. This impliedly involves ascertaining the points on which the parties are agreed; a matter hardly less important than finding out the points on which they are not agreed, the court is responsible for stating the issues and consequently for obtaining from the parties the information necessary before framing them. When stated they are the basis of further proceedings: they are to give evidence ;and of the points of law which arise. When the evidence is recorded, the judgment is to deal with it for the purpose of deciding each and all of the issues and all the ultimate conclusion is the result of the findings on the several issues. This shows of what great importance it is to have the issues correctly framed and to require that the parties shall not evade the production of the information necessary for that purpose. Furthermore, the issues should be precise and definite, not vague and general such as "Is the plaintiff entitled to succeed" The object is to indicate in the issues the exact and particular points in dispute. When issues are carelessly or vaguely framed advantage of that defect can be taken by an appellant in appeal who in such a case may succeed in working injustice by obscuring the points really in dispute in the first Court and concentrating attention on points really taken for the first time in appeal. This should be prevented and the surest prevention is the framing of issues fully and precisely. 4. After the framing of issues there follows the actual trial, that is the hearing of the evidence. In the trial the Code follows fargely the English theory which is based on trial by jury. Before a jury when the trial, that is the hearing of the evidence, once begins, it must go on from day to day or the jury might forget the evidence and could not return a verdict according to the evidence. Judges like juries can also forget the evidence unless it is reasonably fresh in their minds: so the code intends that the hearing of evidence when once begun, should proceed from day to day. And indeed it is difficult to imagine anything less In accordance with our ideas of justice than Judge who decides a suit on evidence heard so long ago that he has forgotten the impressions it made on his mind at the time. 5. To sum up in the briefest way the theory of the Code as to the disposal of suits; it is full disclosure by each party of his allegations and prompt disposal by the Judge. It has been pointed out how immensely important is the correct framing of issues. The detailed provisions of the Code contain an interesting instance of the importance attached to promptness of disposal. Rule 5 of Order V provides that in issuing summons to a defendant the Court shall determine whether it shall be for the settlement of issues only or for final disposal. Here, it may be said, is a provision against the theory that issues must be framed first and that issues are the notice to the parties of the matters as to which evidence is to be adduced. For a summons for final disposal means that the parties must appear with their evidence, and how can they do this before issues are framed, if issues are the only notice of the matters as to which evidence is required! The explanation is a class of simple suits where each party may well be assumed to know exactly what is in dispute and what is to be proved or rebutted. Prompt disposal is so highly valued that in suits of this class the formality of framing issues before fixing a date for final disposal is dispensed with. But even in such cases issues have to be framed before the trial takes place; and if they are found to be less simple than was anticipated, it may be necessary to postpone the trial and to allow further time for the production of evidence. It is not intended that the summons should be for final disposal except in simple suits. 6. The provisions contained in the Code regarding plaints and plaintiffs make it very difficult for a plaintiff to proceed unless he has a practical knowledge of the working of the Courts or has competent legal advice. With defendants it is different. In this country many defendants are poor, ignorant and inexperienced, and the theory of the Code is that such persons are to receive a large measure of protection and assistance from the Courts. A defendant need not put in a written statement in answer to a plaint, and his failure to do so does not relieve the Court of the duty of finding out what the defendant has to say in answer to the plaint. 7. The final outcome of a suit is a decree usually requires one party to pay money to, or do or refrain from doing something for the benefit of, the other party. Execution is the expression used to mean the enforcement of the decree. The Code intends that it should be enforced and the Courts are required to give assistance in the enforcement. Moreover execution is a part of the Court's duty requiring care and attention at the hands of the Judge in exactly the same manner as the disposal of suits. But the Court does not, of itself, enforce a decree: it does nothing after making the decree until asked to do so by a party entitled to some benefit under the decree. 8. The theory of the suit is that at the beginning the

defendant knows nothing about it and therefore nothing should be done without his first having notice of it. Theory of execution is that the loser in the suit (the judgment-debtor) knows all about the decree and anticipates that it will be executed against him. Therefore if the person benefiting by the decree (the judgment- creditor) applies to the Court with reasonable promptitude, he will usually obtain the Court's assistance in execution without any notice being required in the first instance to be given to the judgment-debtor. 9. satisfaction of a decree is enforced sometimes by the arrest of the judgment-debtor but more commonly by seizing and, if necessary, selling his property or by ordering him to abstain from dealing with his property and eventually selling it. The Code lays down in detail the circumstances in which a judgment- debtor may be arrested and what property may be attached and sold. Underlying these provisions there is always the assumption that only the property of the judgment-debtor can be attached and sold. Some Judges fail to realize fully this part of the theory of the Code. They know that when property not belonging to a judgment-debtor is attached, it can be released from attachment on that fact being proved. Consequently they think there is no great need to be scrupulously careful before ordering attachments to have prima facie assurance that the property to be attached belongs to the judgment-debtor. The truth is that it is grossly unjust to attach one person's property in order to discharge another person's obligations, still more so to sell such property and the theory of the Code recognizes this. Consequently it is an imperative duty of judges to have prima facie proof before ordering attachment that the property is that of the judgment- debtor. Such prima facie proof as is necessary may be furnished in an affidavit by the decree-holder; but if that be not enough to satisfy the Judge, he may demand something more, before issuing attachment. 10. Another prominent and important part of the theory of the Code in the matter of execution is that a decree once satisfied shall not be made the ground of further execution proceedings against the judgment-debtor. To ensure this a Register of Suits is provided in which all steps taken in execution and all payments made are to be noted or entered. But it often happens that payments are made or a decree is partially or wholly satisfied out of Court. The intention of the Code is that all such payments or satisfaction should be reported to the Court. Frequently, however, this is not done and consequently, in order that the intention of the Code may not be defeated, it is necessary for the Court to take steps of its own initiative to find out whether a decree has been wholly or partially satisfied. 11. When property is sold in execution, the intention of the Code is that a reasonable price should be obtained and that property should not be sold unless it apparently belongs to the judgment- debtor or he has an interest in it. To ensure the latter, proof in the form of affidavit is required and the judgment-debtor can, if necessary be summoned and questioned. To ensure the former, the officer conducting the sale should possess a fair knowledge of the value of the property to be sold and he has power to postpone the sale if no reasonable bid is made. 12. Briefly summarised therefore the theory and intention of the Code in execution proceedings are that the court when asked to do so should give prompt and effective assistance: that it should be watchful to prevent the sale of property in which the judgment- debtor has no interest and to ascertain any satisfaction of the decree out of Court so as to be fully aware of the extent to which a decree is satisfied; and lastly that it should do all in its power to ensure that property sold in execution is sold for a fair price and that intending purchasers are placed in a position to find out for themselves exactly what the judgment-debtor's interest in the property amounts to. 13. It is especially important in the Mofussil that the Judges should understand and act upto the theory of the Code because experience has taught us that there are certain defects which can only be entirely eradicated by following the true spirit and theory of the Code. These defects are well known and need not be stated here, especially as for some time past there has been a general and consistent effort to eradicate them. 14. The sections of the Code are many and the provisions detailed but it does not provide rules for all cases. Human affairs are so immensely varied and human language so ambiguous and Imperfect that it is impossible to frame rules to suit all cases. General principles are indicated and many detailed rules prescribed, but much is left to the discretion of the Judges. The theory of the code is that only in this way can the rigidity of written law be made elastic enough to suit the justice of particular cases. Where matters are left to the discretion of the Judge it is intended that he should use his discretion in the light of the facts of each case: and not limit it by rigid rules. 15. The theory of the Code as to appeals is not always understood. Usually a first appeal lies except in suits tried by small Cause Courts or by Judges under their small Cause jurisdiction. In many suits a second appeal also lies, but only on points of law not on questions of fact. The result is that however complicated or difficult the suit may be on matters of fact the decision of the Court of first appeal is final. This throws a very heavy responsibility on such Courts: a responsibility which can only be properly discharged by a careful consideration of the evidence: and where the Court of appeal differs from the lower Court in appreciating the evidence, by a clear and full statement of its reasons for so doing. 16. In second appeal it is often argued that the decision of the Court of first appeal as to the evidence cannot be accepted because the judgment does not discuss the evidence or does not state findings clearly. These are short comings which a Court of first appeal should be scrupulous to avoid. The evidence which has been considered should be referred to briefly in the judgment, and, where necessary, discussed, especially where the opinion but as definite conclusions based on the evidence. If that be done, a Court of second appeal will not be placed in any difficulty in understanding precisely what are the facts found by the Court of first appeal and remands for fresh findings will be very rare."

CHAPTER 1

Court and Office Hours

1. Court Hours :-

(1) All Judges shall sit in Court during the hours prescribed by paragraphs 2 and 3 for the disposal of judicial business. Administrative work shall ordinarily be done outside Court hours, but if on any day the Board breaks down (such occasion should be rare), the Judge should continue to work for the rest of the day in the Court premises and utilise the time in writing judgments and attending to administrative matters.

2. Office Hours :-

The hours of work in Offices of Civil Courts shall be from 11-00 a.m. to 6-00 p.m. (except on Sundays, holidays and second and fourth Saturdays of each calendar month), but no work unless of an urgent nature, will be admitted after 5-00 p.m. The Offices will remain closed on the second and fourth Saturdays of each calendar month and on the remaining Saturdays working hours shall be the same as prescribed above. An Official may, however, be ordered by the Presiding Officer to attend early or sit late or attend on a Sunday, holiday or 2nd or 4th Saturday of the month if the exigencies of service so require. An Official should not, except in exceptional cases, be made to attend on a holiday pertaining to his religion. The Chief Ministerial Officer of the Court shall maintain an attendance register and shall put it up before the Judicial Officer every day. The Judicial Officer may give a recess upto half an hour to those members of the theministerial staff who require it at suitable hours, so that the office routine is not substantially affected. Muslim employees, if they ask for permission to leave office to say their Jumma prayer, should be allowed to take their lunch recess on Friday at the time convenient to them, provided it can be suitably done.

2A. Hours of cash transactions :-

The cash transactions shall commence at 11-00 a.m. and close half an hour before the closing hours of the Treasury, provided, however, that the Judicial Officer concerned may permit any transaction to be effected beyond the prescribed hours in exceptional circumstances.

2B. Daily sittings of Judges :-

The daily sittings of Civil Courts for Judicial Work shall (except on Sundays and holidays and second and fourth Saturdays of each calendar month and except when the Judges are unavoidably required elsewhere) ordinarily be from 11-30 a.m. to 5-30 p.m. with recess of an hour from 2-30 p.m. to 3-30 p.m. The Courts will remain closed on 2nd and 4th Saturdays of each calendar month and on the remaining Saturdays working hours shall be the same as prescribed above. The sittings of the Court however, may with the consent of the parties and their advocates be prolonged for such period as the circumstances may require.

Ordinarily all Judicial matters should be disposed of in open Court.)

3. The district Judge may :-

with the previous permission of the High Court, later the hours prescribed by paragraph 2 for any Court in his District, but so as not to reduce the total number of working hours in the week.

4. RULE :-

Ordinarily all judicial matters should be disposed of in open Court.

5. RULE :-

(1) Persons attending Courts and even witnesses taking the oath should be allowed to keep on their foot-wear.

(2) the public should have access to, or remain in, the room or the building used by a Court, except when the Presiding Judge thinks it fit in any particular case, to exclude either the public generally or any particular person. The grounds for doing so should, however, be recorded in the Roznama.

6. RULE :-

The Presiding Officers of Courts are authorised to suspend work for about half an hour or to stand in silence for a minute or two after a suitable reference has been made when a prominent local lawyer passes away and when a request for suspension of work is made to the Court.

CHAPTER 2

Institution of Suits

7. RULE :-

A plaint may be presented at any time during the Court hours to the Clerk of the Court or to such officer as the Court appoints in this behalf under Order IV, rule 1, Civil Procedure Code, or in the absence of such officer, to the Judge himself. Immediately after it is presented, the date of presentation shall be endorsed thereon.

Note 1.-If a plant is presented beyond Court hours, it will be in the discretion of the Judge to accept it or not.

Note 2.-The officer receiving the plaint is forbidden to refuse to receive plaints, application, etc., presented to him on the ground that he is not able, at that time, to check them.

8. RULE :-

The next step is the examination of the plaint in order to determine whether it should be-

(a) admitted: or

(b) rejected (Order VII, rule 11): or

(c) returned for presentation to the proper Court (Order VII, rule 10): or

(d) returned for amendment on the ground that it is not framed as required by law. This examination should be particularly directed to ascertaining-

(i) whether the forms provided in appendix A of The Code are followed as far as is reasonably possible (Order VI, rule 3);

(ii) whether the plaint is properly signed (Order VI, rule 14);

- (iii) whether it is duly verified (Order VI, rule 15);
- (iv) whether it complies with the requirements of Order VII, rules 2, 4 and 6;
- (v) whether it is properly stamped;
- (vi) whether the provisions of section 135 H (1) of the Bombay Land Revenue Code, V of 1879, are complied with: or the extract from the Property Register Card is produced or not where the suit is in respect of immoveable property bearing City Survey No.;
- (vii) whether the provisions of Order II. rules 4 and 5 are infringed;
- (viii) whether the necessary court-fee-stamps or the necessary postal charges for the service of the summons on the defendant have been affixed to it;
- (ix) whether the document or documents on which the plaintiff sues or the documents in his possession or power are produced along with the plaint;
- (x) whether the certificate required by the Pensions Act, XXIII of 1871, is produced in suits to which that Act appears to apply;
- (xi) whether the provisions of rules 2 and 4 of Order III as to the production of a power of attorney and Vakalatnama with the plaint are complied with or not;
- (xii) whether the plaintiff has filed with the plaint a memo in writing giving an address at which service of notice or summons or other process may be made on him:
- (xiii) whether a certificate of the Charity Commissioner is filed or not in a suit filed under the Bombay Public Trusts Act as required by section 51(1) of that Act.

9. RULE :-

While examining the plaint; it is also necessary to (a) verify the list of documents produced along with the plaint; (b) ascertain the correctness of the concise statements, if any (Order VII rule 9): and (c) compare with the original any copy of account book produced under Order VII, rule 17 and mark the relevant entries therein. The officer should also see that for every Indian date mentioned in the plaint, the corresponding date according to the Gregorian Calendar has been given.

10. RULE :-

If the officer examining the plaint finds that it complies with all the requirements and is correct in all respects, he should make the endorsement on the plaint- "Examined, and ordered to be registered" with the date and his signature. If he thinks that the Plaint should be returned for amendment or for presentation to the proper Court, or be rejected under Order VII, rule 11, he should refer the matter to the Judge for orders.

11. RULE :-

Where, upon examination, the plaint is found to be correct and in order, it should be entered in one of the three Registers of Suits according to the category to which it belongs. Three types of Registers should be maintained viz..

(i) Regular Suits: (ii) Small Cause Suits: and (iii) Special Suits.

12. RULE :-

After examination and registration, the plaint should be placed before the Judge for orders as to the issue of summons or otherwise. It will then be for the Judge to deal with the matter. (5) When the plaint is found to be defective in any material particular, or not to comply substantially with the requirements of Order VI, it would be competent to the Judge to direct that the necessary amendment should be made.

13. RULE :-

It is desirable that only those plaints which are admitted, should be dealt with under Order IV, rule 2 and their particulars entered in the Register of Suits. However, a plaint may be registered even before it is returned for amendment. When it is presented after amendment, the date of its re-presentation should be noted on the plaint and in the Register.

14. RULE :-

Where the dismissal or abatement of a suit, or an ex parte decree is set aside, the plaint should not be re-registered but proceedings should continue under the original number of the plaint in the Register of Suits, after taking a note of the order of the Court in that Register, and the number of the miscellaneous application or the proceeding in which the order was passed as also of the date of that order.

15. RULE :-

In the case of a plaint returned under the provisions of rule 10 of Order VII, a copy of the Judge's reasons for returning it should be retained and filed. A separate file of such copies should be maintained.

16. RULE :-

Rejected plaints should be kept together with the orders of rejection and the reasons for the same. and any evidence which may have been taken. A register of rejected plaints, in the form prescribed at page 405 of Vol. II should be kept in each Court. The entries in it should be numbered in each year according to the order in which the plaints are rejected.

17. RULE :-

the plaintiff shall state in the plaint or in a memorandum annexed thereto the value of the subject matter of the suit, as required by rule 1 (i) of Order VII and also how and under what provision the valuation has been arrived at. Where it is not clear how the valuation is arrived at, the officer examining the plaint should place the matter before the Judge for orders.

18. RULE :-

Where the subject-matter of the suit is immoveable property in a City in which a City Survey has been completed or in a village where a Grampanchayat is established, and the numbering of the houses and open spaces in the jurisdiction of the said Panchayat has been made, it should also be seen that the City Survey Numbers or Grampanchayat numbers have been properly specified in the plaint (Order VII rule 3).

19. RULE :-

In the plaint, the names of the parties should be shown in consecutive numbers, written one below the other. These numbers should not be changed; the representatives of a party' who are brought on record after the institution of the suit, should be shown by subnumbers. Where a party whose name is entered in the Register of Suits dies, the necessary correction should be made in that Register.

20. RULE :-

In many Courts, the provisions of rules 14 (2) and 18 of Order VII are not strictly followed. The attention of both Judges and lawyers is, therefore, specially directed to those provisions with a view to their strict compliance.

21. RULE :-

The lists, copies and statements referred to in Order VII rule 9 and 14 must be signed, if found to be correct, by the Clerk of the Court. It is also desirable that any copy produced as required by rule 14 of Order VII, but not covered by rule 17 of that order, should be compared, and if found to be correct, signed by the Clerk of the Court. If the list or copy is not correct, it should not be signed but returned for correction. All corrections, erasures and interlineations should be initialled while signing the list or copy, as the case may be.

22. RULE :-

Every pleading, application, affidavit and other legal document presented to a Civil Court shall be signed by the lawyer or person presenting it or shall bear an endorsement at the end giving the name of the lawyer or other person who has drafted it.

23. RULE :-

When a document produced with the plaint appears to be defaced, torn or in any way damaged, or where its condition or appearance acquires special notice, a note of such condition or appearance should be made on the list of documents and should be verified and initialled, if it is found correct, by the officer examining the plaint. In such cases, a copy of such defaced or damaged document or of document which is illegible should be got produced from the plaintiff for use in Court so that the damaged document may not further deteriorate, or difficulties may not be experienced in reading it.

24. RULE :-

Interlineations, erasures or corrections in a plaint should be initialled by the party or lawyer presenting or tendering the plaint and by the officer of the Court to whom it is presented.

25. RULE :-

The form for Register of suits is given in Schedule I, Appendix H at serial No. 14. In column 9 of the Register of Suits relating to particulars, it will be sufficient to note only the (7) nature of the suit. and the relief or reliefs prayed for in the plaint.

26. RULE :-

Certain forms which may be used by parties as an authority for appearance, a general power of attorney, an appointment of a lawyer, an authority to receive notices etc. are given as forms Nos. 1, 2, 3, 4, and 5 pertaining to this Chapter in Volume II. To understand their value and use the provisions of Order III should be read.

27. RULE :-

There should be a diary or index of proceedings called the Roznama an example of which is appended as Form No. 7. The following general instructions are issued for the maintenance of the Roznama:-

(i) The Roznama should clearly show the course of a suit or case from the beginning to the end in chronological order. It should show in a concise form the progress of the suit or proceeding from day to day. The reasons for every adjournment shall also be stated, the Roznama should be a faithful, complete and concise history of the case and of all proceedings taken in it. It should contain a correct list and description of the exhibits, the date of the delivery of the judgment of the signing of the decree and of any application for review of judgment, for amendment of the decree or for final decree. It should show in chronological order all proceedings subsequent to the passing of a preliminary decree, if any, and also contain a note of other proceedings, such as Commissioner's Reports, if any.

(ii) An entry should be made in the Roznama. stating whether all witnesses summoned or present have been examined and if any such witness has not been examined the reason for not doing so.

(iii) The Roznama must be kept from day to day as an original document by the Bench Clerk or the clerk on duty and must always remain in file 'B'. Entries other than those made at the time of institution of the suit or proceeding

shall normally be signed by the Judge.

(iv) Every document admitted in evidence and recorded should be mentioned in the Roznama in chronological order, the description of the document and the date of the document according to the Gregorian Calender should also be mentioned in the Roznama.

(v) At the end of the Roznama of each case the Bench Clerk concerned should make a note that all the Court-fee stamps have been punched and should sign the note.

(vi) The name of the Presiding Judge should be written in the Roznama when a case is filed; and when it is taken up by another Judge his name should also be entered.

(vii) The notice prescribed by rule 1 Order XX where Judgment is reserved or postponed should be set in the \\ Roznama.

(viii) The category of the file (A.B.C.D,). in which each paper or document mentioned in the Roznama is kept, should be noted in red ink or pencil in the margin of the Roznama against each paper or document. similarly, a note as regards the return or loss or destruction of a document should be made in red ink in the Roznama.

(ix) Before transmitting the record to the District Court record room, the Bench Clerk concerned shall verify and make an endorsement mentioning that the documents are properly classified and kept in the appropriate files A, B, C, D.

(x) The District Judges and the Civil Judges are authorised and may write the Roznamas of Gujarati).

28. RULE :-

The Judge should also keep memoranda books In the Form Nos. 8, 9 and 10, for which the following instructions should be followed:-

(i) Form No. 8.-This form is to be kept by all District Judges (including Joint and Asistant Judges). It should contain on one page the following heading and columns:- Heading : Day of week and date. Columns:

1. Sessions cases and criminal appeals and applications.
2. Original suits and civil applications.
3. Regular and miscellaneous appeals.
4. Any suit or proceeding coming before the Court on this date and not entered in columns 1, 2 or 3.

(ii) No. 9.-This form is to be kept by all Civil and Small Cause Court Judges. It should contain on one page the following heading and columns;- Heading : Suits. Day of week and date. Columns:

1. Suits fixed for final disposal.
2. Suits fixed for settlement of issues.
3. Adjourned hearings.
4. Suits coming before the Court on this date without having been previously fixed.
5. If the Civil Judge is invested with Appellate Powers, appeals should be entered in columns I and 3. This form should also be used for interlocutory proceedings which take place during the progress of the suit, for example, the appointment of a guardian.

(iii) Form no. 10:-Civil Small Cause Judges should keep a separate memorandum book, form 10 for darkhasts and miscellaneous applications for which it is necessary to fix a date. This form should contain the following heading and columns:- Heading : Darkhasts and miscellaneous applications. Day of the week and date. Columns:

1. Fixed for first hearing.
2. Adjourned hearing.
3. Remarks.

(iv) Every case entered in any memorandum book should, if the case has on the day in question advanced a stage, be then and there marked with the mark. If the case is taken up simply to be adjourned, the mark X should be made against It. If the case is taken up and decided, a line should be drawn through the entry.

(v) Every suit and proceeding should be entered by its number and year.

(vi) The object of these forms is two-fold-

- (a) to show the Presiding Judge what work is fixed for any particular day.
- (b) to show an inspecting authority what work was done on any particular day.

(vii) Form No. 8 should be kept in English. Forms Nos. 9 and 10 should be kept in the regional languages by the clerk-in-charge of the duties of Sheristedar, unless the presiding Judge prefers that they should be kept in English.

29. RULE :-

It will be for the Judge to determine-

- (a) whether, the summons should require the personal attendance of the defendant (Order V, rule 3 and 4); and
- (b) whether the summons shall be for final disposal or for settlement of issues (Order V, rule 5); and
- (c) the date for the appearance of the defendant (Order V, rule 6); and the Judge should make or cause to be made appropriate endorsements on the plaint and initial them. The forms to be used for summonses are Nos. 1, 2 and 3 of Appendix B to the First Schedule of the Code.

30. RULE :-

After the order for summons is passed and the process fee paid by the plaintiff is credited in the process fee book, the summons should be promptly prepared in accordance with the order of the Court and with due regard to the date of appearance, or returnable date fixed by the Court.

31. RULE :-

As soon as the summonses are prepared and signed, the Nazir should arrange for their service by a bailiff.

32. RULE :-

In addition to the service to be effected through a bailiff, a summons should also be sent to the defendant, to the address given by the plaintiff, by registered post, prepaid for acknowledgment, provided there is a regular daily postal-service at such place.

33. RULE :-

Rules as to service of summons are contained in rules 9 to 30 of Order V. Care should be taken to see that bailiffs follow those rules as well as the instructions given in the Bailiffs' Manual.

34. RULE :-

It is the duty of the serving officer to follow the procedure and take all the steps laid down in rules 17 of order V. He has no discretion for not taking the necessary steps, when the conditions laid down in the said rule are fulfilled.

35. RULE :-

It is for the Court to determine whether the service is good or bad. In determining whether the service is good or not the attention of Courts is drawn to the necessity of strictly following the provisions of the civil Procedure Code as to the service of processes. Ordinarily service should not be considered sufficient unless all the requirements of the law in that behalf are fulfilled. The object of the service is to inform a party of the proceedings in due time. When from the return of a serving officer it appears that there is no likelihood that a process will come to the knowledge of the party in due time, or a probability exists that it will not come so to his knowledge, the service should not be considered to be proper. The law contemplates that the primary method of service should be by tendering or delivering a copy of the process to the party personally, in cases in which it may be practicable to do so. It is the duty of the serving officer to make all proper efforts to find the party, with a view to effect personal service. If it be not possible after reasonable endeavour to find the party, then only the service may be made on an adult male member of the family residing with him. The law in this matter does not take into account the female members of a family and does not rely upon the presumption that they will take steps to inform the party of what takes place in his absence.

36. RULE :-

Where the service is effected by affixing a copy of the summons, the Court has to make enquiry under rule 19 of Order V, and when the summons is not duly served the above rule provided that the Court should order such service as it thinks fit. When the summons has been duly served it is incumbent on the Court to record a distinct declaration to that effect and to file it with the papers. This rule applies even in case of summonses received from other Courts for service.

37. RULE :-

With reference to the provision regarding the service of summons by post on a defendant residing within the limits of the town of Bombay added to rule 22 in Order V of the Code, and the provisions in rule 21 A, Order V regarding other places where there is regular daily postal service, attention is invited to section 27 of the General Clauses Act, X of 1897; and it is directed that where in pursuance of such service by post, the defendant does not appear when the suit is called on for hearing, the Court shall, in order to satisfy itself whether the service has been duly effected or not, not only see whether the packet containing the summons was sent prepaid by registered post and an acknowledgment asked for, but also whether it was sent properly addressed. For that purpose the Court should require it to be proved by affidavit or otherwise that the defendant resided at the place to which the packet was addressed to him at or about the time when it would reach him in the ordinary course of postal service, and when the acknowledgment purports to have been signed by the defendant, should also, in most cases, require an affidavit verifying the signature of the defendant on the acknowledgment.

38. RULE :-

the attention of the Judges is drawn to the necessity of returning the original of proceedings in Form 10, Appendix B under their own signatures as required by section 28 (2) and Order V, rule 23.

39. RULE :-

The instructions relating to the service of summonses on witnesses (paragraphs 92 to 108) also apply to service on defendants.

40. RULE :-

As provided in rule I, Order VIII, the defendant may, and if so required by the Court, shall present a written statement of his defence, at or before the first hearing or within such time as the Court may permit. But the first adjournment for filing the written statement shall not ordinarily exceed for weeks, and no further adjournment shall be granted except for reasons to be recorded in writing. The defendant, who has been granted time for his written statement, ought to be compelled to file it within the period allowed. If he does not obey the Court's order in this respect, the Court may pass such order under Order VIII, rule 10, Civil Procedure code. as it thinks just and proper.

41. RULE :-

A written statement is not essential to the progress of a suit. There are many defendants who are illiterate, ignorant and too poor to obtain legal advice. In their case the object of a written statement may be attained by the examination of the defendant (see Order X, r. 1) or of some one personally acquainted with the facts which constitute a defence to the suit. In examining such a person the Judge should have in mind the provisions of Orders VI and VII so as to be able to elicit what can be said in reply to the allegations made by the plaintiff.

42. RULE :-

Paragraph 24 also applies to written statements. Model forms are to be found in Appendix A to Schedule I.

CHAPTER 4

Pleadings

43. RULE :-

Rules as to pleadings are set out in Order VI. Attention is invited to rules 2, 6, 9, 10, 11, 12, and 13 of Order VI. The Courts should take particular care to see that they are strictly complied with. The provisions have been summarised as follows in Mulla's Commentary on the Civil Procedure Code:-

- (1) The whole case must be stated in the pleadings. That is to say all material facts must be stated. (Order VI rule 2).
- (2) No matter of law is to be stated.
- (3) Only material facts are to be stated. The evidence by which they are to be proved is not to be stated. (Order VI, rules 2, 10, 11, 12).
- (4) Immaterial and unnecessary facts are not to be stated.
- (5) The facts are to be stated concisely.
- (6) It is not necessary to allege the performance of any condition precedent: an averment of performance is now implied in every pleading. (Order VI, rule 6).
- (7) It is not necessary to set out the whole or any part of a document, unless the precise words thereof are necessary. It is sufficient to state the effect of the document as briefly as possible (Order VI, rule 9).
- (8) It is not necessary to allege a matter of fact which the law presumes, or as to which the burden of proof lies on the other side. (Order VI, rule 13).

44. RULE :-

(1) Though it is no part of the duty of the Court to make pleadings for the parties, they should bear in mind that the scheme of the Code is that the Pleadings of the parties must contain full and accurate statements of the claims and assertions of each party. Therefore, where a Court after perusing the pleadings, the Statements of the parties or their lawyers, the documents, admissions as to facts and documents, answers to interrogatories, and information obtained from examination of the parties under Order X finds that the pleadings do not represent the real assertions and contentions of parties, it should give an opportunity to the parties concerned to apply for amendment of pleadings.

(2) The law as to such amendments is contained in section 153 and Order VI, rules 16 and 17. Attention is specially drawn to the provision that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties". It should be noted that under the provisions of Order VI, rules 17 and 18, pleadings should be altered or amended by the party or his lawyer. Any amendment made in a plaint, at any time after it is registered, should be signed or initialled by the Judge.

(3) If a plaint is amended a corresponding amendment should be made in the Register of Suits and initialled by the responsible officer of the Court.

45. RULE :-

Form No. 5 in Schedule I, Appendix B, may be used for giving notice to a person whom it is proposed to add as a co-plaintiff.

CHAPTER 5

Pre-trial Stages

46. RULE :-

After the written statement is filed, the Court shall fix a date for (i) the reception of documents other than those in the possession or power of parties (ii) and the applications for interrogatories, discovery of documents and inspection thereof. Such applications and also applications for permission to produce documents should not be entertained thereafter unless good cause is shown to the satisfaction of the Court.

47. RULE :-

The examination of parties under Order X, rule 2 is intended to assist the Court in setting the issues and not for modifying the pleading. The object of examination under this rule is to clear up the points in dispute and ascertain fully and accurately the matters on which the parties are to go to trial. Thus, where the allegations of facts made in the plaint or in a written statement are not admitted or denied in the pleadings, either expressly or by clear implication, the Judge should at the first hearing, proceed to question the party or the lawyer and record categorically the admissions or denials of these allegations. In this connection the Judge should bear in mind the provisions of rule 3, sub-rule (2) of Order V which enables him to require the personal attendance of the plaintiff on the date on which the defendant is required to appear and of rule 4 of Order X which enables him to require the attendance of parties at a later stage. Form No. 1, page 416. Vol. II is the form of notice requiring personal attendance.

48. RULE :-

Other means by which the Court may ascertain what is necessary in order to frame issues are interrogatories and the discovery and inspection of documents (Order XI): admissions (Order XII) and the production of documents (Order XIII). The Judges and lawyers should make themselves thoroughly acquainted with these provisions and endeavour to make use of them. Attention is invited to the position of these Orders in the scheme of the Code. They precede the Order relating to issue. This fact considered along with the provisions of rule 20, Order XI, shows that according to the scheme of the Code all matters must be got clarified before the issues are settled.

49. RULE :-

The court should see that discovery is given and admissions are made before trial. The law permits the administration of interrogatories by a party to his opponent to obtain (16) admissions which will facilitate the proof of the case of the party who delivers the interrogatories. A party may by notice in writing call upon the other party to admit for the purpose of the suit only (Order XII, rule 2) any document and (Order XII, rule 4), any specific facts mentioned in the notice. Order XII rule 2 contains the salutary provision that, when a party has refused or neglected to admit, the subsequent cost of proving the documents should be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs, and that no costs of proving the documents should 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. The newly added rule 3-A of Order XII enables the Court even where no notice is given under rule 2 of Order XII at any stage of the proceedings of its own motion to call upon any party to admit any document, and record whether the party admits or refuses or neglects to admit such documents. In the heavier and more complicated cases it will usually be advisable, after the documents have been lodged in Court, to allow at least one date (or more if necessary) before issues are framed for admissions, discovery, interrogatories and the like, and to fix, if necessary, one or more dates after the issues have been framed for the completion of this preliminary work.

50. RULE :-

Section 30 of the Code provides that a Court may of its own motion make orders as to interrogatories, the admission of documents and facts, and the discovery inspection and production of documents.

51. RULE :-

Appendix C to the Code (Schedule 1) contains forms to be used for delivery of interrogatories, discovery and inspection of documents and the admission of facts and documents. Form 1 of Appendix H may be used where issues are agreed on by the parties.

52. RULE :-

Under clause (c) of section 30 of the Code, a Court may order any fact to be proved by affidavit. This is a power which may well be used to secure formal proof of facts. It is desirable to make full use of the provisions of Order XIX for the proof of simple or incontrovertible facts. Whenever a fact is allowed to be proved by an affidavit, an order should invariably be passed by the Court.

53. RULE :-

Issues should be framed by the Presiding Judge on the date fixed for the purpose. They indicate the points in controversy, on which the parties are to go to trial and give them notice of the matters which they are required to establish by adducing evidence or otherwise. No trial is likely to be satisfactory unless the issues are complete and precise. It should be observed that a party has to produce evidence in support of the issues, which he is bound to prove (Order XVIII. rules 2 and 3) and that the Judgment of the Court shall record its findings on the issues (Order XX, rule 5). These provisions should make it plain that an essential preliminary to a satisfactory trial is the settlement of full and precise issues. A judicious use of the provisions of rule 1 of Order X and sub-rule (5) of rule I of Order XIV may be found of help for collecting material necessary for framing issues in seriously contested cases. The duty of framing issues under the law must be performed by the Court and the presiding Judge should not leave it to the parties or lawyers to frame the issues but should apply his own mind to the subject, there is however, no reason why the Court should not take suggestions from the parties as to the issues to be framed.

54. RULE :-

In framing issues the Court should proceed as follows:-

(a) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.

(b) Every issue of law shall be so framed as to indicate the precise question of law to be decided.

Note.- When the claim or any portion of it is alleged to be barred by any law the issue shall also state the Act and section or rule or other provision under which it is so barred.

(c) When the question is whether a certain section of law applies, the issue should be framed in the words of that section, e. g.. if the question is whether a transfer should be set aside under section 54 of the Provincial Insolvency Act, the issue should not be "Is the transfer bogus and fraudulent" ?

(d) Issues should be self-contained. The framing of issues such as "Is the sale liable to be set aside for the reasons stated by the defendant in his written statement, dated..." should be avoided.

(e) Every issue should form a single question and as far as possible should not be put in an alternative form.

(f) No proposition of fact which is not itself a material proposition, but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.

(g) No question regarding admissibility of evidence shall be made the subject of an issue.

55. RULE :-

When the court is of opinion that any of the issues of law raised by it such as limitation and jurisdiction goes to the root of the case and is triable as a preliminary issue, it shall proceed to try it as expeditiously as possible.

56. RULE :-

Rule 5 Order XIV provides that at any time before the passing of the decree, the Court may amend the issues or frame additional issues on such terms as it may deem fit. All such amendments, or additional issues as may be necessary for determining the matters in controversy shall be made or framed at any time before passing the decree.

CHAPTER 6

Incidental Proceedings

57. RULE :-

On every application an order should be endorsed, showing how it was disposed of, e. g. an application for summonses to witnesses might be endorsed as follows:- "Application granted, summonses to be issued for next", or "application rejected, because, etc. (enter reasons for rejection)". Date (Signed) Judge.

58. RULE :-

It is for the Court to decide whether it will allow an oral application or insist on a written application. The general rule hitherto followed is that applications materially affecting the conduct of a suit or the legal position, or rights of either party, should be received only in writing. In matters of mere routine or indulgence and matters wholly within the discretion of the Judge, motions may be made orally.

59. RULE :-

An order regarding costs shall be made on every application.

60. RULE :-

Proper discretion should be exercised in issuing ex-parte injunctions under Order XXXIX. Before granting such an injunction, it is the duty of the presiding officer of the Court to take every care to protect the Interest of the absentee defendant and to ensure to him the earliest opportunity of being heard. District Judges when dealing with appeals or inspecting Courts should scrutinize the materials upon which ex-parte injunctions have been granted.

61. RULE :-

All appointments as receivers under the Code of civil Procedure whether in suits or other proceedings, shall be made from amongst responsible and capable lawyers practising in the Court. A panel of such lawyers shall be prepared by the Presiding Officer of the Court. The list shall be revised every two years. Special case shall be taken to see that no undue preference is given to any particular lawyer.

CHAPTER 7

Processes

62. RULE :-

Form No. 6 of Appendix H is a notice to be issued in case it is desired to examine without delay a witness who is about to leave jurisdiction of the Court. Application for the examination of such a witness should be made promptly and treated as an urgent matter.

63. RULE :-

(1) Rule of 1 Order XL VIII provides that processes shall be served at the expense of the party on whose behalf they are issued unless the Court otherwise directs and that the Court-fees chargeable shall be paid within the time fixed by the Court. For the rules as to process fees see Chapter XXII.

(2) For the purpose of payment of diet allowance witnesses are divided into following Classes:-

Class I .. Professional men of high position, Members of Parliament and of the State Legislatures, large land owners and owners of big business organisations, corporations and local bodies, and class I Government officials who are required to attend the Court in their private capacity.

Class II .. Members of local bodies, ordinary professional and business men: land owner other than small farmers: junior employees in business organisations, in Corporations and Local bodies in corresponding grades and Class II Government officials who are required to attend the Court in their private capacity.

Class III .. Artisans, clerks, small landowners, village officers and officers in lower grades of Corporations, local bodies and business organisations, and Class III Government officials who are required to attend the Court in their private capacity.

Class IV .. Labourers, petty shop-keepers, pedlars and persons other than those in the above classes and Class IV Government Servants who are required to attend the Court in their private capacity.

(3) The diet money for the various classes should be as follows:-

	Rs.
Class I	5
Class II	3
Class III	2
Class IV	1

(4) In special cases, and in particular where a person is being examined as an expert, the Court may require such sums as appear reasonable to be paid to a witness. The reasons for ordering payment of higher amounts should be recorded by the Court.

(5) diet money shall be given not only for the period of actual attendance but also for any reasonable time spent in the journey to and from the Court, the ordinary mode of conveyance available being taken into consideration. When the journey is made on foot, 15 miles a day shall be reckoned as the day's journey and subsistence allowance should be paid accordingly.

(6) Travelling expenses will be granted according to the rates specified below in all cases in which the Court deems such expenses to be reasonable having due regard to the distance to be traversed and the position and circumstances of the witness :-

(i) When the journey is by road, the actual expenses incurred, provided the same be reasonable.

(ii) When the journey is wholly or partly by rail or steamer-

(a) witness of Class I...First class Railway fare:

(b) witness of Classes II and III. ..Second class Railway fare:

(c) witness of Class IV... Third Class Railway fare.

(7) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence money or the travelling allowance is demanded.

(8) Witnesses produced under warrants of arrest should receive subsistence money at the rate allowed to judgment-debtors.

(9) When Government as a party to a case asks for a summons to one of its servants for appearance in Court as a witness it is not required to deposit in Court anything on account of diet money and travelling allowance of the witness. In no case should any money deposited by a party for calling a Government servant as a witness accompany the summons.

64. RULE :-

(1) the fees to be paid to a Chartered Account or his qualified Assistant for each day spent in attending a Court or in travelling for the purpose of attending a Court as a witness, shall be as specified in column 2 or 3 as the case may be of the Schedule appended hereto in accordance with his professional standing for the years as specified in column 1 thereof: \ \ \ \

SCHEDULE

Professional standing	Chartered Accounts	Qualified Assistants.
1	2	3
Of five years or less	Rs.75	Rs.10
Of more than 5 years but not exceeding 10 years	Rs.100	Rs.20
Of more than 10 years but not exceeding 15 years.	Rs.125	Rs.25
Of more than 15 years	Rs.150	Rs.30

Note.- The expression "expert evidence" includes evidence which an accountant is called upon to give by virtue of his having conducted audits or investigation.

(2) chartered Accountants or their qualified Assistants should not ordinarily be summoned except when their evidence is absolutely necessary. Whenever they are required in Courts as witnesses they should not, as far as possible, be asked to be present on days on which their evidence is not likely to be recorded.

65. RULE :-

A public officer, whose salary does not exceed Rs. 35 per mensem, whether he is or is not entitled to travelling allowances under the Bombay Civil Services Rules or other corresponding Rules shall, when summoned as a witness in his official capacity to give evidence or to produce a document before a Court, be paid travelling expenses in accordance with the scale prescribed by the rules in paragraph 63. Any public officer whose salary exceeds Rs. 35 per mensem but who is disentitled to travelling allowances under the Bombay Civil Services Rules or other corresponding Rules by reason of the fact that the Court before which he is summoned to give evidence or to produce a document is situate not more than five miles from his head-quarters, shall be paid the said travelling expenses. Any sum payable to such officer on account of subsistence allowance shall be credited to government.

66. RULE :-

The "expenses" to be deposited by a private party under rule 2 of Order XVI for summoning as witness a public Officer in his official capacity mean, where such officer is entitled to travelling allowances under the Bombay Civil Services Rules or other corresponding Rules, the travelling and halting allowances admissible under the appropriate Rules but do not include subsistence allowance. The sum deposited by the party shall be credited to Government.

67. RULE :-

A public officer who has not been paid travelling expenses under paragraph 65 or as provided in Rule 3-A, Order XVI and who is entitled to receive travelling allowances under the Bombay Civil Services Rules or other corresponding Rules shall obtain from the Court a certificate that he has attended in his official capacity for the purpose specified in the proviso to rule 3 of Order XVI, Civil Procedure code, stating the date of his appearance, the period for which he has been detained, and that he has received no payment from the Court.

68. RULE :-

The period within which expenses of witnesses are to be paid. is to be fixed by the Court under rule 2 of Order XVI. Such period may be fixed by a general order but such general order may be varied by the Court in any particular case. The general order should be in writing and a copy should be affixed to the notice board of the Court or in some conspicuous place in the Court.

69. RULE :-

The expenses tendered beyond the time fixed for their deposit should not be accepted unless the Judge, for good cause, condones the delay.

70. RULE :-

Subsistence money payable to witnesses under the provisions of sub-rule (2) or rule 4 of Order XVI should, as far as possible, be paid daily.

71. RULE :-

The Court will do well to encourage parties to procure the attendance of their witnesses without the issue of any process from the court. The names and addresses of such witnesses shall, however, be disclosed to all the parties before the witnesses are kept present in court for examination.

72. RULE :-

It is the duty of the parties to be reasonably diligent in obtaining the issue of summonses in time so as to give reasonable opportunity for service in accordance with the normal routine of the Court. Although under rules 1 and 9 of Order XVI, a party is entitled to obtain summonses at any stage of a suit or proceeding if he pays for them, and is also entitled to every reasonable effort on the part of the Court to secure their service, he has no right to disturb the proper and orderly routine of the Court's business. If in the course of such routine, no bailiff is likely to proceed to the neighbourhood of the place where summonses are to be served, the party may either pay for a special bailiff or take his turn. If he prefers the latter course and the summonses are not served in time, he will not be entitled as of right to an adjournment in order to have them served.

73. RULE :-

No public officer, whose absence from duty may be detrimental to the public service, should ordinarily be summoned to give evidence, and If summoned he may on his application or on that of either party, be examined immediately under rule 16 of Order XVIII of the Code of Civil Procedure. Ordinarily a commission should be issued for the examination of such officer, as provided in rule 4 of Order XXVI. Where a summons is necessary, it should be sent through the Head of the Office to which the officer belongs.

74. RULE :-

Doctors who are summoned to give evidence in Courts as witnesses should not as far as possible be made to wait. Their evidence should be recorded and they should be relieved as early as possible.

75. RULE :-

When the hearing of a case is adjourned to a future day, and a party requires the reattendance on that day of a witness present in Court, whether summoned or brought by a party to give evidence, such witness, before leaving the court, may, on the motion of the party be served with an order for re-attendance in Form No. 1 page lit-. Vol. II, provided that the party pays immediately his travelling and other expenses for reattendance.

76. RULE :-

A witness who has been summoned and who has been ordered to re-attend may be required to give security to attend as provided in rule 16 (2) of Order XVI.

77. RULE :-

The District Judges and Civil Judges are authorised to make the payment of subsistence money to witnesses from their own permanent advances, instead of obtaining advances for that purpose from the Collectors and Mamlatdars as authorised by Government of India Resolution No. 3025, dated the 31st December 1878.

78. RULE :-

The following extracts from revised rules framed by the Government of India regulating the applications for and the payment of the services of the Government Examiner of Questioned Documents are reproduced for convenience of reference:-

1. applications should be sent direct to Government examiner of Questioned Documents, Intelligence Bureau, Ministry of Home Affairs, "dormers", Simla-1.

2. acceptable applications fall into two classes;-

(A) Official applications from certain authorities including applications from High Court.

(B) Other applications, these include cases from private parties in Civil suits in Indian Union Courts. These will be accepted only on the requisition from the Court in which the case is being heard. The party concerned must move the Court and it will rest with the Court to take the further steps necessary to obtain the services of the Government Examiner of Questioned Documents.

Explanation.- Reference made by a Court sue) motu in civil cases in which the State is not a party will be deemed to be cases from private parties for the purpose of these rules.

3. Applications falling under classes A and B will ordinarily be accepted but may be refused at the discretion of the Government Examiner of Questioned Documents if they cannot be undertaken without detriment to his other work.

4. An inclusive fee will be charged in each case in which an opinion is given and will normally cover the opinion, the cost of photographs and the giving of evidence, limited in class B cases to one day. The inclusive fee for class A cases will be Rs. 220 and for class B cases Rs. 250. (This fee, however, does not cover travelling allowance which is governed by rule 13 below).

5. where on class A case is split up in Court into several cases, a fee of Rs. 150 (one hundred fifty) will be charged for each split up case. Similarly, where one class B case is split up in Court into several cases, the fee will be Rs. 200 (two hundred) for each split up case.

6. subject to the exception stated at the end of this rule, the fee is payable in advance in all case and each application should be accompanied by a certificate in the following form:-

deposited in thetreasury onOn account of the government Examiner of questioned Document fee in Case/Suit

No..... and that this amount has been shown under head XXIII Police/Central Fees, fines and Forfeitures, in the Cash Account of Central Subjects for the month of..... and appears at item No.....in the relevant Receipt Schedule.

Signature of the Treasury Officer.

Countersigned.

Signature of Officer submitting the case.

In special circumstances, which should be stated in application, class A cases will be accepted without this certificate, but the certificate should be forwarded as soon as possible.

7. In cases where the cost of photographs is exceptionally heavy the fee will be Rs. 180 plus actual cost of photograph in class A cases and in class B cases Rs. 200 plus the actual Cost of the photographs. In class B cases the authority submitting the cases will be informed of the extra cost involved before it is incurred and will be

required to certify that it has been deposited before the Government Examiner of Questioned Documents proceeds with the case.

8.

(i) In cases in which no examination has been completed but no opinion could be expressed, a consolidated fee of Rs. 100 will be charged.

(ii) In cases in which the opinion is given but photographs are taken only actual cost of the photographs will be charged, subject to a minimum of Rs. 35.

9. No reduction in the fee will be allowed if evidence is not required or is taken on commission.

10.

(i) In class B cases an additional fee of Rs. 200 will be charged for each day after the first day on which evidence is given, whether in court or on commission, or on which the officer is detained. The Presiding Officer or the Commissioner will be requested to certify before the second and each subsequent day's work is begun, that the fee for that day and also for any intervening day or days of detention has been deposited, and subsequently to furnish a certificate in rule 6 above.

(ii) A fee of Rs. 250 will be charged in class B cases even for the first day's evidence if evidence is taken upon an opinion expressed on the same documents when they formed part of a criminal case.

11. In cases falling under class B, the Government Examiner or his assistant will be prepared to attend courts provided that he can do so without detriment to his other work. When evidence is taken on commission, the commission should be issued to the Senior sub- Judge Simla, and normally should be so worded that either the Government Examiner or his Assistant can give evidence.

12. Presiding Officers of Courts are requested to detain the government Examiner of Questioned Documents or his Assistant for the least possible time compatible with the requirements of the case. they are also requested to accept so far as possible, the time and dates for attendance offered by these officers, because the latter frequently have to attend several courts in the course of one tour.

13. the government of India in the Ministry of Home Affairs reserves the right to impose an extra charge in any case in which they consider that the usual fee is incommensurate with the time and labour spent on the case.

14. When the government Examiner of Questioned documents or his Assistant is required to travel in order to give evidence or for any other purpose the authority or party employing his services will be required to pay travelling allowance at the rates laid down in the Supplementary Rules of the government of India for journeys on tour. Travelling allowance will also be payable for the class IV servant accompanying the officer at the rates fixed for Government of India class IV servants. In class B cases the Presiding Officer of the Court concerned will be required to certify that the cost of Travelling allowance has been deposited before the Government Examiner of Questioned Documents or his Assistant undertakes the Journey.

79. RULE :-

The following are the terms on which the services of the officers of the Public Health Department in the State Gujarat will be made available for giving evidence as experts in court of Law on behalf of private firms and individuals:-

(i) A fee of Rs. 110 only per day should be charged in the case of the Director of Public Health, and Rs. 50 only per day in the case of other officers, the days chargeable being from the day the officer starts on his journey up to the day of his return. The travelling and halting allowances admissible to the officers should be recovered in addition to the fee prescribed.

(ii) These officers should be allowed 1/6th of the total amount of fees recovered, and this remuneration should be classified as honorarium.(Vide fundamental Rule 9(9).)

(iii) The amounts deposited by the parties should be credited in the first instance to "Civil courts Deposits", the Presiding Judge shall pay the witnesses by drawing a refund bill against such deposit for the amount payable as travelling allowance and honorarium to the witnesses. At the same time the Presiding Judge shall draw another refund bill for crediting the rest of the deposit to Government under "XVII- Administration of Justice-Miscellaneous fees and fines-Fees or expenses in civil and Criminal Courts for travelling and subsistence allowance, etc.

80. RULE :-

In cases of doubt in which the opinion of an expert may be required on the question whether any stamps are genuine or forged, a reference can be made to the master. Security Printing, India, Nasik road, for his or his nominee's report. The scale of charges to be made by the Master, Security Printing, India Nasik Road, for the examination of Stamps and for giving evidence on commission shall be as follows :-

(1) For each stamp examined Rs. 20 but where the stamps to be examined consist of a block or blocks from the same sheet this fee will be charged for the examination of each block; as any one of the stamps is representative of the whole block.

(2) For stamps examined on commission, Rs. 40 per document Irrespective of the number of stamps requiring

examination on each document: provided that where more than one document relating to the same case is to be examined on the same day, the charge will be Rs. 40 for the first and Rs. 20 for each subsequent document. These fees will be credited to "IX-Stamps-Central-India Security Press".

81. RULE :-

The scale of charges to be made by the Master, Security Printing. India, Nasik Road, for the examination of currency and bank notes and for giving evidence on commission, is as follows :- \ \ \ \ \ These fees will be credited to "XXVII-Currency-Miscellaneous."

82. RULE :-

When the valuation of a private building is required to be carried out at the instance of a Civil court, the services of the officers of the Public Works Department will be available 1291 on the following terms, provided that such work can be undertaken without detriment to the officer's legitimate duties :-

(i) The following scale of fees will be charged which will be based on the valuation arrived at by the officer concerned:-

(a) In cases where the valuation of a private building is required on the basis of a detailed survey of the building-

(b) In cases where a valuation based on the net annual value is sufficient and also in cases where the valuation is based on a rate per cubic foot of the contents of the building or on a plinth area rate basis : 1 per cent. on the first Rs. 15,000 of the valuation. 1/2 per cent. on the next Rs. 1,35,000 of the valuation. 1/4 per cent. on the residue of the valuation.

(ii) the travelling and halting allowances admissible to the officer concerned under the rules In force will have to be paid.

(iii) Government will not in any way be responsible for or bound by the valuation arrived at or the opinion expressed by the officer permitted to carry out the valuation.

83. RULE :-

The finger Print Bureau will not supply written reports on impression submitted to it except at the request of a Civil or Criminal court. Such reports will be supplied to Criminal Courts free. Civil Courts in forwarding requests for such opinion should state whether the report is required solely for the information of the Court and In the Interest of justice or for the use of the party to suit or any proceeding. If the report is called for In the Interest of a party a fee of Rs. 20 shall be forwarded along with the request. Levy of a fee of Rs. 30 from private persons for the evidence of an Expert from Finger Print Bureau in Civil and non- cognizable criminal cases is sanctioned per day. No fee should, however, be charged for the attendance of an Expert from the Finger Print Bureau In non-cognizable criminal cases in which the expenses of complainants and the witnesses have been ordered to be paid by Government under paragraph 6 of chapter II of the Criminal Manual, 1960. Judges of the small Cause Court, Bombay, are authorised to reduce the fee of Rs. 30 in exceptionally deserving cases when the party concerned is unable to pay the full amount.

84. RULE :-

A summons from a Court of civil or criminal jurisdiction to produce any of the records of a Post Office, or a certified extract from, or copy of, any of such records, must be complied with. The receipt of such a summons, and such particulars as are known to the Post Master regarding the case, should be at once reported to the post master General in case he should see fit to raise any objection in Court under section 123 or section 124 of the Indian Evidence Act, 1 of 1872, to the production of any of the records. When any journal or other record of a Post Office is produced in court and admitted In evidence, the officer producing it should ask the Court to direct that only such portions of the record as may be required by the Court shall be disclosed.

85. RULE :-

Under Government Resolution, Home Department, No. 8996/6, dated the 28th April 1954, certain instructions have been issued for the guidance of Government servants when they are summoned by a Court to produce official documents. The following relevant instructions are re-produced for the guidance of Court:-

(1) The law relating to the production of unpublished official records as evidence In courts is contained in Sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872).

(1A) A Government servant other than the Head of a Department who is summoned to produce an official document should first determine whether the document is in his custody and he is In a position to produce it. In this connection, it may be stated that all official records are normally in the custody of the Head of the Department and It is only under special circumstances that an official document can be said to be in the custody of an Individual Government servant. If the document is not In the custody of the Government servant summoned, he should inform the Court accordingly. If, under any special circumstances, the document is in the custody of the Government servant summoned, he should next determine whether the document is an unpublished official record relating to affairs of State and privilege under section 123 should be claimed in respect of it. If he is of the view that such privilege should be claimed or if he is doubtful of the position, he should refer the matter to the Head of the Department, who will issue necessary instructions and will also furnish the affidavit in Form No. 1 in suitable cases. If the documents is such that privilege under section 123 could not be claimed but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim privilege under section 124 In form No. II. In case of doubt, he

should seek the advice of the Head of the Department.

(2) The Government servant who is to attend a Court as a witness with official document should, where permission under section 123 has been withheld, be given an affidavit in form No. I duly signed by the head of the Department in the accompanying form. He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the Court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

(3) The Government servant who is summoned to produce official documents in respect of which privilege under section 124 has to be claimed, will make an affidavit in the accompanying Form No. II. when he is not attending the Court himself to give evidence, he shall have it sent to the Court along with the documents. The person through whom the documents are sent to Court should submit the affidavit to the Court when called upon to produce the documents. He should take with him the documents which he has been called upon to produce but should not hand them over to the Court unless the Court directs him to do so. They should not be shown to the opposite party.

(4) The head of the department should abstain from entering into correspondence with the presiding officer of the Court concerned in regard to the grounds on which the documents have been called for. He should obey the Court's orders and should appear personally, or arrange for the appearance of another officer in the Court concerned with the documents and act as indicated in paragraph 2 above, and, produce the necessary affidavit if he claims privilege.

86. RULE :-

Summons for the production of documents in the custody of the House of Parliament or of the Houses of State Legislatures should not be issued in the ordinary form. A letter requesting the production of the same should be substituted therefor in the following Form, addressed to the Speaker of the House of People or the Legislative Assembly of the State, or the chairman of the Council of States or the Legislative Council of the State, as the case may be. \ \ \

87. RULE :-

Rule 10 of Order XIII states the law as to the production of court records, the principle of sub-rule (2) of that rule may well be applied to other public records.

88. RULE :-

Subject to any provision of the law to the contrary, the originals of records should not be called for by courts when certified copies of them can legally be put in at the hearing of cases and will serve the purpose for which the records are required. In cases in which the courts consider that the production of the original records is desirable, they should record briefly their reasons for directing their production.

89. RULE :-

Requisitions made under the provisions of Order XIII, rule 10, by subordinate courts for the production of records of cases pertaining to, and in the custody of High Courts other than the High court at Ahmedabad or courts subordinate to such other High courts should be transmitted through the High court at Ahmedabad. and should be accompanied by a copy of the affidavit referred to in the rule above quoted together with a duly certified translation into English if such affidavit be in the regional language. Requisitions received through this High Court from Courts outside the State should be complied with.

90. RULE :-

Original documents in the custody of the Houses of Parliament or of the State Legislatures should not be called for if certified copies thereof would serve the purpose. It is only in cases where parties insist upon strict proof that the Courts should call for the originals. In this connection attention of the Judges and Magistrates is also called to section 78(2) of the Indian Evidence Act which specifies the way in which the proceedings of the Legislature can be proved.

91. RULE :-

In order to guard against the loss of original documents in the post, all applications under rule 10 of Order XIII of the Civil Procedure Code, for such documents filed or recorded in any suit before the High Court should state specially whether the originals are necessary, and why certified copies obtained in the usual manner by parties will not serve the purpose.

92. RULE :-

A process issued by any Court in the Territory of India should be served free of charge by any Court (including the court of Small Causes at Ahmedabad) in the State of Gujarat, if it be certified in the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated.

93. RULE :-

Every process or order issued by a judicial officer should show (a) the name and description of the officer, (b) the place and district of issue, (c) the hour at which attendance is required, (d) the name, father's name, age, caste (only when necessary for identification), occupation and place of residence of the person on whom the summons is to be served. When the person lives in a village, the name of the taluka and district in which it is situated shall also be mentioned. When the person resides in a large village or municipal town, the name of the locality, municipal ward, street, lane and the number of the house in which he resides, shall also be mentioned.

94. RULE :-

(i) Process-fee must be paid in court-fee stamps and not in cash. the stamps shall be affixed to the application and, where there is no application, to a memorandum to be written on a sheet of paper and filed in court. The memorandum should state the name of the court, the number and the description of the suit, appeal or proceeding. the value of the claim, the value of the court-fee stamps affixed and details of the processes to be issued. If the memorandum be an application for the issue of a process, it must, in addition to the requisite stamps for the process-fee, bear such stamps as are necessary for its own validity.

(ii) If a party presents in duplicate a memorandum for the issue of a process and desires that the process-writer should acknowledge it the latter shall sign and date the duplicate copy by way of acknowledgment of the original and return it to the applicant.

95. RULE :-

All copies of plaints and other documents which are to be served with processes shall be written or typed legibly on durable paper of foolscap size. If carbon copies are filed they must be distinct and legible.

96. RULE :-

A party who desires the attendance of any witness before the Court or before a commissioner appointed to take evidence, shall file a list of such witnesses stating the full name, residence and occupation or description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case. specifying the date and description of the document so as to identify it. The party shall, along with the requisite process-fee, pay into Court the prescribed diet-money, travelling allowance and other expenses.

97. RULE :-

(i) Processes sent for service at any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place or should be English.

(ii) the language of the Presidency Small Cause Court, Bombay, is English.

(iii) The return of service of processes from Courts subordinate to other High Courts shall be accompanied by an English translation.

98. RULE :-

Where the English version of a notice, summons or any other form used in civil proceedings in the District or Subordinate Courts has been abolished and the notice, etc., is to be addressed to a person unable to read the language, the appropriate form should be translated into English.

99. RULE :-

If a process is sent for service to the Presidency small Causes Court, Bombay, or to another District or place in which the language of the Court is different:-

(1) no translation fee should be levied for an English translation of the process where a form of the process in English is available or can be copied either from the Code of Civil Procedure or from the Civil Manual;

(2) a charge may be made for a translation into a language which is neither English nor the language of the District if such a translation is required and furnished by the office.

100. RULE :-

Notices of suits against the Central government involving claims against the Indian Government Railway Administration and summonses of the Court to be served on the Central Government representing the Indian Government Railway Administration should in future be addressed to the General Manager, the Deputy General Manager or the chief Administrative Officer of the Railway concerned.

101. RULE :-

No summons or other process issued against a Member of the Parliament or of a State Legislature shall be sent for service to the Presiding Officer or the Secretariat of the Parliament or State Legislature. No such summons or other process shall be served on any Member within the precincts of the House of which he is a Member without obtaining the permission of the Speaker or the Chairman.

102. RULE :-

The provisions of Order V, rule 30 of the Civil Procedure Code allowing the substitution of a letter for a summons, are to be applied in the case of all Judicial Officers, Justices of the Peace, Covenanted and Commissioned officers. Officers of a rank not below that of a Deputy Collector, and other gentlemen of equal or superior rank.

103. RULE :-

When a village officer is summoned to give evidence, the summons should be served through the Mamlatdar under whom he may be serving, time being allowed, if possible, for making official arrangements for performing the duties at the village of the officer summoned.

104. RULE :-

A Civil court to which a summons or other process has been sent for service should make a return within the time fixed for the hearing of the cause, stating whether service has been effected or not, and if not, the reason for the non-service.

105. RULE :-

If a Court to which summons has been sent for service be satisfied that the defendant is intentionally avoiding service, such Court should itself direct substituted service to be effected in such manner as it thinks fit under the provisions of the code of Civil Procedure without further reference to the Court issuing the summons.

106. RULE :-

The officer who serves a summons or notice on a defendant or respondent should, immediately on his return, make before the proper officer an affidavit as to the service of the summons or notice.

107. RULE :-

A bailiff should use his best efforts to effect the service of a process without the help of a person to point out the party or witness to be served. (See also (paragraph 562 of chapter XXVIII on this point.)

108. RULE :-

Forms for use in connection with the issue and service of summonses and in dealing with witnesses who refuse to appear in answer to summonses, are given as Nos. 7 to 19 in appendix B of Schedule I of the Code.

109. RULE :-

The general law as to commissions is contained in sections 75 to 78 and Order XXVI of the Code.

110. RULE :-

In every case the Judge shall record his reasons for issuing or refusing to issue a commission. When a commission is ordered to issue, the reasons for doing so shall also be briefly stated in the Register of commissions.

111. RULE :-

The court may issue commissions of its own motion, or on the application of any party to the suit or the witness to be examined in the suit. Applications for the issue of commissions should be made as early as possible and ordinarily before the settling date. Notice of any such application should be given to the other side. In every case, the Judge shall record the reasons for issuing the commission which should be stated in brief in the appropriate register prescribed in that behalf.

112. RULE :-

The selection of commissioners should be made by the Judge himself who should make the order of appointment himself. Commissions which can be suitably allotted to junior lawyers should be so allotted. For this purpose a panel may be formed, and fair and equitable distribution should be made. The District Judges, during their inspection should examine how the distribution has been made.

113. RULE :-

Court officials should not be appointed as Commissioners unless in any particular case the Judge thinks that commission will be more efficiently or economically performed by a member of the staff than by a lawyer or private person. If it is found convenient and expeditious, a Court official who possesses the necessary qualifications may be appointed as Commissioner for the purpose of local Investigation and preparation of maps and plans.

114. RULE :-

(i) when the application is granted the Court should, after consulting the parties or their lawyers and after taking into account the probable length of time the execution of the commission; likely to take, fix the amount of the Commissioner's fee. travelling expenses etc. and direct the payment of the same into Court within a specified time. The commission shall not issue unless the sum so fixed is paid in full.)

(ii) If found necessary the Court may, from time to time, direct that any further sum be paid into Court by the party concerned.

(iii) When the commission is executed to the satisfaction of the Court, the full sum mentioned should be paid to the Commissioner but where the commission is not executed at all or not fully or satisfactorily executed, or the work done turn out to be less than was expected, it will be in the discretion of the Court to direct a smaller amount to be paid, or to make any other order in the matter which it thinks just and proper in the circumstances. It will also be in the discretion of the Court to direct payment of reduced remuneration when in its opinion, there has been unreasonable delay on the part of the commissioner in the execution and return of the commission.

(iv) Such fees, when the Commissioner is a servant of Government in the Judicial Department, and the work of executing the commission is not done entirely out of office hours, are to be credited to Government.

(v) The Judge of each district should in his discretion from time to time call for returns of fees so credited to government on account of the execution by his subordinates of commissions issued under Order XXVI of the Code of Civil Procedure, and make annual reports to the High Court consolidating the information for the whole District.

(vi) Strict compliance with the orders regarding the deposit of commissioner's fee and other expenses should be insisted on and the time once fixed for the purpose should not be extended except on very good grounds.

(vii) the commissioners are not permitted to accept any payment directly from. the party. The fees, travelling allowance, etc. shall be drawn by them from the Court.

115. RULE :-

Commissions sent for execution at any place where the language is different from that of the Court issuing them should be accompanied by translations in the language of such place, or in English. The fee for making such

translations should be paid by the party applying for the commission, and should be made recoverable as costs.

116. RULE :-

Before issuing the commission the Court should call on the party at whose instance the commission is granted to supply such copies of pleadings or abstracts thereof (if by reason of the length of the pleadings the Court permits the filing of abstracts) and issues for the use of the commissioner as it considers necessary and should satisfy itself that all Interrogatories, crossinterrogatories, maps, documents, etc. necessary for the execution of the commission have been filed.

117. RULE :-

Every order for the issue of a commission shall fix a date allowing sufficient time for its execution and return. If for any reason the Commissioner finds that the time so fixed is likely to be exceeded he should apply for its extension setting forth the grounds thereof and should intimate to the Court the date by which the commission is likely to be executed and returned.

118. RULE :-

Commission should not be executed piecemeal or at intervals. When the work of a commission has once begun it should be continued from day to day until it is completed, unless in exceptional circumstances an adjournment is necessary, in which case the commissioner should at once inform the Court and seek its directions.

119. RULE :-

Commissions issued by Mofussil Courts to the Court of Small Causes at Bombay for the examination of witnesses resident in Bombay, should be sent direct to that Court by post. In all cases sufficient time should be allowed for their execution and return. On receipt of such a commission, the Court of Small Causes should write to the Court issuing it, acknowledging its receipt and stating the date fixed by it for taking the evidence. This date should be communicated to the parties concerned, for enabling them to make arrangements to be present in Bombay a few days before that date in order to enable the Judge to cause the necessary service of subpoenas to the witnesses to be examined on commission. This provision also applies mutatis mutandis to all the Courts to which commissions are issued.

120. RULE :-

As a rule, commissions should be issued as required by sections 75 and 76 of the code and in Form No. 7 or 8 of Appendix H of Schedule I, though in special cases commissions for the examination of witnesses not named, and whose names can not be ascertained by the parties applying for such commissions, may be allowed.

121. RULE :-

Where the commissioner disallows any question put to a witness, he shall record such question and answer thereto, but the same shall not be admitted as evidence except when the Judge before whom the deposition is put in evidence, so directs.

122. RULE :-

The following instructions are mainly intended for regulating the issue of commissions for taking accounts but they should be followed even as regards the issuing of other commissions with adaptations, that may be deemed necessary. The instructions are as follows:-

(i) The court may adjourn the case to a fixed day pending the report of the Commissioner, acting under Order XXVI, rule 11.

(ii) The Court shall furnish the Commissioner with instructions on the following points as required by Order XXVI, rule 12 (1):-

(a) The nature of the accounts to be taken.

(b) The date from which and the date to which the account is to be taken.

(c) The name of the party by whom a statement of accounts is to be filed before him.

(d) The name of the party by whom a statement of objection and surcharge is to be filed.

(e) The periods within which the statements of accounts, objection and surcharge are to be filed.

(f) The date on which the Commissioner is to submit his report.

(g) Any other matter on which the Court may think it necessary to give, or the Commissioner may desire to obtain, its instructions.

(iii) The statement of accounts shall be in the form of a debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(iv) The statement of objection shall specify the items to which objection is taken by reference to their numbers in the statement of accounts.

(v) The statement of surcharge shall specify the amount with the receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him. The items of surcharge shall be numbered consecutively.

(vi) the statement of objection and surcharge shall also state (a) the grounds of each objection and surcharge and (b) the balance, if any, admitted or claimed to be due; and it shall be verified by the affidavit of the party concerned or his agent.

(vii) If any party fails to file his statement of accounts or objection or surcharge within the period allowed, the Commissioner shall report the fact to the Court, and on the application of the defaulting party the Court may extend the period or direct the Commissioner to proceed ex-parte as regards such party or charge the parties required to file the statements of account, objection and surcharge.

(viii) If the Commissioner is unable to submit his report within the time fixed by the Court, he shall apply to the Court for an extension of the time and the Court may extend the time or cancel the commission and appoint a new Commissioner.

(ix) When the case before him is ready for hearing the Commissioner shall, after reading the statements filed before him and after examining the parties. If necessary, ascertain the points on which the parties are at issue and require them to produce their documentary and oral evidence on such points.

(x) After the evidence has been duly taken and the parties have been heard, the Commissioner shall submit his report together with a statement in the form of a diary of the proceedings he had before him. The report shall state (a) the contested Items allowed or disallowed by the Commissioner, (b) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due, and (e) the name of the party by whom it is due.

(xi) When the report, if any, is received, the Court shall give notice to the parties requiring them to file their objections to the report, within a time to be fixed by it; and after considering the objections, if any, the Court may act upon the report or pass such orders as it thinks fit, under Order XXVI, rule 12(2).

(xii) The provisions of Order XXVI, rules 15 to 18. of the Civil Procedure Code, apply to commissions issued under these rules.

123. RULE :-

(i) The order directing the issue of a commission to examine a witness should state whether the commission is to be addressed to a court or a lawyer or other person.

(ii) Where the witness to be examined is resident beyond the jurisdiction of the Court, the commission shall ordinarily be addressed to the Court within whose jurisdiction the witness resides.

(iii) When a commission is issued to a Court, the amount deposited by a party for defraying the expenses shall also be transmitted to the Court to which the commission is issued.

(iv) On receipt of a commission issued under Order XXVI, rule 4, for examination of a witness, the commissioner should determine whether he will execute it at the residence of the witness, or at some convenient place in the neighbourhood of the Court, or if the commissioner be a judicial officer, whether the witness shall attend in the Court or in the premises of the Court of such officer, proper arrangements being made, if necessary, for due privacy. As a rule the person to be examined should appear before the Commissioner at the particular time and place specified in the notice issued but discretion should be exercised in the examination of those whose attendance is ordinarily excused, such as women, persons unable to be removed from their houses owing to old age, sickness, or other bodily infirmity, or persons of rank exempted under section 133, civil Procedure Code, from personal attendance in court. In such cases the commissioner should endeavour to discharge his duty with due regard to the special circumstances and condition of the witness.

(v) While evidence should not as a rule be excluded by the commissioner on debatable grounds, he is nevertheless responsible for preventing abuse of the right of cross-examination and for keeping it within reasonable limits.

(vi) When a party fails to appear on the day and at the hour fixed for examination or applies for time, the commissioner should proceed ex-parte if he is of opinion that adjournment is sought on frivolous or unreasonable grounds.

124. RULE :-

No person holding the office of Judge In any Court subordinate to the High Court shall receive a fee for the execution of any commission for the examination of witnesses issued to him under the provisions of the Code of Civil Procedure.

125. RULE :-

A Court to which a commission is sent for the examination of witnesses at the request of one party may allow the other party, if leave has been given him to join in the commission to examine his witnesses, and may allow each party to cross-examine any witness examined by the other party.

126. RULE :-

Commissions issued and received by a Court shall be shown in separate Registers maintained for that purpose. Such Registers are prescribed in this Manual. (Forms Nos. 2 and 3 at pages 417 and 418 Vol. II.)

127. RULE :-

Where no remittance is received with the commission issued by another Court, inquiry should be made with the

Court which issued the commission before proceeding with the commission under Order XXVI, rule 18. Civil Procedure Code.

128. RULE :-

Forms for use in issuing commissions are given as Nos. 7,8,9 and 10 of Appendix H, to schedule I of the Code.

129. RULE :-

The provisions of the Civil Procedure Code as to service outside India (Order V, rules 25 and 26: Order XVI, rule 8, Order XLVIII, rule 2) are applicable to the service of summonses to appear and answer, notices of appeal, summonses to give evidence or produce documents and generally to all orders, notices and other documents required by the Code to be served.

130. RULE :-

The main provision of the Code for service outside India is that such service shall be by post. The summons shall be forwarded to the defendant and not to a foreign official for service upon him.

131. RULE :-

(a) A summons should be sent by registered post and if the defendant does not appear or is not represented, proof should be given (i) that at the time of the service the defendant ordinarily resided and was actually residing at the foreign place in question, and (ii) that a cover correctly addressed to him, containing the summons was posted, the postal acknowledgment being produced or annexed to the affidavit.

(b) Service by post while necessarily confined to cases where there exists postal communication between the place where the Court is situate and the place in which the person to be served resides, will in practice cover the great majority of cases and resort is not to be had to any other method for service upon persons outside India save for sufficient reason.

(c) The principle is that though there are other methods of service, e.g., through official channels, the Code does not require service outside India to be made through official channels.

132. RULE :-

All Courts when issuing process for service outside India should take care that the time limited for appearance or returnable date shall be such as to enable the process to be served and the person served to do what is required of him. This applies to all forms of processes and to all methods of service.

Note.-Repeated complaints on this score have been received from foreign countries who very properly object to their Courts or officers being asked to serve within their jurisdiction summonses to appear before a Court in India on a date already past or otherwise impracticable. For instance, Iraq, the Straits Settlements and Iran have suggested that the returnable date should be at least three months after the date of the despatch of the process.

In the case of summonses and notices sent for service to places named below, the minimum period noted against each of those places calculated from the date of posting the summons or notice should be fixed for hearing of suits:- (ii) In Pakistan.

133. RULE :-

(i) When a defendant, not being a public officer, resides in Pakistan the summons may be sent for service on him under the first proviso to rule 25 of Order V, Schedule I, civil Procedure Code, to any Court in that country (Not being the High Court) having jurisdiction in the place where the defendant resides.

(ii) When the defendant is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces) the summons may be sent for service on him to the following officers, namely:-

(a) Where the defendant is a public officer serving in connection with the affairs of Pakistan or is a servant of a Railway in Pakistan, to the Secretary to the Government of Pakistan in the Ministry of the Interior.

(b) Where such defendant is serving in connection with the affairs of any other Government in Pakistan, or under any local authority in Pakistan, to the Home Secretary to that Government, or, as the case may be, to the Home Secretary to the Government within whose territory the local authority has its jurisdiction.

134. RULE :-

Summons and other process issued by any Civil Court within the jurisdiction of the High Court at Ahmedabad for service on any person in Pakistan, may be sent direct to the Civil Court in that Country having jurisdiction in the place where the person resides.

135. RULE :-

Clause (b) of rule 26 of Order V can be applied by the State Government to foreign countries generally. Some foreign countries have already been notified under clause (b) of rule 26 of Order V by the Government of India before the amendment by Adaptation of Indian Laws Order, 1937. The list of those countries given below is still operative. The list is as follows:- Iraq.-All the civil and Revenue Courts (6th June 1923, Home Department Notification No. F. 290-23-Judl.)

Note:- When the correct designation of the Court concerned is unknown the summons should be addressed to the Iraq Ministry of Justice. Full English translations should be sent.

Kenya .-The Civil Courts (4th June 1924, Home Department, Notification No. F. 811-23-Judl.) Nepal.-The Court mentioned in Home Department, Notification No. F. 576-24-Judl., dated the 15th August 1925. (See Appendix A at page 401 Vol. II). Iran.-The civil courts (3rd May 1928, Home Department Notification No. 840-25-Judl.)

Note.- Though the Civil courts in Iran have been notified under Order V, rule 26 (b) it appears from Home Department letters Nos. F. 864/32, dated the 30th June 1931, and F.

864/32. dated the 19th September 1932, that summonses should not be sent by post to such Courts direct but should be sent through the State Government to the Government of India who will transmit them to the Indian Embassy at Teheran. At least six months time should normally be allowed for service of any legal documents through the diplomatic channel in Iran and for the return of the documents to the Court of issue. To obviate delay in service the Court of issue shall indicate clearly in English the last known address of the person upon whom service is to be effected. Full translations in Persian of the summonses and notices issued by Indian Courts should accompany or in the alternative an amount sufficient to cover the translation fee as laid down in G.R.H.D., No. 1631/3, dated 10th July 1935. France, Spain, Belgium, Portugal, Sweden, Japan, Singapore and Ceylon:-The civil courts.

Note 1.- Singapore:-Processes for service in Singapore should be forwarded to the Register of the Supreme Court at Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being made by a Post Office Money Order.

Note 2.- Sweden.-Sweden has agreed to accord reciprocal treatment to the processes issued by Indian Courts provided that the request for service is transmitted to the Ministry for Foreign Affairs in Stockholm and the documents are drawn up in the Swedish or English language or are accompanied by a translation in one of these languages (G.R. H.D., No. 7424/3, dated 12th February 1936.)

Federation of Malaya.-The Courts possessing civil jurisdiction (Government Notification, Home Department, No. 4529/2, dated 17th February 1938). Johore.-The civil Courts situate in the State of Johore (Malaya). (Government Notification, No. 2146/4-II. dated the 30th May 1940).

136. RULE :-

Subordinate Courts should not send process of any kind for service to Consuls or ambassadors or Diplomatic Agents unless expressly provided for or permitted by any law, rule or Government order in force.

137. RULE :-

Apart from the special cases provided for in Order V, rule 26, Subordinate Courts are not authorised by the Code to send processes for service direct to any Court outside India.

Note 1.- Prima facie for the Court of one country to address directly the Court of another country is irregular and improper and to send process for execution is even worse., Unless special arrangement has been made between the two countries or the foreign country is known to be willing that its courts should receive processes for service for Indian Courts directly, the only proper mode by which a Court in a foreign country can be addressed is by a letter of request forwarded through the diplomatic channel. So far as service of processes is concerned the Code by directing that service be made by post upon the individual concerned (Order V, rule 25) intends to obviate all unnecessary formality and all difficulties as to collection etc. of costs of service.

Note 2.- As to Thailand, It has been pointed out that the procedure laid down below shall be followed in the issue of summonses and any other legal processes for execution in Thailand : (a) they should be drawn up in proper form and if not typewritten should be written in ink, (b) They should be written in English: (c) full translations in English should accompany all documents in regional language forming enclosures; (d) the period of time to be allowed for execution and return of the documents to India before the date of the next hearing should be at least eight months from their date of issue; (e) they should be forwarded through the High Court and the State Government to the Government of India for being sent to the Indian Embassy at Bangkok. The names and addresses of the individuals upon whom service is desired should be stated clearly in the forwarding letter.

138. RULE :-

Where service is not to be effected by post under Order v, rule 25 or by transmission to a Court to which Order V, rule 26 applies, subordinate Courts should send a Letter of Request to the foreign Court in question, if known. If the appropriate Court is not known, the name may be left to be filled in afterwards. It should be forwarded through the High Court and the State Government to the Government of India for transmission through the appropriate official channel.

139. RULE :-

(i) Processes intended for service through official channels on individuals resident in foreign countries shall be forwarded through the High Court to the State Government for transmission to the Government of India for necessary action.

(ii) Such processes shall be accompanied by an explanation to the High Court of the reasons why the service is not made by post under rule 25 of Order V. Where in the opinion of the High Court no sufficient reason is disclosed the process shall be returned to the issuing Court and shall not be forwarded to Government. Such processes shall also be accompanied by a translation of all documents into the language of the foreign country within which the service is to be made.

140. RULE :-

All summonses issued by the Civil Courts in this State for execution in Mauritius should always be accompanied with

a sum of Rs. 32 in order to cover the expenses of service of summons and other incidental charges in connection therewith. (Vide Government Letter, Home Department. No. 2062/2-II-B, dated the 7th August 1929).

141. RULE :-

Section 28 of the Code provides that summonses and processes may be sent for service in another 'State' to such Court as may be prescribed by rules in force in that State. The provisions of this section also apply to service in territories to which the Civil procedure Code does not, in view of section 1 (3), apply.

142. RULE :-

(i) The provisions of the Code as to service within India of the processes of Courts situate beyond the limits of India (section 29 and Section 31) apply not only to "summonses to appear and answer" (which should be construed included all civil citations) but also to summonses to give evidence or to produce documents or other material objects.

(ii) Clause (a) of section 29 relates to service of summons and other processes issued by any Civil or Revenue Court established in any part of India to which the provisions of the Code do not extend, namely the territories specified in clauses (a) to (d) of sub-section (3) of section 1 of the Code.

(iii) The right to send summons direct to an Indian Court for service exists only if the issuing Court outside India is a Civil or Revenue Court which is either (a) established or continued by the authority of the Central Government or (b) notified for this purpose in the Gazette.

(iv) As regards Clause (a) of (iii) above which refers to clause (b) of section 29 Civil and Revenue Courts in the State of Pondicherry are only Courts outside India which are continued by the authority of the Central Government. (Vide clause 4, French establishments (Administration) order 1954, issued under the Foreign Jurisdiction Act, 1947)

(v) As regards clause (b) of (iii) above which refers to clause (c) of section 29, the provisions of section 29 have been applied to the Courts in the following countries :-

<FNR>1</FNR>Sr. No.	Name of the Country	Number and date of Notification.	Court in respect of which notification has been issued.
1	2	3	4
1.	Republic of Singapore	No.SRO. 1233, dated May ww, 1956.	All Civil Courts.
2.	Ceylon	No.GSR 643. dated July 25,1958.	All Civil Courts.
3.	France	No-852-C, dated February 3,1913.	Civil Courts.
4.	Spain	-Do-	-Do-
5.	Belgium	-Do-	-Do-
6.	Russia	-Do-	-Do-
7.	Portugal	-Do-	-Do-
8.	Iraq	No.F.290-23, dated June 6,1923.	All Civil and Revenue Courts.
9.	Kenya	No.GSR. dated March 15,1962.	All Civil Courts.
10.	Japan	No. 1924. dated November 25,1920.	Civil Courts.
11.	Persia (Iran)	No.840/25, dated May 3,1928.	Civil Courts.
12.	Sweeden	No.GSR 640, dated July 22,1958.	Civil Courts.
13.	Nepal	No.F.576/24, dated August 15,1924.	Courts specified in the Schedule
			to the
			notification.
14.	Pakistan	No.SRO 1340, dated September 1,1951.	All Civil and Revenue Courts.
15.	Federation of Malaya	No. SRO 223, dated January 24, 1956.	All Civil Courts.
<FNR>1</FNR>16.	Deleted		
<FNR>2</FNR>17.	Burma	No.GSR 935, dated July 15,1961.	All Civil and Revenue Courts.
<FNR>3</FNR>18.	Egypt	No.369, dated May 31,1938.	Egyptian Mixed Courts.
<FNR>4</FNR>19.	People's Republic of Bangla Desh	GSR dated March 11, 1975.	All Civil Courts.]

143. RULE :-

Subordinate Courts are not concerned with applications to take evidence for foreign tribunals as such applications have, under Order XXVI as amended by Act X of 1932. to be made to the High Court and subordinate courts have only to carry out: any directions which the High Court may give.

Note. Foreign consular officers and other persons sometime apply direct to Civil Court to take such evidence in disregard of the procedure. They should be referred to the terms of Order XXVI. Care should be taken in any such correspondence with officers of Foreign States to address them properly and politely.

144. RULE :-

(i) The proper course for the courts of one country to adopt in order to obtain evidence in another country is to send letters of request (Commission rogatoire) addressed to the proper court in the foreign country.

(ii) The question as to the method by which evidence could be obtained by the Indian Courts in any foreign country is governed by (1) International courtesy. (2) the law in force of the country concerned. Evidence can be obtained in a foreign country either by addressing a letter of request to the competent judicial authorities of the country from which the evidence is required; or by the issue of a commission to take evidence to some person in the foreign country concerned, for example a consular or diplomatic officer of India abroad, to be named personally by the Indian Courts. But the issue of a commission is only possible in a limited number of countries where the local law permits it. Necessary instructions for taking of evidence by our Consular or Diplomatic Officers in foreign countries upon commissions issued to them by courts in India have been issued by the Central Government to officers belonging to the Indian Foreign Service. A list of Foreign Service Officers is given in Appendix B at page 308 in volume II.

(iii) The Code of Civil Procedure provides for this by section 77, Order XXVI, rule 5, and form 8 in Appendix H. It should be noted that the appointment of a foreign Court as a Commissioner is not permissible.

145. RULE :-

(i) Arrangements have been made between the Government of India and the Government of Pakistan for the examination on commission of nationals of one country as witnesses in civil cases pending in the other country.

(ii) A list of the courts in Pakistan to which commission and letters of request may be issued by courts in India is given below: List of courts in the provinces of Sind and Baluchistan to whom commissions or letters of request can be addressed by courts in India

BALUCHISTAN (1) Court of District Judge in Baluchistan, Quetta.

BALUCHISTAN STATES UNION (2) Court of the Wazir-i-Azam Baluchistan States Union. List of civil Courts in East Bengal, Baluchistan and Baluchistan States Union to whom commission or letters of request can be addressed by Court in India

List of Courts in the Khairpur State and Baluchistan State Union to whom commissions or letters of request can be addressed by Court in India.

1. Khairpur State

1. The Court of District Judge, Khairpur.

List of Courts in Bahawalpur State to whom commissions or letters of request can be addressed by Courts in India.

1. High Court of Judicature at Baghdadul-Jadid.

2. District and Sessions Judges of Rahimyar Khan and Bahawalpur.

List of Courts in the Frontier Regions and States to whom commissions or letters of request can be addressed by Courts in India.

I. MOHAMAND AGENCY (1) The Court of the Political Agent, Mohamand.

II. MALAKAND AGENCY

(i) The Court of Political Agent, Dir. Swat and Chitral Malakand.

(ii) The Court of the Additional Political Agent, Chitral.

(iii) The Court of the Assistant Political Officer, Malakand Agency, Chakdara.

III. KHYBER AGENCY

(i) The Court of the Political Agent, Khyber.

(ii) The Court of the Assistant Political Officer, Khyber.

IV. KURRAM AGENCY

(i) The Court of the Political Agent, Kurram.

(ii) The Court of the Assistant Political Officer, Kurram.

V. NORTH WAZIRISTAN AGENCY

- (i) The Court of the Political Agent, North Waziristan.
- (ii) The Court of the Assistant Political Agent. North Waziristan.
- (iii) The Court of the Assistant Political Officer, North Waziristan.

VI. SOUTH WAZIRISTAN AGENCY.

- (i) The Court of the Political Agent, South Waziristan.
- (ii) The Court of the Assistant Political Officer, South Waziristan.

146. RULE :-

Evidence can be obtained in a foreign country by means of letters of request addressed to the Judicial authorities of the country; or by the direct appointment by the Indian Court of someone in the foreign country to take the evidence without the intervention of the local authorities. There is a third method, made up of a combination of the other two, which however, is only available under and by virtue of certain conventions. This method consist of sending letters of request addressed to the foreign judicial authorities asking them to cause the evidence to be taken by a specific person designated by the Indian Court in the letter of request.

147. RULE :-

The procedure by letters of request is generally available in all countries except in the United States of America. The United States of America prefers the appointment of a Commission and will compel the attendance of witnesses before it. In those countries where the only available procedure is to send a letter of request. Foreign Service Officers should not be called upon to take evidence, and would refuse, if asked.

148. RULE :-

In certain convention countries and also in certain non- convention countries only a Foreign Service Officer can take evidence on a direct appointment from the Court requiring the evidence. In other countries, there is no restriction and any suitable person can be appointed for this purpose.

149. RULE :-

The evidence must be taken in accordance with the law and the procedure of the Court requiring it, and when complete should be transmitted direct to the Court by the Foreign Service Officer or other person appointed. Foreign Service Officers, however, cannot do anything contrary to the local law.

150. RULE :-

The procedure by direct appointment from the Court requiring the evidence is permitted in most countries and is generally included in the conventions. There are, however, countries in which the procedure by letters of request alone is available.

151. RULE :-

When under the local law a Foreign Service Officer cannot take evidence by virtue of a direct appointment, he will refuse to act, and inform the Court or the parties of the reason, drawing attention to the procedure by letters of request which is normally available.

152. RULE :-

A Court can appoint any one for taking evidence; it is guided in its choice solely by personal qualifications, and considerations of convenience and suitability. Except for conventions, Foreign Service Officers may be appointed on the condition that they are allowed to appoint a deputy. The power to do this may be provided for in the writ of commission or order appointing the Foreign Service Officer. The power to appoint a deputy may normally be included in the order of appointment.

153. RULE :-

The method of issuing letters of request asking foreign tribunals to cause evidence to be taken by person specified by the Indian Courts exists only under certain conventions. Such a person should normally be a Foreign Service Officer. The advantage is that the local authorities can compel the witness to present himself with documents, and to make depositions which otherwise the Foreign Service Officer cannot secure; and the evidence can be taken according to the provisions of the Indian law.

154. RULE :-

Where any witness is to be examined before some person appointed for that purpose by the Court, it is essential that the Examiner is furnished with copies of all the relevant documents which may be necessary in order to inform him as to the question at issue between the parties.

155. RULE :-

The letter of request should be drawn up by the Court desiring the service of documents and where the proper description of the foreign judicial authority in question is not known, the letter of request should be addressed to the Competent Judicial authority in the Country concerned.

156. RULE :-

The letter of request in duplicate should be signed by the Judge or the Registrar of the Court and bear the official seal of the Court. The letter of request in duplicate should state the steps to be taken and either contain at the foot

thereof a schedule of all relevant documents forming part of such letter of request or be followed immediately by an index of such documents. The first document should give a concise summary of the pleadings of the parties thereto. This document and the other documents should be numbered or lettered to correspond with the schedule or index mentioned above and be arranged, as far as practicable, in chronological order. If any of the documents in the letter of request are in original, the copies appearing in the duplicate letter of request should be certified by an official of the Court that they have been examined and are true copies. Such certified copies should also bear the seal of the Court.

157. RULE :-

Two certified copies of the translation of the complete letter of request in the language of the foreign country in which service is to be effected should always accompany the complete letter of request.

158. RULE :-

The complete letter of request in duplicate and the two certified copies of the translation should be on strong paper and bound together so that they are all covered by the signature of the Judge and seal of the Court and there is no possibility of the removal, substitution or addition of any sheet without breaking the seal.

159. RULE :-

The letter of request for service of a summons or of interrogatory or the first document annexed thereto should indicate clearly (a) which is the actual document (or documents) to be served and (b) whether a special method of service is desired (as apposed to a case where any method usually employed by the Courts of the foreign country in question will suffice). The method of service desired should also be indicated viz., that one copy of the documents to be served should be left with the intended recipient that a certificate of service by the process server should be written on the copy of the documents to be served; that the recipient should be asked to sign a copy of the document served, etc., as the case may be.

160. RULE :-

A letter of request for service of an interrogatory should be accompanied by specific interrogations and cross-interrogations, if any.

161. RULE :-

The interrogatory with the cross-interrogatory, if any, should be arranged in proper sequence in the letter of request and in the certified copies of the translation. Instead of enclosing interrogatories the letter of request may request that the local agents of the parties to the proceedings, whose names and addresses should be given, should be permitted to appear at the examination of the witnesses and ask or submit to the foreign judicial authority the questions which they desire to put.

162. RULE :-

The full names, descriptions, and addresses of the intended witnesses should be given in the letter of request or in the 'first document' referred to in paragraph 156.

163. RULE :-

(i) A letter of request should in all cases be accompanied by its translation in the language of the foreign court to which it is addressed. All accompanying documents should be similarly translated in that language. If the commission is to be executed by a Foreign Service Officer such documents should, if they are in a language other than English, be translated in English. If a person to be served or whose evidence is to be taken knows English, the translation of the accompanying documents in foreign language may be dispensed with. All translations should be sent in duplicate. If it is not feasible to translate the letter of request or its accompanying documents in the foreign language in question, a request should be made to the office of the Indian representative of the foreign country concerned for getting the documents translated. The costs of such translations will have to be borne by the party concerned. Such costs should first be ascertained by the Court and remitted to the office of the Indian representative.

(ii) A list of all the documents should in every case accompany the papers.

(iii) When it is not possible to ascertain the particular foreign Court to which the letter of request should be addressed, the name of the Court may be left blank so as to be filled in by the Indian representative in the foreign country.

(iv) It is to be noticed that in letters of request it is not proper to fix a day for the return of the evidence. When it is known that neither party proposes to attend at the taking of the evidence, this should be stated in the covering letter forwarding the letter of request, as it may avoid delay.

(v) Neither commissions nor letter of request should be ordered to issue abroad unless there is sufficient time for the execution to be completed before the hearing of the cause or matter in which the evidence is to be used.

164. RULE :-

(1) Order XXVI, rule 15, enables the Court to require a party to deposit such amount as would be adequate for the purpose of execution of a commission or a letter of request, which should be slightly higher than the amount likely to be paid to the foreign Court.

(2) In the case of a commission or a letter of request issued to a Court in Pakistan the Court should obtain a bank

draft in the name of the Court concerned in Pakistan for the amount required to defray the expenses in connection with the execution of the commission or letter of request and send it direct to the Court concerned in Pakistan.

(3) The above procedure should be followed for remitting fees for execution of commissions and letters of request in other foreign countries. The permission of the Reserve Bank of India should be obtained for remitting money to the foreign country in question by making an application to any of the offices of the Reserve Bank.

(4) The deposits should be taken in the Central Section of Government accounts to a separate minor head, "Deposits for Service of Legal documents in other countries" under the major head "Civil Deposits" in the Section "S-Deposits and Advances".

165. RULE :-

The following statement showing the approximate cost required, for the execution of letters of request, commission, etc., in foreign countries should be taken as a rough guide for considering the adequacy of the deposit. In regard to the countries which are not included in the statement, a sum of Rs. 200 is considered to be an adequate deposit subject to the amount being adjusted when the actual charges are known. Each individual case may be dealt with on merits and with reference to the nature and volume of work required to be performed.

166. RULE :-

The channel for letters of request is as follows:

- (a) The High Court.
- (b) The State Government.
- (c) The Ministry of External Affairs and Commonwealth Relations of the Government of India.

167. RULE :-

The letter of request and the accompanying documents should be in the following order :

- (a) Letter of request.
- (b) Index of documents in English [if not included in (a)]. This must be complete, that is to say every document which is contained in the bundle and follows the letter of request must be separately specified together with its serial or page number, and either every document must bear a serial number corresponding to the number given to it in the index, or all the documents following the letter of request must be paged consecutively. Moreover, all numbers appearing at the top or foot of any page of the documents other than the number (if any) assigned to that page in the index should be deleted.
- (c) Narrative of facts [if not included in (a)].
- (d) Interrogatories, cross-interrogatories and re-interrogatories. These should contain the same description of witnesses as appears in the letter of request.
- (e) Other documents, in chronological order, accompanying the letter of request.
- (f) Translations of (a) to (e) inclusive where necessary arranged in the same order and each one of them properly certified by an official of the Court as true translations.
- (g) Duplicates of (a) to (f) inclusive arranged in the same order and each one of them properly certified by an official of the Court as true copies.

168. RULE :-

Letters of request and accompanying documents intended for transmission to foreign countries through diplomatic channels should be sewn together in a stout paper cover down the left hand side, the ends of the silk, tape or thread with which they are sewn being brought out on to the front cover, and the ends sealed with the seal of the Court.

169. RULE :-

(i) Where the party at whose instance the letters are issued is represented in the foreign country by an agent who can apply to the foreign Court, the letters may be given to such party for transmission to such agent but as it is difficult for Indian Courts to make certain that the practice of the foreign Court is to receive letters of request so produced before it, this procedure is not advised.

(ii) In the case of Brazil, however, this method is understood to be obligatory. The party's agent at Rio de Janeiro presents the letters to the Ministry of Justice.

170. RULE :-

All letters of request, covering letters and translations should be typewritten.

171. England :-

(i) In England there is no objection to the Courts of any other country appointing whomsoever they may choose as an examiner or Commissioner to take evidence, but such an appointment carries no compulsory powers.

(ii) If the assistance of the English Courts is required, the procedure is under the Foreign Tribunals Evidence Act, 1856, and the rules are to be found in Order 37, rules 54-60 of the Rules of the Supreme Court.

(iii) (a) In simple cases not involving great expenditure of time or money, (b) where it is not possible for the parties to appoint agents in England (c) where a letter of request has been transmitted through the diplomatic channel and (d) is accompanied by detailed interrogatories or explanations of points to be enquired into and of the issues in the cause-the Court of England may upon an application by the Treasury Solicitor, appoint an examiner and compel the attendance of witness.

(iv) But in all ordinary cases the Court must be moved by an agent of one of the parties, in which case a certificate of the foreign country's diplomatic representative will suffice in lieu of a letter of request or the letter of request may be produced by the party's agent without being sent through the diplomatic channel.

(v) These rules (Cf. rule 59 of Order 37, Rules of the Supreme Court) apply as far as may be to India and to applications under the Evidence by Commission Act, 1859 (22 Vic., Chap. 20).

172. RULE :-

The following Rules should be observed in regard to commissions to be executed in and transmission of letters of request to the United Kingdom:

(1) For the execution of a commission costs have to be incurred amount to about 25, if it is non-contentious.

(2) In cases in which the Central Government or a State Government is interested, the High Commissioner for India in the United Kingdom will pay the expenses and debit the same to the Central Government or the State Government concerned.

(3) When the commission or letter of request is at the instance of a private party and routed through the Government of India, Ministry of External Affairs, the party interested will have to bear the expenses. Arrangements in such cases will be made for execution of the documents only if the sum of 25 sterling is deposited by the party in favour of the High Commissioner for India in the United Kingdom and the draft in question is sent to the Ministry of External Affairs along with the documents. The party interested should also undertake to pay any excess over 25 if the expenses exceed 25. The commission or letter of request and interrogatories both for the purposes of examination and cross-examination should be prepared neatly and on good paper. All these documents should be sent to the Ministry of External Affairs in duplicate in a sealed cover.

173. United States of America :-

Evidence of witnesses in U.S.A. can be obtained only by issuing commissions addressed to the appropriate Foreign Service Officer. They are to be addressed to the Indian representative at New York so far as his Consular District consisting of States of New York, Connecticut and the Northern half of New Jersey, is concerned. As regards witnesses residing elsewhere in the United States of America, if the Court issuing the commission is unable to ascertain which Foreign Service Officer has jurisdiction in the State where the witnesses reside, the commission should be addressed to the Foreign Service Officer for the State concerned and the Government of India will forward the commission to the Foreign Service Officer at the New York requesting him to transmit it to the Foreign Service Officer having jurisdiction. If it is desired to take the evidence of witnesses who reside both within and outside the particular Consular District the commission should be made out substantially in the following terms : The Indian Representative, at or his deputy with power to appoint any other person or persons whom he may deem fit to take the evidence on interrogatories which accompany this commission and viva voce of such witness to be examined at.....and/or at....."... A deposit of one hundred dollars should accompany the commission for the cost of service. Such commissions should be forwarded through the High Court and the State Government to the Government of India who will transmit them to the Foreign Service Officer concerned.

174. Japan :-

(i) Reciprocal arrangements have been made between India and Japan for the execution of letters of requests as well as for service of legal processes. They have to be forwarded through the High Court and State Government to the Government of India. The Government of India will forward them direct to the Indian Embassy at Tokyo.

(ii) Adequate sums for expenses must be recovered under rule 15 of Order XXVI, Civil Procedure Code, and deposited in the treasury before the letter is forwarded to the High Court and the covering letter should state the amount deposited. The Government of India have guaranteed to Japan the cost involved in the execution of letters of request. A translation of all documents into Japanese should be sent with the papers. The documents should be drawn up separately for each of the Japanese Courts in whose jurisdiction witnesses reside and detailed particulars as to name, nationality and residence of the witnesses are insisted on.

175. Thailand :-

(i) Letters of request shall be addressed to the High Court of the Justice, Bangkok (or other Court having jurisdiction) for the formal taking of evidence on commission. They have to be sent through the Ministry of External Affairs, Government of India and the Thai Foreign Office and other methods are regarded as irregular.

(ii) The letter of request addressed to the High Court of the Justice, Bangkok has to be forwarded through the High Court and the State Government to the Government of India.

(iii) It should be borne in mind that the Court language being Thai, in ordinary circumstances the Courts there only receive requests in the Thai language. It is therefore advisable that the letter and interrogatories should be accompanied by a translation in Thai.

(iv) In conformity with the requirements of the Thai Ministry of Justice relative to the service in Thailand of writs or summonses issued by foreign Courts what is required is not the original writ or copy thereof, but a notice or certificate that the writ has been issued.

176. Iran :-

Letters of request issued by Courts in India for execution in Iran are to be transmitted through the High Court and State Government to the Government of India who will pass them on to the Indian Embassy at Teheran.

Note 1.-Letters of request should formally be addressed to the Iranian Ministry of Justice and forwarded to the Government of India along with the list of interrogatories for transmission to Teheran.

Note 2.-Letters of request or interrogatories for service in Iran should be accompanied by translation in Persian or by translation fee as laid down below :

(i) For making or verifying a translation of a document for every 190 words or fraction exclusive of fee for certificate 7/6 plus 25 per cent = 9/6.

(ii) For granting any certificate not otherwise provided for, if not exceeding 100 words exclusive of fee for drawing 10 plus 25 percent = 12/6.

177. Indonesia :-

If the Court requests on the covering letter, the Indian Representative at Batavia will arrange for translation into English of Dutch depositions and will intimate the cost. (G.R., H.D., No. 4846/3, dated 21st October, 1937).

178. Iraq :-

Indian Courts are free to send processes for sendee to the Iraq Ministry of Justice direct. All judicial documents should be accompanied by a separate letter. Such documents should be accompanied by an English translation. If, for any particular reason which should be stated in each case, it is considered necessary to transmit the documents to the Iraqi authorities through the Indian Embassy at Bagdad they should be sent through the State Government to the Government of India who will forward them to the Embassy.

179. Federation of Malaya :-

In cases where an Indian Court desires to obtain evidence in the Federation of Malaya, it should issue a commission instead of a letter of request, and sent it direct to the Court concerned. The commission should be written in the English language or, if not so written, should be accompanied by a translation in English. The Court sending a commission should transmit or arrange to deposit such sum of money as may be reasonably necessary for the expenses of executing the commission. The scale of fees and expenses payable in connection with the execution of commission is given below :

Note.-Items 1 and 2 will not be required if no agent is appointed in the Federation of Malaya. Summonses can be sent by Indian Courts direct to the Courts in the Federation of Malaya.

180. RULE :-

Summonses issued by Indian Courts and intended for residents in South Africa should be sent to the Supreme Court, South Africa, through the State Government and the Government of India in the Ministry of Home Affairs. The returnable date to be specified in the summons should be such as to allow sufficient time for service and return to India of the document before the next hearing of the suit. The period to be allowed should ordinarily be not less than six months. The charges for the service of summonses will be the actual charges incurred by the Courts in South Africa. The particulars of the fees ordinarily charged by the Courts in the Union of South Africa are as given below:

CHAPTER 8

Despatch of Court Business

181. RULE :-

For the prompt and effective disposal of judicial business the following suggestions are made:

(a) The Presiding Judge should personally fix all the dates in the proceeding and should not leave the matter to the Bench Clerk.

(b) When fixing dates for the appearance of persons summoned, attention should be paid to the provisions of rule 6 of Order V and rule 9 of Order XVI, Civil Procedure Code.

(c) In fixing the Daily Board, due regard should be had to the complexity of the suit, the period for which it has been pending and the time expected to be available for its hearing. The Presiding Officer of the Court should also make a rough estimate as to the period required for the disposal of each portion of work. He should keep a margin for contingencies like collapse of the board by reason of unforeseen and unavoidable adjournments or compromises etc.

(d) The dates for final hearing of suits should be fixed after informal consultation with the lawyers, preferably when issues are framed, as to the time the final hearing is likely to occupy.

(e) Apart from the division of suits into Small causes suits and Regular Suits, the latter should be further divided into (a) Short Causes and (b) Long Causes. In the first would fall uncontested suits and other suits of simple character and in the latter seriously contested or complicated suits. It should be possible for the Presiding Judge to

place a suit in its appropriate category upon consideration of the pleadings and issues in the case. Short cause suits would include suits for maintenance, suits under section 9 of the Specific Relief Act, suits instituted under rules 63 and 103 of Order XXI, of the Code of Civil Procedure, Petitions under the Payment of Wages Act, Workmen's Compensation Act, Hindu Marriage Act, and Succession Act. The category of the suit should be indicated in the sheet on which issues have been scribed by noting in the top right-hand corner the letter 'S' or 'L' according as the suit belongs to the first or second category. It will, however, be in the discretion of the Judge to transfer a suit from one category to the other.

(f) In Courts in which exclusively civil work is done the first four days should ordinarily be set apart for the trial of long causes, one day for the trial of short causes and small cause suits and for dealing with interlocutory and miscellaneous matters and one day for execution work. While distributing the work in this manner care should be taken to ensure that there is adequate work for each day of the week. It would, of course, be open to the Judge to modify that pattern according to the state of the file in his Court. It is also open to him to hear, upon a motion, urgent matters on any day of the week.

(g) If, after the issues are framed and matters preliminary to the trial are attended to, it is found that no day for hearing is available within the next 3 months, the case should be entered on the sine die list until such time as a day is available for hearing it. The list must be carefully examined by the Judge every week so as to see that the cases in it are set down for hearing as days become available. When the Judge finds it practicable to fix a day for hearing of such suits, he should do so after due intimation to the lawyers concerned or to the parties if they are unrepresented.

(h) All suits and other matters requiring judicial orders and cases in which judgments are to be delivered should be shown on the Notice Board. Even suits and proceedings in which only formal orders are required should be notified.

(i) If for any reason contested and uncontested work is fixed for the same day, the Judge should first go through the whole list of the day, dispose of all uncontested work, and then take up contested work.

(j) The Judge should endeavour, as a general rule, to dispose of a suit according to its age, to be determined by the date of institution. He should also bear in mind the mark 'S' or 'L' shown on the corner of the issue sheet.

(k) Every Judge proceeding on leave, for whom no locum tenens has been appointed, should before his departure adjourn all cases set down for hearing during the period of his absence, and should, as far as possible, give notice of the adjournments to all parties or the lawyers concerned when necessary.

182. RULE :-

(i) All suits, appeals or applications for the prosecution or defence of which persons in the service of Government, Officers in the Army or soldiers have obtained leave of absence, should be disposed of as soon as they are ripe for hearing, irrespective of the order in which they may stand on the register, and as speedily as may be consistent with the due administration of justice.

(ii) When an officer or soldier has obtained leave of absence for the purpose of instituting or defending a suit, appeal or application, and the case cannot be decided within the period [67] of his leave, he should, if he so requests, be furnished with a certificate stating the extension of leave that may be necessary.

(iii) On the subject of litigant Indian Soldiers, the attention of the Civil Judges is invited to the Indian Soldiers (Litigation) Act, 1925, and the Rules framed by the Central Government under Government of India Notification, Defence Department, No. 455, dated the 14th May, 1938, published at pages 1376-1380 of the Bombay Government Gazette for 1938, Part IV-A, to Section 5 of the Indian Limitation Act, 1908, and to Order V, rule 28 of the Code of Civil Procedure, 1908.

(iv) On the subject of litigant Indian Seamen, the attention of Civil Judges is invited to the Indian Soldiers (Litigation) Act, 1925, and also to the Indian Seamen (Litigation) Rules, 1944, framed by the Central Government and published under Government of India Notification, War Department, Navy Branch, Part B, No. 709, dated the 6th May, 1944, at pages 622-623 of the Gazette of India, part I, to section 5 of the Indian Limitation Act, 1908, and to Order V, rule 28 of the Code of Civil Procedure.

183. RULE :-

The senior Judge of a Court should not transfer the bulk of the heavy cases to a Joint Judge and keep the bulk of the light ones for his own disposal.

184. RULE :-

When a Civil Judge of a Court is deputed to another Court to render assistance to relieve the congestion, he should be given the lighter and more congenial work, the old and tough suits being tackled by the original Judge. The deputed Judge should not be regarded as a drudge sent to relieve the original Judge of work which the latter has been unable (or unwilling) to do for himself; rather the deputation should be regarded as enabling the original Judge, without losing ground, to dispose of the difficult and contested suits which he could not have afforded to tackle but for the assistance given.

185. RULE :-

(i) It appears that in some original suits the parties still abstain from coming forward as witnesses on their own behalf to substantiate by their own evidence on solemn affirmation the statements of fact on which they

respectively ask the Court to give judgment in their favour. The non-appearance in the witness- box of a party in support of his own allegation of fact within his own knowledge, would ordinarily be regarded, in the absence of some satisfactory explanation, as throwing grave doubt on the bona fides of his case.

(ii) The practice of calling the opponent in the case as one's own witness has been condemned by the Privy Council.

186. RULE :-

All preliminary matters should, as far as possible, be disposed of before the date fixed for trial. Such preliminary matters include, for example, the proof of facts by affidavit, the issue and return of commissions for making plans, or for examining witnesses, etc., and all matters connected with the discovery and inspection of documents.

187. RULE :-

On the completion of the interlocutory stage it will generally be convenient to fix an early date called the "settling date" for giving lists of witnesses and paying the necessary process-fee and expenses. On that date information which would enable the Court to make an estimate of the probable length of trial should be obtained and a date should then be fixed for recording evidence.

188. RULE :-

In Courts of Judges, who are doing both civil and criminal work, some days should be set apart exclusively for criminal work and some days for civil work.

189. RULE :-

When a suit assigned for disposal by a Civil Judge of the Senior Division to his Joint Civil Judge of the Junior Division is found by the latter to be beyond his pecuniary jurisdiction, he should request his District Judge to transfer the suit administratively to the Civil Judge of the Senior Division, and not return the plaint to the Plaintiff for being judicially presented to the proper Court or return it to the Civil Judge of the Senior Division.

190. RULE :-

Ordinarily the adjournment costs should not be out of proportion to the value of the claim in suit nor should they be inordinately low. They should be adequate to compensate the party affected by the adjournment.

191. RULE :-

(i) The attention of the Courts is directed to the provisions of rule 6, Order V and rule 9 of Order XVI, Civil Procedure Code, when fixing dates for the appearance of parties. The responsibility for fixing a date is that of the Judge alone and should not be delegated to any of the Court officials. He should make an estimate of the time each case will take so as to ensure, so far as practicable, that the work fixed for a particular day will be done during the course of that day.

(ii) In order to minimize the hardship caused by unnecessary detention of parties and witnesses in cases which have to be adjourned for want of time every Judge should, at the commencement of work on any day, consider applications for adjournment of cases in the day's list. Thereafter he should assess the number of cases he would be able to take during the course of the day. For this purpose, he should consider the position in regard to the part heard and new cases on the Board. He should then discharge the cases which are not likely to be heard on that day so that the parties and the witnesses may not have to remain present in the courts unnecessarily. In regard to cases retained on the board, he should inform the parties and their Advocates at what time approximately their cases are likely to be taken up. Before rising for the afternoon recess, the Judge may again assess the position, and if he be of the opinion that any cases, which were not discharged earlier are not likely to be taken up, he may discharge such cases after giving suitable dates for the next hearing.

192. RULE :-

During the absence of a Judge dates may have to be fixed or adjournments granted by a Court official. The Judge should, on return to duty, satisfy himself that proper dates were fixed and that the adjournments were properly granted.

193. RULE :-

The grant of adjournment is a matter within the discretion of the Court. The Court is not ordinarily bound to grant an adjournment and, before granting it, should usually require reasons to be stated unless it makes an adjournment of its own motion. Adjournments are sometimes granted by Civil Judges to the plaintiff or defendant merely because the other side does not object with the result that the duration of the suit in which such adjournments are granted is unduly and unnecessarily protracted. Such a practice is deprecated.

194. RULE :-

The Presiding Officer should be strict in granting adjournments. Mere convenience of the lawyer or of the Presiding Officer is not a sufficient ground for granting an adjournment. Wherever two lawyers appear for a party in a Civil suit, appeal or other proceeding, no adjournment should ordinarily be granted on the ground that either of them is engaged in some other Court.

195. RULE :-

(i) When an adjournment is sought with a view to effect a compromise the Court should exercise its discretion with caution. An adjournment should not, as a rule, be granted unless the Court has reason to believe that there is every likelihood of a compromise being effected.

(ii) If an adjournment with a view to compromise is granted on a date fixed for evidence, the Court should take particular care to see that the witnesses in attendance are not discharged, but are dated for the next hearing. This will avoid an unnecessary further adjournment for re-summoning the witnesses and will enable the parties to proceed with their evidence in case the parties fail to come to terms. Repeated adjournments to allow compromise should not be granted. It is preferable to grant adequate time for negotiations and make the adjournment final. However further short adjournment may be given if the Court is satisfied that though the compromise has not been effected it is imminent.

196. RULE :-

A party has no right to an adjournment merely because it has filed a petition for revision and has applied or intends to apply to the High Court for stay. The automatic grant of adjournments in such cases encourages the filing of petitions for revision of interlocutory orders solely for purposes of delay.

197. RULE :-

A party is not entitled as of right to an adjournment because the witnesses who have been summoned have not appeared. Further, where witnesses have appeared but for any reason the trial cannot be proceeded with, their convenience should be borne in mind when adjourning the case.

198. RULE :-

When processes are returned unserved a considerable time before the date fixed for hearing, it should be the duty of the Nazir to give out the processes for re-service if there is sufficient time before the hearing. General instructions, should be issued to lawyers that they should ascertain a week before the date of hearing which of the processes are returned unserved, and then ask for the services of a special process-server to have them served at once. If they fail to do so, the parties should not be allowed to apply for a fresh service on the date of hearing.

199. RULE :-

When a party applies for a process or deposits the diet money too late to allow of the witness being served in time to reach the Court on the day fixed for hearing, no adjournment should ordinarily be granted to give the party a second opportunity to produce the witness. If a party fails to produce a witness whom he has undertaken to produce on a particular day, he should not ordinarily be given a second opportunity to produce him.

200. RULE :-

A list of cases in which the plaintiff or his lawyer omits for a month to apply for a fresh summons to a defendant should be brought up in Court to prevent their being lost sight of, and with a view to the plaintiffs or their lawyers being reminded of the necessity of taking, the requisite steps.

201. RULE :-

After the examination of witnesses has begun, adjournments, if found necessary, should be from day to day or for very short intervals. Otherwise, the Court might have to determine cases on evidence and impressions, which have been partially forgotten. If the disposal of a suit is to be satisfactory, it must be on a consideration of evidence which is as fresh in the mind of the Judge as may be possible.

202. RULE :-

Arguments should be heard immediately after the evidence closes and a case, unless it is long and complicated, should not, as a rule, be adjourned for arguments after all evidence has been adduced. If any adjournment is necessary, reasons should be recorded by the presiding Judge and it should never be for any but a very brief period. Arguments should not, except for good reasons, be heard piecemeal and where it is found necessary to adjourn a case for the hearing of further arguments the adjournment should ordinarily be to the next working day.

203. RULE :-

Ordinarily the judgments should be delivered immediately after the arguments are heard and in every case within fifteen days of the completion of arguments.

204. RULE :-

A case once closed and adjourned for arguments should never be permitted to be re-opened by allowing parties to produce evidence unless for good cause clearly established to the satisfaction of the Judge.

CHAPTER 9

Trial of Suits

205. RULE :-

(1) The Court should enforce the Rule as to "opening" a case. When the parties have their oral evidence ready, the law directs (Order XVIII, rule 2) that the party having the right to begin should state his case, and produce his evidence in support of the issue which he is bound to prove. The other party has then to state his case, and produce his evidence, if any, and may then address the Court generally on the whole case, the party beginning being permitted to reply generally.

(2) It is absolutely necessary that the case should be opened in order that time may be saved. It is essential that the evidence of each side should be preceded by a brief and clear statement of the case to be made out, showing the exact nature of the claim, the facts to be established by the evidence which will be adduced, the general character and bearing of that evidence, the names of witnesses to be examined, and a clear statement of any proposition of law involved. The case stated in the opening must be in accordance with the party's pleadings, for no

litigant can be allowed to make at the trial a case different from that which he has pleaded and of which only his adversary has notice.

(3) In complicated suits, the judge should make brief notes of the case stated in the opening and keep them on the record.

206. RULE :-

All witnesses should give their evidence from the witness box. A witness should normally stand when giving evidence, but a chair should be provided in the witness-box, upon which any witness may sit on receiving permission of the Presiding Judge. This permission should be given on valid grounds, such as the witness's health or the likelihood that his evidence will occupy a long time etc.

207. RULE :-

The attention of Court is drawn to the provisions of Order XVIII, rule 4, that witnesses are to be examined in open Court. The power under section 30 (c) (and see Order XIX, rule 1) to order any particular fact or facts to be proved by affidavit or the reading of an affidavit of any witness at the hearing, should be exercised only in special circumstances, or, as that rule declares "for sufficient reason", which should always be specified in the order; there can be no general order for the admission of affidavits in suits or appeals.

208. RULE :-

(1) The standard forms provided should be used for recording depositions as it is important to record the name, description and residence of the witness sufficiently to prevent any subsequent mistake as to his identity.

(2) The depositions of each witness should be recorded on a separate sheet and in the manner prescribed in Order XVIII of the Civil Procedure Code. It is illegal and improper to record the deposition of one witness at length and to enter against the names of other witnesses "states as above". Deposition should be recorded in the first person.

(3) In depositions recorded in English the use of words or phrases in regional language (not being technical, revenue or law terms) should be avoided if there is a satisfactory and corresponding English equivalent. If a word in the regional language is used its nearest English equivalent should be added in brackets. It is often necessary to know in what sense a Court is using a term in the regional language. Similarly, Indian dates should be followed in brackets by their equivalents according to the Gregorian Calendar.

(4) Each deposition should be signed (not merely intialled) by the presiding officer, who should add to his signature at least the initials indicating his official designation, so that the deposition may be complete in itself. He shall also sign a certificate at the foot of each deposition to the effect that it has been read over or interpreted to the witness. Every correction in the deposition should be intialled by the Judge.

(5) The provisions of Order XVIII, rules 5 and 6, Civil Procedure Code, as regards the reading over and interpretation of evidence to witness in the presence of the Judge are frequently overlooked. These provisions of the law should be strictly followed.

(6) It is important that the whole of the evidence given by each witness should appear in one place, and not scattered at intervals through the record. Therefore, when a witness is for any reason, recalled and further examined, after the close of his original deposition, such further examination should appear as a continuation of the original deposition, being headed as follows, for the sake of distinction: Recalled for further examination on this (here enter the date) after the (here show the stage of the proceedings, immediately preceding the recall of the witness, e.g. if the first witness for the plaintiff is recalled after the tenth, the entry would be) "10th witness for the plaintiff.

(7) Care should be taken to make deposition clear and precise. Vagueness should be avoided. In particular, different words or phrases should not be used in different parts of the deposition to describe the same object and documents. A person should be referred to in a consistent manner, e.g., he should not be referred to by his family name at one place and by his personal name at another.

209. RULE :-

(1) The imperative language used in sections 5, 60, 64, 136 and 165, Indian Evidence Act, indicates that a Court should, whether objection to evidence is or is not raised by any party, compel observance of the law.

(2) When a witness is being cross-examined, the Judge should guide himself by the provisions of sections 146, 148, 151 and 152 of the Evidence Act, and disallow any question which appears to him to be improper. He should see that much is not made of trifling discrepancies, that the examination is not protracted beyond reasonable limits even if the questions put be relevant, and that the witness is not subjected to questions, which merely invite repetition of the story, which he has already given in his examination-in-chief, in the hope that he will change it in the process. In this connection section 136 of the Evidence Act should be borne in mind, as it empowers the Judge to ask a party proposing to give evidence in what manner the alleged fact, if proved, will be relevant. The cross-examiner must not be allowed to bully or take unfair advantage of the witness.

(3) While it is necessary for the Judge to check random and pointless questioning, he should be careful not to frustrate a skillful cross examination by interposing when the drift of the questions is not immediately apparent and some questions are repeated. He should endeavour to follow the line and purpose of the cross examination closely and should only ask the examiner to explain relevancy of a line of enquiry when it apparently has no bearing upon

the case.

(4) A witness may be questioned in cross-examination not only on the subject of enquiry but upon any other subject, however remote for The purpose of testing credibility, his memory, his means of knowledge, or his accuracy. The moment it appears that a question is being asked which does not bear upon the issue or give promise of helping the Court to estimate the value of the witness' testimony, it is the duty of the Court to interfere as well to protect the witness from that then becomes an injustice or insult as to prevent the [75] time of the Court from being wasted. The Court should also prevent any evidence being given to contradict a witness in contravention of section 153 of the Evidence Act.

210. RULE :-

It is essential that the Presiding Officer should control the examination-in-chief, cross examination and re-examination of witness and try to check the tendency to prove and over-prove unessential allegations, so as to prevent much time being taken up in eliciting and recording unessential particulars to which no reference can usefully be made in argument.

211. RULE :-

(1) When remarks as to the demeanour of a witness are made, it is convenient to enter them at the foot of his deposition or of the Judge's memorandum or his evidence.

(2) When any question is objected to, and the Court disallows it. or allows it to be put, the objection and the Court's decision and the other particulars required by rule 11 of Order XVIII of the Civil Procedure Code may be noted in the body of the deposition or memorandum of evidence.

212. RULE :-

Typewriter may be used by a Judge for recording depositions and memoranda of evidence, but every sheet of any deposition or memoranda of evidence so recorded shall be signed by the Judge recording it.

213. RULE :-

Form No. 5 of Appendix H of Schedule I may be used for listing documents produced by a witness. A witness may apply orally for the return of documents produced by him. After returning a document which has been entered on record, a receipt should be taken (see paragraph 473), and where it is returned at any time earlier than that prescribed by rule 9 of Order XIII, a certified copy or extract thereof should also be taken as required by that rule.

214. RULE :-

Where a witness gives evidence in a language not understood by the Court, the presiding Judge is authorised to employ an interpreter and pay him reasonable sum for his services not exceeding ten rupees per diem, the cost being borne by the party calling the witness in the first instance and being charged as costs in the suit.

215. RULE :-

Local inspections should be rarely undertaken by Courts and particularly by appellate Courts. It is the duty of the parties to put forward in evidence lucid plans of such detail and accuracy as to render inspection unnecessary, and it is for the trial Judges to see that the parties discharge this duty and do not seek to escape it by suggesting inspection.

216. RULE :-

Where inspection is found necessary, the proper rule should be as follows: When the inspection is undertaken at the instance of the parties and is at a place which is within easy distance of headquarters, the party desiring it must arrange for the conveyance of the Judge, who, before he accedes to the suggestion, should ordinarily arrange to hold the inspection outside Court hours.

217. RULE :-

Where such inspection involves absence from Court or from headquarters, the Civil Judge should inform the District Judge of the circumstances, which render inspection necessary and obtain the previous sanction of the District Judge to his absence from his Headquarters on the particular date. The lawyer, at whose instance the inspection is undertaken, should be responsible for arranging for the conveyance of the Civil Judge. Ordinarily the District Judge should not interfere with the judicial discretion of the Civil Judge regarding the necessity for inspection.

218. RULE :-

(i) The costs of an inspection which requires a Civil Judge to leave his headquarters must be deposited by the party in Court and cannot be received by the Civil Judge direct from the party. He can, however, reimburse himself in respect of the expenses incurred by him by submitting a T.A. Bill to the District Judge as permitted by the Rules.

(ii) The expenses incurred by the party for this purpose shall be included in the Bill of Costs.

219. RULE :-

Where the Judge considers it necessary to make a local inspection even though the parties do not move him and are not willing to arrange for it, it is open to the Judge (if a Civil Judge, with the previous sanction of the District Judge) to make the inspection at Government expense.

220. RULE :-

It is necessary for the Judge to make notes of local inspection so that the parties as well as the Appellate Court may

know what facts were noticed by the Judge and what impressions were formed by him.

CHAPTER 10

Judgment, Decree and Taxation of Costs

221. RULE :-

The attention of the Courts is drawn to section 33, and rules 1 to 5 of Order XX, Civil Procedure Code regarding preparation and pronouncement of Judgment. Judgment should be pronounced in open Court and the date on which the judgment is to be pronounced should be notified.

222. RULE :-

All judgments and orders should be written in English. However, in every case, whether appealable or non appealable, the Civil Judge may at his option write his orders or judgments either in English or in Gujarati. All judgments and proceedings should be written only on a foolscap paper, leaving one quarter margin of the sheet blank.

223. RULE :-

Every judgment should be paragraphed, duly numbered.

224. RULE :-

When a judgment or order is typewritten, every sheet should bear the initials of the Judge.

225. RULE :-

(i) Where Indian dates are mentioned in judgments, the corresponding dates, according to the Gregorian Calendar should be added. The use of words in regional language should be avoided in judgments when English equivalents of such words can be used without detriment to sense. If a word in regional language is used its nearest English equivalent should be added in brackets.

(ii) All references in Judgments to Rulings of superior Courts should be cited both by the names of the parties as well as by the number of the volume and the page of the report, e.g. Sadanand V. Parashram, I.L.R. 52 Bombay 336.

226. RULE :-

A Judge should not hand over charge on transfer till he has disposed of all cases awaiting judgments. If he cannot do so within the time available before his departure, he should report to the District Judge, who may retain him for a short period after obtaining the sanction from the High Court or the Government as the case may be.

227. RULE :-

When a Civil Judge works at two places for some time alternatively, he may pronounce his judgment or order at either place with the assent of the parties at the close of hearing.

228. RULE :-

Judgment should ordinarily be shown to Reporters of the local press on request although it is within the discretion of the Court concerned not to show them to such Reporters in any particular case or cases.

229. RULE :-

A certificate in the following form should be filled in and appended to judgments in suits and applications relating to land to which section 135H of the Bombay Land Revenue Code, V of 1879, applies, whenever any finding arrived at or decree or order passed necessitates any alteration in or addition to any entry or entries in the Record of Rights, register of Mutations or register of Tenancies regarding the said land. In the case of an appellate or revisional decree or order passed by the High Court, the communication mentioned in the certificate should be made by the Court from which the appeal or application for revision lay or the record was called for:

CERTIFICATE Certified that the extract from the Record of Rights, Register of Mutations or Register of Tenancies filed in the suit or application appears from the evidence to be incorrect. requires to be altered or added to in consequence of the decree or order and that a communication has been made to the Collector of..... having regard to the provisions of section 135H (3) of the Bombay Land Revenue Code, V of 1879, and that a copy of such communication has been kept with the record of the suit or application.

230. RULE :-

With reference to section 26 of the Bombay Public Trusts Act, 1950, Civil Courts shall append a certificate in the following form to judgments in proceedings decided under that Act:

"Certified that a copy of the above decision has been forwarded to the Charity Commissioner, Bombay, under section 26 of the Bombay Public Trusts Act, 1950, and that a copy of the communication has been kept with the record of the proceedings."

231. RULE :-

The Code requires that the decree shall agree with the Judgment. Rules 6 and 7 state in general what the decree should contain. There are other provisions in Order XX which give directions as to the contents of the decree in specific cases. Several forms are also given in Appendix D of Schedule I of the Code. The appropriate form should be used for drawing up the correct decree. Although the forms do not mention all the particulars which may be embodied in the decree, it is desirable to follow the practice of incorporating the whole plaint in the decree in a regular suit. Experience shows that it is a good practice which leaves no possibilities of omitting any important

particulars. It is also necessary to mention the registered address of the parties in the decree.

232. RULE :-

When a suit is settled by compromise, the fact of the compromise and its terms should be set out in the decree, which should state that it is passed in terms of the compromise. A note should be made on such decree and in the suit register of the amount of refund of court-fee, and of the fact that certificate of refund of court-fee has been issued.

233. RULE :-

In cases in which lawyers are employed, it is their duty to see that decrees and final orders are properly drawn up in conformity with the terms of the judgment, and every facility should be given to them for that purpose and for being heard on the subject in cases of doubt and difficulty. Except in the Courts of Small Causes at Ahmedabad, Nagpur and Poona the lawyers should be required to affix their signatures to the decree before they are signed by the Judges. Where any lawyer has not signed the decree, the cause of his failure or refusal to sign should be certified on the decree.

234. RULE :-

(i) Decree should ordinarily be drawn up within 4 days from the date of the pronouncement of the Judgment or Order; and due intimation thereof shall be given to the lawyers or their Clerks in cases where parties are represented by lawyers:

Provided that in special or complicated cases this time limit may, for reasons to be recorded in writing in the Roznama, be extended by the Presiding Judge.

(ii) The lawyers concerned shall, unless prevented by just or proper cause, sign the decree in token of their approval or file a statement of their objections to the decree as drawn up within four days from the date of the intimation. Where the lawyers fail to sign the decree or file the statements of their objections within the said time, without just or proper cause, the fact may be mentioned in the Roznama and the Presiding Judge may sign the decree although it is not signed by the lawyers.

(iii) The Presiding Judge should ordinarily sign the decree after disposing of the objections, if any, within 10 days from the date of the pronouncement of the judgment.

235. RULE :-

In every case arising under Special Acts, whenever a party applies for a copy of an order of the Court with a view to filing an appeal or Revision Petition against it to the superior Court, the order should be formally drawn up before furnishing a copy thereof to the party.

236. RULE :-

Under Order XX, rule 7, Civil Procedure Code, every decree shall bear the date on which the judgment was pronounced. As questions regarding the time requisite for obtaining a copy of the decree may involve ascertaining the date of signature by the Judges, this date should be written by the Judge below his signature.

237. RULE :-

It is the duty of the officer or clerk who draws up the decree to go through the proceedings and apportion the costs in accordance with the orders as to costs, if any, made by the Court during the course of the proceedings, and to enter in the bill of costs the numbers of the exhibits of which costs are taxed and the costs taxed on each. The payment, if any, made to the Petition-writer should be included in the Bill of Costs provided the party making the payment is not represented by a lawyer. A Bill of Costs should be drawn up when final orders are passed on interim applications at the instance of the party desiring to go in appeal or revision against it. These bills should be taken into account while drawing up the final bill of costs in decrees.

238. RULE :-

In cases in which a party is entitled to refund of court- fees under section 43 of the Bombay Court-fees Act, 1959, the judgment or order of the Court regarding costs should contain a clear direction as to the exclusion of the refundable Court-fees from the amount of costs.

239. RULE :-

The copy of the decree required by rule 14 of Order XXXIII of the Code of Civil Procedure, V of 1908, to be furnished to the Collector should be sent promptly by the Court which passes the decree through the Government or Sub-Government Pleader without application being made and without charge.

240. RULE :-

Both preliminary and final decrees should be noted in the Register of Suits.

241. RULE :-

(i) The attention of all Civil Courts is drawn to the provision of Order XXXIII, rules 10, 11. 11-A and 16, of the Code of Civil Procedure, V of 1908, in the matter of the payment of Court-fees and the costs of the Government. The orders in regard to these matters should be embodied in the decrees passed in the suits or appeals. Copies of the decrees should be furnished to the Government without delay.

(ii) Whenever the provisions of section 13 of the Bombay Court- fees Act, 1959, so require, copies of decrees in

suits to which that section applies should be sent to the Collector.

CHAPTER 11

Suits by or Against Special Classes of Persons

242. RULE :-

(i) The law in regard to suits by or against minors is contained in Order XXXII, Civil Procedure Code, and the attention of the Court is particularly drawn to the provisions of rules 3 and 4 thereof. Where the minor is the plaintiff there is generally no difficulty as the next friend is mentioned in the plaint. When, however, the minor is a defendant, difficulties sometimes arise. It must be borne in mind that a suit cannot proceed against a minor unless a guardian-ad-litem is appointed for him. It is, therefore, the duty of the plaintiff to take the necessary steps for securing the appointment of a proper guardian-ad-litem for the minor and incur necessary expenses for the purpose.

(ii) In order to enable the Court to issue the notice in Form No. 11, Appendix H, Schedule I, on the proper person mentioned in sub-rule (4) of rule 3 of Order XXXII, an application for the appointment of a guardian-ad-litem should state whether there is any guardian appointed or declared by a competent authority, and when there is no such guardian who the natural guardian of the minor is, or in whose care the minor lives.

(iii) But no person can, without his consent, be appointed as guardian-ad-litem [sub-rule (3) of rule 4]. Therefore, it is essential to ascertain whether the person found suitable to act as Guardian-ad-litem is willing. For this purpose a notice in Form No. 1, page 418, Volume II, is prescribed.

(iv) The Form No. 1 at page 418, Volume II, is for use in ascertaining the consent of the person suggested as Guardian-ad-litem of the minor defendant as required by Order XXXII, rule 4, sub-rule (3).

(v) This notice should be served on the person described in sub-rule (4) of rule 3, in all cases. The Judge should do what lies in his power to obtain a Guardian-ad-litem who will defend the interest of the minor.

(vi) Notice in Form No. 11 of Appendix H, Schedule I of the Code is an invitation to the person described in sub-rule (4) of rule 3 of Order XXXII to volunteer to be the Guardian-ad-litem. Broadly speaking two classes of case arise: first, where the plaintiff himself proposes that such person should be the Guardian-ad-litem. second, where the plaintiff proposes that some other person should be the Guardian-ad-litem. In the second case, the interests of the minor may require that the person proposed by the plaintiff should not be appointed and that the person described in sub-rule (4) of rule 3 should instead be appointed Guardian-ad-litem.

(vii) The Court shall proceed to appoint a Guardian-ad-litem after hearing any objection that may be urged by any of the persons served with a notice. If the proposed guardian does not appear and give his consent as required by law, or if he appears to be unsuitable for any reason, or there is no other fit person willing to act as Guardian-ad-litem. the Court may appoint any of its own officers to be such guardian.

243. RULE :-

(i) When an officer of the Court is appointed Guardian-ad-litem, he should communicate with the minor, if in his view the minor is able to give him useful information, and/or with the minor's relatives in order to ascertain what the defence ought to be; and at the hearing he should appear and explain to the Court what steps he has taken.

(ii) The Court is empowered by Sub-rule (4) of rule 4 of Order XXXII to arrange for the necessary funds to enable an officer of the Court who has been appointed Guardian-ad-litem of a minor's interest to communicate with the minor or his relatives and to ascertain and substantiate the defence. The Court may, when necessary, call on the plaintiff or any of the parties to pay such expenses beforehand.

(iii) When an officer of the Court has been appointed a Guardian-ad-litem he shall, before the disposal of the suit, submit to the Court a true account of the expenses incurred and of the moneys received by him and the matter shall be adjusted in accordance with the final order passed in the suit in respect of costs.

244. RULE :-

The Judge should make a separate order in Form No. 2 page 1 of Volume II appointing a Guardian-ad-litem and not merely have the appointment recorded in the Roznama.

245. RULE :-

(i) The Guardian-ad-litem shall file his registered address as required by Order VIII, rule 11, Civil Procedure Code.

(ii) After the appointment of a Guardian-ad-litem all processes in the suit or subsequent proceedings should be served on the guardian and not on the minor.

(iii) The foregoing paragraphs 242 to 244 and 245 (i) and (ii) apply mutatis mutandis to the guardians of minor respondents. Paupers.

246. RULE :-

When a person is permitted to sue or defend as a pauper, the Court may, if necessary, assign a lawyer to assist him. The lawyer so assigned shall not be at liberty to refuse his assistance, unless he satisfies the Court that he has good reason for refusing.

247. RULE :-

It shall be the duty of the lawyer who may be assigned to a person permitted to sue or defend as a pauper, to take care that no notice is served, summonses issued, or petition presented without good cause, and to report to the Court every six months the progress of the suit or matter.

248. RULE :-

A lawyer appointed to represent a pauper shall not take or agree to take, or seek to obtain from him, any fee, profit or reward, for the conduct of his case in the Court. The Court shall, however, have power to award costs against the adverse party or out of the property recovered in the suit and to direct the payment thereof to the lawyer appointed to represent the pauper. If such lawyer accepts any fee, profit or reward except as aforesaid, he shall be guilty of misconduct.

249. RULE :-

The Clerks of the Courts are directed to inform every person presenting an application for leave to sue or defend in forma pauperis that he may avail himself of the free legal aid service of a lawyer under Paragraphs 246 to 248 above. The Clerk of the Court should make an endorsement on every such application to the effect that the party presenting it was informed of the said provisions.

250. RULE :-

The law as regards paupers is contained in Order XXXIII. Applications for permission to file a suit in forma pauperis are to be presented to the Courts by the applicant in person, unless he is exempted from appearing in Court, in which case it may be presented by an authorised agent. Such application should contain the particulars mentioned in rule 2 of Order XXXIII. The application must bear the requisite Court-fee stamp, and the applicant must pay the process fee required for issuing notice under rule 6 of Order XXXIII. After the application is granted it should be registered as a suit. The plaintiff is exempted from payment of Court-fee on the plaint, vakalat- nama, petition or proceeding connected with the suit, but is not exempted from payment of process fees.

251. RULE :-

Where the Court passes a decree or order for payment of court-fees under rule 10, 11 or 11-A of Order XXXIII, a copy of the decree or order shall be forwarded forthwith to the Collector for recovery of the amount of court-fees.

252. RULE :-

The law on this subject is contained in sections 86, 87, 87- A and 87-B of the Code.

CHAPTER 12
Mortgage Suits

253. RULE :-

The following are the rules made by the High Court under section 104 of the Transfer of Property Act, in so far as they relate to proceedings taken in all the Courts subordinate to the High Court except the Ahmedabad City Civil Court:

1. Application under Section 69-A.- (i) Every application under sub-section (2) or sub-section (10) of section 69-A of the Transfer of Property Act shall be made by verified petition. The petition shall bear the prescribed court fee. (ii) When the Court orders issue of a notice in any petition under sub-rule (i) above, the petitioner shall pay the process charges prescribed therefor within fourteen days from the date of the order, or within such time as the Court may allow.
2. Application under Section 83.- Every application under section 83 of the Transfer of Property Act, shall be made by verified petition stating the facts. The petition shall bear the prescribed court fee and, in addition, court fee Stamps of sufficient value for the process charges for the issue and service of notice on the mortgagee.
3. Payment into Court of Costs and expenses under Section 83 or any subsequent section.- Unless otherwise ordered, the mortgagor shall, in addition to the amount due, deposit or pay into court a sum sufficient to provide for (a) the mortgagees' costs of obtaining payment out of court; (b) the mortgagees' costs, when the payment is made under section 83 of the Act, of executing or registering (1) a conveyance or transfer where necessary or (2) an acknowledgment of the discharge of the mortgage in other cases and (c) the interest to which the mortgagee may be entitled under the last paragraph of section 84 of the Act.
4. Order of payment of money into court under Section 83.- Every order for payment of money into Court, under section 83, shall specify the sums to be paid, and the purpose for which each sum is intended.
5. Service of notice under Section 83.- On the admission of the petition to the file, the Court shall, unless it otherwise deems fit, cause notice under section 83 to be prepared, issued and served in the prescribed manner.
6. Notice to mortgagee to deposit documents relating to mortgaged property.- The notice to the mortgagee shall, in addition to any other requirements, require the mortgagee to deposit in Court on the day specified in the notice the mortgage deed and all other documents relating to the mortgaged property in his possession or power.
7. Service of Notice of payment under any subsequent Rules.- When money is paid into court under Order XXXIV, rule 2 of the Code of Civil Procedure, or under any subsequent rules of the said order, the person making such payment shall forthwith give written notice thereof to the person or persons on whose account such payment is made.
8. Application by mortgagee.- Every application by a mortgagee to obtain payment of money out of Court shall be

made by verified petition accompanied by such of the documents mentioned in rule 6 as have not been deposited in Court, and when necessary, by a draft deed of re conveyance of the mortgaged property or acknowledgment of discharge of the mortgage, as the case may be.

9. Disallowances where tender refused.-Where it shall appear that previous to any payment into court under section 83 or any subsequent section a sufficient tender was made to, and refused by the mortgagee, he shall not be allowed to obtain payment of the amount deposited in Court to meet his claim without deduction of the fees and charges of the Court, nor shall he be allowed his costs of obtaining such payment. Except as aforesaid, or when otherwise ordered, the mortgagee shall be allowed all costs incurred by him.

10. When interest disallowed.-If through default on the part of the mortgagee it becomes necessary to obtain an enlargement of time under Order XXXIV, rule 3, or rule 8 of the Code of Civil Procedure, no interest shall be allowed for the enlarged time without a special order in that behalf.

11. Orders for payment of money out of Court under Section 83 or any subsequent section.-On an application for payment of money out of Court under section 83 or any subsequent section by a mortgagee who has complied with the orders of the Court and the provisions of the Act and of the Rules made in this behalf, so far as they relate to him or apply to his case, and has when required so to do, transferred the property and possession free from encumbrance, and caused such transfer to be registered and accounted for the documents of title which were held by him, the Court shall make such order or orders as it shall deem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

12. Decree absolute for fore-closure, Order XXXIV, Rule 3 or Rule 8 of Civil Procedure Code.-Every decree absolute for foreclosure under Order XXXIV, Rule 3 or Rule 8 of the Civil Procedure Code shall direct that possession of the property be given to the mortgagee except where he is already in possession. It shall be drawn up with a recital of the decree and the proceedings had thereunder and with a full description of the property.

13. Conveyance of property sold under Order XXXIV, rule 4 of Civil Procedure Code or any subsequent Rule.-Where immovable property is sold under Order XXXIV, rule 4 of the Civil Procedure Code or any subsequent rule, the purchaser may, on application to the Court, obtain a certificate of sale as evidence of title to the property sold to him and may also, at his own costs, obtain a conveyance from the mortgagor.

14. Order under section 83 how enforced.-Every enforceable order made under section 83 may be enforced under the provisions of the Code of Civil Procedure, and shall for that purpose be deemed to have been made in a suit instituted under that Code.

15. Procedure of Court to apply to applications.-Subject to the provisions contained in Chapter IV of the Transfer of Property Act, rules governing the procedure of the Court shall except in so far as they are inconsistent with these rules, apply mutatis mutandis to applications in these rules.

16. Application of rules to owner of immovable property. - The rules relating to a mortgagor or mortgagee in an application under section 83 of the Transfer of Property Act shall, as far as may be respectively apply to the owner of immovable property, subject to a Charge (as defined in section 100 of the Act) and the person holding such charge.

17. Reference to "Advocate" to include reference to "Pleader".- Reference to an "Advocate" in these rules shall include a "Pleader" authorised to practice in the Court.

CHAPTER 13

Proceedings under the Indian Succession Act, 1925 and Bombay Regulation VIII of 1827.

254. RULE :-

Attention is invited to Government Notification No. 5861, dated the 25th October, 1890, issued under section 26 (1) of the Succession Certificate Act (VII of 1889), and printed at page 1259 of the Bombay Local Rules and Orders under Central Acts, Volume I, 1953 edition, under which all Civil Judges in this State have for the purpose of the said Act been invested with the functions of a District Court. The Notification has also the effect of investing Civil Judges with the power to hear applications made under section 2 of Bombay Regulation, VIII of 1827. Although the Succession Certificate Act, 1889, has been repealed, the Notification dated 25th October, 1890, remains in force by virtue of section 24 of the General Clauses Act, 1897. Applications under section 2 of Regulation VIII of 1827 can be entertained by Civil Judges directly or when transferred to them by the District Judges.

255. RULE :-

(i) Under section 265 of the Indian Succession Act, 1925, the High Court has appointed all Civil Judges to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases arising within the local limits of their respective jurisdiction.

(ii) In exercise of the powers conferred by section 28-A (1) of the Bombay Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Senior Division), with all the powers of a District Judge to take cognizance of any contested proceeding under the Indian Succession Act, 1925, arising within the local limits of their respective jurisdiction that may be transferred to them by their respective District Judges. Judge should ascertain what the market value of the properties is and recover the duty on such value. He should for this purpose insist on an affidavit and make such other enquiry as may be necessary. The certificates should be issued in the form set forth in Schedule VIII of the Act. The last column of the form should be correctly filled in.

258. RULE :-

Probate Duty should always be taken in the form of Court Fee Stamps. The Courts should not under any circumstances accept cash in payment of such duty.

259. RULE :-

Before passing an order for the grant of Letters of Administration, probates and the like, the Judge should, when necessary, require the production of the certificate of the Controller of Estate Duty as required by section 56 of the Estate Duty Act, 1953.

260. RULE :-

Certain forms which have been drawn up for use under the Indian Succession Act, Act XXXIX of 1925 are given at pages 19-21 of Volume II of the Civil Manual.

261. RULE :-

Notwithstanding any provisions to the contrary in Bombay Regulation VIII of 1827, certain provisions of Part X of the Indian Succession Act, 1925, are by section 390 of that Act, made applicable to applications for certificates and certificates granted under the said Regulation.

262. RULE :-

The following note should be appended to certificates given under Bombay Regulation No. VIII of 1827 :

"The person, to whom this certificate is granted, or his representative, is required, within six months from the date of this certificate, or within such further time as the Court may from time to time appoint, to exhibit in Court a full and true inventory of all the property and credits in his possession under this certificate, and also within one year from the same date or within such further time as the Court may from time to time appoint, to render to the Court a true account of the said property and credits, showing the assets which have come to his hands and the manner in which they have been applied or disposed of."

263. RULE :-

The following form may be used for an order to a person to whom a certificate has been granted or to his representative, to render accounts, etc.:

264. RULE :-

When an administrator is appointed under section 10 of Regulation VIII of 1827, a proclamation in the Form contained in Appendix C of the said Regulation shall be prepared by the Nazir and issued under the signature and seal of the Judge.

265. RULE :-

Whenever an administrator is appointed under the aforesaid section 10, he shall, before entering upon the execution of his office, give security in a sum to be fixed by the Judge for the faithful discharge of his trust as an administrator.

266. RULE :-

The Nazir, or any other person who is appointed an administrator of intestate property under Regulation VIII of 1827 shall receive no remuneration either until the estate is made over to a claimant under clause (3), or until it is sold and the proceeds are deposited in the Public Treasury under clause (4) of section 10 of the said Regulation. When he parts with the custody of the intestate property in either of these ways, he may be allowed by the Judge a fee not exceeding 5 per cent, on the value of the property which he gives up, subject to the modification of the High Court on the complaint of any person interested:

Provided that the District Judge may in his discretion and subject to the previous sanction of the High Court allow remuneration to an administrator who has been in charge of the estate for several years and who is required to retire before the proceedings are terminated.

267. RULE :-

Whenever any Magistrate is of opinion that property of intestates without known heirs should be sent to the District Court he should report direct to the Judge, in the form prescribed below in this Chapter, who, in the event of his concurring with the Magistrate, will order the Nazir at once to take possession, or, in the event of his differing, will direct the property to be returned, or left with the party having original possession. (See also section 84 of Bombay Act XXII of 1951.)

268. RULE :-

All expenses attendant on the issue of a proclamation regarding intestate property under Regulation VIII of 1827, section 10, shall be paid out of the estate of the intestate.

269. RULE :-

An annual return of property of persons dying intestate and without known heirs should be sent to the High Court in the form prescribed on page 278 of Chapter XXXIII on Returns and printed at page 8 in Appendix H of Volume II.

CHAPTER 14

Guardians and Wards

270. RULE :-

(i) The District Judge should bear in mind that the minor, in respect of whose person or property a guardian has been appointed under the Guardians and Wards Act, is committed especially to his care and that it is essential that the District Judge should exercise the closest supervision on the work of the guardian so as to secure the welfare of the minor. Attention of the District Judge is, in this connection, drawn to the rules under the Guardians and Wards Act, 1890, in paragraph 271 below.

(ii) The District Judge should in each case require the guardian to furnish a statement of the property belonging to the minor within six months from the date of appointment and insist on submission of periodical accounts of receipt and expenditure. The nature and extent of the supervision to be exercised by the District Judge and the details to be required in the accounts submitted by a guardian will depend on the size of the estate, the relationship of the guardian with the minor and the intelligence and education of the guardian. The control exercised should in all cases be real, periodical and punctual. Careful and economic management of such estates is a matter essential to the proper administration of justice.

(iii) No ministerial official employed in the Judicial Department shall be appointed or declared as such official to be the guardian of the person or property of a minor, nor shall any such official be appointed or declared as aforesaid in his private capacity, unless he has been appointed by will or other instrument or is, by reason of relationship to the minor or other special circumstances not connected with his official position, suited to act as guardian.

(iv) The services of some responsible official may, however, be used to inquire into the management of estates by guardians and also to inquire into the upbringing and education of the minors.

(v) When a minor's estate comprises considerable landed estate, it would generally be desirable to appoint the Collector to be the guardian or to allow the estate to pass under the management of the Court of Wards.

271. RULE :-

In exercise of the powers conferred by section 50 of the Guardians and Wards Act, VIII of 1890, the High Court of Bombay is pleased to make the following rules:

(1) Applications under section 10 for the appointment or declaration of a guardian shall be made so far as may be in Form A at page 320, Volume II.

(2) When the natural guardian of the minor is not proposed for being declared or appointed guardian, the applicant shall state the facts relied upon for showing that such person is unfit to act as guardian of the minor, or that he consents to the application.

(3) The notice required by section 11 shall be in Form B at page 323, Volume II and shall be served in the manner therein prescribed and may in addition be published in a newspaper.

(4) When the petition does not disclose the names of the near relatives of the minor, or when full details of the property of the minor are not furnished by the petitioner, the Court may call for a report from the Collector or from a subordinate Court as to the near relatives of the minor or the extent of the minor's property.

(5)

(i) The proposed guardian shall enter into a personal bond to cover the value of (1) movable property kept by the guardian in his custody and (2) three year's income of the immovable property of the minor. He shall furnish two securities if the aforesaid estimated value be above Rs. 5,000 and one surety in other cases.

(ii) The forms of the personal bond to be entered into by the proposed guardian and of the suretyship bond to be entered into for the sureties, shall be as given in Form C, at page 420, Volume II.

(iii) The District Judge may, for sufficient reason, allow security to be furnished by the proposed guardian in any other form than the one prescribed above.

(iv) The District Judge may, for sufficient reasons to be recorded in writing, dispense with the security to be furnished by the proposed guardian or reduce its amount.

(v) Every guardian shall be required to inform the Court immediately of the death of any of his sureties and to furnish another surety within one month of the death or such further time as the Court may grant. The Nazir of the District Court shall ascertain annually which of the guardian's sureties are alive and submit a report in the matter to the District Judge in January every year.

(vi) Where security is required, the Court shall fix a time within which such security shall be furnished, and the order of appointment or declaration shall be made only after it has been furnished.

(6) After the security, if any, has been furnished, the Court shall make a final order appointing or declaring a guardian, and thereupon a certificate of guardianship shall be issued to the guardian in Form D at page 324, Volume II.

(7) At the time of the appointment or declaration of a guardian, or as soon thereafter as possible, the Court shall require the guardian

(i) to proceed to take possession of all the property belonging to the minor and, in case any difficulty arises in the course of taking possession of any such property, to report the facts immediately to the Court and to take such further steps as the Court may direct;

(ii) to prepare inventories of the property while taking possession thereof. The inventories should be signed by the guardian and countersigned by the panchas present and by the person or persons from whom possession of the property is taken;

(iii) to prepare a consolidated inventory in Form E at page 327, Volume II of all the property of the minor and of the encumbrances thereon. The consolidated inventory as well as the inventories, if any, prepared at the time of taking possession shall be furnished to the Court within six months as required by section 34 (b), unless for reasons to be recorded the Court extends the time;

(iv) to report to the Court without delay the details of the ornaments or other valuable movable property taken possession of by the guardian and to obtain orders as to whether they should be sold or retained. The guardian shall normally be required to keep all valuables and securities, except such as are by the express order of the Court allowed to be kept by him, in some branch of the State Bank of India or other approved bank, in the joint names of himself and the Nazir of the District Court;

(v) to submit a scheme of management in Form 1 at page 330 of Volume II with such modifications as the District Judge may find necessary;

(vi) to obtain the sanction of the Court for making every payment not sanctioned by the scheme of management;

(vii) to obtain from the payees receipts for all sums paid out of the minor's estate and preserve them as vouchers, and to pass receipts for payments received on behalf of the minor's estate and preserve their duplicates or counterfoils;

(viii) to obtain orders from the Court for instituting suits or defending suits on behalf of the minor;

(ix) to keep and maintain such accounts of the minor's estate as may be directed by the Court. The guardian shall normally be required to maintain a day-book and a ledger;

(x) to present in Court copies of the accounts maintained by him alongwith the account-books, receipts and vouchers at least once in every six months, unless the Court requires the examination of the accounts at more frequent intervals;

(xi) to report to the Court without delay any appreciable increment to or diminution in the minor's property. The Court shall cause the same to be noted in the consolidated inventory produced under sub-rule (iii) above;

(xii) to keep all moneys received by him in such bank as may be approved by the Court over and above an amount of Rs. 250 which he may normally be allowed by the Court to keep on hand, and to seek orders of the Court for the investment of the surplus amounts;

(xiii) to report to the Court when a minor attains majority, or dies, or ceases to have interest in any property.

(8)

(i) At the time of making the appointment or declaration of a guardian, the Court shall pass orders regarding the approximate expenditure, if any, to be allowed under the following heads:

(a) allowance to the guardian under section 22;

(b) maintenance and education of the minor and his dependents; and

(c) religious ceremonies of the minor and his dependents.

(ii) The order so passed may be varied on receiving the scheme of management presented by the guardian in Form I, at page 330, Volume II or as the exigencies may require.

(9) (a) The appointment or declaration of a guardian shall be entered in a register in Form F at page 328, Vol. II and the particulars therein prescribed shall be entered from time to time as occasion requires.

(9) (b) When a foreigner makes an application in person, or through an Advocate, for being appointed as the guardian of the person or property of a minor not related to him, such Advocate or party in person shall address a letter to the Secretary of the Indian Council of Social Welfare, Gujarat State Branch, Ahmedabad, forwarding therewith a copy of such application, and informing him of the date fixed for the hearing thereof, and further requesting him that any representation which the Indian Council of Social Welfare, may make in the matter, should be submitted to the District Judge, in writing, in duplicate four days before the hearing of the said application and that such a representation would be considered by the Court before passing the order on the application. The Court may, while passing the order on the application, direct the applicant to pay, as condition precedent, such sum as it may fix to the Indian Council of Social Welfare, Gujarat State Branch, Ahmedabad, as costs of making the representation. If the costs are awarded to the Council the District Court shall not issue a certified copy of the order made on the application, to the applicant, until he produces a receipt, from the Council for payment of their costs awarded by the Court.

(10) The Court shall, except for sufficient reason, cause the accounts submitted by the guardian to be audited, and may thereupon issue such general directions to the guardian as may be necessary, and such special orders as may be required.

(11) The copies of accounts submitted by the guardian under rule 7 (x) shall be exhibited and preserved with the

record of the application and shall be open for inspection, with the permission of the Court by persons legitimately interested in the same, on payment of such fees as may be fixed by the Court.

(12) When the guardian declared or appointed under the Act obtains permission as required by section 28 or section 29, or when by virtue of section 8 of the Hindu Minority and Guardianship Act, 1956, a natural guardian is granted permission by treating his application as if it were an application under section 29 of the Act. the Court will issue him a certificate in Form G at page 329, Volume 11 with such modifications as the circumstances may require. When the Court attaches conditions under section 30 (2) to the permission, they shall be embodied in the certificate.

(13)

(a) The Court shall in all cases consider the propriety of making orders under sections 32 and 43 (1) as to (i) investment of surplus money, (ii) borrowing of money by the guardian on behalf of his Ward, and (iii) sale or retention of ornaments or other valuable movables.

(b) When the Court passes orders as to investments, it shall ordinarily direct them to be made in securities mentioned in clauses (a), (b), (bb), (c) and (d) of section 20 of the Indian Trusts Act, or in the Government Savings Bank. Where investment is not ordered to be made in this manner, it shall record its reasons for so doing.

(c) The Court shall not ordinarily permit any lending or investment of money which is not covered by adequate security.

(14) Until the minor attains majority, all subsequent applications relating to his guardianship and the orders thereon shall form part of the record of the original application.

(15)

(1) When, at the inspection of accounts submitted by the guardian, the Court finds that the minor would attain majority within the next six months, it shall direct the guardian to furnish accounts and shall issue notice to the minor in Form H, at page 329, Volume II.

(2) The final proceedings for the discharge from liabilities of a guardian of the property of a minor should be adjourned for six months after the guardian has deposited his final accounts.

(16) in the case of estates not exceeding one thousand rupees in value, the Court may relax these rules so far as may seem desirable in each particular case. When the estate exceeds one thousand rupees in value, the Court may, for sufficient reasons to be recorded in writing, apply the rules with such modifications as are deemed essential.

CHAPTER 15

Rules and Instructions under Special Acts

272. RULE :-

(1) These Rules may be called the Divorce (District Court) Rules, 1929.

(2) They shall come into force on the 30th day of June 1929. Petition.

(3) All petitions under section 10, 18, 23, 27, 32 or 34 of the Indian Divorce Act, 1869 (hereinafter called "the Act") shall be accompanied by a certified copy of the certificate of the marriage, if such a certificate is available to the petitioner.

(4)

(1) In the body of a petition under sections 10, 18, 23, 27, 32 or 34 of the Act shall be stated

(i) whether the petitioner professes the Christian religion;

(ii) the place and date of the marriage and the name, status and domicile of the wife before the marriage;

(iii) the status of the husband and his domicile at the time of the marriage and at the time when the petition is presented and his occupation and the place or places of residence of the parties at the time of the institution of the suit;

(iv) the principal permanent addresses where the parties have cohabited including the address where they last resided together in India;

(v) whether there is any living issue of the marriage, and if so the names and dates of birth or ages of such issues;

(vi) whether there have been in the Divorce Division of the High Court of Justice in England or in the Court of Sessions in Scotland or in any Court in India any, and if so what, previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(vii) the matrimonial offences charged set out in separate paragraph with the times and places of their alleged commission;

(viii) the claim for damages, if any;

(ix) the grounds on which the petitioner claims that the District Court, in which the petition is presented, has

jurisdiction to determine the petition; and, if the petition is one for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation, it shall further state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

(2) The petition shall conclude with a proper setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought and shall be signed by the petitioner:

Provided that where the petitioner is, by reason of absence or for other good cause unable to sign the petition it may be signed by any person duly authorized by him or her to sign the same or to sue on his or her behalf.

(5) The statements contained in every petition shall be verified by the petitioner or some other competent person in manner required by the Code of Civil Procedure for the time being in force for the verification of plaints. Co-Respondents and Interveners.

(6) In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterers co-respondents in the suit, unless the Court shall otherwise direct under section 11 of the Act.

(7) Where a husband is charged with adultery with a named person, certified copy of the pleading containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled, within the time therein specified, to apply for leave to intervene in the cause. Service of Petitions and Notices.

(8) Every petition or notice under the Act shall be served on the party to be affected thereby either within or without India, in the manner prescribed by the Code of Civil Procedure for the time being in force for the service of summonses:

Provided that, unless the Court for good cause shown otherwise directs, service of all such petitions and notices shall be effected by delivery of the same to the party to be affected thereby and the Court shall record that it is satisfied that service has been so effected:

Provided also that the Court may dispense with such service altogether in case it seems necessary or expedient to do so. Answer and subsequent Pleadings.

(9) A respondent or co-respondent or a woman to whom leave to intervene has been granted under Rule 6, may file in the Court an answer to the petition.

(10)

(1) Any answer which contains matter other than a simple denial of the facts stated in the petition shall be verified in respect of such matter by the respondent or co-respondent as the case may be in the manner required by these Rules for the verification of the petitions, and when the respondent is husband or wife of the petitioner the answer shall contain a declaration that there is not any collusion or connivance between the parties.

(2) Where the answer of a husband alleges adultery and prays relief a certified copy thereof shall be served upon the alleged adulterer, together with a notice to appear in like manner as a petition. When in such case no relief is claimed the alleged adulterer shall not be made a co-respondent, but a certified copy of the answer shall be served upon him together with a notice as under Rule 6 that he is entitled within the time therein specified to apply for leave to intervene in the suit, and upon such application he may be allowed to intervene, subject to such direction as shall then be given by the Court.

(11)

(1) If it appears to the Court that proceedings for the dissolution of the marriage have been instituted in England or Scotland before the date on which the petition was filed in India the Court shall either dismiss the petition or stay further proceedings thereon until the proceedings in England or Scotland have terminated, or until the Court shall otherwise direct.

(2) If it appears that such proceedings were instituted after the filing of the petition in India, the Court may proceed subject to the provisions of the Act with the trial of the suit:

Provided, that unless the Court for good cause shown otherwise directs, service of all such petitions and notices shall be effected by delivery of the same to the party to be affected thereby, and the Court shall record that it is satisfied that service has been so effected:

Provided also that the Court may dispense with such service altogether in case it seems necessary or expedient to do so. Judgment.

(12) Every judgment granting a decree for dissolution of marriage, nullity of marriage, or judicial separation, shall record clear findings as to the facts which give the Court jurisdiction to pass the decree; and the Court for this purpose should take care to see that sufficient and proper evidence is adduced in the course of the proceedings to enable it to record such findings.

(13) When the District Judge has made a decree for dissolution of marriage or of nullity of marriage a copy thereof shall be served on the Respondent and Co-Respondent within a month from the date of the decree and the parties shall be informed that the case for confirmation of the decree will come on in the High Court on or after six months from the date of the decree and that no further notice of the date of hearing will be given. They shall at the same

time be warned what a remarriage before six months from the date on which the decree is made absolute by the High Court is prohibited by section 57 of the Act and that such remarriage is liable under section 19 to be declared a nullity.

(14) The District Judge shall then submit the proceedings to the High Court for orders under section 17 or 20, as the case may be.

(15) Cases for confirmation of a decree received from a District Judge under section 17 and 20 of the Act shall not be heard by the High Court till after the expiry of six months from the pronouncing of such decree.

(16) After the period of six months mentioned in Rule 14 has expired, the decree may be confirmed even though no application for that purpose has been made to the Court, or no party appears at the hearing.

(17) Any person wishing to show cause against the confirmation of the District Judge's decree on the ground that the decree has been obtained by the collusion or by reason of material facts not being brought before the Court, or because of any change of circumstances since the passing of the decree such as that the parties have resumed the relation of husband and wife or that the petitioner has died, shall, if the Court so permits, enter an appearance in the proceedings before the High Court and file affidavits setting forth the facts upon which he relies. Certified copies of the affidavits shall be served upon the party or the Advocate of the party in whose favour the decree has been pronounced.

(18) Any person applying under the last paragraph of Section 17 of the Act to the High Court to remove the suit from the Court of a District Judge may file an application for the purpose supported by an affidavit setting forth the grounds on which the applicant relies. Copies of the application and affidavit shall be served on all parties to the suit who may, within a time to be fixed by the High Court, file affidavits in reply, and the High Court shall then make such further orders in the matters as it deems fit.

(19) The party in the suit in whose favour the decree has been pronounced may within a time to be fixed by the Court file affidavits in answer and the person showing cause against the decree being confirmed may within a further time to be fixed file affidavits in reply.

(20) The District Court shall not entertain an application for alimony, maintenance or the custody of children or for the modification or discharge of the order for alimony, maintenance or the custody of children unless the person on whose petition the decree for the dissolution of the marriage was pronounced is at the time the application is made resident in India.

273. RULE :-

(1) Title of application:

(a) Save as hereinafter provided, all applications, affidavits, and proceedings, under the Act shall be intituled in the matter of the Act, and in the matter of the Arbitration.

(b) Applications under Chapter IV of the Act shall be intituled in the suit or matter in which order of reference is made.

(c) Applications under section 34 of the Act shall be intituled in the suit which the applicant seeks to have stayed.

(d) Applications under section 7 (2) of the Act shall be entitled "In the matter of the insolvency in which the reference to arbitration is sought to be claimed."

(2) Mode of Application: All applications under the Act shall be made only to the proper Court and all applications shall be presented in the same manner as plaints or other applications to the Clerk of the Court to such other Officer as the Court appoints in that behalf who shall cause them to be registered and take such orders as are necessary from the presiding Judge.

(3) Contents of petition: Every petition shall be divided into paragraphs numbered consecutively and shall contain a statement of facts relied on, and the nature of the relief asked for and shall clearly specify the persons liable to be affected thereby. A copy of the arbitration agreement, the special case of the Award relating to the petition, if any, whenever necessary, shall be annexed thereto.

(4) Filing of Award: The Arbitrator or Umpire shall cause the Award or a signed copy thereof to be filed in Court, together with any depositions and documents which have been taken and proved before him and the opinion pronounced by the Court on a Special Case submitted by him, if any, in accordance with section 14 of the Act, by forwarding the same under a sealed cover addressed to the Court, with a letter requesting that the same be filed. He shall also send together with the Award a copy of the Notice given to the parties concerned and affidavit of service of such notice and of attestation if any, of his signature on the Award.

(5) Arbitrator or Umpire to make affidavit: The Arbitrator or Umpire shall also make an affidavit stating (1) the date on which the Award was made and signed, (2) that all depositions taken and documents proved before him have been forwarded to the Court along with the Award and (3) that no documents which came into his possession in the course of the arbitration proceeding have remained with him. Such affidavit shall be filed along with the Award.

(6) Notice of filing award: When the Award has been filed in Court, it shall forthwith issue notice of such filing to the parties interested in the Award.

(7) Notice of application to persons affected by Award: Upon any application under the Act, the Court shall direct Notice thereof to be given to all persons mentioned in the petition, and to such other persons as may seem to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the Notice, why the relief sought in the petition should not be granted.

(8) Limitation for application for Judgment on Award: An application for judgment in terms of an Award shall not be made until after expiration of 30 days from the date of service of the Notice of filing of the Award.

(9) Statement in application for judgment on Award: An application for judgment in terms of an Award shall contain a statement that no application has been made to remit the Award or any of the matters referred to Arbitration for reconsideration or to set aside the Award, or if made, that has been disallowed. Such statement shall, unless otherwise directed by the Court, be supported by an Affidavit.

(10) Special Case: Where the Arbitrator or Umpire state a Special Case under section 13 (b) of the Act for opinion of the Court, they shall transmit it to the Court. They shall at the same time give notice of such transmissions to the parties and intimate to the Court the names and addresses of the parties.

(11) Form of Special Case: Every Special Case under section 13 (b) of the Act shall contain only a statement of the material facts and points on which the opinion of the Court is sought. It shall be in Form No. 2.

(12) Notice: When the Special Case is filed, the Court shall issue notice of such filing to the parties, intimating to them the date fixed for the hearing of the case and requiring them to appear on the said date.

(13) Copy of the Court's order and Judgment to be forwarded: The Court shall send a copy of its order and Judgment, if any, to the Arbitrator or Umpire, as the case may be.

(14) Issue of notice of application under section 20: When an application is presented under section 20 of the Act and the Court directs notice to be issued, the notice shall call upon the opposite party to show cause within the returnable date why the arbitration agreement should not be filed. Unless otherwise ordered the application shall not be heard until after 10 days from the service of the notice upon the party.

(15) Process to be issued on application by Arbitrator or Umpire: Process to the parties to arbitration proceedings or to witnesses shall be issued by the Court on the written application of the Arbitrator or the Umpire.

(16) Accompaniments of the above application: If the proceedings are under Chapter II of the Act, the application for such processes must be accompanied by a copy of the agreement under which the Arbitrator or the Umpire is acting. If otherwise, the date of the order appointing him Arbitrator or Umpire, shall be mentioned in the application.

(17) Application of Code of Civil Procedure and the Rules and Forms: In cases not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908, and the Rules and Forms in the Civil Manual shall apply mutatis mutandis to all proceedings in arbitration before the Court.

(18) Court fees and Process Fees: The Court fees and process fees chargeable for all petitions shall be in accordance with the Court Fees Act and the rules for the levy of process fees in force for the time being.

273A. RULE :-

The following are the rules made by the High Court under section 10 of the Arbitration (Protocol and Convention) Act, 1937:

1. Title of application etc.: All applications, affidavits and proceedings under the Act shall be instituted in the matter of the Act, and in the matter of the arbitration.

2. Mode of application: Applications under sections 3 and 5 of the Act shall be made by petition which shall be presented to the Court.

3. Contents of petition: Every petition shall be divided into paragraphs, numbered consecutively and shall contain, in a summary form, a statement of the material facts relied on, and the nature of the relief asked for, and shall specify the persons liable to be affected thereby.

4. Stay of proceedings under section 3 of the Act: Upon an application for stay of proceedings under section 3 of the Act being filed, the Court shall direct notice to be given to the party or parties to the legal proceedings other than the applicant, requiring him or them to show cause, within the time specified, why the order should not be made unless the Court is satisfied that the object of the application would be defeated by the delay occasioned by the notice.

5. Documents to be produced with petition: The party seeking to enforce a foreign award shall produce with his petition:

(a) the document specified in section 8(1) of the Act and, where such document is in foreign language, the translation thereof into English or Gujarati certified in the manner prescribed in sub-section (2) of the said section 8;

(b) the original agreement for arbitration or an authenticated copy thereof and, when the same is in a foreign language, the translation thereof into English or Gujarati certified in the manner prescribed in sub-section (2) of the said section 8.

(c) an affidavit or affidavits showing (1) that the said agreement was valid under the law by which it was governed; (2) that the award was made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties, (3) that it was made in conformity with the law governing the arbitration procedure, and (4) that it has become final in the country in which it was made; and

(d) other document or documents in support of his application.

6. Procedure to be followed in the case of non-production of documents with petition: If the application under section 5 of the Act be presented without the document specified in rule 5 (a) above, it shall forthwith be returned to the party presenting it. If such application is unaccompanied by the documents specified in rule 5 (b) and (c) above, the Court may allow time within which such documents must be filed.

7. Execution of Decrees and orders:- The provisions of the Code of Civil Procedure and the Rules and Forms of the Court relating to execution of decrees and orders shall mutatis mutandis be applicable to the execution of decrees and orders under the Act.

274. RULE :-

In some parts of the State, certain classes of money-lenders are in the habit of lending money to impecunious military and civil officers and to poor agriculturists, not on bonds or promissory notes but on arbitration awards and the loan the amount of which is usually much less than the amount stated as advanced in and payable by the award is not advanced until after these arbitration awards are actually filed in Civil Courts and decrees passed thereon. The object of this procedure is apparently to oust the jurisdiction of the Civil Courts and prevent them from inquiring into the terms of the transaction. It has been found that some Judges have been in the habit of ordering these so-called arbitration awards to be filed and passing decrees thereon without enquiring into their nature. Every Judge must, therefore, before allowing an award to be filed satisfy himself that there was, in fact some point of real difference between the parties, that it was submitted to arbitration and that there was a genuine arbitration upon that point.

275. RULE :-

The system of appointing Civil Judges as arbitrators in suits pending before them, though legal and convenient, is open to objection. A party may sometimes be compelled against his wishes to agree to such an arbitration; and it may be difficult for a litigant to raise objections successfully to an award on the ground of erroneous procedure or technical misconduct of the arbitrator before the Court when the Presiding Officer was himself the arbitrator. Further it is undesirable that Judges who have given awards as arbitrators should be subject to reckless personal charges at the instance of suitors disappointed by an award. The practice, therefore, of presiding judges acting as arbitrators in suits pending before them is undesirable.

276. RULE :-

Copies of pleadings and issues in cases of suits referred to arbitration should be prepared at the cost of the parties.

277. RULE :-

An order of reference should be served on arbitrators, whether they are present in the Court or not and even when they are present in Court and express their willingness to act as such. In all these cases process fee should be charged for serving an order of reference on arbitrators. Where, however, a party is permitted to serve the copy of an order of reference on the arbitrator half the usual process fee should be charged.

278. RULE :-

(1) Short title and Commencement.-

(i) These Rules may be called the Special Marriage Rules, 1954.

(ii) The Rules shall come into force on the 1st January, 1955.

(2) Definitions.-

(i) "Act" means the Special Marriage Act, 1954 (Act XLIII of 1954).

(ii) "Code" means the Code of Civil Procedure, 1908.

(iii) "Court" means the District Court or the City Civil Court, as the case may be.

(3) Petition.-

(a) Every petition made under the Act shall be accompanied by a certified copy of the certificate from the Marriage Certificate Book about the solemnization of the marriage under the Act.

(b) A petition for divorce on any of the grounds mentioned in clauses (i) and (j) of section 27 of the Act shall be accompanied by a certified copy of the decree for judicial separation or for restitution of conjugal rights as the case may be.

(4) Contents of Petitions.-In addition to the particulars required to be given under Order VII, rule 1, of the Civil Procedure Code, every petition for judicial separation, nullity of marriage and divorce shall contain the following particulars:

(a) The place and date of marriage;

- (b) The name, status and domicile of the wife and husband before the marriage;
 - (c) The principal permanent address where the parties cohabited including the address they last resided together;
 - (d) Whether there is living any issue of the marriage and, if so, the names and dates of birth, or ages of such issues
 - (i) In every petition presented by a husband for divorce or judicial separation, on the ground that, his wife has committed adultery with any person or persons the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained;
 - (ii) In every petition presented by a wife for divorce or judicial separation, on the ground that her husband has committed adultery with any woman, or women, the petitioner shall state the name, occupation and place of residence of such woman or women, so far as they can be ascertained;
 - (e) Whether there have been in any Court in India, and if so what previous proceedings with reference to the marriage by or on behalf of either of the parties and the result of such proceedings;
 - (f) The matrimonial offences charged set out in separate paragraphs with the time and places of their alleged commission;
 - (g) The claims for damages, if any, with particulars;
 - (h) If the petition is one for a decree of dissolution of marriage, or of nullity or annulment of marriage or for judicial separation, it shall further state that there is no collusion or connivance between the petitioner and the other parties to the marriage or alleged marriage;
 - (i) The relief or reliefs prayed for.
- (5) Co-respondent in husband's petition.-In any petition presented by a husband for divorce or judicial separation on the ground that his wife has since the solemnization of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing by an order of the Court which may be made on any or more of the following grounds, which shall be supported by an affidavit in respect of the relevant facts:
- (i) That the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
 - (ii) That the name of the alleged adulterer is unknown to the petitioner although he has made due efforts for discovery;
 - (iii) That the alleged adulterer is dead;
 - (iv) For any other sufficient reason that the Court may deem fit to consider.
- (6) Verification of petition.-Statements contained in every petition shall be verified by the petitioner or some other competent person in a manner required by the Code of Civil Procedure for the time being in force for the verification of plaints.
- (7) Forma of Petitions.-The Petitions made under the Act shall, so far as possible, be made in the forms prescribed in the Schedule to the Indian Divorce Act, 1869 (IV of 1869).
- (8) Petitions on behalf of Lunatics.-When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than the petition for restitution of conjugal rights, may be brought, on his or her behalf, by the person entitled to his or her custody.
- (9) Petitions by minors.-
- (i) Where the petitioner is a minor he or she shall sue by his or her next friend to be approved by [107] the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.
 - (ii) The next friend shall file an affidavit along with the petition which shall state the age of the minor, that the next friend has no adverse interest to that of the minor and that the next friend is otherwise a fit and proper person to act as such.
 - (iii) The Court may on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such other orders as it may deem fit.
- (10) Notice.-The Court shall issue notice to the respondent and co-respondent, if any. The notice shall be accompanied, by a copy of the petition. The notice shall also require, unless the Court otherwise directs, the respondent or co-respondent to file his or her statement in Court within a period of four weeks from the service of the notice and to serve a copy thereof upon each of the other parties to the petition, within the aforesaid period.
- (11) Service of Petitions.-Every petition and notice under the Act shall be served on the party affected thereby in a manner provided for service of summons under Order V of the Civil Procedure Code:
- Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

(12) Written statements in answer to petitions by Respondents.- The Respondent may and, if so required by the Court, shall present a written statement in answer to the Petition. The provisions of Order VIII of the Code shall apply mutatis mutandis to such written statements. In particular, if in any proceedings for divorce, the Respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state particulars of such adultery, cruelty, or desertion as required in the case of petition under clauses (d) and (f) of Rule 4, and the particulars of any relief which he claims on the said grounds.

(13) Interveners in wife's petition.-

(i) Unless the Court for good cause shown otherwise directs:

(a) Where the husband is charged with adultery with a named female person a certified copy of pleading or material portion thereof containing such charge shall be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.

(b) Where the written statement of the Respondent alleges adultery by the petitioner with a named male person a certified copy of such statement or such material portion thereof containing such allegation shall be served on such person, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.

(ii) Costs regarding Intervention.-

(a) Whenever the Court finds that an intervener has no sufficient grounds for intervening, it may order the intervener to pay the whole or any part of the costs occasioned by the application to intervene.

(b) Whenever the Court finds that the charge or allegation of adultery against the intervener made in any petition or written statement is baseless or not proved and that the intervention is justified, it may order the person making such charge or allegation against the intervener to pay to the intervener the whole or any part of the costs of intervention.

(14) Answer.-A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges or allegation against such intervener.

(15) Intervention by third party.-During the progress of the petition under Chapter V or VI of the Act, any person suspecting that any parties to the petition are or have been acting in collusion, or the petitioner has committed fraud or he has concealed some material facts from the Court for the purpose of obtaining the decree prayed for, shall be at liberty to apply to the Court stating the circumstances and facts of such collusion, fraud and concealment, as the case may be. The application shall be supported by an affidavit. When such application is filed, the Court shall give notice thereof, to the parties concerned and after hearing them and taking necessary evidence pass the necessary orders:

(i) If the Court comes to the conclusion that such collusion fraud or concealment of material fact is proved, then the original petition shall be dismissed and the intervening third party shall be awarded his costs from the parties, guilty of such collusion, fraud or concealment of facts.

(ii) Whenever such application is made and the Court comes to the conclusion that the intervening third party had no grounds or no sufficient grounds for intervening, it may order him to pay the whole or any part of the costs occasioned by his intervention.

(16) Mode of taking evidence.-The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as [109] a witness and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify the respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the petition of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party, orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

(17) Damages.-Any husband may, either in a petition for divorce or judicial separation, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner

(i) such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service in accordance with the provisions of Rule No. 11.

(ii) the damages to be recovered on any such petition shall be ascertained by the said Court, although the respondent or either of them may not appear. After the decision has been given, the Court may direct in what manner the damages shall be paid or applied.

(18) Costs.-Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceeding:

Provided that the co-respondent shall not be ordered to pay the petitioner's cost:

(i) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a

prostitute or;

(ii) if the co-respondent had not, at the time of adultery, reason to believe the respondent to be a married woman.

(19) Taxation of Costs.-Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in suits under the Indian Divorce Act, IV of 1869.

(20) Order as to Costs.-The award of costs shall be within discretion of the Court and the Court shall make an order about the same while passing the decree.

(21) Power to adjourn.-The Court may from time to time, adjourn the hearing of any petition under the Act, and may require further evidence thereon if it sees fit so to do.

(22) Transmission of certified copy of the Decree.-The Court shall send a certified copy of every decree for divorce or nullity or dissolution of marriage to the Marriage Officer appointed under section 3 of the Act.

279. RULE :-

(1) Short title and Commencement.-

(i) These Rules may be called the Hindu Marriage and Divorce Rules, 1955.

(ii) These rules shall come into force on 1st December, 1955.

(2) Definitions.-

(i) "Act" means the Hindu Marriage Act, 1955 (Act XXV of 1955).

(ii) "Code" means the Code of Civil Procedure, 1908.

(iii) "Court" means the Court mentioned in section 3 (b) of the Act.

(3) Petition.-

(a) Every petition under the Act shall be accompanied by certified extract from the Hindu Marriage Register maintained under section 8 of the Act or from the Register maintained under the Bombay Registration and Marriage Act (Bombay Act V of 1954), where the marriage has been registered under the Bombay Act or this Act.

(b) Every petition for divorce on any of the grounds mentioned in clause (viii) or (ix) of sub-section (1) of section 13 of the Act shall be accompanied by a certified copy of the decree for judicial separation or for restitution of conjugal rights as the case may be.

(4) Contents of petitions.- (i) In addition to the particulars required to be given under Order VII, rule 1 of the Civil Procedure Code and section 20 (1) of the Act, every petition for judicial separation, nullity of marriage and divorce shall contain the following particulars:

(a) The place and date of marriage.

(b) The name, status and domicile of the wife and husband before and after the marriage.

(c) The principal permanent address where the parties cohabited including the address where they last resided together;

(d) Whether there is living any issue of the marriage and, if so, the names and dates of birth, or ages of such issues

(i) in every petition presented by a husband for divorce on the ground that his wife is living in adultery with any person or persons or for judicial separation on the ground that his wife has committed adultery with any person or persons, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained;

(ii) in every petition presented by a wife for divorce on the ground that her husband is living in adultery with any woman or women or for judicial separation, on the ground that her husband has committed adultery with any woman or women, the petitioner shall state the name, occupation and place of residence of such woman or women, so far as they can be ascertained;

(e) Whether there have been in any Court in India, and if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties and the result of such proceedings;

(f) The statement that there is no collusion between the petitioner and the other party to the marriage.

(g) The matrimonial offence or offences charged, set out in separate paragraphs with the time and place of its or their alleged commission;

(h) Property mentioned in section 27 of the Act, if any;

(i) The relief or reliefs prayed for.

(5) Necessary parties.-

(a) In every petition for divorce or judicial separation on the ground that the Respondent is living in adultery or has committed adultery with any person, the petitioner shall make such person a co-respondent. The petitioner may,

however, apply to the Court by an application supported by an affidavit for leave to dispense with the joinder of such person as a co-respondent on any of the following grounds;

(i) that the name of such person is unknown to the petitioner although he has made due efforts for discovery;

(ii) that such person is dead;

(iii) that the respondent being the wife is leading a life of a prostitute and that the petitioner knows of no person with whom adultery has been committed;

(iv) for any other sufficient reason the Court may deem fit to consider.

(b) In every petition under section 13 (2) (i) of the Act the petitioner shall make "the other wife" mentioned in that section a co-respondent.

(c) In every petition under section 11 of the Act on the ground that the condition in section 5 (1) is contravened, the petitioner shall make the spouse alleged to be living at the time of the marriage a co-respondent.

(6) Verification of Petition.-Statements contained in every petition shall be verified by the petitioner or some other competent person in a manner required by the Code of Civil Procedure for the time being in force for the verification of plaints.

(7) Forms of petitions.-The petitions made under the Act shall so far as possible, be made in the forms prescribed in the Schedule to the Indian Divorce Act, 1869 (IV of 1869).

(8) Petitions on behalf of Lunatics.-When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than the petition for restitution of conjugal rights, may be brought, on his or her behalf, by the person entitled to his or her custody.

(9) Petitions by minors.-

(i) Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

(ii) The next friend shall file an affidavit along with the petition which shall state the age of the minor, that the next friend has no adverse interest to that of the minor and that the next friend is otherwise a fit and proper person to act as such.

(iii) The Court may on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such other orders as it may deem fit.

(10) Application for leave under section 14 of the Act.-

(i) Where any party to a marriage desires to present a petition for divorce within three years of such marriage, he or she shall obtain leave of the Court under section 14 of the Act on ex-parte application made to the Court in which the petition for divorce is intended to be filed.

(ii) The application shall be accompanied by the petition intended to be filed bearing the proper court-fee under the law and in accordance with the rules. The application shall be supported by an affidavit made by the petitioner setting out the particulars of exceptional hardships to the petitioner or exceptional depravity on the part of the respondent on which leave is sought.

(iii) The evidence in such application may, unless the Court otherwise directs, be given by affidavit.

(iv) When the Court grants leave, the petition shall be deemed to have been duly filed on the date of the said order. The petitioner within a week of the date of the said order shall file sufficient number of copies of application for leave and order of the Court thereon and of the petition for divorce for service upon the respondent in the petition.

(11) Service of copy of application for and order granting leave on the Respondents and procedure after service.-

(i) When the Court grants leave under the preceding rule a copy of the application for leave and order granting leave shall be served on each of the respondents alongwith the notice of the petition for divorce.

(ii)

(a) When the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or improperly obtained, he or she shall set forth in his or her written statement the grounds with particulars in which the grant of leave is sought to be contested.

(b) The Court may, if it so deems fit, frame, try and decide the issue as to the propriety of the leave granted as preliminary issue.

(c) The Court may, at the instance of either party, order the attendance for examination or cross-examination of any deponent in the application for leave under the preceding rule.

(12) Notice.-The Court shall issue notice to the respondent and co-respondent, if any. The notice shall be

accompanied by a copy of the petition. The notice shall require, unless the Court otherwise directs, the respondent or co-respondent to file his or her statement in Court within a period of four weeks from the service of the notice and to serve a copy thereof upon each of the other parties to the petition within the aforesaid period.

(13) Service or Petitions.-Every petition and notice under the Act shall be served on the party affected thereby in the manner provided for service of summons under Order V of the Civil Procedure Code:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

(14) Written statement in answer to petition by Respondents.- The Respondent may and, if so required by the Court, shall present a written statement in answer to the petition. The provisions of Order VIII of the Code shall apply mutatis mutandis to such written statements. In particular, if in any proceedings for divorce the Respondent opposes the relief sought in the petition on the ground of the petitioners adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion.

(15) Intervener's petition.-

(i) Unless the Court for good cause shown otherwise directs where in the petition or in the written statement the husband or the wife is charged with adultery with a named person, a certified copy of pleading or material portion thereof containing such charge shall be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled within the time therein specified to apply for leave to intervene in the cause.

(ii)

(a) Costs regarding Intervention.-Whenever the Court finds that an intervener had no sufficient grounds for intervening, it may, order the intervener to pay the whole or any part of the costs occasioned by the application to intervene,

(b) When the Court finds that the charge or allegation of adultery against the intervener made in any petition or written statement is baseless or not proved and that the intervention is justified, it may order the person making such charge or allegation against the intervener to pay to the intervener the whole or any part of the costs of intervention.

(16) Answer.-A person to whom leave to intervene has been granted may file in the Court an answer to petition of written statement containing the charges or allegations, against such intervener.

(17) Mode of taking evidence.-The witnesses in all proceeding before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined like any other witness:

Provided that the parties shall be at liberty to verify the respective cases in whole or in part by affidavit but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined, by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

(18) Costs.-Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established the Court may order the co-respondent to pay the whole or any part of the costs of the proceeding:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs:

(i) if the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute or,

(ii) if the co-respondent had not, at the time of adultery, reason to believe the respondent to be married person.

(19) Applications for alimony and maintenance.-

(a) Every application for maintenance pendente lite permanent alimony and maintenance, or for custody, maintenance and education expenses of minor children, shall state the average monthly income of the petitioner and the respondent, the sources of these incomes, particulars of other movable and immovable property owned by them, the number of dependents on the petitioner and the respondent, and the names and ages of such dependents.

(b) Such application shall be supported by an affidavit of the applicant.

(20) Taxation of Costs.-Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in a suit.

(21) Order as to Costs.-The award of costs shall be within the discretion of the Court.

(22) Transmission of certified copy of the decree.-The Court shall send a certified copy of every decree for divorce or nullity or dissolution of marriage to the Registrar of Marriages in charge of the Hindu Marriage Register, if any, or in charge of Register maintained under the Bombay Act V of 1954.

(23) Applicability of the Rules of the City Civil Court, Bombay. Where any applications or petitions under the Act are

filed in the City Civil Court, Bombay, the rules of that Court, except in so far as they are inconsistent with the Act and these rules, shall apply to such applications or petitions.

CHAPTER 16
Insolvency Proceedings

280. RULE :-

I. In exercise of the powers conferred by the proviso to sub-section (1) of section 3 of the Provincial Insolvency Act (V of 1920), and in supersession of Government Notification in the Judicial Department, No. 3358, dated 16th June 1910, the Provincial Government is pleased to invest all Courts of Civil Judges (Junior Division) with jurisdiction under the Act in respect of the following cases, namely:-

(1) Where the debtor who presents an insolvency petition

(a) has been arrested or imprisoned in execution of the decree of any Court for the payment of money, or

(b) an order of attachment in execution of such a decree has been made, and is subsisting against his property; and

(2) Where the creditor who presents an insolvency petition against a debtor is the holder of a decree passed by any Court against such debtor for the payment of money.

II. The Provincial Government in exercise of the said powers is pleased to invest all Courts of Civil Judges (Senior Division) with jurisdiction under the said Act in all classes of cases arising within the local limits of the jurisdiction of such Courts. The Bombay Provincial Insolvency Rules, 1954.

281. RULE :-

By virtue of the provisions of section 79 of the Provincial Insolvency Act (V of 1920), and of all other powers thereunto enabling the High Court of Judicature at Bombay has, with the previous sanction of the Provincial Government, and in supersession of the Bombay Provincial Insolvency Rules, 1909, made the following rules for carrying into effect the provisions of the said Act:

I. These rules may be called "The Bombay Provincial Insolvency Rules, 1924", and shall apply to all proceedings under the Provincial Insolvency Act, 1920, in any Court subordinate to the High Court of Judicature at Bombay. They shall come into force on the 1st day of December, 1924, and shall apply to all proceedings thereafter instituted and, as far as may be, to all proceedings then pending.

II. The forms mentioned in these rules are the forms in Appendix D at page 331, Vol. II and shall be used with such variations as circumstances may require.

III. In these rules unless there is anything repugnant in the subject or context, "the Act" means the Provincial Insolvency Act, V of 1920; "the Court" includes a receiver when exercising the powers of the Court in accordance with section 80 of the Act; "receiver" means a receiver appointed by the Court under section 56 (1) of the Act. and (except where the context otherwise requires) includes an Official Receiver; "interim receiver" means a receiver appointed by the Court under section 20 of the Act; "proved debt" means the claim of a creditor so far as it has been admitted by the Court. (2) Save as otherwise provided, all words and expressions used in these rules shall have the same meaning as those assigned to them in the Act.

IV.

(1) A creditor, desirous that an insolvency notice under section 6A may be issued, shall produce a certified copy of the decree or order on which the notice is founded and file the notice, together with a request to the Court for issue. The creditor shall at the same time lodge with the Court two copies of the insolvency notice to be sealed and issued for service.

(2) The insolvency notice to be given under the provisions of section 6A of the Act shall be in Form 3.

(3) The notice shall state

(i) the name and address of creditor or creditors;

(ii) the decrees or orders for payment of money on which creditors' claims are based with particulars thereof, viz., the number of suit or proceeding in which the decree or order has been made, the date thereof and the amount claimed as due thereunder;

(iii) the aggregate amount due to the creditor or creditors giving the notice under these decrees and orders;

(iv) that the execution of any of these decrees or orders has not been stayed; and

(v) the date (which shall not be less than one month) before which compliance with the requirements of the notice is asked for.

(4) The notice shall require the debtor to pay to the creditor the amount claimed or to furnish security for the payment of the amount to the satisfaction of the creditor or his agent.

(5) There shall also be endorsed on every notice an intimation to the debtor that if he has a counter-claim, or set-off, which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not

lawfully set up in the suit or proceeding in which the decree or order was made against him, he must within the time specified in the notice apply to the Court to set aside the notice.

(6) Non-compliance by the debtor with the requirements of the notice within the specified period will be treated as an act of insolvency on the debtor's part.

(7) The insolvency notice shall be served on the debtor personally or by registered post.

(8) If the notice is refused, or unserved for any other reason, it shall be published in the local newspaper and such publication shall be deemed to be sufficient service of notice.

(9) Any person served with an insolvency notice may within the time allowed for compliance with that notice or such further time as the Court may for sufficient reason see fit to allow apply to the Court to set aside the insolvency notice:

(a) on the ground that he has paid the amount claimed or furnished security for the payment of the amount to the satisfaction of the creditor or his agent;

(b) on the ground that he has a counter-claim or set-off which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not lawfully set up in the suit or proceeding in which the decree or order was made; or

(c) on any other ground which would in law entitle him to have the notice set aside.

(10) Where an application to set aside the insolvency notice has been made and it cannot be disposed of until after the expiry of the time specified in the notice as the day on which the act of insolvency will be complete, no act of insolvency shall be deemed to have been committed under the notice until the application shall be disposed of.

Petitions

V.

(1) Every insolvency petition shall be entered in the Register of Insolvency Petitions to be maintained in Form No. 19 in all Courts exercising insolvency jurisdiction and shall be given a serial number in that register and all subsequent proceedings in the same matter shall bear the same number.

(2) Every petition, application, affidavit or order in any proceeding under the Act or under these rules shall be headed by a cause-title in Form No. 1.

VI.

(1) When an insolvency petition presented by a creditor is admitted the creditor shall, within seven days thereafter, furnish copy or copies of the petition for service on the debtor or debtors, and in the case of petitions founded on matters mentioned in section 6 (a), (b) and (c) of the Act, the creditor shall, within seven days after its admission furnish copy or copies thereof for service on transferee or transferees, also. The Chief Ministerial Officer of the Court shall sign the copy or copies if on examination he finds it or them to be correct.

(2) The copy or copies shall be served together with the notice of the order fixing the date for hearing the petition on the debtor or debtors and transferee or transferees or upon, the person whom the Court orders notice to be served. Such notice may, in the discretion of the Court, require the debtor or debtors to file a schedule containing all the particulars mentioned in section 13 (d) and (e) within such time not being less than ten days from date of service of notice as the Court shall determine.

VII. A debtor's petition shall be in Form No. 2 and a creditor's petition shall be in Form No. 5.

VIII. If a debtor against whom an insolvency petition has been admitted dies before the hearing of the petition, the Court may order that notice of the order fixing the date for hearing the petition shall be served on his legal representative or on such other person as the Court may think fit in a manner provided for the service of summons.

Proof of Debts.

IX.

(1) Unless otherwise ordered, all claims shall be proved by affidavit in Form No. 9 in the manner provided in section 49 of the Act, provided that before admitting any claim the Court may call for further evidence.

(2) The affidavit may be made by the creditor or by some person authorized by him, provided that if the deponent is not the creditor, the affidavit shall state the deponent's authority and means of knowledge.

(3) As soon as may be after proof of any debt is tendered, the Court shall, by order in writing, admit the creditor's claim in whole or in part or reject it. provided that when a claim is rejected in whole or in part the order shall state briefly the reasons for the rejection.

(4) A copy of every order rejecting a claim, or admitting it in part only, shall be sent by the Court by registered post to the person making the claim within seven days from the date of the order.

X. In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or by some other person on behalf of all such creditors. Such proof should be in Form No. 10. Schedule

of Creditors.

XI. As soon as the schedule of creditors has been framed, a copy thereof, shall, if a receiver has been appointed, be supplied to him, and all subsequent entries and alterations made therein shall be communicated to the receiver, except in cases where the Official Receiver himself frames such schedule under section 80.

XII.

(1) If a debtor submits a proposal under section 38 (1) of the Act, the Court shall fix a date for the consideration of the proposal, and notice thereof together with a copy of the terms of the proposal shall be sent to every creditor who has proved.

(2) At the meeting for the consideration of the proposal the debtor shall be entitled to address the Court in person or by lawyer in support of the proposal, and every creditor who has proved shall be entitled in person or by lawyer to question the debtor and to address the Court.

XIII.

(1) Every receiver or interim receiver other than an Official Receiver shall be required to give such security as the Court thinks fit; provided that a Nazir, or other Government Officer who is appointed a receiver or interim receiver ex-officio, and who has already under the Public Accountants' Default Act, XII of 1850, or otherwise, given security, that is still valid, for the due account of all money which shall come into his possession or control by reason of his office, shall not be required to give such security unless, owing to the extent of the assets likely to be realized, or for other special reasons, the Court thinks it desirable to do so.

(2) The Court shall not require an Official Receiver to give security in each case in which he acts under section 57 (2); but he shall, previous to his admission, or within such further time as the Court may allow, give general security by entering into a recognizance with one or more sufficient sureties in Form No. 18 or by depositing Government Securities, in such sum as the High Court may fix in this behalf.

(3) Where a petition is referred to an Official Receiver for disposal in exercise of his powers under section 80, the Court ordinarily shall, when the debtor is the petitioner, and may, when a creditor is the petitioner, at the same time appoint him an interim receiver under section 20, and confer on him all the powers conferrable on a receiver under Order XL, rule (1) (d), of the Civil Procedure Code. Such Official Receiver, upon making an order of adjudication, shall at once apply to the Court for an order appointing him Receiver for the property of the Insolvent under sections 56 and 57. The Official Receiver should at the same time submit a draft order in Form No. 8 with the necessary modifications, for signature and sealing.

XIV.

(1) The Court may remove or discharge any receiver other than an Official Receiver. Any receiver so removed or discharged or any Official Receiver suspended or dismissed by the State Government, shall, unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books, accounts or other documents relating to the debtor's property which are in his possession or under his control to such person as the Court may direct.

(2) If an order of adjudication is annulled, the receiver, if any, shall unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books, accounts or other documents relating to the debtor's property which are in his possession or under his control to the debtor or to such other person as the Court may direct.

XV. Every receiver or interim receiver shall be deemed for the purpose of the Act and of these rules to be an officer of the Court.

XVI.

(1) Every application to the Court made by a receiver or an interim receiver shall be in writing.

(2) The Court may order that notice of any application by the receiver and of the date fixed for the hearing of the application shall be sent by registered post to all creditors who have proved.

XVII.

(1) The remuneration of receivers other than Official Receivers shall be in such proportion to the amount of the dividends distributed as the Court may direct, provided that if over Rs. 25 it does not exceed five per centum of the amount of the dividends.

(2) When a receiver realizes the security of a secured creditor, the Court may direct additional remunerations to be paid to him with reference to the amount of work which he has done and the benefit resulting to the creditors.

(3) If a receiver other than the Official Receiver has been appointed in an insolvency in which the Court makes an order approving a proposal under section 39 of the Act, the remuneration to be paid to the receiver shall be fixed by the Court, and the order approving the proposal shall make provision for the payment of the remuneration and shall be subject to the payment thereof.

XVIII. The receiver in making his report shall state whether in his opinion any of the facts mentioned in section 42, sub-section (1) of the Act exist, and if the debtor makes a proposal under section 38 (1) of the Act, the receiver

shall state in his report whether in his opinion the proposal is reasonable and is likely to benefit the general body of the creditors and shall state the reasons for his opinion.

XIX. If the Court directs, the debtor shall furnish the receiver or if a receiver has not been appointed, the Court, with a trading account, and an account showing all moneys and securities paid, disposed of or encumbered, or recovered by or from the debtor or on his account and his income and the source thereof for such period as the receiver or, if a receiver has not been appointed, the Court may direct: provided that the receiver shall not, without the previous sanction of the Court, direct the debtor to furnish accounts for more than two years before the date of the presentation of the insolvency petition.

XX.

(1) The receiver shall keep a cash book and such books and other papers as are necessary to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as the Court may direct. In the absence of a direction in that behalf, the receiver shall submit his accounts within six months of his appointment and will thereafter submit his accounts once in every three months. Such accounts shall be audited by such person or persons as the Court may direct. The costs of the audit shall be fixed by the Court and shall be paid out of the estate.

(2) Any creditor who has proved his debt, or the debtor, shall be entitled to obtain a copy of the Receiver's accounts or any part thereof relating to the estate, on payment of the legal fees therefor.

XXI. The receiver shall deposit all valuable securities for safe custody with the Nazir or, if so ordered by the Court, in the State Bank of India, and whenever a sum exceeding Rs. 500 shall stand to the credit of any one estate the receiver shall give notice thereof to the Court, and, unless it shall appear that a dividend is about to be immediately declared, he shall obtain the Court's order to invest the same in a Promissory Note of the Government of India or in Post Office cash certificates.

XXII. No dividend shall be distributed by a receiver without the previous sanction of the Court.

XXIII. The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by post.

XXIV.

(1) An application for discharge shall not ordinarily be heard until after the schedule of creditors has been framed and the receiver has submitted his report. The receiver, if he is in a position to make it and has not already done so, shall file his report in Court not less than fourteen days before the date fixed for the hearing of the application.

(2) Every creditor who has proved shall be entitled in person or by lawyer to appear at the hearing and oppose the discharge: provided that he has served upon the insolvent and upon the receiver, if any not less than seven days before the date fixed for the hearing a notice stating the ground of his opposition to the discharge.

(3) A creditor who has not served prescribed notices shall not, unless the Court otherwise directs, be permitted to oppose the discharge of the debtor; and a creditor who has served the prescribed notices shall not be permitted, unless the Court otherwise directs to oppose the discharge on any grounds not specified in the notice.

(4) At the hearing of the application the Court may hear any evidence which may be tendered by a creditor who has served the prescribed notices, or by the receiver and also any evidence which may be tendered on behalf of the debtor and shall examine the debtor, if necessary, for the purpose of explaining any evidence tendered and any hear the receiver, the debtor, in person or by lawyer and any person or by lawyer who has served the prescribed notice.

(5) Any case in which the debtor fails to apply for his discharge the period allowed by the Court under section 27 shall be brought up for orders under section 43. If the Court has omitted to specify a period under section 27 (1) and the debtor has not already applied for discharge the Court upon receipt of the receiver's report shall fix a period within which the debtor shall apply for an order of discharge. Notice of such period shall be given to the Receiver and the debtor and if on its expiry, the debtor has not applied accordingly, the case shall be brought up for orders under section 43.

XXV.

(1) The notices to be given under sections 30 and 37 (2) of the Act shall be published in the Bombay Government Gazette, in English, and, if the Court so directs, in any suitable newspaper in English or regional language, and copies of the notices in English and in the language of the Court shall be affixed to the notice-board of the Court.

(2) The notices, to be given under sections 19 (2), 38 (1) and 14(1) of the Act shall be published in any suitable newspaper in English or regional language, and if the Court so directs, in the Bombay Government Gazette, and copies of the notices in English and in the language of the Court shall be affixed to the notice board of the Court.

(3) Notice of the date fixed for the hearing of an insolvency petition under section 19 (1) of the Act shall be sent by the Court by registered post, if the petition is by the debtor, to all creditors, mentioned in the petition, and if the petition is by a creditor, to the debtor, not less than fourteen days before the said date.

(4) When in a creditor's petition it is alleged that the debtor has committed one or more of the acts of insolvency mentioned in clause (a), (b) or (c) of section 6, notice of the date fixed for hearing of the Insolvency petition under

section 19(1) of the Act, shall also be served on the transferee or transferees or their successors in title by registered post or otherwise as directed by the Court to the address supplied by the petitioner.

(5) Notice of the date fixed for the consideration of a proposal under section 38 (1) of the Act shall be sent by the Court by registered post to all creditors who have tendered proof of their debts not less than fourteen days before the said date.

(6) Notice of the date fixed for the hearing of an application for discharge under section 41 (1) of the Act shall be despatched by the Court by registered post to all persons whose names have been entered in the schedule of creditors not less than fourteen days before the said, date.

(7) The notice to be given under section 64 of the Act shall be by the receiver by registered post to all persons whose claims creditors have been notified but not proved not less than one month before the limit of time fixed for proving claims.

(8) The notice to be given under section 33 (3) of the Act shall be served only on the debtor and on the creditors whose names appear in the schedule of creditors and may, if the Court so directs, be served on any or all such creditors by registered post.

(9) The Court may instead of or in addition to forwarding a notice by registered post under the foregoing rules cause it to be served in the manner prescribed for the service of summons.

(10) In addition to the prescribed methods of publication any notice may be published otherwise in such manner as the Court may direct, for instance, by affixing copies in the Court house or by beat of a drum in the village in which the debtor resides.

(11) It shall not be necessary to give notice of the date to which the hearing of a petition or of an application for discharge or the consideration of a proposal is adjourned.

XXVI. When an estate is ordered to be administered in a summary manner under section 74 of the Act the provisions of the Act and rules shall, subject to any special directions of the Court and in addition to the modifications contained in section 74 be modified as follows, namely:

(i) There shall be no advertisement of any proceedings in a local paper.

(ii) The petition and all subsequent proceedings shall be entitled "Summary Case."

(iii) The notice of the hearing of the petition to the creditors shall be in Form No. 17.

(iv) The Court shall examine the debtor as to his affairs but shall not be bound to call a meeting of creditors, but the creditors shall be entitled to be heard and to cross-examine the debtor.

(v) The appointment of a receiver will generally not be necessary and the Court may act under section 58 of the Act in order to reduce the costs of the proceedings.

XXVII. If no receiver is appointed and the Court, in exercise of its powers under section 58 of the Act, sells any immovable property of the debtor, the deed of sale of the said property shall be prepared by the purchaser at his own cost and shall (subject to any modifications the Court thinks necessary) be signed by the Presiding Officer of the Court.

XXVIII.

(1) All proceedings under the Act down to and including the making of an order of adjudication shall be at the cost of the party prosecuting them; but when an order of adjudication has been made, the costs of the petitioning creditor shall be taxed and be payable out of the estate.

(2) Before making an order in an insolvency petition, presented by a debtor, the Court may require the debtor to deposit in Court a sum sufficient to cover the costs of sending the prescribed notices of the hearing of petition.

(3) No costs incurred by a debtor or, incidental to, an application to approve a composition or scheme shall be allowed out of the estate, if the Court refuses to approve the composition or scheme.

(4) Whenever a creditor presents an insolvency petition he shall deposit in Court the sum of Rs. 150 to cover expenses. Such deposits shall be paid out of the first available assets realized.

XXIX.

(1) Where any notice, declaration, petition or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his own signature, e.g. "Brown and Co., by James Green, a partner in the said firm."

(2) Any notice or petition for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm within the jurisdiction of the Court, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

(3) The provisions of the last preceding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own.

(4) Where a firm of debtors file an insolvency petition the same shall contain the names in full of the individual partners, and if such petition is signed in the firm name the petition shall be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in the filing of the same.

(5) An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in that firm.

(6) In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs.

(7) The joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

(8) Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors and the proposal made to each set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the adjudication order shall be annulled only so far as it relates to the estate the creditors of which have confirmed the composition or scheme.

(9) If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last mentioned firm shall be deemed to be a separate set of creditors, and to be in the same footing as the separate creditors of any individual member of the firm. And when any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

XXX. All insolvency proceedings may be inspected at such times and subject to such restrictions, as the Court may prescribe, by the receiver, the debtor, any creditor who has proved or any legal representative on their behalf.

XXXI. The fees allowed to lawyers as costs in any proceeding under the Act shall be such as are allowed under the rules of the Court for a miscellaneous proceeding.

282. RULE :-

The following rules have been framed with respect to the appointment and procedure of Committees of Inspection:

(1) In any case in which the Court authorises the creditors to appoint a Committee of Inspection pursuant to the provisions of section 67-A of the Act, the Court shall, by the order of adjudication or any subsequent order, fix a date for the holding of a meeting of the persons qualified to vote for the purpose of selecting the members of the Committee. A notice mentioning the date fixed shall be put up on the Notice Board of the Court.

(2) The Committee shall consist of not more than five, nor less than three, persons.

(3) The Committee shall meet at such time as they shall from time to time appoint, and failing such appointment, at least once a month, and the Receiver or any two members of the Committee may call a meeting as and when necessary.

(4) The Committee may act by a majority of members present at a meeting, but shall not act unless a majority of the Committee is present at the meeting.

(5) Any member of the Committee may resign his office by notice in writing signed by him and delivered to the Receiver.

(6) If a member of a Committee becomes insolvent or is absent from five consecutive meetings of the Committee, his office shall thereupon become vacant.

(7) Any member of a Committee may be removed by a resolution passed at any meeting of the creditors of which seven days' notice has been given stating the object of the meeting.

(8) On a vacancy occurring in the office of a member of a Committee, the Receiver shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another person to fill the vacancy.

(9) The continuing members of the Committee of Inspection, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body, and when the number of members of Committee is for the time being less than five, the creditors may increase their number so that it does not exceed five.

(10) When a Committee has been appointed, the Receiver shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any suggestions that the Committee may give by resolution. If the Receiver thinks that any suggestion of the Committee is not in the interests of the general body of creditors, he may report the matter to the Court, which will give such instructions as it may consider just and necessary.

(11) The Court shall afford an opportunity to the Committee of Inspection for being heard before orders are passed on any such report submitted by the Receiver.

(12) The Court may, in order to decide the matter in dispute, call meeting of the general body of creditors and consider their views before arriving at a conclusion.

(13) The Receiver shall ordinarily act as the Secretary of the Committee and maintain a record of its proceedings in a bound register.

(14) No defect or irregularity in the appointment or selection of a member of the Committee of Inspection shall vitiate any act done by the Receiver in good faith.

(15) The Receiver shall afford all the members of the Committee, both individually and collectively, reasonable facilities to examine at his office any of his records and registers during the working hours of the Court. The Receiver shall also give the Committee and its members V any information which they require and give them every assistance and facility in the discharge of their functions.

(16) The Receiver shall, from time to time as ordered by the Court and not less than once in every quarter, submit to a member of the Committee appointed by the Committee to receive it an account of the estate duly verified.

283. RULE :-

The work of the Nazirs and other Court Officers responsible for giving effect to Insolvency decrees should be sufficiently checked in order to expedite all Insolvency Proceedings, which, generally long at all times are still further protracted for want of sufficient check.

284. RULE :-

(i) All clear cases of offences committed during Insolvency Proceedings with the intention of defrauding creditors need deterrent punishments.

(ii) Attention is drawn to the necessity of enforcing strictly the provisions of section 22 and utilizing, when necessary the provisions of section 69 against a debtor who has willfully failed to perform the duties imposed on him thereunder.

(iii) The following principles should be observed in applying the provisions of section 29 of the Act. In any case in which the suit is merely one to establish a claim which in insolvency would be a provable debt or liability the correct course clearly is to stay the suit in order that the plaintiffs claim may be proved in the insolvency and give leave to prove in the insolvency than that a law suit should go on either against the insolvent who has no interest or his receiver. The only cases in which suits should be allowed to go on against the insolvent or his receiver are cases in which the insolvent has an interest of his own, or cases in which the plaintiff is insisting upon a right which is not a mere claim to a provable debt, e.g., where the plaintiff is a mortgagee insisting upon his security.

285. RULE :-

Attention is also drawn to the necessity of enforcing strictly the provisions of section 41 of the Provincial Insolvency Act (Vof 1920), and obliging insolvents to apply for discharge within the time specified, and utilizing the provisions of section 43. Unless an insolvency is in due form annulled the insolvent should in every case be proceeded against, if he does not apply for his discharge within the time limited. It may be that receivers postpone or agree to the postponement of the date for application for discharge, because the discharge when granted terminates the time during which any property accruing to the insolvent ensures; for the benefit of his creditors. In such cases however the proper course as a rule, is not to postpone the application for discharge, but to make the application, the Court being able to suspend the discharge for such period as is proper.

CHAPTER 17

Miscellaneous Proceedings Requiring Judicial Inquiry

286. RULE :-

(i) Under the head Miscellaneous Judicial Proceedings are included all proceedings and enquiries of a judicial nature which do not form part of the proceedings in a suit or darkhast or appeal pending before the Court.

(ii) The expression includes: Proceedings under Regulation VIII of 1827; Proceedings under section 83 of the Transfer of Property Act; Proceedings of a judicial nature under the Guardians and Wards Act; Proceedings on a reference by a Magistrate under section 146, Criminal Procedure Code; Proceedings under sections 476, 476-A, 478 and 480, Criminal Procedure Code; Proceedings under Order IX, rules 4, 9 and 13, Civil Procedure Code; Proceedings under Order XXI, rule 2, to certify a payment when there is no darkhast pending; Proceedings under Order XXI, rules 58, 97 and 100; Proceedings on application under Order XXI, rules 89 and 90, Civil Procedure Code to set aside a sale; Proceedings under Order XXI, rule 91, by a purchaser to set aside a sale; Proceedings under Order XXXIII, rule 2, for permission to sue as a pauper; Proceedings under Order XLI, rules 19 and 21 for re-admission of a dismissed appeal or under Order XLI, rule 21, to rehear an appeal decided ex parte; Proceedings under section 5 of the Indian Limitation Act; Proceedings under the Provincial Insolvency Act: Proceedings under Indian Succession Act. XXXIX of 1925; Proceedings under section 11 of the C.P. and Berar Money Lenders Act, 1934; Proceedings under section 24 of the Bombay Money Lenders Act; Proceedings under section 47 of the Bombay Agricultural Debtors Relief Act; Proceedings on Applications under Special Acts. And other proceedings on application in which relief is asked against a person not a party to a suit or proceeding.

287. RULE :-

The instructions as to suits contained in this Manual apply, in so far as they are applicable, to all miscellaneous

proceedings requiring judicial enquiry. All such applications requiring judicial investigation should be verified in the same manner as plaints.

288. RULE :-

All these applications must be registered in the following form:

289. RULE :-

A Roznama or diary of these proceedings should be kept as in the case of suits.

290. RULE :-

The Courts may make use of the provisions of Order XIX of the Code of Civil Procedure regarding affidavits.

CHAPTER 18

Miscellaneous Applications not requiring Judicial Enquiry.

291. RULE :-

The following are some examples of applications not requiring judicial enquiry :

- (1) Applications under section 39 to transfer a decree to another Court for execution.
- (2) Applications under Order XXI. rule 94. for granting a sale certificate.
- (3) Applications under section 152, Civil Procedure Code, for correcting clerical or arithmetical mistakes or an accidental slip or omission in a judgment, decree or order.
- (4) Applications for orders regarding reconstruction of documents in cases where the originals are lost or destroyed.

292. RULE :-

For such proceedings a register in the following form should be kept:

293. RULE :-

Applications entered in the above register are not to be entered in the Inward and Outward Registers (Banisti), which are for correspondence with the District Judge and other officers. The several columns are to be filled in as follows:

Column 1.-The date on which the application was presented.

Column 2.-The Court's consecutive number of the application.

Column 3.-Name of the applicant.

Column 4.-The subject of the application to be stated as concisely as possible.

Column 5.-The orders passed thereon. If the report of the Nazir or other officer of the Court be required, it should be so mentioned, and the matter, when it again comes before the Court, should be re-entered, but solely by its number in column 2, the date of the last previous entry in column 3, and the final order in column 5, the date of the final order being noted in column 6 of the former entry.

Column 6.-Remarks, such as those mentioned in the explanation of column 5 or the like.

CHAPTER 19

Execution of Decrees

294. General :-

Where disputes arise in the course of execution proceedings the provisions as to suits, unless inapplicable, should be followed. In such cases, issues must be framed, evidence taken and judgment written according to the law applicable to suits.

295. RULE :-

The law relating to the execution of decrees is to be found in sections 36 to 67, 73, 74 and 135 and Order XXI of the Code. The Code imposes on the Judge considerable responsibilities in execution matters. The work of execution is carried out by the Court through its agents. It is essential, according to the scheme of the Code, that the Court should know fully and precisely how far its decrees are satisfied. The Court has the responsibility of preventing the sale of property in which the judgment-debtor does not prima facie appear to have an interest; of seeing that property of a value far in excess of the amount of debt is not sold; of seeing that a reasonable price is realised; and of securing that intending purchasers shall have the opportunity of knowing all that is material for them to know concerning the property. As the sale is held by the Court, it must be conducted in a way just to all parties concerned.

296. Applications for execution of decrees and orders thereon :-

Except an application made immediately after a decree is passed, every application for execution shall be made in writing in Form No. 6, Appendix E, and signed and verified.

297. RULE :-

As soon as an application for execution is presented the date of presentation shall be endorsed thereon by the Clerk of the Court or such other Officer as may be appointed by the Court.

298. RULE :-

The next step is the examination of the application. This examination should be particularly directed to ascertaining

- (i) whether it is in conformity with Form No. 6 in Appendix E, Schedule I of the Code,
- (ii) whether it is properly signed and verified,
- (iii) whether it contains the particulars about the number of the suit, names of the parties and date of the decree,
- (iv) whether it contains information as to whether an appeal has been preferred from the decree,
- (v) whether it states if any payment or adjustment of the matter in controversy has been made between the parties subsequent to the decree,
- (vi) whether it contains information about previous applications for execution of the decree, if any,
- (vii) whether it contains particulars about dates of previous applications, if any, and their results,
- (viii) whether it mentions the amount of costs, if any, awarded,
- (ix) whether it gives the name of the person against whom execution of the decree is sought,
- (x) whether it mentions the mode in which the assistance of the Court is required,
- (xi) whether it is filed in time,
- (xii) whether it is accompanied by a copy of the decree,
- (xiii) whether in the case of an application for attachment of movable property, the application is accompanied by an annexure showing the inventory of the property to be attached and its description.
- (xiv) whether, in the case of an application for attachment of immovable property, it contains sufficient details of description of the property to enable its identification, and specifies the share or interest of the judgment-debtor as required by rule 13 of Order XXI.
- (xv) whether in the case of an application for attachment of land assessed to the payment of revenue to the Government, it is accompanied by a certified copy of the current entry in the Record of Rights or Register of Mutations or Register of Tenancies in regard to such land,
- (xvi) whether, where the application is by an heir of the deceased decree-holder, a Succession Certificate is required.

299. RULE :-

The Officer examining the application for execution shall also verify the correctness of the particulars furnished by the applicant so far as they can be ascertained from the records of the Court viz., Register of Suits, Register of applications for execution and previous Darkhast proceedings. He should also ascertain whether any stay order is received from the Appellate Court.

300. RULE :-

If the Officer examining the application (darkhast) finds that it complies with all the requirements and is correct in all respects, he should make an endorsement on the Darkhast 'Examined and ordered to be registered' with the date and his signature. If he thinks that the Darkhast should be amended or corrected, he should refer the matter to the Judge for orders.

301. RULE :-

Where, upon examination, the application is found to be correct and in order, it should be entered in the Register of application for execution. Two separate Registers should be maintained, one for applications for execution of decrees in Regular Suits, and the other for Applications for execution of decrees in Small Cause Suits.

302. RULE :-

Every application for execution of a decree should be placed before the Judge for orders as soon as possible, and in no case later than five days' from its presentation, without the special orders of the Judge.

303. RULE :-

Interlineations, erasures or corrections in the application should be initialled by the party or his lawyer, and by the Officer receiving it.

304. RULE :-

Applications for execution of decrees are proceedings in suit and do not require fresh Vakalatnamas unless the engagement has been terminated by the lawyer or the party engaging him. A memo of appearance should, however, be filed by the lawyer stating that he had filed the vakalatnama in the suit and his engagement still continues.

305. RULE :-

On every application for execution which is found to be in order, the Court shall pass an order directing the execution of the decree or the issue of a notice under Rule 22 or under rule 37 of Order XXI, as the case may require.

306. RULE :-

The returnable date given in the notice which may be issued under the above paragraph should be treated as the date of hearing of the application and the application should be entered on the notice board accordingly.

307. RULE :-

When a decree is ordered to be executed and process issued, the Court should see that it is executed and if it is not executed ascertain the reasons for its non-execution. Certain modes of execution are described in rules 30 to 36 of order XXI.

308. RULE :-

A final order should be made upon every application for execution. Such order may also provide for costs. The final order may be, for example, the dismissal of the application, as provided by Order XXI, rule 57, or an order that no further proceedings are required or can be taken. An order that the application is struck off or that it is consigned to the record is not a satisfactory order. No final order should be made in any case unless the decree holder or his lawyer is present, or has had an opportunity of appearing and applying for an adjournment or for taking further proceedings.

309. General Instructions for the conduct of business in execution proceedings :-

To prevent delay in executing processes, and to avoid postponement of an attachment or sale consequent on the temporary absence of a Civil Judge or the closing of his Court at other times than during vacations and sanctioned holidays, the District Judge should direct the Civil Judge who may be appointed under section 37 of the Bombay Civil Courts Act, XIV of 1869, to perform the duties of the Judge of the vacated Court, to carry on all processes for execution of decrees or other proceedings in execution.

310. RULE :-

If the record of the proceedings in the suit is not before the Court, it may refuse to entertain an application for execution, unless the application is accompanied by a certified copy of the decree. [See O. XXI, r. 11(3)]. But if the application is made to a Court, to which a copy of the decree has been sent under rule 6 of Order XXI of the Civil Procedure Code, a fresh copy of the decree need not be produced with the application.

311. RULE :-

The decree-holder is not entitled to receive back the copy of the decree until the application has been finally disposed of and the period of appeal has expired: thereafter the Court may return the copy, if it deems it fit to do so. The copy should be filed in the proceedings and numbered as an exhibit and costs in respect thereof should be included in the costs of the application. If the copy is not returned to the decree holder it should be kept with the proceedings and eventually sent with them to the record room,

312. RULE :-

A Roznama or diary should be kept for all execution proceedings to which, so far as applicable, the instructions in paragraph 27 of Chapter II apply.

313. RULE :-

A Register of Applications for execution should be kept in Form No. 1 at page 2 of Volume II. It should be regularly written. Entries regarding execution should also be made in the Register of Suits. In column 3 of the Register of Applications the following matters should be entered:

- (i) the first order regarding issue of notice under Order XXI, rules 16, 22 and 37;
- (ii) the orders for issue of process in execution;
- (iii) the final order disposing of the application together with the order regarding costs.

314. RULE :-

A separate register should be kept for applications for the execution of decrees made by a Court in the exercise of its Small Cause Court jurisdiction.

315. RULE :-

(i) Rule 1 of Order XXI requires that when money payable under a decree is paid into Court, notice of such payment shall be given to the decree-holder either by the judgment-debtor or at his instance by the Court. Such notice issued by the Court may be in Form 3 of Appendix H, Schedule I of the Code. The Court should also take such steps as it conveniently can, to prevent moneys due to decree-holders from remaining unpaid and lying with the Court or in the Government Treasury.

(ii) Where money due under decree is remitted to Court by the judgment-debtor by money-order or through a Bank or by other recognised mode and the judgment-debtor or his lawyer is not available to pay the process fees for the notice required to be issued under rule 1 (2) of Order XXI, the notice may be issued initially at Court's costs, but the process fees should subsequently be recovered from the judgment-debtor.

316. RULE :-

Rule 2 of Order XXI shows that it is the intention of the Code that the Court should be informed of all payments and adjustments made out of Court. Bailiffs who have executed or attempted to execute process in execution of a decree should be required to report all payments or adjustments which come to their notice. Nazirs should take special care to have this direction carried out. When a payment or adjustment comes to the notice of the Court which has not been certified by the decree-holder, whether brought to its notice by the judgment-debtor or not, it

is open to the Court to ascertain the facts from the lawyer of the decree-holder, if he is represented by one, or to issue notice to the decree-holder to show cause why he should not certify it. This notice should be in Form I, Appendix E, Schedule I, or the Code.

317. RULE :-

All payments, satisfaction or adjustment whether made out of Court or not, and whether made in execution of a decree in the Court which made it or to which it is sent should be entered in the Register of Suits; and also in the Register of Applications for Execution, if an application for execution be then pending.

318. RULE :-

The payment of decretal amounts to the Court or to the decree-holder by money-order should be encouraged.

319. RULE :-

Where the decree holder has asked that the money should be sent by money-order or by a bank draft the Court may, after making all necessary and lawful deductions, send him the amount due

(1) by money order, if the amount does not exceed Rs. 600;

(2) by bank draft by registered post acknowledgment due provided he submits in advance a duly stamped receipt for the amount due, in the form given below:

Form of Receipt

Received the sum of Rs....(Rupees nP only)

by Bank Draft from the Court at being

the amount deposited in the Court at

in connection with

Dated:

(Stamp)

(Signature of Payee).

320. RULE :-

In all the Subordinate Courts, the Judges should, as a general rule make payments of decretal amounts to decree holders or their lawyers on all working days. This rule may be departed from in Courts where the District Judge considers that the local conditions make daily payments impracticable. In all such cases the District Judge should report the grounds of his opinion to the High Court.

321. RULE :-

In addition to the usual orders, endorsements and reports, each paper filed in an execution proceeding should bear an endorsement showing the number allotted to it and entered in the Roznama and the number of the application for execution. When the execution is completed, all the papers should be placed with the Roznama so as to form a complete case for record.

322. RULE :-

When process for execution is issued it may be signed by the Clerk of the Court or other officer of the Court appointed in that behalf (O. XXI, r. 24). The forms prescribed by the Code are in Appendix E; others will be found at pages 425-432 of Volume II. In case of doubt as to what forms should be used, the matter should be referred to the Judge.

323. RULE :-

The actual execution of the process should be according to the usual practice of the Court, unless the Judge orders an exception to be made. The issue of process for execution and the supervision of the work of execution should be in the hands of the Nazir or of such officer of the Court as is appointed in that behalf.

324. RULE :-

When execution of a decree is stayed by a competent Court, the application for such execution should not be struck off the file, but adjourned pending the final order of the Court staying execution.

325. RULE :-

The orders mentioned in paragraph 313 above as requiring to be entered in column 3 of the Register of Applications for execution and all other judicial orders which cannot be endorsed on separate applications or exhibited in the proceedings, should be endorsed on the application for execution. These orders need not be copied in the Roznama.

326. Notice to the Judgment-debtor :-

The law as to notice to the Judgment-debtor is contained in rule 22 of Order XXI and a form of notice is given as No. 7 of Appendix E, Schedule I, of the Code.

327. RULE :-

The order for the appointment of a guardian ad litem for the minor legal representative of a deceased judgment-debtor should be made in Form No. 2 at page 425 of Volume II.

328. Execution by other Courts :-

(i) The law on this subject is contained in sections 38 to 46 and rules 3 to 9 of Order XXI of the Code. The forms to be used are Nos. 2, 3, 4 and 5 of Appendix E of Schedule 1 of the Code. Decrees may be sent to Court in this country or to Courts in other countries.

(ii) The documents mentioned in rule 6 of Order XXI should be sent to the foreign Court concerned while sending the decree for execution.

329. Execution by Indian Courts of Decrees of Courts Outside India and Vice Versa :-

The execution by Indian Courts of decrees outside India and the execution by Courts outside India of decrees of Indian Courts is possible only if specific provision has been made in that behalf. The ordinary rule is that the Courts of one country do not execute the decrees of the Courts of another and that to enforce a foreign judgment it is necessary to bring a suit.

330. RULE :-

(i) Sections 43, 44 and 44-A, Civil Procedure Code provide for the execution by Indian Courts of decrees passed outside India.

(ii) Section 43 provides for the execution of decrees passed by (a) Civil Courts established in such parts of India to which the Code does not extend, as referred to in sub-section (3) of Section 1 of the Code; and (b) Courts which have been established or continued by the authority of the Central Government.

(iii) Civil Courts in the State of Pondicherry would be within the purview of clause (b) above, as those Courts have been continued by the authority of the Central Government.

(iv) Section 44 provides for the execution of decrees passed by Revenue Courts in places to which the Code does not extend. In exercise of the powers conferred by that section the Government of Bombay have declared by Notification No. 8109/5/ii- B, dated 4th February, 1954, that the decrees of Revenue Courts situate in the territories specified below may be executed in the State of Bombay as if they had been passed by the Court in the State of Bombay :

- (1) The Tribal areas in the State of Assam;
- (2) The scheduled areas in the State of Madras;
- (3) The State of Jammu and Kashmir;
- (4) The State of Manipur.

331. RULE :-

Section 44-A applies to decrees of superior Courts of the reciprocating territories. The following countries or territories specified in column 1 of the Schedule appended hereto have been declared to be the reciprocating territories for the execution of decrees of the superior Courts specified in column 2 of the said schedule:

332. RULE :-

The Reciprocal Enforcement of Judgments (India) Order, 1958, issued by the Government of United Kingdom which revokes and replaces with certain modifications the Reciprocal Enforcement of Judgments (India) Order, 1953, provides for the execution in the United Kingdom of the decrees of the following Courts of the territories mentioned in the Schedule:

- (a) The Supreme Court;
- (b) All High Courts and Judicial Commissioners' Courts;
- (c) All District Courts;
- (d) All other Courts whose civil jurisdiction is subject to no pecuniary limit provided that the judgment sought to be registered under the United Kingdom Foreign Judgments (Reciprocal Enforcement Act), 1933, is sealed with a seal showing that the jurisdiction of the courts is subject to no pecuniary limit.

Schedule (territories).

- (1) The States of Andhra Pradesh (excepting the scheduled areas), Assam (except the Tribal areas), Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.
- (2) The Union territories of Delhi, Himachal Pradesh, Tripura, Manipur and Andaman and Nicobar Islands.

333. RULE :-

Section 45 empowers a Court in any State to send a decree for execution to any Court established by the authority of the Central Government outside India to which the State Government has by notification declared this section to apply.

334. RULE :-

The Court which originally passed the decree should not, save for special reasons, after transmission of such decree to another Court for execution, itself grant execution without obtaining a certificate of non-satisfaction from the Court to which such decree was transmitted. After the grant of such certificate the Court to which the decree was

transmitted should refuse any further application for execution.

335. Giving possession of immovable property :-

(i) Rules 35 and 36 of Order XXI deal with the delivery of possession of immovable property and distinguish between delivering possession of property which is in the possession of a person bound by the decree and of that which not. The action to be taken by the Court in the two classes of cases is entirely different. Therefore, before taking action, the Court should ascertain from the decree-holder whether he alleges the property to be in the actual possession, that is, in the occupation of a person bound by the decree. The Court should not issue process under rule 35 or 36 of Order XXI on a bare application to be placed in possession. The decree-holder must be called upon to state specifically in his application the kind of possession which he wants.

(ii) In giving possession of immovable property, Form No. 11 in Appendix E of Schedule I may be used for authorising the Officer of the Court to give actual possession or with suitable modifications for affixing a copy thereof according to sub-rule (2) of rule 35 or rule 36 of Order XXI.

336. RULE :-

When any building or enclosure of which possession is to be given in execution is found locked, a notice should ordinarily be given to any person bound by the decree who is in possession of such building or enclosure requiring him to unlock it within a given time. If on the day so appointed it is still locked, it may be broken open and given into the possession of the decree-holder or purchaser, by following the procedure laid down in sub-rule (3) of rule 35 of Order XXI.

337. RULE :-

If at the time of putting the decree-holder or purchaser in possession of the house of judgment-debtor there is any movable property therein, and the judgment-debtor is either absent at the time or unwilling to take such property in his custody or the owner of such movable property is not known, the bailiff or officer concerned should remove the property to the Court, after making a proper inventory thereof, in the presence of respectable witnesses.

338. Stay of execution :-

(i) The law on this point is given in rules 26 to 29 of Order XXI and rules 5 to 8 of Order XLI. Usually stay of execution is allowed only when appropriate security is furnished by the Judgment-debtor. The forms given in the Code for security bonds, are Nos. 2 to 4 of Schedule I, Appendix G of the Code. The fact that the only forms of security bonds given in the Code are forms Nos. 2, 3 and 4 in Appendix G of Schedule I of the Code, would not justify a mortgage security being taken in every case. The Judge should exercise a discretion as to the nature of the security to be furnished, and if he, in the exercise of that discretion, does not consider that security of the nature for which forms Nos. 2, 3 and 4 of Appendix G of Schedule I of the Code are appropriate should be furnished he may require security of any other kind to be furnished, and for security of this nature forms Nos. 3 and 4 at page 426 of Volume II and the form at pages 428 of Volume II should be used. In proper cases the security required should take the form of money deposited in Court.

(ii) Form No. 5 given at page 427 of Volume II is for use as a notice to show cause against stay of execution; for, execution should not, as a rule, be stayed without giving the other party an opportunity of showing cause against the stay. An exception to this general rule is provided for in sub-rule (4) of rule 5 of Order XLI. Where an order for stay of execution is granted ex-parte under this provision, the stay should only be for a limited time and notice should be immediately issued to the other party.

(iii) Form No. 13 of Appendix H, Schedule I, of the Code is a notice to the surety to show cause why the bond should not be enforced. His liability is provided for in section 145 of the Code.

(iv) Form No. 6 at page 428 of Volume II is for use when security is taken under sub-rule (3) of rule 26 of Order XXI for stay of execution by a Court to which the decree sought to be executed is transferred.

(v) Where a High Court makes a stay order to take effect upon the applicant furnishing security to the satisfaction of the lower Court, it is the duty of the Court concerned to take the required security, whether or not an application for the execution of the decree under appeal has been filed.

(vi) The Officer of the Court entrusted with duty of taking security bonds from sureties or parties should take sufficient care to see that the security bonds are properly worded.

All Judges should impress upon the Officers of their Courts that it is their duty to see that such security bonds should be worded in conformity with the Forms prescribed by the Code of Civil Procedure, V of 1908, and this Manual. In this connection, the attention of Courts is invited to

(1) The provisions of Order XLI, rule 5, Code of Civil Procedure, V of 1908.

(2) Form No. 2 of Appendix G of the same Code.

(3) Form No. 3 at pages 426 and 427 of Volume II of this Manual.

339. RULE :-

A Civil Judge executing an appellate decree of the District Court is not empowered to grant stay of execution upon application by the Judgment-debtor pending orders to be obtained by him upon a second appeal made to the High Court.

340. Arrest and detention of Judgment-debtor :-

The law on this subject is to be found in sections 55 to 59 of the Code and in rules 37 to 40 of Order XXI. It is important to notice that it is the duty of the Court to inform a Judgment-debtor arrested in execution of a money-decree that he may apply to be declared an insolvent (Section 55, Clause 3). Forms for use in proceedings for the arrest of a judgment-debtor are given as Nos. 12 to 15 of Appendix E, Schedule I, of the Code.

341. RULE :-

Whenever a public Officer is to be arrested under a warrant, he should be given an opportunity of communicating his arrest to his superior.

342. RULE :-

The following rules have been made under the old Code and are in force and need not therefore be made again under section 55, clause (2) of the Code:

(i) If at the moment of proposed arrest of any person under civil process he is engaged in the performance of public duties, his withdrawal from which would be attended with danger or manifest public inconvenience, the arresting Officer should first acquaint the immediate superior of the employee about to be arrested or the person who has authority to find a substitute to perform the duties of such employee, and, if necessary, should defer arrest until such employee is relieved by another. A similar course should be pursued with regard to persons filling offices connected with the preservation of the peace. The expenses should be paid by the decree-holder and added to the sum levied in execution.

(ii) Whenever a Court has occasion to issue a warrant for the arrest of any person in the employment of a Railway Administration, the Court shall enter in the warrant a direction to the bailiff or process-server to whom it is entrusted for execution requiring him before making the arrest, if the person to be arrested is on duty, to acquaint a superior official of such person with the fact that the arrest is about to be made.

(iii) With reference to a person in the employment of a Railway Administration, the words "Official Superior" shall be deemed to include a railway official of the rank of Station Master, Foreman or Inspector, but not one of lower rank.

343. RULE :-

Before a warrant is issued by a Civil Court for the arrest of an employee of the Telegraph Department, notice shall be given to the Superior Officer designated in column 2 of the subjoined list for the period specified in column 3 of the list:

344. RULE :-

Rs. 6/- (six) per day as the allowance payable for subsistence of judgment-debtors has been fixed under section 57 of the Code of Civil Procedure, 1908].

345. RULE :-

When a person arrested in execution of a decree and brought before the Court is released without being sent to the Civil Jail (in consequence of payment or some compromise having been entered into between him and the opposite party), the money paid into Court for his subsistence and unexpended, should be returned to the party paying it. Section 16 of the Civil Jails Act, II of 1874 (Bombay Act II of 1874), applies only to cases in which the debtor has actually been an inmate of the Civil Jail.

346. RULE :-

Arrest and detention of the judgment-debtor in prison is one of the modes in which the assistance of the Court may be required for execution of a decree. The attention of the Courts is drawn in this respect particularly to the provisions of section 51 and 55 to 59 and rules 37 and 40 of Order XXI. Before the Court can issue a warrant of arrest or a notice to the judgment-debtor under Order XXI, rule 37, it has to satisfy itself that the judgment-debtor is liable to arrest in pursuance of the application. When the execution of a decree for the payment of money is sought by arrest or detention of the Judgment-debtor, the Court may issue a notice to the judgment-debtor calling upon him to show cause why he should not be committed to the civil prison in execution of the decree unless the Court is satisfied that the judgment-debtor is likely to abscond or leave the local limits with the object of delaying execution. Where however, the judgment-debtor does not appear in obedience to the notice, the Court shall, if the decree holder so requires, issue a warrant of arrest. Forms of notice and warrant of arrest are Nos. 12 and 13 respectively of Appendix E, Schedule I. Before arrest is ordered, provision for the debtor's subsistence should be made as required by rule 39 of Order XXI. What is required to be done when the judgment-debtor is before the Court is laid down in rule 40 of Order XXI.

347. RULE :-

Members of the Parliament and State Legislatures enjoy the privilege of freedom from arrest during the continuance of the Session of the House of which they are members and 40 days before the commencement and after its conclusion.

348. RULE :-

No arrest of a Member of the House of Parliament or of the State Legislature shall be made within the precincts of the House without obtaining the permission of the Presiding Officer. To enabling the Presiding Officer to decide whether he should grant or withhold permission for arrest, within the precincts of the House, the Court concerned when making a request for such an arrest, should attach a letter of request to the warrant containing a concise statement setting out the grounds for the request and explaining why it is desirable that the arrest be made within

the precincts of the House and why the matter cannot wait till the House adjourns for the day.

349. Arrest for debt, attachment of pay and allowances and priority in disposal of litigation involving persons belonging to the Armed Forces :-

The following Government of India Memorandum accompanying Government of India letter, Ministry of Home Affairs, No. 5051, Judicial, dated the 7th January, 1954, regarding the legal position of persons belonging to the Armed Forces in the matter of arrest for debt, attachment of their pay and allowances and priority in disposal of litigation involving them, is reproduced for the guidance of subordinate Courts:

(1) Cases have occurred where civil courts have issued orders attaching the pay and allowances of persons belonging to the Armed Forces. There have also been cases of delay by courts in the hearing and final disposal of cases involving such persons. The intention of this memorandum is to state in simple terms the existing provisions in regard to exemption from arrest for debt and attachment of pay and allowances and other property of persons belonging to the Armed Forces and the priority to be given by civil courts for the hearing and final disposal of any suits or other proceedings in which they may be involved.

(2) The privileges granted to such persons by the Army and Air Force Acts, 1950 (Acts XLVI and XLV of 1950 respectively) are detailed below. These rights and privileges are in addition to any other rights and privileges conferred by any other law for the time being in force.

(3)

(a) Immunity from attachment.-Under section 28 of the Army/Air Force Act, no arms, clothes, equipment, accouterments or necessities of any person subject to either of these Acts nor any animal used by him for the discharge of his duties can be seized, nor can his pay and allowances or any part thereof be attached by direction of any civil or revenue court, or any revenue Officer in satisfaction of any decree or order enforceable against him.

(b) Immunity from arrest for debt.-Section 29 of the Army/Air Force Act provides that no person subject to either of these Acts, so long as he belongs to the Armed Forces, can be arrested for debt under any process issued by, or by the authority of, a civil or revenue Court or a revenue Officer. Where, in spite of the above, any such arrest is made, the Court or the revenue Officer concerned, on receipt of complaint by such person or by his superior Officer to that effect, may discharge him and award reasonable costs to the complainant. The costs may be recovered in like manner as if they were awarded to him by a decree against the person obtaining the process. No court fees are payable for the recovery of such costs.

(c) Immunity of persons attending Court martial from arrest.-Under section 30 of the Army/Air Force Act, no presiding officer or member of a Court-martial, no Judge, advocate, no party to any proceedings before a Court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a Court-martial, while proceeding to, attending or returning from, a Court-martial, is liable to be arrested under civil or revenue process. If any such person is arrested under any such process, he may be discharged by order of the Court-martial.

(d) Priority in respect of Army /Air Force personnel's litigation.- Under section 32 of the Army/Air Force Act, on the presentation to any Court by or on behalf of any person subject to either of these Acts of a certificate, from the proper military/air force authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceedings within the period of the leave so granted or applied for. The certificate from the proper military/air force authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for. No fee is payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case. Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself. If in any case a question arises as to the proper military/air force authority qualified to grant such certificate as aforesaid, the Court shall refer the question at once through the authority granting the certificate to

(i) an Officer having power not less than a Brigade or equivalent Commander in the case of military personnel;

(ii) an Officer having power not less than a Group Commander or equivalent Commander in respect of air force personnel. The decision of the Officer so referred to shall be final.

(4) Persons subject to the Army and Air Force Acts who are entitled to the privileges mentioned above are detailed in sections 2 and 31 of those Acts. They are

(a) Officers, Junior commissioned officers and warrant officers of the Regular Army and officers and warrant officers of the Air Force;

(b) persons enrolled under the Army or the Air Force Acts;

(c) persons belonging to the Indian Reserve Force or Air Force Reserve when called out for, or engaged in, or returning from training or service;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) Officers of the Territorial Army when doing duty as such officers;

(f) enrolled persons of the Territorial Army when called out or embodied or attached to any regular forces;

(g) persons holding commissions in the Army in India Reserve of Officers and Officers appointed to the Regular Reserve of Officers when ordered on any duty or service for which they are liable as such members;

(h) persons belonging to the Indian Air Force Volunteer Reserve in the circumstances specified in section 3 of the Indian Air Force Volunteer Reserve (Discipline) Act, 1939 (XXXVI of 1939);

(i) persons not otherwise subject to military/air force law, who, on active service, in camp, on the march or at any frontier post specified by the Central Government are employed by, or are in the service of, or are followers of, or accompany any portion of the Regular Army/Air Force.

350. RULE :-

The following extract of Memorandum accompanying the Government of India letter, Home Department, No. F. 311/37- Judicial of the 29th July, 1937, regarding the legal position of persons belonging to Naval Service, is reproduced for the guidance of Subordinate Courts:

(i) Navy: Persons in Naval Service in India are subject either to the Indian Navy (Discipline) Act, 1934, or to the (British) Naval Discipline Act, 1866 (29 and 30 Vict. C. 109).

(ii) The Indian Navy (Discipline) Act, 1934, applies to the Indian Navy. There is no specific provision in that Act corresponding to section 120 of the Indian Army Act. As regards exemption from arrest see section 97 of the Act; but as regards pay and allowances clause (j) of the proviso to sub-section (1) of section 60 of the Civil Procedure Code gives total exemption from attachment to person other than commissioned officers to whom the Indian Navy (Discipline) Act applies. Thus all persons in the Indian Navy other than commissioned officers enjoy this total exemption and commissioned officers enjoy the total or partial exemption under clause (i) and (1) of the proviso to sub-section (1) of section 60 of the Civil Procedure Code. Persons subject to the Indian Navy (Discipline) Act are stated in sections 87 and 90 (1) of that Act.

(iii) The (British) Naval Discipline Act 1866, contains no provisions protecting the pay or allowances of a person subject to that Act. Therefore, the only protection afforded is by clauses (i) and (1) or the proviso to sub-section (1) of section 60 of the Civil Procedure Code and it appears from the definition of 'public officers' in the Code that this protection will apply only to commissioned officers of the Royal Navy. Section 97 of (British) Naval Discipline Act, 1866, provides for exemption from arrest for debt. Persons subject to the Naval Discipline Act, are stated in sections 87 and 90 (1) of this Act.

351. Attachment of Property :-

The law on this subject is contained in sections 60 to 64 of the Code and rules 41 to 57 of Order XXI. Section 60 mentions the property which is liable to be attached, and the property not so liable. Rule 50 of Order XXI states the law in respect of a decree against a firm.

352. RULE :-

Attention is invited to rules 46-A to 46-E of Order XXI which lay down the special procedure to be followed for investigation and determination of the liability of the garnishee in execution proceedings in which debts have been attached.

353. RULE :-

The Notice issued under Order XXI, rule 52, of the Code of Civil Procedure, for attachment of money or other property lying in the custody of the Court should not be served on the Nazir but on the Court.

354. RULE :-

Attachment may be made either by seizure; or by order prohibiting the debtor or other person from dealing with the property except in a particular way; or by order charging the debtor's interest in the partnership property and profits with payment of the decretal amount and appointing a receiver. After it is attached, property cannot lawfully be dealt with in such a way as to affect claims enforceable under the attachment.

355. RULE :-

Before ordering attachment, the Judge should satisfy himself that the judgment-debtor has an attachable interest in the property. The Code of Civil Procedure provides that when the decree is for the payment of money the decree-holder may apply for an order that certain persons be orally examined as to the means the judgment-debtor has of satisfying the decree (Order XXI, rule 41). A form of notice for the purpose is given as No. 7 at page 29, of Volume II. It is also open to the Court of its own motion to make such an inquiry. But where any party to an execution proceeding is at a disadvantage owing to ignorance, poverty, want of proper legal advice or other cause, it is the duty of the Judge, as far as possible, to prevent injustice being done as a consequence of that disadvantage.

356. RULE :-

The next thing to ascertain is how the attachment is to be made by seizure or in some other way. For this purpose, the Court may require the decree-holder to state the mode in which assistance is required (Order XXI, rule 11).

357. RULE :-

What may be attached by seizure is described in rules 45 and 51 of Order XXI and other modes of attachment are described in rules 44 to 49 and 52 to 54. Rule 49 gives an instance of a case in which a receiver may be appointed. The appropriate forms will be found as Nos. 8, 9 and 16 to 26 in Appendix E. If attachment is to be made by another Court, Form No. 2 of Appendix E, Schedule I, may be used.

358. RULE :-

A warrant for attachment is usually addressed to the bailiff of the Court (see e.g. Forms 8, 9 and 20 of Appendix E). This does not, however, imply that it must necessarily be addressed and given for execution to a bailiff. The expression used in rule 43 of Order XXI is "attaching officer" and rule 3 of Order XLVIII allows such variations in the forms as the circumstances of each case require. Therefore, it is open to the Court to direct a clerk or the Nazir and not merely a bailiff to make an attachment.

359. RULE :-

Both the Central and the State Governments have issued notifications in pursuance of Order XXI, rule 48, sub-rule (1) appointing Officers to receive notices of orders attaching the salaries or allowances of public Officers.

360. RULE :-

Rule 25 of Order XXI prescribes the manner in which an officer entrusted with the process for execution is to make a return. The report whether the process has been executed or not should be complete. It should show amongst other things whether there has been any payment, satisfaction or adjustment of the decretal debt and if so the amount or the nature thereof. The Nazir of the Court or other officer entrusted with this duty should scrutinize the report and papers submitted by the attaching officer and satisfy himself as to all matters needing elucidation. If the officer is unable to execute the process, the Court or the Nazir empowered by the Court is bound to examine him and, if necessary, any witness or witnesses and to record the result. All information ascertained as to the payment, satisfaction or adjustment of the decree whether in or out of Court should be recorded or noted both in the Register of Suits and in the Register of Applications for execution. (See paragraphs 315, 316 and 317 above).

361. RULE :-

A bailiff attaching movable property under rule 43 of Order XXI should furnish to the judgment-debtor or other person, from whose possession the movable property is attached, a receipt signed by him and setting out each item attached.

362. RULE :-

When the officer executing a warrant of attachment issued by a Civil Court finds that the property to be attached by him is already under attachment by the Revenue authorities, he should refrain from actually attaching the property and should report to the Nazir. But, in order to satisfy the attaching officer and the Court that there is a bona fide attachment by the Revenue authorities, the Patel of the village should be required to give a certificate to that effect which should state the amount of the Government demand. The attaching officer should at the request of the Patel (to be noted on the certificate) wait for not more than twenty-four hours to enable the Patel to get the certificate written.

363. RULE :-

The following rules previously made under section 269 of the old Code are still in force so far as they are consistent with the present Code (Section 157):

(i) All live-stock and other movable property attached under section 269 of the Code of Civil Procedure shall ordinarily be removed and conveyed by the attaching officer, or by his subordinates or by persons specially engaged by him, for the purpose, to the Court premises or other appointed place, and there kept under due custody till sold or otherwise disposed of according to law.

(ii) In cases where it is found more convenient so to do the property may be handed over to the judgment-creditor under proper security, for removal and conveyance to the Court premises, or other appointed place, for the purpose specified in Rule (i).

(iii) When the property is of such a nature that, in the opinion of the attaching officer, or his subordinate, its removal to the Court premises or other appointed place, is impracticable, or can only be effected at a cost out of proportion to its value, the attaching officer shall report his opinion to the Court and, pending receipt of the order of the Court shall arrange for its proper maintenance, guarding and custody at the place at which it has been attached.

(iv) The Court, on receipt of such a report as is mentioned in rule (iii), may either order the removal of the property to the Court premises, or other appointed place, or sanction its detention at the place at which it has been attached or elsewhere, under such provisions as to its maintenance, guarding and custody as it thinks fit.

(v) Before making any order for the attachment of live-stock, or other movable property, or at any time after any such order has been passed, the Court may require the person, at whose instance the order of attachment is sought, or has been made, to deposit in the Court such sum of money as the Court may consider necessary

(a) for the removal of the property to the Court premises, or other appointed place, and its maintenance, guarding and custody till arrival thereat;

(b) for the maintenance, guarding and custody of the property at the Court premises or other appointed place, till it

is sold or otherwise disposed of;

(c) for the maintenance, guarding and custody of property, at the place at which it was attached, or elsewhere.

(vi) An account of the expenses actually incurred shall, on demand being made on or before the date of the sale, be furnished to the attaching creditor and to the person whose property was attached, and the amount that the Court, after hearing their objections to the account, if any, made within three days after furnishing the same, finds to be properly due, shall be deducted as a first charge from the proceeds of the sale of the property and paid to the attaching creditor alongwith any balance that there may be of the deposit.

(vii) If, in consequence of the cancellation of the order of attachment, or for any other reason, the person whose property has been attached becomes entitled to receive back the livestock, or other property attached, it shall be given to him on payment of all charges found by the Court to have been property incurred which have not been defrayed, or for the defrayal of which no money has been deposited by the attaching creditor, and, in default of his paying the same within the time prescribed by the Court, the property or so much thereof as may be necessary, shall be sold by auction, and, after defraying the above mentioned charges and expenses of the sale, the balance of the sale proceeds and of the property shall be delivered to him.

364. RULE :-

Civil Judges may refuse to attach cattle if the attaching creditor does not pay or arrange for sufficient amount for the proper custody and sustenance of the cattle between the period of attachment and sale.

365. RULE :-

The mode of attachment of immovable property is described in rule 54 of Order XXI and the form No. 24 of Appendix E. The enquiries essential before such an order is made have already been described.

366. RULE :-

Rule 55 of Order XXI provides that, where immovable property has been attached, the withdrawal may be proclaimed at the judgment-debtor's expenses. This is the only express provision as to notifying withdrawal of attachment, but such withdrawal may be notified by appropriate notice at the cost of the judgment-debtor in other cases also. For example, the judgment-debtor might wish to have notice sent of withdrawal of an attachment made under rule 46 or rule 48 or rule 53 of Order XXI. The form prescribed for proclamation notifying withdrawal of attachment is Form No. 8 given at page 429 of Volume II.

367. RULE :-

Before a final order is passed in an attachment proceeding disputes frequently arise, and the procedure for disposing of these disputes is provided for in rules 58 to 62 of Order XXI. No appeal lies from an order made in such a case but a suit will lie (Order XXI, rule 63).

368. RULE :-

Section 10 of the Employees' Provident Funds Act, 1952 (Act XIX of 1952), lays down that the amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee.

369. Sale :-

Attached property should not be put to sale without an order for sale under rule 64 of Order XXI. No order for sale should be made unless the statement required by sub-rule (3) of rule 66 of Order XXI is furnished. This statement must be signed and verified in the same manner as a pleading and must contain, as far as the decree-holder can ascertain the information set out in sub-rule (2) of rule 66 of Order XXI. A form of warrant of sale of property is given in Form No. 27, Appendix E. An order of sale is also required where mortgaged property is to be sold, under a decree in a mortgage suit though the property has not been attached.

370. RULE :-

After an order of sale is made, notice must be issued to the decree-holder and the judgment-debtor [Order XXI, rule 66(2)] to settle the proclamation of sale (Form 82, Appendix E).

371. RULE :-

Thereafter such inquiry may be made as is necessary to settle the terms of proclamation. What the proclamation must contain is stated in rule 66 of Order XXI and the Form No. 29 of Appendix E. The Court should ascertain the liabilities and claims against the property after careful scrutiny of Extracts from the Records of Rights and City Survey Register. Other things which the Court considers material for a purchaser to know in order to judge of the nature and value of the property must also be ascertained and specified in the proclamation.

372. RULE :-

The enquiry specified in paragraph 371 must be as thorough as possible, for the Code casts on the Court the duty of ascertaining the facts to be entered in the proclamation. If the decree-holder refuses to take such steps, or call such witnesses as the Court considers necessary to enable it to ascertain the required facts, it is open to the Court to decline to issue the proclamation of sale.

373. RULE :-

Under sections 287 and 652 of the old Code the High Court framed certain rules, which, in so far as they are consistent with the new Code are still in force. So far as they are so consistent they are as follows:

(i) Where the Record of Rights has been completed, the extract to be put in under section 238 of the Civil Procedure Code (O. XXI, r. 14) should be an extract from the register of that Record, and a copy of the entry, if any, in the Register of Mutations and the same should be utilized in the enquiry under section 287 of the Civil Procedure Code (O. XXI, r. 66).

(ii) If it can be done without unreasonable delay the Court shall examine the judgment-debtor or some person acquainted with the circumstances as to his interest in the property and especially as to his share therein, if he is a Hindu, and as to the circumstances, if any, existing thereon (See Form No. 28, Appendix E, Schedule I).

(iii) The Court may require the judgment-debtor to produce any title deeds relating to the property which may be in his possession or power and may retain such documents till the property is sold or released from attachment. It shall with the certificate of sale deliver to the purchaser such of them as relate solely to the property sold and on his demand and at his cost shall give him copies of such of them as relate to the property sold as well as other property. It shall return all documents which may not under this rule be delivered to the purchaser to the person by whom or on whose behalf they shall have been produced. When any encumbrance on the property shall be discharged from the sale-proceeds, the Court shall have like power to direct the production of title-deeds by the encumbrancer and to deliver them to the purchaser or to furnish him with copies thereof and to return them.

(iv) A form of notice of the enquiry to be affixed in the Court is given as No. 9 at page 430 of Volume II.-The Court shall give notice on the board of the date on which it proposes to hold an enquiry under section 287 (O. XXI, r. 66), and may summon any person likely to afford material information to attend and give evidence and produce any documents relating to the property which may be in his possession or control. Such documents shall be returned after inspection, the Court retaining copies, if it thinks necessary, prepared at the applicant's expense.

(v) All costs of the enquiry shall be advanced by the applicant. They shall be treated as costs in the execution proceedings and may be apportioned as the Court thinks fit.

(vi) It shall be borne in mind that the enquiry under section 287 (O. XXI, r. 66) is independent of any enquiry consequent on Code. The object of the enquiry under section 287 (O. XXI, r. 58) is merely to collect particulars to be inserted in the proclamation for the information of intending purchasers. The conclusions arrived at in this enquiry are not subject to appeal, and, as a rule, are not determinative between the parties.

(vii) The enquiry shall be completed as soon as possible. When it is finished, the proclamation of the said shall be prepared in the form prescribed. (No. 29, Appendix E, Schedule I). If in the case of a Hindu judgment-debtor it is desired to sell the interest of any other member of the family (e.g. that of a minor son or brother) the name of such member and the fact that his interest is being sold ought to be stated in the proclamation, as otherwise his interest may not pass to the purchaser. To the proclamation shall be appended a list of all claims for which, in the opinion of the Court, there is reasonable and probable cause-such as claims of co-parceners, or reversioners in the case of Hindu females, or mortgagees, or tenants, etc. The list may be varied as occasion requires.

(viii) When a copy of the proclamation is sent to the Collector under section 289 (O. XXI, r. 67) a duplicate shall also be sent to the Mamlatdar of each taluka in which any portion of the property is situated. The Mamlatdar shall post such copy in his kacheri in a conspicuous place.

(ix) If after the proclamation has been settled, any matter is brought to the notice of the Court which it considers material for purchasers to know, it shall cause the same to be notified when the property is put up for sale.

(x) So much of the foregoing rules as may be applicable shall be followed in case of application to sell movable property attached by prohibitory order so that the description of such property may be as complete as possible.

(xi) In the case of other movables, the Court may make such inquiries as it thinks proper, but shall not be bound to do so unless application is made to raise the attachment or to declare a lien.

(xii) It shall not be necessary to sell at the same time or place movable and immovable property attached in execution of the same decree.

(xiii) As respects all sales of immovable property the Court in fixing the place of sale shall consult the wishes of the parties, preference being given to those of the judgment-debtor. In the absence of agreement by the parties as to the debtor. In the absence of agreement by the parties as to the place of sale the sale shall ordinarily be held where the property is situated, unless the Court is of opinion that it is likely to fetch more if sold at the Court-house.

(xiv) All sales held at the court-house shall be conducted by a responsible officer and shall take place on a fixed day of the week which the court shall make generally known. Care should be taken correctly to specify in the proclamation the time and place of sale subject to the provisions of section 290 (O. XXI, r. 68).

374. RULE :-

In all cases where sales are adjourned and no fresh proclamations have to be issued, the adjourned date and hour should be notified for the information of the public by taking the following steps. When the sale is held in the court precincts a notice shall be put up on the Notice Board of the Court notifying the adjourned date and hour of the sales. When the sale is held at any place outside the Court precincts a notice notifying the adjourned date and hour shall be affixed if the property to be sold is immovable, on some conspicuous part of the property itself, and if the property is movable on some conspicuous part of the property in which it is kept. When the property involved is of

considerable value the adjourned date and hour shall, as far as possible, be published also in one of the local newspapers.

375. RULE :-

Whenever the lands of a minor have been placed in charge of the Collector, a notice of an intended sale should be given to the Collector, being either delivered to him or sent by registered post.

376. RULE :-

Civil Judges have a discretion in postponing the sale of attached property, if they consider that by reason of exceptional circumstances a reasonable price will not be realised.

377. RULE :-

When immovable property is to be sold and it is intended to take preliminary bids at the site of the property or the village where it is situated and the final bids at the Court-house, it should be so stated in the proclamation of sale.

378. RULE :-

When the necessary particulars to be entered in the proclamation have been ascertained and settled, the proclamation must be published. (See Form No. 30 of Appendix E. Schedule I].

379. RULE :-

The law relating to the sale is stated in rules 68 to 77, and 82 to 88 of Order XXI. If a re-sale is held resulting in a deficiency in price the Officer holding the sale must give a certificate in Form 31, Appendix E. The officer conducting the sale should give to the auction purchaser a receipt in Form No. 10 at page 430 of Volume II. This form may also be used in other cases. (See the foot-note printed on it). It should be in counterfoil and the bailiff or officer of the Court receiving

380. RULE :-

As a rule no sale in execution of a decree should be fixed to take place on any day on which the Court is to be closed. The same rule, so far as possible, should apply to the execution of processes for the attachment of movable property or for the arrest of a witness or judgment-debtor.

381. RULE :-

The sale of movable property becomes absolute when the purchase money is paid and a receipt given [Order XXI, rule 77 (2)] and is not vitiated by irregularity (Order XXI, rule 78).

382. RULE :-

Whenever guns or other arms in respect of which licences have to be taken out by purchasers under the Indian Arms Act, XI of 1878, are sold by public auction in execution of decrees, the Court directing the sale should give due notice to the District Magistrate of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Indian Arms Act. The possession of the arms shall, however, not be allowed to the bidder unless he holds the requisite licence under the Indian Arms Act.

383. RULE :-

The manner of vesting movable property in the purchaser or giving him possession is prescribed in Order XXI, rules 79 to 81. (See Forms Nos. 32 to 34 of Appendix E).

384. RULE :-

Government Promissory Notes attached in execution of a decree, which have to be disposed of in satisfaction of the decree, should be sent by the Court, making the attachment to the Accountant General with instructions regarding the disposal of the sale-proceeds of the notes.

385. RULE :-

In the case of a sale of immovable property the sale has to be confirmed by the Court (Order XXI, rule 92). Certain cases are stated in Order XXI, rules 89, 90 and 91, in which the sale may be set aside. There are also other reasons for example, fraud, on account of which a sale may be set aside. A sale should not be set aside without notice to the persons interested (See Forms 36 and 37 of Appendix E) and due enquiry.

386. RULE :-

When a sale is confirmed by the Court, a certificate of sale in Form 38 of Appendix E is to be granted to the purchaser (Order XXI, rule 94).

387. RULE :-

It is desirable that the certificate of sale should state in addition to what appear in Form 38

(i) the price paid;

(ii) the date of application for the certificate;

(iii) the date of granting the certificate;

(iv) the date of confirmation of the sale.

388. RULE :-

An office copy of a certificate of sale issued under Order XXI, rule 94 should be kept, and upon the issue of the

certificate, an entry should be made in the Roznama and also in the Register of Applications for execution of the fact of its having been issued. No fee is to be charged for the writing of the sale certificate.

389. RULE :-

As soon as an application for ratable distribution of sale proceeds is granted, the Court should issue a written order to that effect to the Nazir or Collector, as the case may be, and a note of each execution application should be made in the Roznama of the other or others.

390. RULE :-

Rules 95 and 96 of Order XXI contain the law as to giving possession of immovable property to the auction purchaser. What is stated in paragraphs 335 to 337 of this Chapter applies also to giving possession under these rules; but the form to be used is No. 39 of Appendix E of Schedule I of the Code.

391. Resistance :-

The law relating to resistance to delivery of possession either to a decree-holder or to the auction purchaser is contained in section 74 of the Code and rules 97 to 103 of Order XXI. (See Forms 40 and 41 of Appendix E).

392. RULE :-

The order of the Court in these matters is conclusive, subject to the result of a suit, if any (Order XXI, rule 103).

393. Growing Crops :-

The law as to attachment of growing crops is contained in rules 44 and 45 of Order XXI. Attachment may be by order prohibiting the removal of the crop [rule 45 (4)] or by declaring the crop to be attached, in which event it is deemed to have passed into the possession of the Court.

394. RULE :-

Growing crops are movable property [See clause (13) of section 2 of the Code] and it is clear that the Code intends that growing crops should be specified separately from the land in the application for attachment and that, if it is intended that growing crops as well land should be sold, both should be separately specified in the application for an order for sale.

395. RULE :-

In so far as the rules given in paragraph 363 above apply to standing crops they must be read subject to rules 44 and 45 of Order XXI.

396. Execution by the Collector :-

Sections 68 to 72 and the Third Schedule of the Civil Procedure Code have been repealed by the Civil Procedure Code" (Amendment) Act, India Act LXVI of 1956, with the result that no decree can be transferred to the Collector for execution after the coming into force of that Act. However, under section 16 of that Act, decrees which have been transferred to the Collector for execution, prior to the commencement of the said Act and which are pending with the Collector on the date of commencement of the Act, can be executed by the Collector as if the Act had not been passed. The rules made by the State Government the old section 70 of the Civil Procedure Code, now repealed, and which are given in Appendix I in Vol. II and instructions contained in Paragraph 397 to 400 should be followed in respect of decrees already transferred to the Collector for execution.

397. RULE :-

Register of Darkhasts transferred to the Collector should be kept in the following form:

398. RULE :-

On the 1st April and 1st October of each year a list according to Taluka should be made of all darkhasts sent to the Collector and pending with him for six months or more in the following form: Columns 1 to 4 will be filled in the Court, Column 5 in the Collector's office, and Columns 6 and 7 in the Mamlatdar's office. The Civil Judge will send the list to the Collector. The fact will be noted under the Civil Judge's signature in the Register of Collector's Darkhasts opposite the last darkhast entered as despatched to the Collector on the 31st March and 30th September. In the course of entering in column 5 the appropriate serial numbers from the Collector's registers, the Collector's office will tally the list with the darkhasts which according to its registers have been received and not returned to the Court. Any discrepancy should be reported at once to the Court for reconciliation. The Collector after making such note in his Register as he deems necessary, should forward the list to the Mamlatdar concerned. The Mamlatdar should then give his explanation and return the list to the Court through the Collector.

399. RULE :-

The sale proceeds of property attached by Collector in the execution of Civil Court decrees will be transferred by the Mamlatdar or other officer by whom the sale was conducted from "Revenue Deposits" to "Civil Court Deposits" immediately upon the receipt of confirmation of the sale by the Collector. On the same day the Civil Judge concerned will be informed of the transfer, and all the papers in the case will be forwarded at the same time to him, or if for any reason the papers cannot be forwarded, the particulars noted below will be supplied:

- (1) Number of darkhast.
- (2) Names of parties.
- (3) Description of the property sold.
- (4) Amount realized.

(5) Number and date of Collector's order confirming sale,

immediately upon the receipt of such information the Civil Judge concerned should take the necessary steps to facilitate the speedy disposal of the judgment creditor's application.

400. RULE :-

The orders contained in paragraph 399 are applicable also to those cases in which the full amount specified for recovery in the darkhast is deposited before the sale of the property with the Mamlatdar or other officer entrusted with the sale. The amount should, however, be immediately credited to Civil Court Deposits, without in the first instance being credited to Revenue Deposits.

401. Appointment of Receivers in Execution :-

The power to appoint receivers in execution should be more freely used for the purpose of realizing the money decreed where the property is sufficiently large to bear the extra cost of appointment of a receiver.

402. RULE :-

(1) A Court, ordering attachment of land assessed to the payment of revenue to the Government, should send two copies of the order to the Collector with a request to have one of them affixed to the notice board in his office. As the other copy is required for the Record of Rights, one copy only need be sent, if the land is in a village where the Record of Rights, has not been introduced. District Judges should obtain lists of such villages for their Courts and subordinate Courts, from the Collector.

(2) Similarly a Court by whose order attachment is removed or ceases should send intimation to the Collector in Standard Form No. Civ-A 234.

(3) The Collector should certify the affixing to, or the removal from, his notice-board of orders of attachment.

CHAPTER 20

Appeals and Remand

403. RULE :-

The memorandum of appeal shall be written in English. However if the lawyer engaged in the appeal does not know English, or if the party is not represented by a lawyer and the party does not know English, it may be written in the regional language in which case it should be accompanied by an English translation.

404. RULE :-

(1) As soon as a memorandum of appeal is presented the Clerk of the Court should examine it with a view to ascertaining

(i) whether the appeal is competent,

(ii) whether the presentation of the appeal is duly authorised,

(iii) whether the appeal is in time, and if not, by how many days it is beyond time,

(iv) whether the memorandum is accompanied by the copies of the judgment and decree,

(v) whether the appeal is properly stamped,

(vi) whether the names of the parties stated in the memorandum correspond with the names as given in the copies annexed, and

(vii) whether the address given are registered addresses of the parties.

(2) If the valuation stated in the memorandum of appeal differs from the valuation given in the plaint, the difference should be explained and accounted for in a foot-note to the memorandum of appeal.

(3) Where the Clerk of the Court finds that the memorandum of appeal does not comply with any of the requirements referred to in sub-paragraph 1 above, or is open to any objections he should call upon the appellant or his lawyer, if he is present, to comply with the requirements or remove the objections. If he fails to do so within 7 days the memorandum shall be placed before the Presiding Judge for orders.

405. RULE :-

If an appeal is beyond time and an application is made under section 5 of the Limitation Act (Act No. XXXVI of 1963), the memo of appeal should not be registered unless the application to condone the delay is granted.

406. RULE :-

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407. RULE :-

When an appeal is preferred from an order in an execution proceeding, the Court may require the production of a copy of the decree sought to be executed and, when such an order is made, it shall be the duty of the appellant to produce the same.

408. RULE :-

The appellate Court should maintain a register of rejected memoranda of appeals which should be kept in the same form and maintained in the same manner as the register of rejected plaints.

409. RULE :-

If the appellate Court makes an order for appointment of a guardian ad litem of a minor it shall follow the same procedure as is prescribed by the rules herein contained for appointment of the guardian ad litem of a minor in a suit.

410. RULE :-

When an appeal is dismissed summarily under Order XLI, rule 11 of the Civil Procedure Code, the Court shall record a brief judgment, stating the reasons for dismissal. A formal decree should also be drawn up in such a case.

411. RULE :-

(i) After the appeal is admitted and the record and proceedings are received in the District Court, the Clerk of the Court shall give notice of that fact to the appellant or his lawyer, who shall within one month from that date or such other further time as may be allowed by the Presiding Judge, deposit in Court the estimated cost of as many paper books as may be necessary for supplying them to the contesting parties separately represented by lawyers.

[(ii) The paper book shall contain the memorandum of appeal, Judgment, depositions in English and list of documents exhibited in evidence as shown in the Roznama.

(iii) The charges for the preparation of paper books shall be at the rate of 12 nP for 100 words or fraction thereof for all the copies, not exceeding five; if an extra copy is needed, the rate for the extra copy should be 3 nP for the 100 words or fraction therefore. In addition to this, charges for the cost of paper at 2 nP per foolscap sheet shall be levied. When the paper books are ready; notice thereof shall be given to the appellant or his lawyer.

(iv) If the deposit for the paper books is not made if the balance remaining due after making the final adjustment is not paid with one month from the date on which notice has been given in that behalf, the appeal shall be placed before the Presiding Judge for such orders including dismissal for default or for want of prosecution which the Presiding Judge may pass.

(v) In appropriate cases, paper books may be dispensed with by the District Judge.]

412. RULE :-

The costs of preparation of paper books deposited by the appellant in accordance with paragraph 411 shall form part of the costs of the appeal and should be included in the bill of costs.

413. RULE :-

All appeals from proceedings other than suits as well as appeals from preliminary decrees should be treated as short notice matters. Appeals from proceedings other than suits should, as far as possible, be disposed of on the date of the return of notice.

414. RULE :-

The appellate Court should frame suitable points for determination in appeals in accordance with the same principles on which issues are framed in the trial Court.

415. RULE :-

As the first appellate Court is the final Court of facts, it is necessary that the Court should formulate its conclusions on all questions of facts precisely and clearly. Care should be taken to see that every point argued at the hearing by either party is dealt with in the judgment.

416. RULE :-

The appellant has no right to urge any ground not stated in the memorandum of appeal (Order XLI, rule 2). Leave to argue points not mentioned should not be given unless due notice has previously been given to the respondent.

417. RULE :-

An order of remand under rule 23 can be made only where the trial Court has decided the suit on a preliminary point without recording any finding on the merits and the appellate Court has reversed that decree. A suit may be remanded by the appellate Court in exercise of its inherent powers under section 151, when this is necessary in the interests of justice. Ordinarily, the powers under Section 151 should not be exercised for adopting a procedure or method different from that enjoined or provided by the Code; but in exceptional cases, where the Court is satisfied that it is really necessary in the interests of justice to remand the case, the Court may do so in the exercise of its inherent powers. It is open to the appellate Court under rule 24 to frame the necessary issues and finally determine the suit, when the evidence on the record is sufficient but the trial Court has not framed proper or necessary issues. Where the trial Court has omitted to frame or try any issue or to determine any question of fact which the appellate Court considers essential to the right determination of the suit upon the merits, rules 25 and 26 empower the appellate Court to frame such issues and refer them to the trial Court for trial. Rule 27 provides for the admission of additional evidence in appeal in certain cases and rules 28 and 29 deal with the mode in which it shall be taken and the points to which it shall be directed.

418. RULE :-

(i) Except in cases where an order of remand is made under rule 23. or where it has been made under section 151 in the exercise of Court's inherent power in the interest of justice, the appeal shall be retained on the file of the Court. Where, in appeal, the appellate Court has framed an issue or issues and referred the same for trial or has directed the subordinate Court to take additional evidence, the appellate Court shall retain the appeal on its file but

send the record to the subordinate Court concerned for the purpose of compliance.

(ii) When an issue or issues is or are remitted to the trial Court for trial, or for recording additional evidence, and the appeal is kept pending on the file of appellate Court and any of the parties dies after the receipt of the record by trial Court, it is not necessary to re-transmit the record and proceedings to the appellate Court. The trial Court should, in such a case, on receipt of the intimation of the death of the party concerned, merely inform the appellate Court about the factum of death.

419. RULE :-

In cases of remand by High Court, Courts must follow the same procedure as prescribed in paragraph 418 (ii) above.

420. RULE :-

When the appellate Court remands a case under rule 23 of Order XLI, or refers an issue or issues for trial under rule 25, or allows additional evidence to be produced in the trial Court under rule 27, Order XLI, it may fix a date for parties appearing before it to appear in the trial Court to receive directions of that Court. Where the appellate Court has done so, the trial Court need not issue to the parties who were represented by lawyers in the appellate Court fresh notices of the date fixed for hearing. It will be sufficient if a notice of the date of hearing is given on the notice board, or intimation given to the lawyers of the parties. Notice in the manner provided by Order V of the Code, must, however, be served on such parties as were not so represented in the appellate Court.

421. RULE :-

When an issue is referred to the trial Court for recording findings the Court shall treat it as a specially expedited case and return the findings within the time specified in the appellate Court's order. Extension of time for returning findings in such case should be asked for only in very rare cases.

422. RULE :-

When the High Court refers a suit to the trial Court for recording its findings on any issue or issues with a direction that the findings should be certified through the District Court, the District Court should also record its findings before transmitting the case papers to the High Court.

423. RULE :-

When an appellate Judge works at two or more places, he may, with the consent of the parties, pronounce his judgment at any of those places.

424. RULE :-

A copy of the appellate judgment shall be forwarded to the Judge from whose judgment the appeal was preferred when such Judge has been transferred to another station.

425. RULE :-

Decrees should be drawn up in all appeals including appeals arising out of execution proceedings.

426. RULE :-

The Registrar of the High Court should send to each District Court two copies of the High Court judgment delivered in appeals preferred from that Court. One of these copies shall be filed in the District Court and the other shall be kept for being filed with the original proceedings in the suit.

427. RULE :-

An application for return of a document produced or exhibited in a case may be made either to the trial Court, the lower appellate Court or, if, the matter was decided by the High Court, to the High Court. Such application may be oral. If the document is not in the custody of the Court to which the application is made, a receipt of the document should be obtained from the party concerned and along with the application, forwarded to the Court which has the custody of the document. That Court should return the document along with the application and retain the receipt after endorsing thereon the date of despatch of the document. This receipt should be filed in the appropriate file. If, for any reason, the document cannot be returned, the receipt and the application should be sent back to the Court concerned stating the reasons for not returning the document.

CHAPTER 21

Instructions to Lower Courts regarding appeals in the High Court

428. RULE :-

When a writ calling for the Record and Proceedings in a First Appeal is issued by the High Court, the District Court should certify to the High Court within 2 months of the date of receipt of the writ, the whole of the Record and Proceedings together with the original Roznama and four typed copies of paper books. If the Roznama is not in English, it should be translated into English and the English translation should be incorporated in the paper books. The paper books shall also include the depositions in English, and these should be preceded by an index showing the pages on which the Roznama and each of the depositions have been reproduced. Depositions recorded in the regional language by Commissioners should always be translated into English and included in the paper book. Any other exhibits not translated into English in the lower Court need not be translated. Any such translations, if required, will be prepared or furnished in the High Court.

429. RULE :-

Upon receipt of the writ calling for Record and Proceedings, the District Court should issue a notice to the Appellant

requiring him to deposit in District Court, within one month from the service of notice on him, the estimated cost of preparing four type written copies of the paper book. The notice should clearly state that on failure to deposit the amount mentioned therein within one month the Roznama and the evidence, if any, will not be typed but that the papers will be forwarded to the High Court and the appeal will be liable to be dismissed for want of prosecution. The District Judge may extend the above period by fifteen days. In case of default of payment of the deposit as directed the matter should be reported to the High Court for orders.

430. RULE :-

The preparation of the paper book should not be taken in hand till the appellant deposits its estimated cost. The work of typewriting should be done by the staff of the District Court which prepares paper books in appeals filed in the District Court. Where such staff does not exist, the copies should be prepared by section-writers.

431. RULE :-

In special cases in which more than four copies may be required, the lower Courts concerned will be informed accordingly.

432. RULE :-

After the copies are made, the final judgment of costs should be made as in the case of appeals filed in the District Court. A certificate showing the amount recovered for the four copies should be forwarded to the High Court so that the same may be included in the Bill of Costs of the appeal.

433. RULE :-

The above procedure should also be observed, when so ordered, in the case of Appeals from Orders, Civil Revision or other applications as well as Civil References.

434. RULE :-

The above procedure should also be observed (a) in the case of appeals under the Letters Patent from the decisions under Order XLI, rule 11, Civil Procedure Code, of the High Court in a First Appeal, and (b) in the case of findings called for by the High Court in a First Appeal or an Appeal under the Letters Patent of the type mentioned above where additional evidence is recorded.

435. RULE :-

The charges for the preparation of the paper books shall be recovered from the appellant or the applicant as the case may be, and shall be levied by District Courts at the following rates: For 4 copies 12 nP. per 100 words or fraction thereof. For extra copies (made in the same impression) after the 4th, 3 nP. per 100 words or fraction thereof. In addition to the above, where depositions and Roznamas are required to be translated for being included in the paper book, translation charges at the rate 25 nP. per 100 words or fraction thereof and charges for the cost of paper at 2 nP. for 2 foolscap sheets shall also be recovered. These rules shall not affect the rates for paper books prepared for District Court appeals.

436. RULE :-

Documents forming part of the record and proceedings in civil appeals forwarded to the High Court by the District Courts are, at times found to be in a torn condition and in some cases eaten by white ants, so that on being opened they go to pieces. All papers of the record and proceeding should be examined before they are forwarded to the High Court, and if any of them are found to be in a torn or damaged state, a note to that effect should be made on the Roznama and they should at once be repaired and gummed together, as far as possible.

437. RULE :-

A copy of the notice in each case is prepared in the High Court in the regional language and sent to the Subordinate Court concerned for making further copies as required, the requisite number of printed forms being supplied to the lower Court in every case for the preparation of such copies. The Subordinate Courts concerned shall, however, see that in preparing such copies all the particulars stated in the notice prepared in the High Court are correctly copied.

438. RULE :-

(1) Notices issued by the High Court should state whether the address mentioned therein is the registered address of the party to be served or not.

A. Registered addresses. Under Order VII, rule 22 read with Order VIII, rule 12 and Order, XLI, rule 38 (3), if a party is not found at the registered address and no agent or adult male member of the family on whom the notice can be served is present, a copy of the notice shall be affixed to the outer door of the house.

B. Non-registered addresses. In all cases in which the party to be served has no registered address and lives at a place other than the one stated in the notice, the Court to which the notice is sent for service should, if there is sufficient time, itself effect service at the new address or send the notice for service to the Court within whose jurisdiction the party resides. In finding out the whereabouts of persons found to be not living at the address given originally, the Court concerned will take such help from the appellant or the applicant as he chooses to give. In all such cases the levy of one-half of the process fee will be made in the High Court from the party concerned after the process is received back in the High Court. It will not be necessary for the lower Court to recover such process fee.

(2) When returning the process, the lower Court should state the manner in which the service was effected i.e. whether the notice was served on the party in person or by any other method.

439. RULE :-

The following rules made by the High Court under section 42 of the Bombay Civil Courts Act (XIV of 1869) and section 20 of the Court Fees Act, VII of 1870 have been sanctioned by the Government of Bombay :

(i) The fees at present levied for serving and executing processes issued by the High Court in its appellate jurisdiction shall continue to be levied.

(ii) The fees chargeable by all other Civil Courts shall be those shown in the appended table subject to a surcharge of 25 per cent, until further orders;

Provided that those fees shall be reduced by half where the court has under rule 1A of Order XVI, permitted service of a summons for the attendance of any person to be effected by a party, and where the service of a bailiff is not required.

(iii) The remuneration of bailiffs employed by any Civil Court other than the High Court, in the service and execution of processes shall be as prescribed in Statement I appended to Government Resolution, Home Department, No. 421, dated the 20th September, 1923 or by any subsequent Government Resolution amending the same.

(iv) When the salary of any bailiffs is paid by the party requiring their services [see Note (xv) below] additional temporary bailiffs may be employed by the Presiding Judge to a number not exceeding that of the men whose salary is thus paid. If no additional men are employed, the amount should be credited to Government.

A percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of 2 per cent., together with a further fee on all excess of gross proceeds above Rs. 1,000, at the rate of 1 per cent.

Provided that, where the amount of process fees already paid in respect of the warrant of sale equals or exceeds the amount of poundage the latter shall be wholly remitted; and that, when the latter amount exceeds the former, the former shall be deducted from the latter and the balance only shall be levied as poundage (vide Bombay Government Gazette for 1924, Part 1, (page 1022).

Provided also that, when a sale of immovable property is set under Order XXI, Rule 89, 91 or 92, Civil Procedure Code, any poundage or other fee charged for selling the property shall, on application, be refunded.

(See also notes on pages 182 and 183).

Note (i)-The value of the subject-matter shall be considered to be the market value of the property in dispute, * [and in suits between landlords and tenants for possession, shall be considered to be the value for the purpose of Court Fees.-Where the subject-matter is not capable of valuation, the fees are to be levied according to column 9.

Note (ii).-In execution proceedings process-fees shall be levied according to the value of the subject-matter in respect of which execution is sought or where the subject-matter is not capable of valuation according to column 9.

Note (iii).-In miscellaneous proceedings under the Civil Procedure Code (other than execution proceedings) and proceedings under other Acts, the fees to be levied shall be in accordance with market-value of the subject-matter when it is ascertainable, and when it is not ascertainable according to column 9.

Note (iv).-

(a) The percentage or poundage leviable under head V of the Table shall be calculated on multiples of Rs. 25 (i.e. a poundage fee of 50 nP. should be levied for every Rs. 25, or part of Rs. 25 realized by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 25 nP. for every Rs. 25 or part thereof, should be levied.)

(b) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds, shall be levied, 2 per cent, being charged on the gross proceeds up to Rs. 1,000 and 1 per cent, on such proceeds exceeding Rs. 1,000.

(c) The percentage or poundage must be paid (1) in a case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of sale by the court, and (2) in a case where the decree-holder has been permitted to purchase, at the time of the confirmation of sale by the Court or the Collector, as the case may be.

(Vide Bombay Government Gazette, Part IV-A, for 1936, page 208).

Note (v).-Where a summons or notice to a defendant or respondent is to be served by post registered for acknowledgment, the process-fee levied shall in no case be less than the actual amount required for registration and postage. (Vide Bombay Government Gazette, for 1923, Part I, pages 341-342).

Note (vi).-With the sanction of the Court any party may pay the cost of proceeding by railway or any public conveyance where such is available and in such case the process-server shall be bound to proceed by such railway or public conveyance.

Note (vii).-For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

Note (viii). -Where one individual is to be served in more than one capacity, e.g., personally and also as guardian of a minor or minors only one fee is to be charged.

Note (ix).-When a process issued by a Civil Court other than a Mamlatdar's Court is returned unserved and has to be re-issued for service, a half fee only shall be charged on the occasion of each re-issue. This rule applies whatever may be the reason which prevented service e.g. whether the failure to serve was due to the fault of the party on whose behalf it was issued or not), and whether the identical paper is re-issued or a fresh paper.

Note (x).-When the service is set aside in an enquiry under Order V, Rule 19, Civil Procedure Code, or when witnesses, etc., have to be summoned a second time in consequence of the Court not sitting or not taking up or not completing the hearing of the case on the day on which they were first summoned no further fee is to be levied upon re-issue.

Note (xi).-If a warrant has already been issued to arrest a judgment- debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail.

Note (xii).-No fee is to be charged for any process issued by a Court of its own motion.

Note (xiii).-No process-fees shall be charged on proclamations under section 10 of Regulation VIII of 1827, and notices issued under the Provincial Insolvency Act in the case of an application by a debtor.

Note (xiv).-

(a) When the services of one or more bailiffs or peons are required for a longer period than three days the party on whose application the process was issued shall in addition to the fee leviable under the above rules be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.

(b) The time occupied in going to and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.

Note (xv). -Nothing contained in these rules shall apply to processes issued in proceedings under the Bombay Agricultural Debtors' Relief Act, XXVIII of 1947. The fees chargeable in respect of such processes are prescribed in High Court circular No. P. 0122/47, dated the 9th November, 1948, published at page 914 of the Bombay Government Gazette for 1948, Part IV-C.

Note.-See also on this subject paragraphs 72 of Chapter VII. The aforesaid rules which were made applicable to the newly added territories of the Re-organised State of Bombay under High Court Notification No. P. 6326/56, dated 31st March, 1959, have been continued to remain in force, and shall be deemed to have been framed under section 32 of the Bombay Court Fees Act, 1959 (Bom. Act No. XXXVI of 1959) with effect from 1st August 1959, provided that the exemptions, if any, already in force in the aforesaid newly added territories of the Re-organised State of Bombay in respect of payment of process fees which are similar to the exemptions granted by the High Court Notification No. PR 0703/49, dated 17th October 1958, and which were continued by the High Court Notification No. P. 6326/56, dated 31st March 1959, shall also continue to remain in force.

440. RULE :-

Before any process is issued in any Court, the proper officer of the Court should calculate the amount to be paid as Court-fees, and should give information of such amount to the person by whom the fees are payable. The Court-fees chargeable for service of the process of the Court, other than the summons to the defendant, shall be paid when the process is applied for or within such time as may be fixed by the Court. The Court may, for sufficient reason, extend the time for payment. The stamp received for Court-fees should be affixed to the application made for the issue of the process. After the process fees have been received but not before, the necessary summons, notice, warrant, or other process, should be prepared. When the process is to be issued beyond the jurisdiction of the Court a note should be made on the process that the proper fee has been levied.

441. RULE :-

For warrants for partition in execution of partition decrees the process fees should be charged as follows: They should be charged at the rate mentioned in item III at page 176 of the Civil Manual. The fees should be calculated and charged according to the number of warrants or commission issued irrespective of the fact whether all the properties are situated in one village or more than one village. Further they should be calculated on the value of the share of the decree-holder in the properties mentioned in the particular warrant or commission. For instance, when a darkhast is filed for partition of houses as well as lands and the Court issues one commission for partitioning all the houses and a warrant to the Collector for partitioning the lands, the fees should be calculated for the commission on the value of the share of the decree-holder in all the houses mentioned therein even though the houses may be situated in different villages. If, however, two or more commissions are issued separately for different houses situated in different villages, the process fees should be calculated and charged separately for each of them on the value of the share of the decree- holder in the houses mentioned in each commission. In regard to lands, as there will be only one warrant addressed to the Collector for partitioning all the lands though they may be situated in different villages, the fees should be levied on the value of the share of the decree-holder in all these lands.

442. RULE :-

All Judges are permitted to levy charges for beating of the drum for attachment of immovable properties at such

rates as they consider reasonable having regard to the situation of the properties and the conditions prevailing in the village in which the beating of the drum is done. Ordinarily the rate should be between 25 nP. and 50 nP. for each beating of the drum and the charges should be levied at this rate for the beating of the drum irrespective of the number of properties for which the beating of the drum is done. In cases, however, where the properties are situated at a distance from one another though in the same village and the beating of the drum has, therefore, to be done at more than one place, the charges may be levied at the above rate separately for the beating of the drum at each of the places.

443. RULE :-

When a decree-holder seeks the sale of immovable properties situate at different places or villages, only one warrant and one proclamation of sale with as many copies as there are places or villages should be issued. Only one process fee should be charged for the warrant and another for the proclamation.

444. RULE :-

The members of the Scheduled Tribes specified in the Schedule annexed hereto are exempted from payment of process fees. This Rule shall remain in force up to and inclusive of the [12th day of September, 1969, and shall be deemed to have been in force from and inclusive of the 7th day of September, 1957.]

445. RULE :-

No Court-fee is leviable upon, a certificate of a decree-holder under rule 2 of Order XXI of the Civil Procedure Code, although such certificate declares that the decree-holder has received a small sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

446. RULE :-

Pending judicial decision by the High Court on the question, Subordinate Courts in their administrative capacity should regard section 20 (xiii) of the Bombay Court-fees Act, 1959, as exempting applications for repayment or refund of deposits from Court-fees.

447. RULE :-

Any copy, which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible be used in the same or any other proceeding without a fresh stamp.

448. RULE :-

The following is a summary of the existing law and rules as to the cancellation and use of Court-fee labels and impressed stamps:

(i) Section 42 of the Bombay Court-fees Act, 1959, is as follows: "No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled. Such officer as the Court or head of the office may from time to time appoint, shall, on receiving any such documents forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed."

(ii) Impressed stamps used for denoting Court-fee need not be cancelled or punched otherwise than as required by section 42 of the Court-fees Act.

(iii) The Court or office issuing copies, certificates and other similar documents liable to duty, is, before issue, to cancel labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure-head nor that part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document, with the date, should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts.

(iv) Before records are forwarded by a Subordinate Court to the District Court as required by paragraph 476 of Chapter XXIV, they should be checked for ascertaining that no stamp is left unpunched. At the end of the Roznama in each case a note should be made by the Suit or Darkhast Sheristadar that all the Court-fees stamps have been punched. Similarly, in District Courts the clerk who completes the Roznama should check the punching of stamps and make a similar note. The Record Keeper of the District Court should examine one out of every ten cases received by him and should endorse on the Roznama of the examined case and in the General Record Register that he has checked the punching of stamps in the particular case. A test inspection of cases received by the Record Keeper of the District Court should be made by the Clerk of the Court of the District Court at the end of each quarter.

(v)

(a) When the fee chargeable under the Court-fees Act is less than Rs. 25, such fee shall, subject to the directions contained in clause (d) below, be denoted by adhesive stamp only. Such adhesive stamp shall, either be the adhesive stamp bearing the words "Court Fees" at present in use, or adhesive stamps of any different shape, size or pattern bearing the words "Court Fees" which may hereafter be issued for use in supersession of, or in addition to, adhesive stamps now in use.

(b) When the fee chargeable under the said Act amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps bearing the words "Court Fees" only adhesive stamps being used to make up fractions of less than Rs.25.

(c) Court-fee stamped papers of the value of Rs. 10, 15 and 20 may, however, be used to denote the fees

chargeable under the said Act until such use is prohibited by a notification issued in this behalf under section 39 (b) of the Act.

(vi)

(a) Fees amounting to less than Rs. 25, shall be paid by affixing a single adhesive stamp, of the required value" But if single adhesive stamp of the required value is not available the stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower value, as may be required to make up the exact amount of the fee.

(b) Fees amounting to or exceeding Rs. 25 shall be paid by affixing a single impressed stamp of the required value. But if such a stamp is not available an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower value available as may be required to make up the exact amount of the fee in combination with the adhesive stamps to make up fractions of less than Rs. 25.

(c) The adhesive stamp used under rule (vi) (b) shall be affixed to the impressed stamp of the highest value used.

(d) Notwithstanding anything herein contained impressed Court-fee stamped papers of the value of Rs. 10, 15 and 20 may be used to denote the fees chargeable under the said Act until such use is prohibited by a notification issued in this behalf under section 39 (b) of the Act.

(vii) When two or more impressed stamps are used to make up the amount of the fees chargeable under the Court-fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or inconvenient, the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court and filed with the record, a certificate being recorded by the Court on the face of the first sheet, of the document to the effect that the full Court-fee has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the document.

(viii) In future, stamps should be cancelled on the day of presentation or within a reasonable time from the date of presentation but invariably before the document is filed or registered or otherwise acted upon.

449. RULE :-

(i) In any suit disposed of by a District Court, a Subordinate Civil Court constituted under the Bombay Civil Courts Act, 1869, or a Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, as the case may be, in the circumstances specified in column 1 of the Schedule hereto annexed, the part of the institution fee as specified against it in column 2 of the Schedule shall be repaid to the plaintiff by such Court, by issuing a certificate.

Schedule

	Column 1 .	Column 2.
1.	Suit the claim in which is admitted but only time or instalments for payment is asked for.	Two thirds.
2.	Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence.	Two thirds.
3.	Suit which is withdrawn unconditionally by the plaintiff (before the settlement of issues or recording of any evidence) as settled out of Court.	Two thirds.
4.	Suit in which the plaint is rejected without issuing summons to the defendant as not disclosing any cause of action, or as barred by Law of Limitation.	Three fourths.
5.	Suit in which judgment is given on admission under rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or	Two thirds of the amount of institution fee of the claim admitted .

(ii) In any appeal or cross objections, disposed of by the Court under circumstances specified in column 1 of the Schedule hereto annexed, the part of the institution fee as specified in column 2 of the said Schedule shall be repaid to the appellant by the Court provided that the amount of the fee paid by the appellant exceeds five rupees or the claim for repayment is made within one year from the date on which the appeal or cross objection is withdrawn or not prosecuted.

Schedule

1.	Appeal which is withdrawn or not prosecuted before registration or when registration is refused.	Full amount of the institution fee.
2.	Appeal which abates after registration because the right to sue does not survive for the legal representatives of a deceased litigant	Two thirds of the institution fee paid on the memorandum of appeal.

3.	Appeal which after having been placed before the Court for admission is withdrawn or not prosecuted.	Half of the institution fee paid on the memorandum of appeal.
4.	Appeal which is withdrawn or not prosecuted though registered, before it is called for effective hearing.	Half of the institution fee paid on the memorandum of appeal.
5.	Memorandum of cross objection which is withdrawn or is not prosecuted before an appeal, in which it is filed, is called for effective hearing.	Half of the institution fee paid on the memorandum of cross objection.

450. RULE :-

A form of certificate for refund of Court-fee is given on the next page.

451. RULE :-

A party or his lawyer may be allowed to take a search of the Record and Proceedings of a disposed of case on a written application made to the Court bearing a Court-fee stamp of 50 nP. The order for search on such application shall be made by the presiding Officer of the Court.

CHAPTER 23

Oaths and Affidavits

452. RULE :-

The persons who may administer oaths to deponents must be duly authorised under section 139 of the Civil Procedure Code to do so.

453. RULE :-

District Courts have been empowered by the Government of Bombay (see Resolution of the 12th October 1877), to appoint officers to administer oaths to deponents for the purpose of affidavits in the District Courts, and the Courts subordinate to the District Courts. This order was originally made under section 197 of the old Code and is valid under section 157 of the present Code.

454. RULE :-

The Clerks of the Courts are empowered to administer oaths only for the purpose of affidavits under section 139 of the Civil Procedure Code, and, therefore, they should not administer oaths for the purpose of affidavits, which do not come within the scope of the Code.

455. RULE :-

(i) When any person desires to make any application to the High Court in its Civil or Criminal Jurisdiction, and to support the same by an affidavit or statement on solemn affirmation, any Court of Magistrate or other officer or person duly appointed shall, on application, take such affidavit or statement on solemn affirmation, and on payment by an affixed stamp of such fee as may be legally prescribed authenticate the same by signature with endorsement stating clearly that the affidavit was made on oath or solemn affirmation in the presence of the Court or the officer attesting it.

(ii) An affidavit intended by a person to be filed in any proceeding before the High Court may be sworn before any Court or Magistrate or before a person duly empowered in that behalf who shall, if the appropriate court-fees thereon and other legal fees have been paid, authenticate it, stating clearly that the affidavit was made on oath or affirmation in the presence of the person authenticating it.

456. RULE :-

The Officer authorised to administer oaths shall before certifying the affidavit satisfy himself as to the identity of the defendant who shall be either known to the Officer personally or identified before him by a person whom he personally knows. The manner in which the identification is made shall be certified by the Officer administering the oath. Every Officer administering an oath in such a case shall add the following words after the words "Solemnly affirmed before me" namely, "by" "who is identified before me by" or "whom I personally know."

457. RULE :-

- (1) Every affidavit to be used in a Court shall be entitled "In the Court of.....".
- (2) Every affidavit shall bear the number of the proceeding in which it is proposed to be filed and shall set out the names of the parties to the proceedings.
- (3) Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.
- (4) The declarant shall state what paragraphs or portions of his affidavit he swears or solemnly affirms to from his own knowledge and what paragraphs or portions he swears or solemnly affirms to on his own belief, stating the grounds of such belief.
- (5)
 - (a) The Officer administering the oath or affirmation for the purpose of affidavits shall satisfy himself that the

language in which the affidavit is sought to be made is known to the declarant.

(b) If the language is not known or understood by the declarant, the Officer administering the oath or affirmation shall, where the party is represented by a lawyer, require the said lawyer to certify in writing below the affidavit that the contents of the affidavit have been interpreted to the declarant in a language known to him and that the declarant has fully understood them.

(c) Where the declarant is not represented by a lawyer, the Officer administering the oath or affirmation shall, when necessary, cause the affidavit to be interpreted to the declarant by any person appointed by him as an Interpreter. The person interpreting the document shall certify below the document that its contents have been interpreted to the declarant in a language known to him.

(d) When the Officer administering the oath or affirmation is satisfied that the language of the document is known or understood by the declarant, or when the lawyer or the interpreter certifies that the contents have been interpreted to the declarant in a language known to him, the oath shall be administered and the affidavit completed by the signature of the declarant below the declaration on oath in the presence of the Officer and the certification by the Officer of the administration of the oath.

458. RULE :-

(1) Judicial Officers should, as far as possible, avoid attesting documents because if they do so, they are liable to be summoned as witnesses to prove them in a Court of Justice.

(2) Where an affidavit is sworn or a statement on solemn affirmation is made before a Judge or a Magistrate or where a document is attested before such Officer, a fee of Re. 1 should be taken in Court-fee stamps, which should be affixed to the affidavit or the document, as the case may be, and obliterated.

[(3) The Officers empowered under paragraph 452 to take affidavits or statements on solemn affirmation or any officer of a Court duly appointed in this behalf by the District Judge, may charge a fee of 50 Paise in Court-fee stamps which should be affixed to the document and obliterated, except in the case of affidavits which are made for immediate use in the Court in which the Officer is employed.]

(4) The attestation of documents should ordinarily be done in the Court. In special cases, the Court Officers may, with the previous written permission of their superior Officers attend private houses for the purpose of attesting documents but they should do so entirely out of office hours. The Court Officers attending at private houses would be entitled to receive an extra fee of Rs. 5, when the private house is situated within a distance of 5 miles from the Court, and Rs. 10 when it is beyond that distance, for each such attendance.

459. RULE :-

Government have authorized all Magistrates where there are no Civil Courts and the following officers to administer the oath to Bailiffs making affidavits of service of Process of Civil Courts without levying from them the fees leviable under Government Resolution in the Judicial Department, No. 2308, dated the 12th June 1871, and No. 429, dated the 21st January, 1887, for attestation of affidavits:- The Sub-Registrar of Savda and the Sub-Assistant Surgeons of Savda and Bodwad, in the District of East Khandesh (vide G.R., H.D., No. 2327/2, dated the 22nd December, 1927).

460. Oaths and Affirmations to be made by witnesses and interpreters :-

Oaths and affirmations to be made by a witness or an interpreter under section 5 of the Indian Oaths Act (Act X of 1873) shall, as required by section 4 of that Act, be administered by the Court itself or by an officer empowered by it in that behalf.

461. RULE :-

Under the provisions of section 7 of that Act the following forms of oaths and affirmations are prescribed by the High Court.

(a) Forms of Oaths for witnesses: Christian (on New Testament)

"I swear that what I shall state shall be the truth, the whole truth and nothing but the truth. So help me God."

"I swear that what I shall state be the truth, the whole truth and nothing but the truth. So help me God."

"I swear in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth. Manasni, Gavasni, Kunasni."

(b) Form of affirmation for Hindu and Muslim witnesses and witnesses having an objection to making an oath:

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but truth."

(c) Forms of Oaths for interpreters: Christian (on New Testament)

"I swear that I shall well and truly interpret the questions put to, and the evidence given by the witnesses in the case. So help me God."

Note.-In the case of Quakers substitute for "Swear" "being one of the people called Quakers do solemnly, sincerely and truly declare and affirm."

"I swear that I shall well and truly interpret the questions put to, and evidence given by the witnesses in the case. So help me God."

"I swear that I shall well and truly interpret the questions put to, and the evidence given by the witnesses in the case. Manasni, Gavasni, Kunasni".

(d) Form of affirmation for Hindu and Muslim interpreters and interpreters having an objection to making an oath:

"I solemnly affirm in the presence of Almighty God that I shall well and truly interpret the questions put to, and the evidence given by, witnesses in the case."

CHAPTER 24

Records

462. Classification of Records :-

For the purpose of the preparation, maintenance, preservation and destruction of records, original proceedings are divided into the following classes:

Class I: includes records of

(a) All regular suits;

[(b) Proceedings under the Hindu Marriage Act, the Indian Succession Act (except those under Part VII of the Act), the Payment of Wages Act, the Workmen's Compensation Act, the Guardians and Wards Act and the Lunacy Act, References under the Land Acquisition Act, Insolvency applications under the Provincial Insolvency Act; and."]

(c) Such other cases as the High Court may from time to time direct to be included in this class.

Class II: includes records of

(a) Proceedings in execution of decrees;

(b) Small Cause Suits;

(c) Miscellaneous proceedings not included in Class I.

Note.-In case of doubt as regards proper classification, the matter should be referred to the District Judge, who should issue suitable instructions, if necessary, after consulting the High Court.

463. Arrangement of Records in Files :-

The record of every proceeding in Class I shall be arranged and kept in the following files:

File 'A' shall contain the following papers, which shall be arranged in the following order:

(a) Complaint or Petition,

(b) Judgment or final order,

(c) Preliminary and final decree, and

(d) Any other papers which the Presiding Judge may with the previous permission of the District Judge order to be placed in file 'A'.

File 'B' shall contain

(a) Summons or notice with return thereof, in cases in which an ex parte order is passed against the defendant.

(b) Written Statements.

(c) Interrogatories and their answers.

(d) Memorandum of issues.

(e) Reference to Arbitration, Award if decree is passed in terms thereof.

(f) Any order of the Court sanctioning a compromise as beneficial to minor or lunatic.

(g) Petition of compromise, if given effect to in the decree.

(h) Roznama of Proceedings.

(i) Findings certified to the Appellate Court.

(j) Copy of judgment, decree or order passed in appeal or revision, if any.

File 'C' shall contain:

(a) Documents admitted in evidence.

(b) Oral evidence.

(c) Affidavits when treated as evidence.

(d) Registered addresses of parties.

[(e) Lists of documents alongwith original documents, which are not exhibited.]

File 'D' shall contain:

(a) Warrant of attachment before Judgment.

(b) All summonses and notices [except those mentioned in file 'B' (a)].

[(c) List of witnesses.]

(d) Petitions relating to attendance of witnesses or adjournments or calling for and sending papers or records.

[(e) Copies of original documents which are not exhibited.]

(e) Documents not exhibited.

(f) Powers of attorney.

(g) Vakalatnama and memos of appearance.

(h) Interlocutory proceedings not specified as included in any other file.

(i) All other papers not included in Files 'A', 'B' and 'C'.

464. RULE :-

The record of every proceeding in Class II shall consist of two files to be styled and marked 'B' and 'D'. File 'B' shall contain the papers specified and included in 'A', 'B' and 'C' of Class I. All other papers shall be filed in File 'D'.

Exception.-Where immovable property has been sold under a decree the proclamation of sale, the Lilavyadi or memorandum of auction and the order confirming the sale and copy of the sale certificate shall be included in File 'A'.

465. Preparation of Records :-

The arrangement of the record and the distribution of the papers in the proper files should commence from the date of institution of the suit or proceeding and this shall be continued from day to day as the case proceeds.

466. RULE :-

(a) Each file of the record shall have prefixed to it a prescribed title page (Form Civ. D. 33E).

(b) In the prescribed title page, the following facts shall be written:

(1) Name of the Court.

(2) Case Number.

(3) Name of Parties.

(4) Date of filing.

(5) Date of decision.

(6) Index containing (i) Serial number, (ii) Exhibit number, (iii) Description of Exhibits, (iv) Page number and (v) Remarks, if any.

(7) Category of the file (A, B, C or D).]

467. RULE :-

The following rules should be observed in marking and preparing exhibits recorded in the Court.

(a) All documents, including applications and affidavits, except those not admitted in evidence, and the depositions of witnesses shall be serially exhibited. The exhibit number should be marked in large figures in red ink on the top of the outer sheet.

(b) All exhibits except original documents should as far as possible be of foolscap size.

(c) Exhibits of small size should be attached to a sheet of foolscap size.

(d) Where an exhibit consists of more sheets of paper or documents than one, the number of such sheets or documents should be shown in brackets below the number of the exhibit.

(e) Where an exhibit is too bulky or awkward to be included in the file of exhibits a sheet of foolscap size should be placed in the file indicating the number of the exhibit and of what it consists and stating that the particular exhibit is separately kept.

(f) A number of extracts from the Record of Rights, assessment receipts or municipal receipts, are produced by parties, and subsequently exhibited after they are duly proved. In order to facilitate quick reference and appreciation of evidence, it is desirable to adopt the following procedure in numbering such extracts or receipts as exhibits in suits and other proceedings:

(1) All extracts from the Record of Rights or receipts should first be carefully sorted out, and then grouped together according to the properties to which they relate and the parties who produce them.

(2) When the extracts or receipts are sorted out and grouped as above, each group should be exhibited under one single common number.

(3) The extracts or receipts in the same group should thereafter be sub-numbered as for instance Ex. 3(1), Ex. 3(2), etc.

(g) Whenever an exhibit has been removed a sheet of foolscap size should be inserted stating the number of the exhibit removed and the purpose for which it has been removed and the name of the person or the designation of the Officer in whose custody it is or if removed and entered as an exhibit in another case, its number in that case.

(h) All share certificates, debentures, promissory notes and other valuable securities should be enclosed in a separate envelop or packet which should be securely fastened and sealed and the packet marked outside to show the numbers of the exhibits contained within and the name of the clerk who enclosed them in the packet and a sheet as above should be inserted in the file in lieu of the original and an entry made thereon to show where the original exhibit has been placed.

(i) When a succession certificate or a power-of-attorney is produced, it need not, unless the Court requires it, be filed. If it is not filed, it may be returned after inspection; but a note thereof should be made in the Roznama and the fact of the production endorsed on the document over the signature of the Judge or Clerk of the Court.

468. Documents :-

(1) All documents tendered in evidence shall be accompanied by a list in the form given as No. 5 in Appendix H of the first schedule of the Code of Civil Procedure.

(2) If any document is written in pencil or is torn, moth-eaten or damaged in any other way, a clear note to that effect must be made in the list and any such document shall be brought to the notice of the Judge by the clerk whose duty is to receive it.

(3) When a document produced is written in pencil or is torn, moth-eaten or damaged in any other way, the Court may, if it deems desirable, ask for a true copy thereof either written in ink or typed.

469. RULE :-

(1) As soon as the list is filed, the Bench Clerk should endorse on the back of each document, the particulars mentioned in clauses (a), (b) and (c) of rule 4(1), Order XIII, Civil Procedure Code.

Note. Occasionally documents are produced which are of great historic value such as old sanads or grants, and such documents may be seriously impaired or damaged by the usual endorsements. It is important that the identity of a document produced in Court and acted upon should be placed beyond question in view of a possible appeal or other future proceeding. But where a document of historical interest is in question, the Court, before which it is produced, should make every possible endeavour to prevent its being defaced by marks of any kind. Some means of avoiding disfigurement would generally suggest themselves. The parties may agree to a photographic copy being substituted for the original, or the document may be enclosed in a sealed cover, or in a locked and sealed box, the necessary particulars being endorsed on the outside. Careful measures should also be taken for the safe custody of such documents.

(2) If any document presents a suspicious appearance, a note of it should be made in the list as well as in the Roznama and if the Court sees sufficient cause it may impound the document under Order XIII, rule 8 of the Civil Procedure Code. If any document appears to have been executed on unstamped or insufficiently stamped paper, action should be taken under the Bombay Stamp Act.

470. RULE :-

If a document included in the list is referred to in the proceedings before it is tendered in evidence and formally proved, it should be immediately marked for identification. When it is tendered in evidence, it should be detached from the list. If rejected, it should be endorsed as prescribed by Order XIII, rule 6, Civil Procedure Code, and returned. If admitted, the endorsement referred to in the above rule should be completed and signed by the Judge (Order XIII, rule 4, Civil Procedure Code) and the document should be assigned the appropriate exhibit number and filed in the record and all references to it in the depositions and Judgment should bear that number. Every document should be further marked with the letter "P" or "D", according as it is tendered by the plaintiff or the defendant. The number assigned to each document should be endorsed on the list of documents mentioned above.

471. RULE :-

The provisions of Order XIII. rules 6 and 7, Civil Procedure Code, do not apply to Vakalatnama, summons and other formal documents. All such documents, should, when filed, be endorsed with the number and year of the case, and the number of exhibit assigned to it in the Roznama and placed on the record.

472. RULE :-

When any person, who has filed a general power of attorney authorising him to appear, apply or act in any Court on behalf of a party to a suit, appeal or any other proceeding, desires to have the power of attorney returned to him during the pendency of such suit, appeal or proceeding it may be returned to him unless sufficient reasons appear to the contrary, provided he tenders a duly certified copy thereof at his expense to be substituted for the original.

473. RULE :-

When a plaint is returned before registration for presentation to the proper court, all documents filed with it should also be returned. If it is returned after registration, unadmitted documents should be returned along with it. The return of other documents will be governed by the provisions of paragraph 474.

474. RULE :-

(1) An application for return of a document admitted in evidence and placed on record may be presented to the Court, which admitted it on record or to the District Court, if the record is sent to that court. The document may be returned to the person entitled to receive it after obtaining a receipt in writing in the usual form. Such receipt should be filed with the record in place of the document returned. A note as regards the return of the document should be made in the Roznama as well as in the list of documents.

(2) If a party wants the return of a document by registered post, it may be so returned at the party's risk, provided the charges of postage and registration are remitted and an advance receipt is sent along with the application.

(3) In any case, in which an appeal or revision application lies, no document shall be returned until the period allowed for preferring such appeal or revision has elapsed, or until such appeal or revision if preferred, has been disposed of, unless the person applying for the return of the document delivers a certified copy to be substituted for the original and undertakes to produce the original if he is required to do so. No document shall, however, be returned which has been declared to be wholly void.

[(4) Register of applications (oral or in writing), for return of documents, should be maintained in the following form:

Sr. No.	Date of the application (oral or in writing)	Name of the applicant with address	Name of the Court	Number of the proceeding	Capacity of the applicant in the proceeding
1	2	3	4	5	6
Description of the document with exhibit No.	Date of return of document.	How the document was returned either in person or by post.	Signature of the applicant, if the document is returned in person or the outward No. of the registered parcel by which the document sent	Remarks.	
7	8	9	10	11	

475. RULE :-

The provisions of the foregoing paragraphs 462 to 474 shall apply mutatis mutandis to the records of appeal and revision applications.

476. Transmission of Records to the District Record Room :-

The records of decided

(i) Suits

(ii) Miscellaneous Judicial Cases,

(iii) Execution Cases,

(iv) Insolvency Petitions

(v) Regular appeal,

(vi) Miscellaneous appeals and

(vii) Miscellaneous cases, should be forwarded to the Record Keeper of the District Court on completion of three months from month of their disposal alongwith a list in the form prescribed below: General Record Register of the.....Court of..... Part I-Suits including Execution Part II-Miscellaneous Applications Part III-Appeal

477. RULE :-

In forwarding the records to District Court, the Civil Judges despatching them should choose the most economic and expedient mode of despatch. The Civil Judges should also see that the cost of conveyance is kept down as low as possible. It is not necessary to forward the records in any particular way but proper precautions should be taken for their safety. Whenever expedient they may be despatched by Registered Post with an acknowledgment.

478. RULE :-

In case the record of any case specified in the list referred to in paragraph 477 is not sent, a note should be made in the remarks column of the list against that case showing why the record has not been sent.

479. RULE :-

Before the record of any suit, darkhast or other proceeding is forwarded by the Court in which it originated, to District Court record-room it should be ascertained that the final order passed in that suit, darkhast or other proceeding is duly noted in the Register of Suits, darkhasts or other proceedings, and a remark to the following

effect should be made in the list mentioned above and signed by the Clerk of the Court:

"I have ascertained that the final orders passed in the proceedings entered in the list are duly noted in the relevant registers which are to be permanently preserved."

480. Custody of Records :-

When the records with the prescribed lists are received in the record-room, the Record Keeper shall verify whether records corresponds with those entered in the list, that their classification and arrangement have been properly carried out and that the contents of each file are correct. He shall bring discrepancies, if any, to the notice of the Judge concerned through the Officer in charge of the record branch. The Record Keeper should make an endorsement as regards the correctness or otherwise of the record received and send a copy of the endorsement so made to the Civil Judge concerned so as to reach him within 15 days from the date of the receipt of the record in the record-room.

481. RULE :-

The Record Keeper of the District Court should further examine one out of every ten cases received by him and should endorse on the Roznama of each case examined by him and in the General Record Register that he has checked the punching of the stamps.

482. RULE :-

A test inspection of cases received by the Record Keeper of the District Court should be made by the Clerk of the Court of the District Court at the end of each quarter. A note of the inspection shall be made in the inspection book kept in the Record Room. The book shall after each inspection be submitted to the District Judge or any Judge appointed by the District Judge for the purpose.

483. RULE :-

Records, which should have been sent with the prescribed list but which have not been so sent, should be entered by the Record Keeper in the record room Register of despatch of Civil records and a note should be made against the entry that the record has been detained in the Court.

484. RULE :-

On the 25th of each month the Record Keeper should submit to the Clerk of the Court a report showing for each Court what records which should ordinarily have reached the record room are yet to be received. The Clerk of the Court shall submit the report to the District Judge for orders.

485. Arrangement of Records in the Record Room :-

(1) The records shall be kept on sturdy racks. All precautions should be taken to see that the records are not destroyed by white ants, insects etc. The legs of the racks should be kept submerged in iron or lead receptacles which should contain some disinfectant. Any damage noticed in this respect should be immediately brought to the notice of the Presiding Judge.

(2) Each rack should bear a number. Each shelf in the rack should also be numbered.

(3)

(a) All the records of a suit or other proceeding shall be kept together in one bundle. The bundle shall also contain the papers of appeal or revision application arising from that proceeding.

(b) Cumbersome or bulky records should be separately kept.

(4) The bundles should be tied in rumsals of such colours as may be prescribed, each of which should bear a label showing the nature of records kept in it and the year or years to which they relate.

(5) The records should be arranged according to the date of their disposal.

(6) On each rack, there should be affixed to it a card showing the number of rack, the number of the shelves the category of records kept on each shelf and the year or years to which they pertain. Each shelf should also bear a label giving particulars of the record kept.

(7) A chart of the record room should be prepared showing on it the numbers of racks and the nature and category of records kept on each of them.

(8) The record, which is due for destruction in any year, should be taken out and kept on separate racks, until it is destroyed.

486. RULE :-

When a record is removed from the record room for any purpose, the Record Keeper shall insert a memorandum in the prescribed form in its place in the bundle and note in the Record Room Register of despatch of Civil records, the number of the case, the names of the parties, the designation of the court to which it is sent and the date of its removal and shall obtain the signature of the receiving court or Officer in the appropriate column of the Register. If the record is required by a Court at an outstation the signature taken shall be that of the Clerk who acts as the despatching clerk. On return of the records the Record Keeper shall note in the same Register the date of return.

487. RULE :-

In the first week of each quarter the Record Keeper shall prepare and submit to the District Judge through the Clerk

of the Court a statement showing all the records which whether for the purpose of appeal or otherwise had been out of the record room for more than four months on the last day of the preceding quarter. A blank report should also be submitted.

488. RULE :-

The lists received along with the records should be bound at the end of the year. The lists so bound will serve as record room registers.

489. RULE :-

The appellate record of the District Court and records of execution proceedings shall be kept with the record of the original suits, but shall not be stitched to the files of those suits.

Exception.-The records of execution proceedings held in a District other than that in which the decrees were passed, shall be kept in the record room of the former District in a separate bundle labelled "Execution in Suits disposed of in other Districts."

490. Preservation and Destruction of Records :-

The following rules for the destruction of records are framed under section 3 of the Destruction of Records Act, V of 1917:

(1) A Files shall be preserved for ever. B Files shall be destroyed at the end of 30 years. C Files shall be destroyed at the end of 12 years. D Files shall be destroyed at the end of 3 years.

(2) The above periods shall be calculated from the date of the final decree or order, which in cases in which appeal or revision applications are filed, will be that of the appellate or revisional Court.

(3) Cumbersome and bulky exhibits, such as account books and the like, which cannot be conveniently kept with the record of the cases in which they have been used, but which have to be preserved separately e.g. in boxes and bundles, may be destroyed, under the orders of the District Judge, after the expiry of one year from the date of the final decision of the Court. In such cases one month's clear notice of the intended destruction shall be served, before the expiry of the said period, on the parties concerned or on their lawyers.

(4) The work of destruction of records should be done regularly once a year preferably in the summer vacation. It is the duty of the members of the establishment in charge of the record room to sort out and destroy records. If assistance is necessary, clerks and bailiffs from any court at the District headquarter should be employed.

(5) The destruction of useless records should be effected by tearing them into small pieces which should be disposed of according to the standing orders of Government issued from time to time.

(6) The records of Election Tribunals constituted under section 86 of the Representation of Peoples Act, 1951, are to be sent to the District Judge of the District concerned. The records of the trial of an election petition should ordinarily be preserved for a period of five years unless a longer period is fixed in any particular case by the Election Commission (Vide Election Commission letter No. 86/55/11578, dated 1st October, 1955).

(7) The several registers and files prescribed by the High Court are classified as follows for the purpose of destruction of records:

	Nature	Classification
1.	Register of Suits.	A
2.	Register of Applications for Execution	B
3.	Register of Applications requiring Judicial enquiry	A
4.	Register of applications not requiring Judicial Enquiry	C
5.	Register of Insolvency petitions	A
6.	Daily Registers of complaints received	D
7.	Register of rejected complaints	C
8.	File of complaints returned for presentation to the proper Court.	B
9.	Register of Sale Certificates	C
10.	Register of Darkhasts transferred to the Collector for execution	B
11.	Register of Decrees received for execution	C
12.	Daily Court fee Register	C
13.	Process fee Register	C
14.	Register of cases in which Nazir is appointed guardian ad -litem	C
15.	"A", "B", "C", "D" Registers of decided cases.	D
16.	Register of interim applications	D
17.	Register of Commissions issued	D
18.	Inward and Outwards Registers (both regional and English)	C
19.	Register of Stamp duty and Penalty	C
20.	Copying fee account and Registers relating thereto	C
21.	Forms A, C, D, F, G, H, I, J, K, L, regarding Accounts	C
22.	Memo Books	C
23.	Daily and Weekly Boards	D
24.	Correspondence file of ephemeral importance	C
25.	Gujarat Government Gazettes	A
26.	Instructions issued for guidance on examination of accounts (from	B
	the date of receipt)	

	the date of receipt)	
27.	Reports of Enquiry Officers and final orders in Departmental enquiries (from the date of final orders).	B
28.	Correspondence and office copies of correspondence relating to preparation of Paper Books in proceedings before Appellate and Revisional Courts	D
29.	Other Miscellaneous correspondence (From the date of disposal of the subject to which such correspondence relates).	D

(8) The following records shall be destroyed after a period of six years:

- (1) Receipt Books for money deposited in the Mamlatdars' Treasury.
 - (2) Account Books of postage stamps.
 - (3) Office copies of contingent Bills and Travelling Allowance Bills.
 - (4) Miscellaneous reports of Civil Judges to District Judges.
 - (5) Office copies of Monthly, Half Yearly and Annual Returns of every description.
 - (6) Office copies of Returns of unanswered letters.
 - (7) Post-books (tapal books).
 - (8) Receipts of registered letters and Money orders.
 - (9) Lawyers' application for leave etc.
 - (10) Bailiffs' process serving and receipt book.
 - (11) Applications for copies and translations.
 - (12) Receipt books of documents given to section-writers to copy.
 - (13) Counterfoils of Court Fee Refund Certificates.
 - (14) Sine die lists.
 - (15) The Diary of miscellaneous work.
 - (16) Receipt books of documents returned to parties.
 - (17) Muster rolls.
 - (18) Statements of dead stock articles.
 - (19} Fee account books kept under rule 4 and 7 (paragraph 505).
 - (20) Statement relating to the Annual Report on the administration of civil justice.
 - (21) Audit Notes and objections (not containing instructions for guidance) (from the date of receipt).
 - (22) Office copies of replies or explanations to Audit Notes and objections (from the dates of such replies or explanations).
 - (23) Letters from Superior Courts calling for reports or explanation and Office copies of the reports or explanation submitted to the Superior Courts (from the date of report or explanations).
 - (24) Statements, depositions and other records of Departmental enquiries. (Other than reports of Enquiry Officers and final orders). (From the date of final order).
 - (25) Correspondence and office copies of correspondence relating to administrative subjects such as buildings, accommodation, strength of staff etc. and miscellaneous correspondence. (From the date of disposal of the subject to which such correspondence relates).
- (9) Any other file or document not specially provided for, may be destroyed with the permission of the District Judge, after such period as he may determine.
- (10) Notwithstanding anything contained in the Rules above, the District Judge or the Civil Judge with the permission of the District Judge, may preserve the papers mentioned in sub- paragraphs 7 and 8 above for a longer time than that prescribed above if in his opinion it is necessary to do so.

CHAPTER 25

Search or Inspection of Records

491. A : Disposed of cases :-

A party or his lawyer may be allowed to take inspection of the Record and Proceedings of a case, or of a Book or Register maintained by the Court, on a written application bearing the requisite court fee stamp and stating precisely the correct number, year and description of the case or the book or register of which inspection is sought. When such application is made by or on behalf of a person who is not a party to the proceeding in respect of which

inspection is sought, the application shall be accompanied by an affidavit stating the grounds on which and the purpose for which the inspection is sought.

492. RULE :-

An Inspection Register in the following form shall be maintained in each Court:-

Note.-If a lawyer's clerk is authorised by the lawyer to inspect the record, a note that he has been so authorised should be made in the remarks column of the Inspection Register.

493. RULE :-

A fee of Re. 1 shall be charged per day for the inspection of a record of any suit or proceeding, particulars of which shall be entered in the Inspection Register. Similarly, a fee of 25 nP per day shall be charged for inspection of every book or register.

494. RULE :-

All applications for inspection shall be dealt with by the Record Keeper of the Court who may refer the application to the Judge, if, in his opinion, the grounds are insufficient.

495. RULE :-

Inspection fees shall be levied in Court fee stamps which shall be affixed on the application, and cancelled in the manner provided for in section 42 of the Bombay Court-fees Act, 1959 (Bom. Act No. XXXVI of 1959).

496. RULE :-

The inspection of records shall be made at such time and place, and in the presence of such official, as the District Judge may by general or special order, direct.

497. RULE :-

It shall be the duty of the official supervising the inspection of a record to see that no marks or alterations are made in it, or papers abstracted therefrom, and that it is returned in its original condition when the inspection is over. The official supervising the inspection shall, before allowing inspection of a record, make a note in the Inspection Register of the torn or damaged condition of any paper, document, book, or register of which inspection is to be allowed, and see that special care is taken by the applicant in handling the same.

498. RULE :-

No other person than the applicant, his lawyer or duly recognized agent shall be allowed to inspect the record or take copies or notes therefrom.

499. RULE :-

A party may be forthwith stopped from proceeding with the inspection, if it comes to the knowledge of the Record Keeper or the official supervising inspection, that the record is being misused, tampered with, or not handled properly by the applicant.

500. RULE :-

If the applicant fails to take inspection within a week from the day on which the order for inspection is passed, the order granting the application shall ordinarily lapse, unless the District Judge directs otherwise.

501. RULE :-

On an application, bearing court fee stamp of 20 nP. the original papers in the record of any civil suit, appeal or proceeding may be supplied to the parties or their lawyers for the purpose of taking copies provided that the papers are kept under the control and supervision of an officer of the Court. Not more than ten documents shall be supplied on any single application.

502. B:Pending Cases :-

A party or his lawyer may be allowed to take inspection of the record and proceedings of a pending case on an oral or written request made to the Clerk of the Court or official in charge of the record. Such inspection should be allowed free of charge.

503. RULE :-

The instructions contained in the foregoing paragraphs 496 to 499 shall also apply to inspection referred to in paragraph 502.

CHAPTER 26

Copies and Copying Fees

504. RULE :-

The following are the rules under which copies of papers may be granted under section 41 of the Bombay Civil Courts Act, (Act XIV of 1869):

(1) A party to any proceeding may, on application on the prescribed Court fee, made to the Court having the custody of the record, obtain a certified copy of any judgment, order, deposition, memorandum of evidence, or any document filed in the said proceeding. The application shall state whether the copy applied for is required for private use or otherwise.

(2) Applications for copies by persons other than parties to the proceeding shall be supported by an affidavit stating the purpose for which the copies are sought.

(3) On receipt of an application, the office shall immediately scrutinize it with a view to ascertaining the correct number of the proceeding, names of the parties, description of the document copy of which is applied for, and whether the document is available for copying.

(4) The office shall estimate the costs of the copies before the copying work is undertaken. The estimate should, as far as possible, cover all probable costs of the copies.

(5) The applicant shall be called upon to deposit the estimated costs of the copies applied for, and make up other deficiencies then and there only, if his presence is available in the office. In other cases, the orders of the Presiding Judge shall be obtained requiring the applicant to supply the deficiencies within a specified period of time, not exceeding ten days from the receipt of the intimation.

(6) When the description of the document given in the application is incorrect or deficient, and it is, in consequence, necessary for the Record Keeper to search his records in order to find it, a fee at the rate of one rupee for each year of which the records are searched, shall be payable by the applicant for such search, whether the document be found or not, and whether the copy for which he applies, on examination of the said document, be granted or not.

(7) As soon as the office finds that the application is complete in all respects, it shall be dealt with by the Clerk of the Court who may either grant the application or refuse it for reasons to be recorded thereon, or pass such other orders as he may deem just. In case of refusal, such refusal, and the grounds for the refusal, shall be communicated to the applicant in writing.

(8) Copies shall be furnished within [two weeks] of the presentation or receipt of the application, if the application is complete on that date, unless further delay is unavoidable, in which case the cause shall be endorsed on the copy. In other cases, the period of 10 days shall be computed from the date on which the application is completed in all respects.

(9) When a party applies for a copy of an appellate judgment for the purposes of filing a further appeal or revision, he shall be furnished with a copy not only of the judgment but also of the grounds of appeal and of the cross-objections, if any, unless these are incorporated in the judgment itself.

(10) A certified copy of a part only of any document on record whether exhibited or not, may, in the discretion of the Presiding Judge, be given. No copy, however, shall be given of part of a judgment or of an order recorded on the application without a copy of the application itself. In the case of a Roznama, the portion of which copy is given at the discretion of the Presiding Judge must include all the entries of a particular date or dates, accompanied with the heading.

(11) Copies of any document on the record of a proceeding prepared by a party, may in the discretion of the Presiding Judge of the Court, be certified as true copies upon an application made in that behalf: Provided that the copies sought to be certified are typed neatly and on good paper, and are otherwise in conformity with the instructions laid down in rule 21 hereof; and Provided further that the applicant pays the comparing fees herein prescribed for certified copies prepared in the office.

(12) The following endorsement shall be made on every copy of the document: The date on which the copy was applied for. The date on which the application was completed. The date on which the copy was ready for delivery. [The date on which intimation was given to the applicant by post (To be filled up when application is made by a party in person and not by an advocate).] The date on which it was delivered or posted. To prevent unauthorised alterations being made, the date shall be written in letters in distinct handwriting and the endorsement should be signed by some authorised officer of the Court on the date on which it was made.

(13) The following shall be the rates of copying and comparing fees:

(1) For copying documents in English, 5 nP. for every 25 words or fraction thereof.

(2) For copying documents in Regional Languages, 5 nP. for every 33 words or fraction thereof.

(3) For copying documents in tabular forms

(a) When the document is an application for execution, a blank printed form for which is presented along with the application for copies: the rates mentioned in (1) and (2) above.

(b) In other cases: Twice the rates mentioned in (1) and (2) above.

(4) For comparing copies, a fee at the rate of 5 nP per 100 words or fraction thereof shall be charged.

(5) For copying a map or plan, such fee not exceeding Rs. 15 and not less than Re. 1 as the Presiding Judge may determine.

[(6) For paper charges 2 paise to 3 paise at the discretion of the District Judge, having regard to the cost of paper, for each sheet].

(14) On extra payment of

(a) a Court fee stamp of 40 nP upon the application; and

[(b) half the fees ordinarily charged as prescribed in sub- paragraph (13) above, copies shall be furnished within one week, provided that the document of which the copy is sought is in existence and available amongst the

records of the Court to which the application is made. In the case of applications for copies of decrees, if the decree is not signed by the Judge till the date of the application, the period of one week shall be computed from the date the decree is signed by the Judge:

Provided that if copies are not supplied within the time limit prescribed above, the fees shall be charged as prescribed in sub- paragraph (13) above.]

(15) Where different persons apply for single copies of the same document each should be supplied, at full rates, with an original, not a carbon copy. But if one person applies for more than one copy, he shall on request, be given carbon copies (in addition to the original copy at the full rate) up to a maximum of five, and should be charged 1/4th of the fee prescribed for a single copy with a minimum of 15 nP.

(16) Court fees should be recovered at the time of furnishing copies and not when the copies are filed in Courts. Under Articles 24, 25 and 27 of Schedule II of the Bombay Court- fees Act XXXVI of 1959, fees are leviable in respect of copies of the documents specified therein except in cases where Government has, by a notification under section 46 of the aforesaid Act exempted any document or class of documents from payment of Court fees. Under clause (7) of Government Notification, Revenue Department No. 590, dated 16th September, 1921, Court fees are remitted in case copies are required for private use by persons, applying for them. Before the aforesaid copies of documents are furnished to the parties concerned, a statement should be obtained from them as to whether the copies are required for private use or otherwise; and if the parties state that the copies are required for private use then in accordance with the exemption granted by Government, no Court fee should be levied on such copies. In case the aforesaid copies are produced later on in any court, then Court fee as required under the foregoing provisions should be levied before they are received. The copies on which Court fees are not chargeable under the Bombay Court-fees Act, 1959, should not be certified to be true copies unless stamp duty under Article 26, Schedule I of the Bombay Stamp Act, 1958, has been paid before furnishing them. Stamp duty under the Bombay Stamp Act will not however be chargeable on copies on which Court fees are chargeable but which has been remitted by a Notification under section 46 of the Bombay Court-fees Act.

(17) No fee is to be charged for comparing copies under Order VII, rules 14 and 17, and Order XIII, rule 5 of the Civil Procedure Code.

(18) In case the estimated deposit falls short of the charges which would have to be recovered in respect of the copies, the balance shall be recovered from the parties or lawyer concerned before the copies are delivered personally to them. In case the applicant applies for such copies by post or where the copies are required to be sent through the agency of the post, such balance may be recovered by sending copies by value payable post.

Note.-A value payable parcel can only be sent for transmission to Post Office which is also a Money Order Post Office and the amount to be recovered must not be less than 25 nP.

(19) In cases where the applicant refuses to pay the balance of the amount of the charges due from him or to accept the V.P.P. the Court shall recover the amount by attachment and sale of the movable property of the applicant.

(20) In every case where an applicant for certified copies pays a deposit, he should be granted a receipt preferably in Form A of Appendix I at page 385, Volume II.

(21) All copies should be correct, and typed or written in a clear hand, with good ink, on stout paper, and on the outer three quarter margin only of sheets of foolscap paper, the inner one quarter margin of every sheet being left blank.

(22) All copies shall be dated, subscribed and sealed in the manner prescribed by section 76 of the Indian Evidence Act. The Clerk of the Court is the officer appointed in every Civil Court to certify and deliver copies of all civil records within the meaning of section 76 of the Indian Evidence Act.

Translation.

(23) Translations should be prepared by an Officer of the Court qualified for the purpose, or by a translator appointed by the Presiding Officer of the Court.

(24)

(1) Fees for translating documents should be charged at a uniform rate of 50 nP. per 100 words, whether from or into the regional language, but the District Judge may modify the rate for sufficient reasons.

(2) If such translations are made by a member of the establishment outside office hours, or by any person other than the member of the staff specially appointed for the purpose, the fees recovered in respect of such translations shall be paid to him.

(25) A surcharge of 55 per cent, shall be levied on all copying, comparing and translation fees and added to the total charges for the preparation of certified copies.

[(26) Supply of uncertified copies-.-

(i) Subject to such regulations as the High Court may make, any party to the proceeding or his lawyer may obtain certified copies of notes of evidence recorded by the District Court. Fees for the supply of such copies shall be

charged as follows:

- (a) If only one party applies for a copy, per folio of 100 words or fraction thereof- 12 Ps.
- (b) If two parties apply for copies, per folio of 100 words or fraction thereof- 10 Ps. per party.
- (c) If more than two parties apply for copies, per folio of 100 words or fraction thereof - 8 Ps. per party.

505. Supplementary rules and forms regarding copying and translation fees for the guidance of all District and Subordinate and Small Causes Courts :-

1. Applications for copies with deposits should be received by the Record Keeper, but if the record from which the copy is required is in the Court and not in the Record Room the application will be passed on by him to the Sheristedar or other officer appointed by the Judge, after he has entered it in the Register of Applications and has entered the fee in the Daily Fee Book as provided in rules 3 and 4.
2. In every case in which the application cannot be granted as a matter of course the order of the Judge should be taken and endorsed on the application.
3. Each application should be initialled and endorsed by the Record Keeper with the date of presentation and the amount of deposit. It should then be entered in the Register of applications for copies (Form at page 214) which should be kept in Record Keeper's Office. Applications for copies should be filed separately in consecutive series after they are disposed of.
4. The Deposit Fee should at once be entered in the Record Keeper's Daily Book, which should be kept in the following form:

Month and Date.	Daily Fee Book.	
	Serial No. in the Register of Applications for copies.	Amount

5. Deficit amount, if any, when subsequently received, should be endorsed on the application and at once entered in the Daily Fee Book.
6. At the close of the day the Record Keeper should take the endorsed applications and the money together with the Daily Fee Book to the Nazir and hand over the money to him and take the Nazir's signature on the Daily Fee Book. The Nazir should compare the endorsements on the applications with the entries in the Daily Fee Book before signing it.
7. The Nazir should keep a Deposit Fee Account containing the following columns:
 - (a) Balance at the close of the month.
 - (b) Amount deposited during the month as per Daily Fee Book.
 - (c) Total of columns (a) and (b).
 - (d) Copying and other fees as per abstract to be credited to Government.
 - (e) Amount refunded to depositors.
 - (f) Comparing and other fees to be credited to Government.
 - (g) Cost of paper to be credited to Government.
 - (h) Copying fee remitted to the Court in which the copy is made.
 - (i) Total of columns (d) to (h).
 - (j) Balance at the close of the month.
8. The amount of the Daily Fee Receipts taken from the Daily Fee Book should be credited daily on the receipt side of the Nazir's Cash Book I, and all sums sent to the Treasury debited in the same book on the debit side. In the same manner all sums withdrawn from the Treasury should be credited in the Cash Book I and payments debited in that book. The remittances to the Treasury should pass through Register (C) of deposits and withdrawals through Register (D). The payments into the Treasury should be supported by the Treasury Officer's acknowledgment in the Court's Pass Book and refunds to applicants by their acknowledgments in column 16 of the Register of Applications for Copies.
9. The Deposit Fee Account should be closed by Nazir monthly, the total of the receipts in the Fee Book being entered in column (b) of the account which with the Fee Book, the Pass Book and the abstract for payment should be placed before the Judge for scrutiny and signature.
10. The above rules and forms apply mutatis mutandis to Translation Fees.
11. The duties of the Record Keeper referred to in the above Rules shall be performed in the subordinate Court by the Clerk of the Court.

No. of	Date of	Name of	No. and	Amount	Amount	Amount	Name of	Date of	Date of	Amount	Amount	Amount	Amount	Amount,	Signature	Amount	Sig
--------	---------	---------	---------	--------	--------	--------	---------	---------	---------	--------	--------	--------	--------	---------	-----------	--------	-----

application.	application.	applicant	year of case from which the copy or translation is required.	of estimated fees deposited and date of deposit	of deficit, if any, and date of receipt.	recovered by V.P.P. and date of recovery.	copyist or translator.	completion of copy or translation.	delivery of copy or translation or despatch by V.P.P.	due for copying fee.	due for comparing fee.	due for translation fee.	due for postage in cases of fees recoverable by V.P.P.	if any, refunded	of applicant or No. and date of Money Order and V.P.P. receipt.	paid to translators.	of tra
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

CHAPTER 27

Judicial Officers

506. Dress :-

The following dress shall be worn by Judicial Officers:

(1) Judicial Officers other than lady Judicial Officers:

(a) Black buttoned up coat (Chapkan, achakan or sherwani)

(b) Black open collar coat, white shirt, white collar, stiff or soft and necktie.

(2) Lady Judicial Officers: Regional dress of subdued colour or colours and blouse buttoned up to neck with sleeves.]

507. Administrative work :-

All Judicial Officers must pay adequate attention to administrative work which is not less important than judicial work. They must make themselves fully familiar with the work done in their offices and see that all registers, diaries and other books are properly maintained. They should periodically go round the office and exercise effective supervision over the work of their staff. They should see that all books, records, forms, and stationery are properly kept. It is also their duty to see that the Court buildings and their compounds are always kept neat and tidy.

508. Regular Leave :-

All applications for leave by District, Joint and Assistant Judges shall be made to the High Court for transmission to Government through the Accountant General, who will certify, in each case, whether the applicant is entitled to the leave applied for.

509. RULE :-

Applications for leave by other Judges shall be made to the High Court through the District Judge and the Accountant General, who will certify in each case whether the applicant is entitled to the leave applied for:

Provided that the District Judge may sanction leave for a period not exceeding 2 months, if no locum tenens is required.

510. RULE :-

All applications for leave shall be made as long as may be possible in advance of the date on which the leave is to commence in order to enable orders on them being made in time.

511. Casual Leave :-

A District or a Joint Judge need not apply to the High Court for casual leave. But he should submit a report to the High Court as soon as he returns to duty from such leave giving reasons for his taking leave and its duration. A Joint Judge should inform his District Judge of his intended absence on such leave and the reasons therefor so as to enable the District Judge to make suitable arrangements for the disposal of urgent work during his absence. If, however, a District or a Joint Judge has to leave his headquarters during his casual leave, [Sundays or Holidays] he should immediately give intimation about it to the High Court.

512. RULE :-

When an Assistant Judge, a Judge of the Court of Small Causes or a Civil Judge wants to take casual leave, he should apply to his District Judge and get it sanctioned by him before he proceeds on such leave, unless for reasons beyond his control he cannot do so. In the latter case, he should obtain such sanction as soon thereafter as may be possible. If, however, he has to leave his headquarters during his casual leave, he must obtain the previous permission of his District Judge for doing so. But if for any unforeseen reasons or for reasons beyond his control, he is required all of a sudden to leave his headquarters during the period of his casual leave, he should immediately inform his District Judge and mention the reasons which necessitated his leaving headquarters without prior permission.

513. Transfers, etc. :-

(i) In the case of transfer of a Civil Judge ordered to take effect from the end of a Vacation, a Judge so transferred may [x x x] leave his charge report duly signed by him with his Clerk of the Court, who will place it before the successor Judge on his arrival. The successor Judge shall complete the charge report and forward it to the Accountant General, Bombay, and a copy of it to the High Court.

(ii) As far as possible, a Judge when transferred during a Vacation should assume charge of his new Court on the opening day of his Court, after the vacation.

(iii) In the cases of transfers of Civil Judges made otherwise than during a vacation, the District Judge or Judges concerned should make such arrangements about giving and taking over charge as may cause least inconvenience.

514. RULE :-

A Judge shall not proceed on leave until he is relieved by his successor, provided that the District Judge may, for sufficient reasons, and when he is satisfied that no inconvenience will be caused thereby, permit a Judge to leave his station before the arrival of his successor.

515. RULE :-

Every Judge shall immediately report to the High Court the date on which he takes charge of a Court, whether on joining service, transfer, deputation or return from leave, other than casual leave.

516. RULE :-

A District Judge may hand over charge by letter after obtaining the sanction of Government under rule 29 of the Bombay Civil Services Rules. In such cases, he should make a report to the High Court.

517. RULE :-

Whenever a District Judge, Joint Judge, Assistant Judge, or Small Cause Judge leaves the station at which his Court is ordinarily held, on duty, except for the purpose of holding Court at another station, a report is to be sent to the High Court and another on his return.

518. Confidential Reports :-

(I) Each District Judge shall report confidentially on Judicial Officers working under him as follows:

- (1) On [December 31st] each year, on all Judicial Officers then serving under him.
- (2) On his own retirement or transfer from a District, on all Judicial Officers then serving in his District.
- (3) On the transfer of any Judicial Officer serving under him, on that officer:

[Provided that no report need be sent if the District Judge has reported about the same Judicial Officer during the previous three months or if the District Judge had no opportunity to watch the work of the officer concerned for more than three months. It would however be open to the District Judge to forward such a report for a shorter period also, if there is any special reason or occasion for reporting on the points on which he wishes to bring his remarks on record.]

(II) These confidential reports should be sent, in the case of Assistant Judges to the Administrative Judge (by name), and in the case of other Judicial Officers to the Registrar (by name).

(III) Attention is invited to the instructions contained in Government Order, General Department No. 9199, dated the 29th November, 1915, and to Government Circular, Political and Services Department No. 2263/34, dated the 12th December, 1946. Adverse remarks, if any, will be communicated to the Judicial Officer concerned either by the Honourable the Administrative Judge or, under the directions of Their Lordships, by the Registrar. They should not be communicated by the District Judge himself.

(IV) A confidential report should not be vague or contain scanty remarks such as "good," "fair," or "poor". It should be considered opinion founded on a knowledge of the Judicial Officer and his work, the methods and practices followed by him and his conduct and behaviour inside and outside Court. It should be based not merely on cases which have come up in appeal but also on a scrutiny of cases and proceedings which have not come in appeal. The report should be frank and outspoken and should be such as will be of real assistance to the High Court in deciding questions relating to promotion of judicial officers and their suitability for appointment to particular posts.

519. General Provisions :-

(1) Every Judge on his first appointment should submit a return of landed property in Form A or B accompanying Government Resolution, General Department No. P. 1 10, dated the 3rd March, 1927, and every tenth year thereafter.

(2) Changes in landed property should be reported by Judges (including District and Assistant Judges) on the 1st April of each year.

(3) These returns should be forwarded by the District Judge through the High Court to Government. Vide Government Resolution, Political and Services Department, No. 1581/34, dated 12th April. 1949 and Bombay Civil Services Conduct. Discipline and Appeal Rules.)

Note.-The Annual Return to be sent on April 1st should be sent only, if there is a change in the landed property since the last report. If there is no change, no return need be sent. Returns should be sent in duplicate.

520. RULE :-

Whenever a Civil Judge is appointed for the first time, the District Judge should ascertain and report to the High Court (1) his place of birth, (2) his mother-tongue, (3) his home-town or Village and (4) the Court or Courts in which he practised.

CHAPTER 28

Establishment

521. Appointments :-

(i) The appointments to all posts in the Classes III and IV of the Subordinate Judicial Services in the Civil Courts in each District may be made by the District Judge from the lists of candidates selected by the Advisory Committee formed for the purpose in each District.

(ii) An Advisory Committee should be formed in each District to assist the District Judge in making appointments to Class III and Class IV services in the Judicial Department. Such Committee should consist of the District Judge, the Assistant Judge and the Civil Judge, Senior Division. In a District, where there is no Assistant Judge the Advisory Committee should consist of the District Judge and the Civil Judge, Senior Division.

(iii) As far as practicable appointments to all posts in Class IV of the said service in any subordinate Civil Court may be made by the Judge presiding over such Court from out of the list maintained by the District Judge.

(iv) The appointments of additional temporary bailiffs, whose salary is payable by the parties requiring their services, may be made by the Presiding Judge of the Court.

(v) The Rules for the recruitment of candidates to Class III and Class IV services in Subordinate Judicial Service are contained in the Appendix attached to Government Resolution, Home Department, No. Misc. 1055/62546-III, dated 26th December, 1957.

522. RULE :-

The nature of a bailiff's duties should be borne in mind while appointing a person as a bailiff. A bailiff has to serve various kinds of writs and processes and must, therefore, possess certain minimum educational qualifications. He has also to travel over wide areas and accomplish a number of tasks within a specified time. This calls for energy, physical fitness and mental alertness. No one should, therefore, be selected who is lacking in any of these qualities.

523. Promotion :-

The District Judge shall maintain a list setting out, in order of seniority, the names of persons belonging to Class III of the subordinate judicial service and a similar list in respect of those belonging to Class IV. The list should contain separate columns for making remarks regarding the character and ability of a person, the manner in which he is discharging his duties, his suitability or otherwise for promotion and his relationship, if any, with other members of the Subordinate Judicial Service.

524. RULE :-

In the matter of promotions and confirmations, the District Judge should take into consideration the following principles:

[I] All Clerks who pass the Lower Standard Departmental Examination shall be confirmed in the existing vacancies. Even if a Clerk who is Junior in service has passed the Lower Standard Departmental Examination before a Clerk who is Senior in service the Clerk Junior in service should be confirmed if there is a permanent vacancy in preference to a Clerk senior in service who has not passed the Examination. Seniority in the cadre of Junior Clerks shall be determined from the date of confirmation:

Provided that a Clerk who passed the Lower Standard Departmental Examination within first three chances and within three years from date of regular appointment and in case of Clerk belonging to Scheduled Caste or Scheduled Tribe within first four chances and within a period of four years, shall be assigned seniority over a person, if any, who although being junior to him in the cadre may have been given seniority by reason of his having been confirmed on his passing the Lower Standard Departmental Examination earlier than him:

Provided further that cases of Junior Clerks whose confirmation and seniority are already fixed prior to the date of coming into effect of this amendment shall not be re-opened.]

[II] A clerk senior in service in the lower grade who has qualified himself for promotion by passing the Higher Standard Departmental Examination should not be promoted to a post in the higher grade by reverting a junior clerk in the lower grade who is already officiating in the higher grade by reason of the fact that he had qualified himself earlier. The same principle applies in the case of a junior clerk officiating in a temporary vacancy in the higher grade. The seniority of clerks in the higher grade should be determined from the date of their appointment to the higher grade and not by reference to seniority in the lower grade. [xxx]

525. RULE :-

Each District Judge should circulate to the Civil Judges and their establishments copies of the gradation lists of the clerical and other establishments of his district at least once a year.

526. RULE :-

The duplicates of Service Books and Service Rolls should be supplied to all members of Class III and Class IV services free of charge.

527. RULE :-

District Judges should freely consult the Civil Judges in matters concerning the promotion of members of the establishments and Civil Judges should be encouraged to write frankly as to the fitness, or want of fitness for promotion of any members of their establishments or any case of special merit.

528. Supervision :-

(i) A Civil Judge should report on the 31st March each year and on his transfer confidentially upon the members of the ministerial staff to the District Judge. Adverse remarks, if any, should be communicated by the District Judge to the persons concerned in accordance with the principles laid down in paragraph (ii) of Government Circular, Political and Services Department No. 2263/34, dated 12th December, 1946, unless the Civil Judge intimates that he has supplied copy of his remarks to the member concerned.

(ii) The Presiding Officer of the Court should leave remarks about his subordinates either on his transfer or on the transfer of the subordinate concerned, unless he has already reported about him within the previous six months. (See also G.R., C.M., No. 4099, dated 18th December, 1950).

(iii) Testimonials should not be given to any member of the establishment except (a) when such person is applying for a post elsewhere and his confidential record cannot be supplied to the appointing authority, or (b) when he is retiring from service.

529. RULE :-

Section 9 of the Bombay Civil Courts Act XIV of 1869, provides that the District Judge shall have general control over the establishments of all the Courts in his district. The District Judge has general control while the Small Causes Court Judge and Judicial Magistrate have direct control over the establishments of their own Courts.

530. RULE :-

The Judge is responsible for the distribution of duties amongst the various members of the establishment and for enabling each member of his establishment to receive proper instruction in the duties he has to perform. He may do this through the agency of the Clerk of the Court and the Nazir but he must satisfy himself that it is properly done.

531. RULE :-

Every District Judge, Civil Judge and Judge of a Court of Small Causes in the mofussil must insist on the punctual attendance in office of all members of the establishment at the proper office hours and on the prompt and regular despatch of all official business by the member concerned.

532. RULE :-

Civil Judges should bear in mind that administrative work is not less important than judicial work. It is the duty of a Civil Judge to see that every office register, diary or book is regularly kept and every official paper is kept in its proper place. It is also a part of his duty to make proper arrangements for the due preservation of all Government books and records entrusted to his care. He may, however, with the sanction of the District Judge, sell or destroy obsolete books and those which are of no use.

533. Punishment :-

(a) A Civil Judge may impose

(i) any penalty specified in Rule 33 of the Bombay Civil Services Conduct Discipline and Appeal Rules upon the members of Class IV service in his Court.

(ii) any penalty, other than dismissal or removal from service, specified in the said Rule 33 upon the members of Class III service in his Court.

(b) The Bombay Civil Services Conduct, Discipline and Appeal Rules shall apply to all the members of Class III and Class IV services of the Subordinate Judicial Service.

534. Leave and Transfer :-

Casual leave and other leave when substitutes have not to be provided may be granted by Civil Judges to the members of their establishments.

535. RULE :-

(1) Every member of the staff belonging to Class III establishment of the District is liable to be transferred after he has served at one place for 5 years.

[(2) A Nazir, Accounts Clerk, Senior or other Clerk doing the work of keeping Civil Courts accounts and other accounts, should not ordinarily be allowed to remain at the same station for more than five years unless his retention for a longer period is specifically sanctioned by the High Court.]

536. Duties on the Establishment and Distribution of Work :-

Many of the matters to be done by the Court can be delegated by the Judge to a subordinate officer. Under the Code certain matters can be done only by an officer appointed for the purpose but there are others which are to be done only by a subordinate.

537. RULE :-

The general provision as to delegation in this State is contained in section 40 of Act XIV of 1869 which runs as follows: "There may be appointed to any Civil Court under this Act a Clerk of the Court, who, in addition to such duties as may from time to time be prescribed by the High Court, may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes, and authenticate copies of papers."

538. RULE :-

The Code itself provides explicitly or impliedly that the Court may appoint an officer

- (1) to receive complaints (Order IV, rule 1),
- (2) to register complaints (Order IV, rule 2),
- (3) to sign summonses to defendants and witnesses (Order V, rule 1 (3) and rule 10),
- (4) to serve summonses (Order V, rule 9),
- (5) to sign letters substituted for summonses (Order V, rule 30),
- (6) to satisfy himself as to the correctness of copies produced and mark the original documents for the purpose of identification (Order VII, rule 17),
- (7) to receive applications for summonses to witnesses (Order VII, rule 17).
- (8) to receive applications for execution (Order XXI, rule 10).
- (9) to sign process for execution (Order XXI, rule 24).
- (10) to conduct sales (Order XXI, rule 65).

The Code also provides by rule 9 (4) of Order VII, that the chief ministerial officer of the Court shall satisfy himself as to the correctness of and sign the following papers:

- (i) List of documents produced along with the plaint.
- (ii) Copies of the plaint.
- (iii) Concise statements.

539. RULE :-

The old rule framed by the High Court under section 40 of Act XIV of 1869 is as follows:

"In addition to the duties set forth in section 40 of Act XIV of 1869, the Judge of a District or subordinate Court may authorize the Clerk of his Court to perform all or any of the following duties, namely,

- (a) authenticate translations,
- (b) sign receipts for papers received in the Court.
- (c) have charge of and affix the seal of the Court.
- (d) sign registers and books of proceedings and notices on the notice board.
- (e) receive and register all applications and papers accompanying them, being bound to refer such as he considers should be refused or amended for the orders of the Judge.
- (f) receive and dispose of all merely formal applications which are presented in due time, and must prima facie be granted as a matter of course: e.g., applications for adjournment made on the ground that the summons was not served on defendant or that service must be proved, or that a notice may be served on the legal representative of a deceased defendant or a guardian ad litem of a minor defendant, or with consent of both sides that a compromise may be effected.
- (g) receive written statements under Order VIII, rule 1, of the Civil Procedure Code.
- (h) in the temporary absence of the Judge, adjourn proceedings, make orders for the re-attendance of witnesses and take bail, from an apprehended witness under Order XVI, rule 18, of the Civil Procedure Code and from judgment-debtors arrested under Order XXI, rule 38.
- (i) receive and register appeals and papers accompanying them,
- (ii) sign Roznamas,
- (iii) sign 'by order' and after taking the order of the Judge, correspond with the Civil Judges relating to leave of absence, establishment, pay and allowances, contingent bills, periodical returns or statements, budget estimates, and similar matters of administration,
- (iv) exercise a general control over the Record Keeper, in providing for the proper sorting and destruction of records, in accordance with the rules in force regarding the permanent or temporary preservation of such records.

540. RULE :-

In addition to the duties mentioned in paragraph 539, a District Judge may delegate or assign to his Clerk of the Court all or any of the following duties on being satisfied that the said Clerk of the Court is competent to discharge the same:

I. Quasi-Judicial.

- (i) Determining the nature of summons to be issued under Order V, rule 5, Civil Procedure Code.
- (ii) Receiving documents produced by parties on the day fixed for the first hearing under Order XIII, rule 1 (2), Civil

Procedure Code.

(iii) Requiring the return of documents and substituting certified copies in their places under Order XIII, rule 9, Civil Procedure Code.

(iv) Calling for records on the application of parties under Order XIII, rule 10 (1), Civil Procedure Code.

(v) Calling upon the applicant-judgment-creditor to produce a certified copy of the decree when it is not already produced with the darkhast under Order XXI, rule 11 (3), Civil Procedure Code.

(vi) issuing a certificate when the Court authorizes a judgment- debtor to raise the decretal amount by sale of the attached property under Order XXI, rule 83 (2), Civil Procedure Code.

II. Non-Judicial.

(i) Calling upon the parties to deposit money to cover the expenses of witnesses under Order XVI, rule 4 (1), Civil Procedure Code.

(ii) Furnishing certified copies of judgments and decrees under Order XX, rule 20, Civil Procedure Code.

(iii) Issuing a sale certificate to purchaser under Order XXI, rule 94, Civil Procedure Code.

(i) Calling for reports and accounts from the private guardians.

(ii) Assisting the District Judge in the inspection of lower Courts.

(iii) To perform such duties and exercise such powers in relation to the appointment and transfer of the members of the District Judge's establishment as the District Judge may by general or special order determine.

(iv) Supervision over the establishment, clerical as well as menial, under the District Judge.

(v) Arranging the board, fixing the appeals, etc., for hearing.

(vi) Returning of original documents, etc., produced by the parties in Court whenever they apply for their return.

541. RULE :-

In addition to the powers conferred and duties imposed under the Provincial Small Cause Courts Act, 1887, and also in addition to the duties of the Clerk of the Court of the District Judge and Civil Judge, the Registrar of the Court of Small Causes may perform the following duties:

1. Issuing processes on changed addresses.
2. Passing orders regarding payments of amounts deposited in the Court in decided proceedings.
3. Passing orders regarding payments of amounts deposited in the Court in pending proceedings when the party depositing the amounts consents to the payment being made.
4. Signing refund certificates.
5. Revalidating refund orders.
6. Carrying on routine correspondence with officers below the rank of a District Judge.
7. Authenticating amendments in the register of suits.

542. RULE :-

All registers, processes, etc., should be legibly and neatly written. Corrections in words or figures should not be written over the original but above it, the incorrect words or figures being cancelled by a line drawn neatly through it and initialled by the officer making the corrections.

543. RULE :-

Files should be maintained and indexed. Dead stock register should be maintained and verified according to the standing orders on the subject.

544. RULE :-

There should ordinarily be two superior officers in each subordinate Court, a Clerk of the Court and a Nazir. The Clerk of the Court shall be the chief ministerial officer of the Court for the purpose of Court work, and the Nazir the chief ministerial officer for the purpose of execution work, service of processes and accounts. Both should be experienced and intelligent men thoroughly acquainted with the Civil Procedure Code, the Bombay Civil Courts Act, the Bombay Court-fees Act, the Suits Valuation Act, the orders and circulars of the High Court and the relevant orders and Circulars of Government. They should be capable of performing accurately and intelligently the duties described in this Manual in regard to the examination of plaints, the drawing up of decrees, the examination of applications for execution and the scrutiny of the work of bailiffs or other officers of the Court engaged in execution work. The clerk in charge of accounts and establishment of each Court must have sufficient knowledge of the Civil Service Regulations and Civil Account Code to deal with leave applications, pension cases, service books of the members of the establishment and other matters requiring an understanding of the orders of Government.

545. RULE :-

There should also be a Record Keeper of the District Court who should be a man of intelligence and be familiar with

the Code of Civil Procedure, the Bombay Civil Courts Act, the Bombay Court-fees Act, the orders of High Court and the relevant orders of Government.

546. RULE :-

The Nazirs of District Courts, Small Causes Courts and subordinate Courts, the Registrars of Small Causes Courts, the Record Keepers of the above Courts, clerks and bailiffs in the offices of the Nazirs, clerks in charge of the library, and all members of the establishment who have to handle Government money shall furnish security for the prescribed amount and in the prescribed manner. If any securities have been deposited, such securities and the security bonds shall be forwarded for safe custody to the Treasury Officer at the headquarters of the District Court. No practicing lawyer shall be accepted as surety.

Note (i).- The amounts of security to be taken from different officers are prescribed in Government Resolution, Home Department No. 1299/2- B, dated the 26th October, 1928.

Note (ii).-One surety would suffice in the case of clerks and bailiffs in the offices of Nazirs of District Courts and subordinate Courts. (Vide Government Resolution, Home Department, No. 1229/2 dated the 16th October 1929).

Note (iii).-No surety is necessary if sufficient cash or other securities are deposited.

Note (iv).-No fresh bond is necessary on transfer to another posts or place in the same district unless the new post requires higher security.

Note (v).-If the position of the sureties deteriorates or their solvency to meet the obligations becomes doubtful then a fresh surety bond should be taken.

547. RULE :-

Every Court shall maintain a list containing the names of sureties and their addresses in respect of the members of their establishment and shall make due inquiries about the solvency etc., of the sureties in December, every year, and every subordinate Civil Court shall submit its report to the District Judge on or before the 15th of January. Enquiry as to the solvency of the sureties shall be made annually in the month of January by the District Judge, who shall certify in writing that he has satisfied himself about the solvency of sureties and report the fact to the High Court.

548. RULE :-

The Court may in its discretion delegate to the Nazir the authority to sign summonses in execution proceedings and to sign processes for execution. It should be borne in mind that wherever possible the ministerial responsibility in execution proceedings should rest with the Nazir.

549. RULE :-

A notice setting out the duties assigned to the Clerk of the Court and the Nazir, should be affixed to the Court Notice Board.

550. RULE :-

The Section Writers should turn out such amount of copying and comparing work as may be prescribed by the High Court from time to time.

551. Duties of Bailiffs and Supervision over them :-

Bailiffs are commonly entrusted with the service of summonses and notices and orders and with the enforcement of processes for execution of decrees and orders.

552. RULE :-

There is no prescribed method for apportioning and supervising the duties of bailiffs. The District Judge may adopt any suitable method for his district having regard to the nature and volume of work, and the particular requirements of the district.

553. RULE :-

It would generally be convenient to divide the jurisdiction of the Court into beats for execution of processes. The bailiffs must try to execute the processes independently of the parties, on their own information and knowledge. They must also understand that if they return a process unserved they will be repeatedly sent back till it is served.

554. RULE :-

Some useful instructions have been given in the Bailiffs Manual which should be followed by the bailiffs. It is the duty of the Nazir or other officer appointed by the Judge for that purpose to give instructions and directions to the bailiffs in regard to their work and duties. The Nazir should also keep a watch over the work of the bailiffs and see that the bailiffs perform their duties satisfactorily and obey the directions given to them.

555. RULE :-

The Nazir of the Court should submit to the Presiding Officer for his orders every day all the processes returned unserved. The Presiding Officer should scrutinize the reasons for non-service in every case and if they are unsatisfactory he may take such action as he deems fit.

556. RULE :-

Although the legitimate work of the bailiffs is the service of processes, the District Judge may assign to them any other reasonable work when they are not engaged on the work of service of processes. The work of bringing tapal,

taking money to and bringing the same from Treasury, calling out parties in Court, doing night watch- duty in the Court building, etc., may reasonably be considered to fall within the scope of duties assigned to bailiffs.

557. RULE :-

(i) The Nazir has to see:

(a) that the process to be given to the bailiff is accurately drawn,

(b) that the bailiff is given all the papers to be sent along with the process, e.g., a copy of the plaint, summons, notice etc.

(c) that the bailiff is given the necessary amount of money for the purpose of the service of the process, and,

(d) that a reasonable time is fixed for his return having regard to the distance and the nature of the work.

(ii) After the process is brought back or sent by post by the bailiff, it is the duty of the Nazir or a clerk working under him:

(a) to scrutinize his report and ascertain whether the bailiff has done his work properly,

(b) to ascertain whether all the details required by the kamgiri book are mentioned in the bailiffs report and,

(c) to scrutinize carefully the bailiffs diaries.

(iii) The scrutiny of the reports and the diary should be intelligent and constant and not merely mechanical and casual. It would be enough if the Nazir signs the bailiffs report in token of scrutiny, if he considers them satisfactory and has no remarks to make.

(iv) The return required under Order V, Rule 23, in amended Form No. 10 in Appendix B, Schedule I, of the Civil Procedure Code, should be made under the signature of the Judge after the scrutiny by the Nazir.

558. RULE :-

It is the duty of bailiffs to explain failure to serve any process and to report as required by rule 25 of Order XXI on all processes in execution.

559. RULE :-

The Nazir should make careful enquiry of the bailiff, in execution matters, as to whether the decree has been adjusted or satisfied wholly or in part.

560. RULE :-

If the reports of a bailiff are not sufficiently clear, the Nazir should examine him about any matter which requires an explanation or a clarification. All matters of doubt or difficulty and all cases of negligence, laziness or misconduct on the part of bailiffs should be referred to the Judge.

561. RULE :-

Where a man sent with a bailiff to identify a judgment- debtor has represented that he does not wish to point out the judgment-debtor or to attach his property he shall be required to sign an endorsement to that effect on the warrant.

562. RULE :-

No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person to be served. It is the duty of the bailiff to use his best efforts to effect the service and is only when he fails, inspite of such efforts, that the Court may order the party to render help to him. Where the serving officer does not know the individual on whom the process is to be served, but such individual is pointed to him, the person who points out the individual served should be asked to make an endorsement on the process.

563. RULE :-

Village Officers have been instructed by Government to give every assistance to bailiffs when serving processes.

564. RULE :-

Bailiffs should be required to keep diaries in the standard form No. "Civil B 38".

565. RULE :-

Forms of the bailiffs' patrol book may be obtained from the Superintendent, Yeravda Prison Press, on indent by the Collector.

566. RULE :-

Whenever a bailiff visits a village, he should ascertain from the patrol book the name of the bailiff who had visited it immediately before him and the date of his visit, and should make a note of the same in his diary. The Nazir should check these notes, from time to time, in order to ascertain the correctness of the diaries of other bailiffs.

567. RULE :-

Permission is given to District Judges and to Civil Judges (subject to any general instructions from the District Judge) to allow their bailiffs to return processes by post in cases in which it may be convenient to do so. Processes, however, should not be posted in village boxes which are cleared at irregular intervals. When sent by pot, they may be sent "Service bearing" and the postage should be paid out of the Court's contingent allowance. The presiding

officer of each Court, in which the system may be introduced, should carefully watch its working, and should discontinue it, if found objectionable.

568. RULE :-

The official directly responsible for the work of the bailiffs is the Nazir. In order to see whether that responsibility is fully realized, the presiding Judge must occasionally inspect the bailiffs work. As illustrating one of the ways in which this may be done the following mode of inspection is suggested. Taking

- (a) the "Kamgiri book";
- (b) the Nazir's book (attendance roll which should show what bailiffs were in attendance on the Court each day and where engaged in outside work);
- (c) the Darkhast Register;
- (d) the Bhatta book;
- (e) the Memo, book for Darkhasts.

The Civil Judge can in a short time trace several execution proceedings and very soon see whether the subordinate officials promptly and accurately do their work and whether the Nazir recognizes his responsibility. Similar investigations should be made by the District and Assistant Judges when on inspection circuit. Serious notice also should be taken of all irregularities on the part of the execution establishment which may be brought to light in the course of any judicial investigation. Close supervision should be exercised over the conduct of process- servers in executing warrants of arrest. This branch of work should be closely scrutinized and persistent default in arresting judgment-debtor should be a ground for either dispensing with the services of the process-server or his reduction or stopping his promotion, and good work in this direction should be a ground for special advancement.

569. Departmental Examinations :-

- (1) There shall be two examinations called respectively the "Lower Standard" and the "Higher Standard".
- (2) No candidate selected for appointment to a clerical post in accordance with the Government Circular, Home Department No. 8977/3-II, dated the 16th March 1939, shall be confirmed in his appointment as a Clerk unless he has passed the "Lower Standard" Examination.

Note.-The above shall not apply to candidates who were selected before 16th March, 1939.

[(3) No Clerk shall be promoted to the post of Senior Clerk or to any other higher post other than the post of Stenographer, unless he passes the Higher Standard Examination.]

Note (i).-The above shall not apply to persons who have either been exempted from passing or passed the Departmental Examination under the rules for such examination previously in force. The promotion of a clerk who has been exempted shall require the special sanction of the District Judge and shall only be made on the ground of the clerk's special efficiency.

Note (ii).-Clerks selected before 16th March 1939 who have not passed the Departmental Examination under the rules previously in force shall be required to pass in the two papers prescribed in part A of the Lower Standard Examination, before they appear for the Higher Standard Examination. [xxx]

(4) No clerk shall be permitted to appear for the "Higher Standard" Examination until he has completed 7 years of service as a clerk. It shall, however, be in the discretion of the District Judge to permit, for special reasons to be recorded in writing, any graduate clerk to appear for the said examination on completion of 5 years of service.

[(5) Except in the case of persons belonging to the Schedule Castes and Schedule Tribes, a Clerk shall be allowed three chances to appear for either examination. A Clerk belonging to Scheduled Caste or Scheduled Tribe shall be allowed one more chance to appear for either examination:]

Provided that if a person fails to pass either of the examinations with the specified chances, he shall notwithstanding such failure, be allowed to appear at any time in such examination on payment of examination fee of Rs. 15 for each additional chance.

[(5A) The District Judge may allow any candidate selected for the post of Clerk or a Section Writer eligible for appointment or promotion to the post of a Clerk, to appear at the Lower Standard Departmental Examination on the following conditions:

- 1. The passing of the Examination will not entitle him to any special claim for being appointed as Clerk.
- 2. His appearance at the Examination would be treated as a chance allowed under sub-paragraph (5). [xxx]

[(6) The examination shall consist of written papers and oral and practical tests. The candidate appearing in "Lower Standard" examination shall be allowed to answer the question of all the papers either in English or Gujarati. The candidates appearing in "Higher Standard" examination shall be allowed to answer the questions of papers (i) to (iii) either in English or in Gujarati, but they shall have to answer the question of paper (iv) in English.]

(7) The examinations shall be held each year in July on the first Monday and Tuesday.

(8) At least three months' notice of the exact dates fixed for holding the examination shall be given by the High Court by publication in the Gujarat Government Gazette.

[(9) The Examination Committee in each district shall consist of the District Judge, the Joint District Judge, if there be, the Chief Judicial Magistrate, the Civil Judge (Senior Division), and one more Officer who should be an Assistant Judge, a Judge of the Small Cause Court or a Civil Judge as the District Judge may think fit to appoint. The adjudication on the answers shall rest entirely with the Committee.]

[(10) The question papers for the whole of the State shall be drawn by the District Judges, selected for the purpose in turn by the High Court. The question papers, except question paper IV of the "Higher Standard" examination, shall be drawn in English as well as Gujarati. The High Court shall on 1st May of each year remind the District Judges whose turn it is to draw up the question papers and such District Judges shall send the question papers confidentially to the Registrar, High Court, so as to reach him not later than 1st of June. The Registrar shall arrange to have the question papers printed and forward their copies in time to all District Judges in accordance with their respective requirement which should be communicated to the Registrar by the 1st of June at the latest.]

[(11) The number of questions which a candidate is required to answer in each paper shall be limited to ten and the time allowed shall be three hours.

[(12) The syllabus for the examinations and the marks for each paper and for the practical and oral tests shall be as under:

	LOWER STANDARD	
	A. Written.-	Marks.
(i)	Questions to test the examinee's knowledge of such parts of the Code of Civil Procedure as refer to matters coming within the scope of a clerk's duties (with books).	200
(ii)	Questions to test the examinee's knowledge of (1) the Code of Criminal Procedure and (2) the Limitation Act (with books).	200
(iii)	Questions to test the examinee's knowledge of (1) the Civil Manual (2) the Criminal Manual (3) the Stamp Act and the Bombay Court Fees Act and (4) the Government Notifications on those Acts (with books).	200
	B. Practical:	
	A test in typewriting.	50
	HIGHER STANDARD	
	A. Written.	Marks
(i)	Bombay Civil Services Rules, Chapter I to V, XII (Parts III to VIII relating to travelling allowance only) XV and XVII of Vol. I and Appendix XLIV-A of Vol. II (with books).	200
(ii)	(a) Gujarat Financial Rules, 1971, (Chapter I, Chapter II (excluding rules 15 to 19), Chapter III (excluding Rules, 34, 35, 36 to 42 and 45 to 48), Chapter IV, Chapter VI and Chapter X (excluding rule 185). (b) Bombay Treasury Rules, 1960, Chapters II, III and IV of part V (with books).	200
(iii)	Questions to test practical knowledge of forms and precedents such as drawing up of different decrees, orders and security bonds (without books).	100
(iv)	General English composition viz. essay, translation from English into Gujarati, precis writing and drafting (without books).	100
	B. Oral.	
	Questions relating to accounts, rules for maintenance, preservation and destruction of records and general questions connected with current rules and practice.	100

[(13) An examinee must, in order to pass, obtain not less than 35 per cent of the maximum marks in each paper. An examinee who fails to pass the examination but obtains 50 per cent or more of the total marks in any paper, shall be exempted from appearing for the same paper again.

Note. A candidate who obtains 75 per cent of the total maximum marks without exemption shall be declared and notified to have passed the examination 'with credit', and a note to that effect shall be made in his Service Book.]

[(14) Any clerk who has passed the LL.B. examination of any recognized University, with Civil Procedure Code, Criminal Procedure Code and Limitation Act as subjects, shall on an application made by him in this behalf to the

District Judge, be exempted from appearing for papers I and II of the Lower Standard Departmental Examination. If such exemption is granted he will not be entitled to be declared to have passed the examination "with credit" under the note below paragraph (13) above.]

570. Petition Writers :-

The following rules have been framed by the High Court under section 41 -A of the Bombay Civil Courts Act, (Act XIV of 1869):

(i) The Judge of each district may from time to time by notification duly published in the Gujarat Government Gazette, direct that from such date as he may prescribe these rules shall be in force in all or any of the Civil Courts of the district (other than Mamlatdars' Courts) and may by like notification suspend their operation in any such Court.

(ii) When the rules are in force in any Court, no person other than a duly qualified lawyer or his clerk shall be permitted to prepare or write pleadings, applications, affidavits, or any other legal documents within the precincts of such Court unless he shall first have obtained from the presiding Judge a petition- writer's licence, which, if issued in any subordinate Court or Small Cause Court, shall be subject to confirmation by the District Judge. Any one breaking this rule shall be liable to a fine not exceeding Rs. 50 which may be inflicted by the presiding Judge with an appeal to the District Judge if he has not himself inflicted the penalty.

(iii) The District Judge shall in consultation with the presiding Judge fix the maximum number of petition-writers to be licensed in each Court.

(iv) No such licence shall be granted to any clerk, bailiff or peon in the service of Government or to the clerk of any lawyer practising in the district.

(v) Every applicant for a licence shall produce a certificate of good character signed by two lawyers of the Court or other reputable and responsible gentlemen known to the presiding Judge.

(vi) Subject to the provisions of rule (iii) the presiding Judge may in his discretion issue to selected applicants licences in the form given below which shall remain in force till suspended or cancelled by competent authority. Temporary licences may be issued to fill temporary vacancies.

(vii) Every licensed petition-writer shall attend the Court daily during office hours and shall not absent himself without leave. He shall charge such fees only as may be sanctioned by the presiding Judge not exceeding the scale hereto annexed. He shall subscribe his name on every document written by him and shall note thereon the date and the fee charged. He shall keep a register in the following form and shall show it to the presiding Judge when required:

Date	Client's and opponent's name if any	Nature of document written (e.g., plaint. affidavit etc.)	Fee charged,

(viii) No licensed petition-writer shall act as a law tout or receive any fee for introducing clients to lawyers.

(ix) No licensed petition-writer shall directly or indirectly bid for any property sold at a Court-sale.

(x) The District Judge or presiding Judge may by written order, fine, suspend or dismiss any petition-writer guilty of misconduct. No such fine shall exceed Rs. 25. All punishments, excepting fines not exceeding Rs. 2, inflicted by the presiding Judge of any Court subordinate to the District Court shall be subject to appeal to the District Judge.

(xi) For the purpose of these rules an Assistant Judge shall have all the powers of a District Judge.

(xii) A copy of these rules shall be hung up in a conspicuous place in each Court in which they are in force.

	Maximum scale of fees	Rs. P.
1.	Plaint or written statement.	
	(a) In a suit of the nature of a small cause where no second appeal lies and in a suit for rent or arrears of land revenue.	2.00
	(b) In all other suits.	3.00
	The fee shall include the preparation of one spare copy of the plaint or written statement for delivery to the opposite party.	
2.	Memorandum of appeal (Regular and miscellaneous):	
	(a) In a suit described in clause 1 (a) and against orders (Section 104 and Order XLVIII, Rule 1, Civil Procedure Code.	1.00
	(b) In a suit described in clause 1 (b)	2.00
3.	Memorandum of objection under Order XLI, Rule 22, Civil Procedure Code.	00.75
4.	Applications :	
	(a) For execution of a decree in a suit under clause 1 (a)	1.00
	(b) For execution of a decree in a suit under clause 1 (b)	2.00
	(c) Not otherwise provided for	0.50
5.	Any other legal document, such rate as may be agreed on, or in the absence of agreement.	3.00

6.	In the case of English copies, for every 25 words or fraction thereof.	0.10
7.	In the case of copies in regional language, for 33 words or fraction thereof.	0.10

Form of Licence to Petition-writer.

In the

Court of

To

You are hereby appointed a petition-writer in the Court of
..... subject to the rules framed by the High Court in this
respect.

Seal

Civil Judge.

571. Miscellaneous :-

A Court official should not be appointed as Trustee or Administrator under the Indian Trustee Act or under the Indian Succession Act or as Administrator of Devasthan but may be appointed as manager of the estates of lunatics.

572. RULE :-

The Court official appointed manager of the estate of a lunatic or trustee of an estate in accordance with a scheme framed under section 92 of the Civil Procedure Code or otherwise should be remunerated by a commission on the income of the estate, the rate of commission being within the discretion of the Court which appoints the official as the manager of the lunatic or the trustee. In no case should the official appointed a manager of the lunatic or a trustee be remunerated by a percentage charge upon the realisation of the principal.

CHAPTER 29

Lawyers, Lawyers Fees and Lawyers Clerks

573. RULE :-

(1) Subject to the conditions hereinafter prescribed, the following persons shall be qualified to present an application for being admitted as Pleaders:

(i) A person who has taken the degree of Bachelor or Master of Laws of any University recognized by the High Court and the Bombay Bar Council, and produces a certificate from the Bombay Bar Council that he has passed the examination for the office of an Advocate of the High Court, held by the Council under its rules in force from June 1941;

(ii) a person who has passed the Examination for the office of a District Pleader held under rules framed therefor and previously in force;

(iii) a person who has previous to the first day of January 1929 passed the Examination for the office of a Vakil of the High Court held under rules framed therefor and previously in force;

(iv) a person who has passed the Advocates' Examination held by the Bombay Bar Council prior to June 1941 under its old rules;

(v) a person who has taken the degree of Bachelor of Laws of the University of Bombay under its regulations in force prior to June, 1938:

Provided no person who has not completed 21 years of age shall be admitted as a District Pleader.

(2) No woman shall be disqualified for admission as a District Pleader by reason only of her sex.

(3) An application for admission as a pleader shall bear court fee stamp of Rs. 10 and state the District for which a Sanad is desired. It shall be addressed to the Honourable the Chief Justice and Judges of the High Court of Bombay, and shall be delivered to the Registrar, High Court, Appellate Side (A prescribed form of admission as a pleader shall be obtainable from the Registrar, High Court, Appellate Side).

(4) An application shall be accompanied by the following:

(a) A diploma showing that the applicant has taken the degree of Bachelor or Master of Laws of a recognized University together with the certificate from the Bombay Bar Council referred to in rule 1 (i) above; or a certificate showing that he has passed the Examination for the office of District Pleader; or a certificate showing that he has passed the Examination for the office of the Vakil of the High Court prior to 1st January 1929; or a certificate showing that he has passed the Examination for the office of the Advocate of the High Court held by the Bombay Bar Council prior to June 1941: or a diploma showing that he has taken the degree of Bachelor or Master of Laws of the University of Bombay under its regulations in force prior to June 1938. The applicant may enclose instead of the diplomas or certificates copies of aforesaid documents certified to be correct by an Advocate or a District Pleader of the High Court of Gujarat of more than ten year's standing, or Justice of the Peace or any Gazetted Officer of Government.

(b) A certificate that he is of good moral character.

(c) A certificate that he can speak, read and write with ease and correctness one of the regional languages used in the district for which the Sanad is desired, viz., Marathi or Gujarati.

(d) If he is in any kind of employment a statement giving particulars thereof.

(e) A declaration that he has completed 21 years of age.

(f) Rs. 50 either in cash or by Money Order or by Insured Registered Cover.

(b) Certified that Mr..... is a person of good moral character. Designation and Signature.

(c) Certified that Mr..... can speak, read and write with ease and correctness the Marathi/Gujarati language. Designation and Signature.

(e; I do hereby declare that I have completed twenty-one years of age, My birth date is..... Date..... Signature.

(f) Declaration and undertakings in the following forms: Declaration. I do hereby declare that I am/I am not engaged in trade business or profession, or in any part-time or full time employment. If the applicant is so engaged, he shall state here the details about the nature and hours of engagement or employment as required by Rule 5. Date..... Signature. Undertakings.

(a) I do hereby undertake that if, after my admission as a Pleader, I engage in any trade, business or profession or accept any employment or if there is any change in the nature and/or hours of my engagement or employment, I shall forthwith inform the Registrar, High Court, Appellate Side, of the nature and hours of such engagement or employment or of any such change therein.

(b) I also undertake that on my being so required by the High Court, I shall either give up any trade, business or profession in which I am engaged or any employment which I hold, or cease to practice as a Pleader during the period of such engagement or employment if on my furnishing the information as required by the rules, it is considered by the High Court that such engagement or employment is derogatory to the status of a Pleader or likely to interfere with my professional work. Signature.

(5)

(a) Every person at the time of applying for admission as a Pleader, if he is then engaged in any trade, business or profession, or in any part-time or full-time employment, shall state that he is so engaged or employed and shall furnish details of the nature and hours of such engagement or employment. He shall also undertake that if, after his admission as a Pleader, he engages in any trade, business or profession, or accepts any employment or there is any change in the nature and/or hours of his engagement or employment, he shall forthwith inform the Registrar, High Court, Appellate Side, of the nature and hours of such engagement or employment or of any such change therein.

(b) Every person at the time of applying for admission as a Pleader shall also undertake that he shall on being so required, either give up any trade, business or profession in which he is engaged or any employment which he holds, or cease to practice as a Pleader during the period of such engagement or employment if on his furnishing the information as aforesaid it is considered by the High Court that such engagement or employment is derogatory to the status of a Pleader or is likely to interfere with his profession work.

Explanation. A breach of the above mentioned rule or any undertaking given in pursuance thereof shall amount to professional misconduct within the meaning of section 26 of the Bombay Pleaders Act, 1920 (Act No. XVII of 1920).

(6) The Honourable the Chief Justice and Judges may relax or dispense with any of the rules or refuse admission in any case in which they think special circumstances justify such a course.

(7) Application for a change of the District for which a Sanad is available shall be made in writing and addressed and delivered as in rule 3 above and shall be accompanied by the Sanad and declarations and undertakings as in clause (f) of rule 4 above. The Sanad when granted will be forwarded to the District Judge of the District for which it is issued and the applicant will be requested to take delivery of it from the District Judge.

(8) Except for special reasons no application for a change of the district for which a Sanad is available can be entertained within twelve months of the issue of the Sanad or of the last endorsement thereon. These rules shall come into force from 1st January, 1941.

574. RULE :-

All pleaders holding Sanads for a district may appear, plead and act in any Court of Small Causes within the same district. The provisions on the subject of pleaders in other Courts contained in Regulation II of 1827. Chapter VI, and Act I of 1846 shall, so far as they are still in force and may be applicable, extend to pleaders practicing in Courts of Small Causes under this rule.

575. RULE :-

In allotting Courts to a pleader who has received Sanad authorising him to practice in his district the District Judge may take into consideration the family connection which the pleader has in different parts thereof.

576. RULE :-

Under section 8(a) of the Bombay Pleaders Act (XVII of 1920), the District Judge may authorize pleaders to practice in such particular Court or Courts in the district as may be assigned to them by him but he cannot direct them to establish their headquarters or reside at any particular place or places. If any Courts are left without sufficient pleaders the only remedy would seem to be to assign other pleaders to them.

577. RULE :-

Lawyers can employ only those clerks who are registered as fit and proper persons in the Register of Lawyers' clerks kept by the District and Sessions Judges.

578. Rules Regarding Lawyers Clerks :-

(1) When any person wishes to be enrolled as a clerk to any lawyer, he shall make an application to the District Judge stating his name, qualifications, age, residential address, the name of the lawyer whom he wants to serve and such other particulars as may be necessary. He shall also submit along with his application certificates of good character, integrity and reliability of any two respectable persons, who are not his relatives. He shall submit alongwith his application a writing from the lawyer saying that he wishes to engage the applicant as his clerk, and if the person is already serving under him, then a certificate from the lawyer that the applicant is fit to be appointed as his clerk.

(2) The District Judge, on making such inquiries as he thinks fit may pass an order enrolling the applicant as a clerk to the lawyer or reject his application.

(3) When the District Judge enrolls any person as a clerk to the lawyer, intimation thereof shall be given to the applicant and his lawyer about the enrolment. The clerk so enrolled shall be given a permit on a strong paper to work as a clerk to the lawyer as per specimen appended.

(4) The District Judge is authorised to impose upon the lawyer's clerk for any misconduct or default any of the following penalties: (1) Suspension of the enrolment. (2) Cancellation of the enrolment.

(5) If the District Judge, on inquiry, finds any clerk to the lawyer guilty of some misconduct or default, he may by an order suspend or remove the name of such clerk from the Register. The permit issued to him shall be treated as cancelled and returned to the office which issued it.

(6) No person shall be entitled to work as a clerk to any lawyer, unless he is so enrolled by the District Judge and holds a permit as prescribed under the rules.

(7) The lawyer shall intimate to the District Judge, if he suspends or removes his clerk whose name is enrolled in the Register maintained in the District Court. On receipt of such intimation, necessary note shall be made in the Register, the permit issued shall be treated as cancelled, and be returned to the office which issued it.

(8) The District Judge may, in his discretion, allow a lawyer's clerk to work under more than one lawyer after obtaining consent of the lawyers concerned.

(9) The District Judge may cancel or modify any order passed by him in respect of the lawyer's clerk.

(10) The District Judge may delegate to any subordinate Judicial Officer powers to enrol an applicant as a Lawyer's clerk and to hold inquiries into misconduct or default of the clerk concerned. In the case of refusal to enrol an applicant as a lawyer's clerk by the Officer concerned, or in the case where he has held inquiries into misconduct or default as aforesaid, the Officer concerned shall submit necessary recommendations or findings as the case may be to the District Judge who shall pass appropriate orders finally in such cases.

(11) The final order of suspension of enrolment or cancellation of the enrolment shall, however, be passed by the District Judge. Due intimation thereof shall be given to the lawyer concerned and a note to that effect be made in the Register.

(12) In an enquiry held under rule 5 by the District Judge or under rule 10 by a subordinate Judicial Officer or before the passing of final orders by the District Judge under rule 11, an opportunity shall be given to the lawyer's clerk concerned to be heard and to show cause against the proposed suspension or cancellation of his enrolment.

(13) No appeal shall lie from the order of the District Judge.

(14) The above rules shall apply also to persons already serving as clerks to the lawyers.

Permit

Mr.....is hereby permitted to work as clerk to the
lawyer, Mr.....

The holder of this permit shall show this permit whenever it is
demanded by any Judicial Officer for inspection.

The loss or mutilation of this permit will disentitle the holder
thereof to work as clerk to any lawyer.

District Court

Dated

579. RULE :-

Lawyers appearing before the Courts subordinate to the High Court shall wear the following dress :

(1) Lawyers other than lady lawyers :

(a) Black buttoned up coat (Chapkan; achakan or sherwani), or

(b) Black open collar coat, white shirt, white collar, stiff or soft, and necktie.

(2) Lady Lawyers : Regional dress of subdued colour or colours and blouse buttoned up to neck with sleeves.]

580. RULE :-

In cases of misconduct of any High Court Pleader or District Pleader the following procedure should be adopted :- The Court mentioned in section 26 of the Bombay Pleaders Act, XVII of 1920, should, after notice to the Pleader concerned, hold an inquiry as contemplated by that section, and forward its report together with the evidence taken at the inquiry to the Registrar, High Court, Appellate Side, requesting him to place it before the High Court.

581. RULE :-

In the paragraphs 582 to 593 below, 'plaintiff' and 'defendant' include 'appellant' and 'respondent' and 'applicant' and 'opponent', respectively.

582. RULE :-

The general law as to costs is stated in section 35 and rule 6 of Order XX and Order XXV of the Code. Specific or implied reference to costs is also made in various parts of the Code, for example, Order VI, rule 17; Order IX, rules 6 (2), 7, 9 and 13; Order XI, rules 3, 15 and 18 (2); Order XII, rules 4 and 9; Order XVI, rules 10 (3), 11 and 12; Order XIX, rule 3 (2); Order XXI, rules 34 (6), 38, 39 (5), 45 (2), 55, 67 (2), 69 (3) and 72 (3); Order XXII, rules 3, 8 (2) and 9 (2); Order XXIII, rule 1(3); Order XXIV, rule 4; Order XXXII, rules 2, 4 (4), 5 (2), 8, 9, 11, 12 (4), 13 (1) and (3) and 14(2); Order XXXIII, rules 10, 11 and 16; Order XXXIV, rules 4 (2), 10 and 13; Order XXXV, rules 3 and 6; Order XXXVII, rule 2 (2); Order XLI, rules 18, 21 and 35 (3); Order XLV, rule 7; Order XLVI, rule 4; Sections 137 and 153 of the Code. This list does not profess to be exhaustive.

583. RULE :-

On the question of taxation of costs, attention is invited to the provisions contained in sections 18, 20, 21 and 23 of the Bombay Pleaders Act, and the rules in Schedule III of that Act.

584. RULE :-

(a) When the Government Pleader, as defined by section 2(7) of the Civil Procedure Code, appears to oppose an application for permission to sue or to appeal in forma pauperis he should be allowed the full costs. In such a case separate costs should not be allowed to the defendant unless good cause is shown by him for engaging a lawyer on his behalf to oppose the application.

(b) When two or more defendants having separate substantial defences have engaged the services of the same lawyer, they shall normally be allowed separate sets of costs. In such a case the defendants interested must apply at the hearing for separate costs.

(c) When several defendants having separate defences are represented by separate lawyers, they shall normally be entitled to separate costs.

(d) The law does not require a party engaging more than one lawyer to file a separate Vakalatnama in respect of each of them provided that each of them accepts his appointment before the Vakalatnama is filed and signs it in token of his having done so. When a party files more than one Vakalatnama the costs for the additional vakalatnamas should not be allowed.

(e) Even when the lawyer appointed by the party dies and another is appointed by the party in his place, the expenses incurred for affixing Court-fee stamps on the Vakalatnama, should not be included in the bill of costs. The same rule applies where a party dies and his legal representatives appoint the same or another lawyer.

585. RULE :-

Where a suit or proceeding has been "dismissed with costs" and there is more than one defendant the Court must be deemed to have intended that each of the defendants is to receive his costs from the plaintiff or applicant. Where several defendants are represented by separate lawyers, the order "dismissed with costs" will mean that separate sets of costs are to be allowed to the defendants engaging separate lawyers. Whether more than one set of costs should be allowed or not is, of course, in the discretion of the Court, but it is its duty to make its intention clear. Accordingly, in all cases where several defendants are represented by more than one lawyer, it will be its duty to obviate ambiguity by specifying whether one or separate sets of costs are allowed.

586. RULE :-

In miscellaneous Judicial proceedings not admitting of precise valuation the scale of fees in the various Courts shall be as follows: Unless the Court otherwise orders the Bill of Costs will include the minimum fee herein prescribed but it will be open to the Court to award higher or lower fees than those prescribed if the Court for reasons to be recorded deems it fit to do so.

587. RULE :-

In calculating the amount of lawyer's fees allowable to the State in respect of an application under order XXXIII, rule 10 of Civil Procedure Code the lawyer's fees awarded to it in respect of the application for leave to sue as a pauper shall be included.

588. RULE :-

The remaining fee payable to a pleader under section 11 of the Bombay Pleaders Act (XVII of 1920) should not be included in the costs of the suit.

589. RULE :-

(i) A suit decided on the defendant's admission is deemed to be decided on the merits, within the meaning of rule 1(a) of Schedule III of the above-mentioned Act and pleader's fee should be allowed in full.

(ii) An award filed without contest under section 14 of the Indian Arbitration Act X of 1940, shall not be considered as a suit decided on the merits within the meaning of the rule referred to above.

590. RULE :-

In a suit for restitution of conjugal rights, the lawyer's fee should be calculated on the amount at which the plaint is valued for purposes of Court fees.

591. RULE :-

The fees paid by a party for interpreting an affidavit and for administering an oath or solemn affirmation should be held to be costs incurred in the case and included in the bill of costs.

592. RULE :-

Separate fees cannot be included in the bill of costs even when they are paid to a lawyer appointed under a fresh vakalatnama by the legal representative of a deceased party.

593. RULE :-

Travelling allowance paid by the Government or a public authority to a public servant who was summoned as a witness in any case as also the amount deposited by a party to cover the travelling allowance payable to such public servant shall be included in the bill of costs.

CHAPTER 30

Post and Correspondence

594. RULE :-

Correspondence intended for the Original Side of the High Court should be addressed to the Prothonotary, and that intended for the Appellate Side of the High Court to the Registrar, High Court, Appellate Side.

595. RULE :-

The following documents and papers should be despatched to the Prothonotary and Senior Master, High Court:

- (i) Decrees and orders from the Mofussil Courts, which are intended to be executed by the High Court;
- (ii) Commissions and other documents forwarded by the Prothonotary and Senior Master to the Mofussil Courts which are required to be returned to the High Court; and
- (iii) All returns to processes received from the Prothonotary and Senior Master for service by the Mofussil Courts.

596. RULE :-

On receipt of a writ from the High Court, the receiving Court should at once endorse thereon the date of its receipt. The writ should be returned to the High Court with an endorsement on it either certifying its execution or, if it is not executed, giving reasons which prevented the Court from executing the same. If the writ is not returned within the time prescribed in it, reasons must be given explaining the delay.

597. RULE :-

Each of the following documents should be forwarded to the High Court in the manner indicated against it without an accompanying letter:

- (1) Civil Monthly and Yearly Returns.....By an endorsement on the return only.
- (2) Receipts for record and proceedings returned by the High Court By signing them only.
- (3) Process sent to the District Judges for service.....By an endorsement made on the High Court's forwarding letter.

598. RULE :-

Whenever any papers are sent to any Court by parcel post because they are bulky or for any other good reason, a separate letter should be sent to such Court, by post, advising the despatch of those papers. In the event of any papers not being received from the High Court within a reasonable time after the receipt of the letter advising the despatch, the fact and circumstances should at once be reported to the High Court.

599. RULE :-

Subject to the provisions of the rule (8) for Civil Courts' Accounts in Chapter XXXV of this Manual money should, whenever practicable, be sent by money-order.

600. RULE :-

If any process, notice or any other document is transmitted by post, the postal charges should be paid in the form of service postage stamps without any additional charge being levied from the parties at whose instance or for whose benefit, the documents are issued.

601. RULE :-

Official correspondence transmitted by Inland post should be stamped in accordance with the rules relating to private correspondence.

602. RULE :-

(1) All letters addressed by Judicial Officers, in their official capacity, to private individuals or associations may be sent under service paid postage.

(2) All references, declarations, statements, etc., made by Government servants under compulsion of the Service Rules should be deemed to have been made for public purpose and Government servants should be permitted to make use of service postage and Government Stationery for such references etc.

603. RULE :-

To avoid the danger of loss of documents in transit, all orders and processes issued by the Civil Courts under Order XXI, rules 48 and 57, Civil Procedure Code or similar other matters addressed to the revenue or other authorities should be sent by registered post, acknowledgment due.

604. RULE :-

Service stamps can only be used on the official correspondence despatched to United Kingdom or Commonwealth countries but not on official correspondence addressed to other countries.

605. RULE :-

Travelling expenses of a witness should not be remitted to him until the acknowledgment of the summons for attendance sent to him is received.

606. RULE :-

(1) Every letter and petition received from any person which does not require judicial consideration should be acknowledged in standard form No. Gen. 236 e.

(2) A formal acknowledgment is necessary unless

(a) a reply can be, and is, sent within 48 hours, or

(b) the person concerned has previously been informed that no further communications on the same subject will be answered.

(3) In addressing members of the public, the memorandum form of address should not be used.

(4) Requests for information should not be treated as if they were applications requiring judicial orders nor should the enquirer be asked to appear in person or by lawyer. It is impossible to enumerate cases in which information should or should not be given. The Judge concerned must use his discretion. As a rule, however, information should be given, if it can be supplied without disproportionate trouble, or is not otherwise readily obtainable by the person asking for it, provided, however the inquiry is not undesirable and does not have the effect of avoiding legitimate fees. If information is refused, the reason for refusal should be briefly and courteously given.

607. RULE :-

All correspondence on which final action is to be taken by Government should always be sent in duplicate.

608. RULE :-

The following memorandum of instructions should be followed as regards official correspondence between District Judges and Government: Memorandum.

I. In the following matters communication between Government and District Judges will ordinarily be direct:

(1) Matters affecting their Courts in relation to finance or buildings. Specific instances of such matters and kindred matters are:

(a) Budget Estimates.

(b) Proposals for additional grants.

(c) Reappropriation reports.

(d) Statement of Expenditure.

(e) Contract Grant.

(f) Audit of Accounts.

(g) Electric installation.

(h) Major Works.

(i) Minor Works, etc.

(j) Advances for motor cars to Judicial Officers.

(2) Matters in which Government desire information on questions of fact relating to a particular Court. Specific instances of such matters and kindred matters are

(a) Returns of Probates and Letters of Administration.

(b) annual Returns showing appointments to the several cadres of man from Backward Class.

(3) Matters in regard to which the High Court may have given general directions to District Judges to communicate directly with Government.

609. RULE :-

No Court shall enter into correspondence with any foreign State, or authority or Court therein except where it is specifically permitted to do so.

610. RULE :-

Correspondence by Executive Officers with Judicial Officers.- The Government in consultation with the High Court have directed that Executive Officers should scrupulously observe the following procedure as regards correspondence with Judicial Officers:

(1) There is no objection to the Collectors and other Executive Officers addressing the District Judges and other Judicial Officers in routine matters, subject to the following conditions:

(a) Only the Head of the Department or at any rate the Head of Office should correspond direct with the District Judge in routine matters.

(b) The officers may use their discretion in deciding whether a particular matter is routine or otherwise and then consider whether or not they should correspond direct with the District Judge. Similarly, the District Judge, may also decide in his discretion whether a particular matter referred to him direct by the District Officers is routine or otherwise and if he considers that the matter referred to him is not of a routine nature, he may return the correspondence to the officer concerned or may move the High Court.

(c) No Executive Officer should enter into any correspondence directly with the subordinate Judicial Officers. All correspondence whether routine or otherwise must pass through the District Judge.

(2) In matters other than routine matters, the executive officers should address the Government, which would in turn address the High Court.

611. RULE :-

Two separate Registers of correspondence-Inward and Outward- shall be kept in the office of the District Court and of the Civil Courts in the prescribed forms. The serial numbering shall commence afresh on the 1st January of each year.

612. RULE :-

The letters and memoranda received shall at once be entered in the Inward Register before being dealt with or put up for orders, and those to be issued shall be registered in the outward Register on the day of despatch and shall bear the date of that day.

613. RULE :-

Entries in Inward and Outward Registers of correspondence should be as clear and concise as possible.

614. RULE :-

An index of case files shall be maintained according to the classification prescribed hereunder. All correspondence shall be given appropriate Major and Minor heads and number in conformity with the classified list.

615. RULE :-

When any letter, memorandum or endorsement which is received, and entered in the register, relates to any pending file, it should be brought on the file after noting the major and minor heads of the subject. If it does not relate to any pending file a new case file should be opened, numbered and entered in the index of case files.

616. RULE :-

Correspondence shall be classified under four major heads, namely, (A) Judicial; (B) Administrative; (C) Finance; and (D) works. Each major head shall be sub-divided according to the list appended hereto. Every letter, memorandum, etc., shall bear the major head, to be shown by the relevant mark, A, B, etc., and the serial number of the minor head of the subject; e.g.; correspondence pertaining to contingencies shall be shown 'C3', and when any communication and year, and the date, e.g., C3- 50/1960, dated the 1st February, 1960.

617. RULE :-

All correspondence issued from the offices of the District Court and Civil Courts, shall show at the right hand top the major head and minor head of the subject in addition to the date and serial outward number of despatch.

618. RULE :-

Administrative correspondence directly relating to suits, appeals or proceedings which are pending shall be filed with

the papers thereof. But copies of such correspondence may be kept with the relevant subject-file, if any, or in the miscellaneous file, if in the opinion of the District Judge, or the Presiding Judge, it is necessary to keep such copies.

619. RULE :-

The papers relating to one subject shall be tacked together in chronological order, the earliest paper being on the top. All note sheets shall also be arranged chronologically.

620. RULE :-

Correspondence with subordinate Courts including Small Causes Court in the district should be conducted by memoranda and not by official letters.

621. RULE :-

All confidential communications shall be sent in double covers, the inside cover being addressed by name to the person for whom it is meant, marked 'Confidential', and sealed, while the outer cover may be addressed in the ordinary way.

622. RULE :-

On the first day of each month, the entries in the Inward and Outward Registers shall be examined, and all unanswered references pending for more than fifteen days separately noted on a pending list. The Clerk of the Court is responsible for the correctness and completeness of the list, and shall place it, not later than the 7th of each month, before the District Judge, or Presiding Judge, for perusal and orders.

623. RULE :-

All case-files of correspondence, after disposal, shall be maintained and kept in proper custody, after arranging them under major and minor heads prescribed herein. They should be kept year- wise, and periodically checked in order to see that no case- file is missing.

623A. RULE :-

The Judges and officers of District Courts in the State are authorised to carry on correspondence in Gujarati with members of the public and their staff wherever it is possible to do so.]

CHAPTER 31

Holidays and Vacations.

624. RULE :-

(i) Under section 43 of the Bombay Civil Courts Act, XIV of 1869, in addition to the days therein mentioned those named in the list contained in Appendix G of Volume II of this Manual are sanctioned holidays in the District and Subordinate Courts. When a holiday on account of a visible eclipse of the sun or the moon is not sanctioned for any District, the Courts in that District may be closed for a day on the occasion of such an eclipse in lieu of any of the holidays sanctioned. (ii) In the case of extraordinary holidays (e.g., Kapila Shashti) which occur only after a series of years, sanction of the High Court shall be obtained before closing the Courts.

625. RULE :-

(i) Early in December a list shall be prepared by the District Judge in English and in the language of the District, showing the dates and the months on which the holidays will fall during the ensuing year. This list shall be circulated for general information to all the officers and Courts in the District. A copy of this list should be affixed on the notice board of each Court for information of the public. (ii) The Courts shall not be closed on days other than those allowed by the High Court.

626. RULE :-

Even where a holiday mentioned in the list of holidays referred to in Appendix G in Volume II, falls on a Sunday or where two holidays mentioned therein fall on one and the same day, no working day in lieu thereof shall be observed as a holiday.

627. RULE :-

The District Judge may close any Civil Court in his District for any day on which the Court cannot function satisfactorily, owing to a requisition by the Collector of the staff thereof in connection with an election or by-election to the State or Central Legislature. This applies also to Local Board and Municipal elections, when Heads of Government Offices other than Courts, have declared a local holiday.

628. RULE :-

The Civil Courts in a district may be closed by the District Judge for the ordinary annual vacation of six weeks after previous publication in the Gujarat Government Gazette at least a month before the date of the commencement of the vacation; but the period should be so fixed as to fall between the 15th of March and the 30th June of each year. [

629. RULE :-

Instead of the vacation of six weeks referred to in the preceding paragraphs, the District Judge may, with the previous permission of the High Court, close the courts in his District for five weeks between the 15th March and the 30th June and for the remaining one week in October/November which may be prefixed or suffixed to the Diwali Holidays.]

CHAPTER 32

Libraries.

630. RULE :-

In each District Court there should be two libraries, which may be called the Court Library and the Bar Library. The former should contain books, which are for the sole use of the Judges and their establishments. The other Library should primarily be for the use of the members of the Bar.

631. RULE :-

In other Courts there should ordinarily be one library under the control of the Presiding Officer of the Court. The members of the Bar should be permitted to have access to and to borrow books from this library, subject to such directions as the Presiding Officer may from time to time give in this behalf. It will be open to the members of the Bar to have their own separate library, if they so desire.

632. RULE :-

The books contained in the Bar Library are purchased primarily from the subscriptions realised from its members. There is no objection to Judges becoming members of the Bar Library. As each Bar Library is given assistance by way of rent free accommodation and also by supply of certain books at Government expense each Bar Library shall frame rules on the lines of the model rules set out in paragraph 635 below and obtain the approval of the High Court to these rules. No books purchased at Government expense shall be supplied to any Bar Library, until it has framed such rules and until they have been approved by the High Court.

633. RULE :-

The District Judge may purchase books from their contingent grants subject to the condition that all charges so incurred are within the budget allotments sanctioned. He may in his discretion place any such books in either the Bar or the Court Library. Court Libraries.

634. RULE :-

(1) The books in a Court Library shall be kept in charge of a clerk appointed for the purpose by the Presiding Officer of the Court. As soon as a clerk takes charge of the books in the Court Library, he shall make a report to the Clerk of the Court about the condition of books, and missing books, if any.

(2) The Library Clerk receiving publications from Government, whether they are intended for the Court Library or for the Bar Library, shall immediately after receipt register them as well as books purchased from Government funds, in a catalogue, which shall be kept in the following form:

Where kept								
Class	Sub-head if any.	Serial Number.	Title and name of author.	Volume Number	Date of receipt (a) Room	(b) Cup board (if any) (c) Shelf (if any)	Remarks.	Margin for cutting and numbering
1	2	3	4	5	6	7	8	

The right-hand margin of the catalogue shall be so cut and numbered as to show where the entries under each class and sub-head represented by the numeral prefixed thereto in subparagraph 3 are to be found.

All entries in the catalogue shall be initialled by the Presiding Officer of the Court immediately after they are made. In the case of the District Court Library they shall be initialled by the Clerk of the Court.

(3) Books shall be classified in the catalogue in the following manner: I. Regulations, Ordinances and Acts. II. Special Acts (when printed separately). III Commentaries, annotated Acts and Text Books. IV. Law Digests and Index of Cases. V. Departmental Codes, Circulars and Manuals (i) Civil. (ii) Criminal. (iii) Finance Department. (iv) Home Department. (v) Miscellaneous. VI. Law Reports. (1) I.L.R. (a) Bombay Series) (b) Calcutta Series) After binding (c) Madras Series.) (d) Allahabad Series etc., as necessary.) (2) Bombay Law Reporter. (3) Other Law Reports. VII. Periodicals. VIII. Dictionaries, Glossaries, Lists and Directories. IX. Bound Gazettes. X. Statutory Rules. XI. Miscellaneous.

(4) It shall be the duty of the Library clerk: (i) to stamp the seal of the Court on the title page and 10th page of the book, (ii) to affix on the lower portion of the spine (back) of the book a label mentioning its serial number, (iii) to affix on the inside of the cover of every book a label in the following form:

Court Library at Class. Room Sub-head. Cupboard.

Serial No. Shelf Received on

These labels will be supplied on indent, by the Superintendent, Government Printing and Stationery Bombay, as standard form No. Civ. B64-Eng.

(iv) to check the catalogue every two months and report having done so to the Judge,

(v) to report the loss of any book as soon as it is discovered,

(vi) to report every six months to the Clerk of the Court whether the books are in good condition and whether any book is missing or damaged and

(vii) to paste correction slips and make amendments in (a) Indian Acts, (b) Bombay Code, (c) Rules and (d) Departmental manuals. When the loss of any book is reported, the Judge shall ascertain from the charge certificates of the clerks concerned the person who is responsible for the loss, and then decide whether the cost of the missing book should be recovered from the clerk or clerks concerned.

(6) Where any Book is in constant use with an Officer a note to that effect shall be made in column 7 of the catalogue.

(7) In the case of the District Court Library, such Judge working at the District headquarters, as the District Judge may appoint in this behalf and in the case of Court Libraries at other stations, the Civil Judge, (Junior Division), and if there is more than one Civil Judge at such place, the principal Civil Judge, shall from time to time, as he may think expedient, and at least once in each year inspect and verify the books in the Library.

(8) Such Civil Judge shall, on taking charge of the Court inspect the books and verify them with the catalogue which he will sign. If any book is missing, he shall at once make a report to the District Judge, who may make such enquiry and take such steps for replacing it or otherwise as may appear necessary.

(9) All letters and correspondence relating to books shall be kept in a separate file.

(10) Gazettes shall be regularly filed and, at the end of the year bound into annual volumes.

(11) The Indian Law Reports should be regularly bound as soon as the volumes are completed and index is received.

(12) No books should be removed from the Court building except by a Judge or Judicial Magistrate who must give a receipt to the Library clerk for any book he takes home with him and take it back on returning the book.

(13) Orders for the removal of obsolete books should be obtained at least every two years from the District Judge.

(14) Books, which are obsolete or of no use, may be sold or otherwise disposed of with the permission of the District Judge.

635. The following shall be Model Rules for Bar Libraries:

I. The Library shall be known as the.....Bar Library.

II. No person shall make use of the Library other than duly enrolled members.

III. Membership shall be open to the following only:

(a) Judges serving in the district;

(b) Lawyers entitled to practice in the Courts in the district;

(c) Police Prosecutors serving in the district;

(d) Such other person as the Managing Committee may admit to membership:

Provided that where the Presiding Judge of the Court is not a member of the Managing Committee, no person shall be admitted under clause (d) above without the Presiding Judge's consent in writing.

IV. All members shall be required to pay a monthly subscription at rates to be fixed by the General Body and approved by the District Judge.

V. (1) All use of the Library shall be prohibited to a member whose subscription is in arrears by more than two months, until he shall have paid all the arrears together with the subscription for the current month.

(2) A subscription shall be deemed to be in arrears from the first day of the month next after the month on account of which the subscription was due.

VI. (1) Any member other than a salaried officer of Government found guilty of conduct which is deemed unworthy of his profession may be deprived of his membership by the vote of not less than 2/3rd of the members present at a General Meeting specially called for this purpose:

Provided that not less than fifteen clear day's notice shall have been given to the alleged offender of the proposed meeting, together with a full written statement of the purpose for which the meeting is called and of the reasons for calling it:

Provided further that no action shall be taken to the detriment of the alleged offender without giving him an opportunity at the meeting to explain his conduct.

(2) A member deprived of his membership under the foregoing provisions shall not be readmitted to membership except by the vote of not less than 2/3rd of those present at a General Meeting specially called for this purpose.

VII. An Ordinary General Meeting shall be held in the Library once a year in the month of, upon a date and at a time suitable to the majority of the members.

VIII. A Special General Meeting shall be held at any time upon the requisition of not less than members.

IX. (1) There shall be given not less than seven clear days notice in the case of a Special General Meeting and not less than twenty-one clear day's notice in the case of an Ordinary General Meeting.

(2) In either case such notice shall be accompanied by a statement of the Agenda.

(3) No subject not included in the Agenda shall be considered at the Meeting except by consent of the majority of

those present.

(4) Every General Meeting shall be presided over by a Chairman to be elected at the time. The Chairman shall exercise no vote except in the case of a tie.

(5) For the purpose of a General Meeting members shall form a quorum:

Provided that when a General Meeting is adjourned for want of a quorum, three members shall suffice to form a quorum at the subsequent meeting, which subsequent meeting shall not have the power to consider any matter which was not upon the Agenda for the original meeting.

X. The general management of the Library shall be in the hands of a Managing Committee consisting of members.

XI. If the Presiding Judge of the Court is a member of the Managing Committee, he shall be ex-officio chairman thereof at every meeting of the Committee at which he is present.

If such Judge is not a member of the Managing Committee, or if, being a member, he shall be absent, the Committee shall elect one of themselves as Chairman at each meeting of the Committee.

XII. (1) The Managing Committee shall be elected afresh every year at the Ordinary General Meeting.

(2) Only members enrolled under clauses (a), (b) and (c) of rule III shall be eligible to serve on the Managing Committee.

(3) At least one member of the Managing Committee shall be a salaried officer of Government; but not more than two members shall be salaried officers of Government.

XIII. If any member of the Managing Committee shall cease to hold office for any reason before the expiry of his term, his place shall be filled by co-option by the other members:

Provided that if more than one member so cease to hold office, a Special General Meeting shall be called for the purpose of filling all vacancies in the Managing Committee.

XIV. A meeting of the Managing Committee may be called at any time on the requisition of any member of the Committee:

Provided that he shall give not less than three clear days notice to all the other members, and that there shall be no quorum if less than 1/2 the members of the Committee be present.

XV. The Managing Committee shall from time to time appoint one of their members to be Honorary Secretary and Treasurer. The member so appointed shall in this capacity have authority to expend the Library funds at any time upto a limit of Rs. 10 on his sole authority for any reasonable purpose connected with the Library:

Provided that when the limit of Rs. 10 has been reached the Honorary Secretary and Treasurer shall have no authority to expend the Library funds any further until he has accounted for the prior expenditure to the satisfaction of the members of the Managing Committee.

XVI. (1) It shall be the duty of the Managing Committee to take all measures necessary to the management of the Library with efficiency and economy and so as to afford the greatest possible convenience to the members.

(2) In particular it shall be the duty of the Managing Committee (i) to prepare the Annual Budget and Balance Sheet and to lay these before the Ordinary General Meeting and (ii) to decide all questions relating to the acquisition of books for the use of the Library.

(3) The Managing Committee shall also be responsible for the marking and cataloguing of the Library Books, the keeping of a separate list of books belonging to Government, and for the keeping of the Library accounts:

Provided that the above duties, and any other duties connected with the Library except those specified in sub-rule (2) above, may be performed by an Honorary or paid Librarian. Such Librarian shall be appointed and supervised by the Managing Committee, and if not an honorary worker, he shall be remunerated out of the Library funds.

XVII. (1) Books shall ordinarily not be removed from the Library.

(2) Upon the written requisition of any member, or of any officer of the Court establishment, any book may be removed from the Library to any place within the Court precincts.

(3) In special circumstances, any member may remove a book which is not the property of Government from the Court precincts:

Provided (a) that he does so only after the Court has risen for the day, (b) that the book is not required by a Judge, (c) that he shall return it before the Court sits on the next working day, (d) that he shall write his name, the date and the name of the book in a ledger to be kept for the purpose and (e) that he is understood to accept full and sole responsibility for the book until it is returned to the Library in good order. (4) Books which are the property of Government shall not be removed from the Court precincts except by a Judge on signing for it.

XVIII. Books which are the property of Government shall be open to inspection at any time by the Presiding Judge of the Court or his representative.

XIX. Government shall have the right to arrange for the audit of the Library accounts at any time, but not more

than once in twelve months; the cost of such audit shall be borne equally by Government and the Library funds.

XX. Save as hereinbefore provided, the foregoing Rules shall not be altered, cancelled or added to except by a majority of not less than two-thirds at a General Meeting.

CHAPTER 33

Returns

636. RULE :-

Monthly Returns of the original Civil and Criminal work should be submitted by the Civil Judges and Judicial Magistrates to the District and Sessions Judge not later than 5th of the following month in Forms 'A-1', 'A-2', 'B-1*' and 'B-2'. Forms 'A-1' and 'B-1' should be used by the Civil Judges (Senior Division) and Judicial Magistrates, First Class. Forms 'A-2', 'B-2' should be used by the Civil Judge (Junior Division) and Judicial Magistrates, First Class. Judicial Magistrates doing criminal work should use form 'A-2' only.)

637. RULE :-

The District and Sessions Judge should scrutinize the Returns carefully and forward consolidated Returns for the whole District to the High Court, in duplicate, along with his own remarks before the [15th] of the month.

638. RULE :-

The District and Session Judge should submit Monthly Returns of his Court in Forms 'C' and 'D' so as to reach the High Court on or before the 5th of the following month. He should send his Returns in duplicate.

639. RULE :-

Wherever there are Provincial Small Cause Courts, the Monthly Returns of work disposed of and pending disposal in forms 'F' and 'G' should be submitted to the District Judge before the 5th of the following month. The District Judge should forward the same to the High Court before the 10th of the month along with his own remarks thereon.

640. RULE :-

If in any Court the arrears are heavy, the District Judge should state what steps he is taking to clear them off. If he requires assistance in any Court, he should make a recommendation to that effect to the High Court.

641. RULE :-

The following instructions should be carefully observed in the submission of the Returns:

- (a) The instructions given in the foot notes to the forms should be carefully observed.
- (b) The names of the Judicial Officers should be mentioned along with their designations.
- (c) If a Judicial Officer is transferred, is on deputation, or is on long leave, a note about the same should be made in the Returns against his name.
- (d) The name of the Judicial Officer on deputation and his disposals while on deputation should be shown against the Court where he was working on deputation. His disposal in his original Court should be shown against that Court.
- (e) In the case of link Courts or Circuit Courts, the information in respect of each Court should be furnished separately.
- (f) Suits and other matters re-admitted or received by transfer should be entered under the heading/'Received during the month' along with the new institutions. The cases received by transfer from one Judge to another working in the same Court should be shown in plus and minus signs in the aforesaid column and proper explanations given in the remarks column or at the foot of the Returns.
- (g) The total number of cases (a) pending for arguments for more than seven days from the conclusion of the evidence and (b) pending for Judgment for more than fifteen days from the [completion of arguments] should be separately shown in the remarks column.
- (h) Suits in which, after preliminary decrees are passed further action for final decrees is to be taken by the Court without any application from a party (e.g. decrees under rules 12 (1) (b), 13, 15, 16 and 18 (2) of Order XX of the Civil Procedure Code) should be treated as pending and shown as such in the Monthly Returns. Suits in which after preliminary decrees are passed, subsequent proceedings for passing final decrees do not arise as a matter of course [e.g. decrees under rules 12 (1) (c) and 18 (i) of Order XX and rules 2 to 8 of Order XXXIV of the Civil Procedure Code], should be shown as disposed of in the Monthly Returns.
- (i) Suits restored to file, remanded or received back from the Debt Adjustment Courts and those transferred from another Court should be shown against the same year in which they were originally instituted.
- (j) The Civil Judges should show in the remarks column of their Returns, the number of plaints that have remained to be registered or otherwise dealt with within one week of their presentation.

642. RULE :-

The Civil Judges should along with their Monthly Returns submit a statement of cases pending in their Courts in which proceedings have been stayed by order of superior Courts, or cases in which there are no orders of stay of proceedings but the records have been called for in revision against interlocutory order.] The District Judge should append a consolidated statement of such cases for the whole district to the Monthly Returns submitted by him to the High Court. In the case of proceedings stayed by the High Court, the number, year and class of the proceeding

in the High Court should be mentioned in the statement. Note. There are six classes of proceedings in the High Court, viz. (1) First Appeals, (2) Second Appeals, (3) Appeals from Order, (4) Letters Patent Appeals, (5) Civil Revision Applications and (6) Civil Applications. Note. For form of Statement See page 384 of Volume II.

643. RULE :-

(1) A return in the form at page 380 of Volume II made up to the previous 31st December and 30th June respectively, for the different Courts in the District should be submitted by District Judges to the High Court on or before the 15th of January and the 15th of July of each year, together with explanations regarding Civil Appeals, Civil Suits, Darkhasts and Insolvency Applications pending for more than 3 years.

(2) A Return in the same form together with explanations in respect of all appeals from orders and Miscellaneous Civil Applications pending for more than a year on 1st April and 1st October should be submitted on or before the 15th of April and 15th of October of each year.

(3) If any of the proceedings shown in these returns are kept pending on decisions in a proceeding in the High Court, the number and nature of such proceeding should be stated correctly in the margin of the explanations.

644. RULE :-

When a District Judge or a Civil Judge delivers charge of his Court on transfer whether to his successor direct or to some one else, he should submit to the High Court a return in the form at page 384 of Volume II, showing the state of the file on the dates of his receiving and delivering the charge. Report about attached property and property produced in Civil Proceedings.

645. RULE :-

The Small Cause Court Judges and Civil Judges should report to the District Judge at the close of the year not later than 1st of February that attached property and property produced in civil proceedings has been examined and the property referred to therein has been properly dealt with. Return of property of persons dying intestate and without known heirs.

646. RULE :-

This return must be despatched to the High Court for sanction not later than the 31st March. For form see page 381 of Volume II. Return of Court fees and Stamp duty paid on letters of Administration etc.

647. RULE :-

District Judges should keep Register and submit Returns in form at page 382 of Volume II for the official year on or before the 20th April of each year. Form of book to be kept in Courts showing payments made under section 34 of the Bombay Stamps Act, LX of 1953.

648. RULE :-

A Register in the following form should be maintained for showing paymients under section 34 of the Bombay Stamp Act. 1958. The entries therein should be made immediately on the receipt of any amount paid under the aforesaid section. A return of entries so made shall be furnished to the Collector at the end of the month: \ \ \ Monthly statement of Refund of Stamp duty.

649. RULE :-

The Civil Judges should every month furnish to the Collectors of their respective Districts, through the District Judges, a statement, in the form at page 385 of Volume II of the stamp duties which are ordered to be refunded to the parties in the suits. District Judges should similarly furnish information in respect of their own Courts.

CHAPTER 34

Superintendence over Courts and Inspection.

650. RULE :-

The District Judge is the head of the judicial administration in his district. He has general control over all the Courts in his district and their establishments and is responsible for the proper and efficient conduct of judicial business in these Courts. This is his personal responsibility, which he must exercise by keeping a close and constant watch over the conduct of work in all the courts. The administrative work is as important as judicial work and should never be neglected.

651. RULE :-

The control over the Courts may be exercised in the following manner: (i) Scrutiny of periodical returns, (ii) Periodical inspections, (iii) Appraisal of the quality of judicial work at the time of hearing of appeals and revision applications, and (iv) Personal contacts. Scrutiny of periodical returns.

652. RULE :-

The several periodical returns prescribed by the High Court indicate generally the state of the file in each Court and the disposal of cases during the particular period. The revised forms of the monthly returns show the pendency of cases according to the years of their institution. These revised forms will give a clear idea as to the position of the file in each court. A careful scrutiny of these returns will immediately reveal whether there is any increase in institutions or in the number of pending matters, or laxity in disposal or a tendency to neglect heavy old suits and dispose of newly instituted lighter ones. It would also show how the Presiding Officer is looking after the file of his Court.

653. RULE :-

(1) A critical scrutiny of the periodical returns and particularly monthly returns, is therefore essential. The submission of returns, would serve no useful purpose, unless they are regularly and closely examined by the District Judge himself. The District Judge should see that each Civil Judge working under him gives priority to old matters and puts in his full quota of work. If any Civil Judge is found to be shirking work or not turning out adequate work, the District Judge should draw his attention to it. If after scrutinising the returns, the District Judge feels that any Civil Judge needs guidance, he should issue appropriate instructions to him. He should also redistribute work amongst the Judges at the station whenever it is found necessary or desirable to do so, in order to secure expeditious disposal of work or to prevent accumulation of matters in any Court.

(2) If the District Judge finds that any Court needs assistance, he should send his recommendations to the High Court. He should also report to the High Court if he is not satisfied with the explanation of any Judge in regard to the low output of work. He should also offer his remarks on the monthly returns, while forwarding them to the High Court.

(3) By following these instructions the District Judge, will not only be able to secure disposal of old cases but will also be able to prevent accumulation of fresh arrears in any Court. Inspections.

654. RULE :-

The District Judge should himself inspect or cause to be inspected by an Assistant Judge, every Civil Judge's Court in his District, as far as possible not less than once in two years.

655. RULE :-

The object of inspection is to maintain efficiency and to raise the standard of work in the Civil Courts. The more careful the inspection is, the better will be the quality of work in these Courts. The number of disposals is not the only criterion to judge the capacity of a Civil Judge. The methods, the practice and the procedure followed by him are also important. An inspection should never be regarded as a fault-finding mission, but should be carried out with the object of securing a more efficient disposal of judicial business in the Court. The manner in which the Civil Judge arranges his work, tries suits and other proceedings and the way in which he manages his office, deals with administrative work and supervises the work of his subordinates, should be examined. It should also be seen whether there is co-operation between the Bench, the Bar and the Staff and whether the Judge has a firm grip over the administration. Efforts should be made to ensure that undesirable and unauthorised practices are discontinued, that mistakes and errors are not repeated and that the methods of work are improved. When an error or fault is detected, the way to avoid it should be explained and it should be pointed out how and in what manner the matter should have been dealt with. Constructive suggestions should be made and guidance given for overcoming difficulties, if any, which are being experienced. Minor matters should be disposed of in a personal discussion with the Civil Judge, but all important points should find a place in the note of inspection referred to in paragraph 662.

656. RULE :-

(1) The District Judge should give due notice of the probable date of inspection to the Civil Judge, who should fill in beforehand the printed form given below, giving so far as possible up-to-date information, so that on the District Judge's arrival there may be no loss of time in collecting information.

(2) The District Judge may also carry out surprise inspections when he deems it proper to do so. Information to be supplied at the time of Inspection.

1. Name of Civil Judge with date on which he came to this Court. 2. Small Cause Court powers exercised. 3. Nature of other work, criminal work, Payment of Wages Act, etc. entrusted to the Judge. 4. State of building. 5. Number of lawyers practising in the Court. 6. Number of licensed petition-writers (if any). 7. State of the file:

(a) Number of suits pending on the last day of previous month.

(b) Number of suits which are ready for hearing.

(c) Number of suits over one year old on the last day of previous month.

(d) Number of suits on file on the corresponding day of previous year.

(e) Number of suits over one year old on the corresponding day of previous year.

(f) Number of applications for execution of decrees on the last day of previous month.

(g) Number of applications for execution of decrees over one year old on the last day of previous month.

(h) Number of darkhasts sent to the Collector for sale or partition, which are pending over two years.

(i) Number of applications (other than for execution of decrees) pending over six months.

(j) Number of suits or darkhasts in which the Nazir has been appointed guardian-ad-litem during the 12 months before inspection.

8. Remarks of the Civil Judge on the state of the file. 9. Date of last inspection. 10. Whether any of the instructions issued at the time of the previous inspection have not been carried out, and if not, the reasons for not doing so. 11. Any other matters which the Civil Judge may wish to bring to the notice of the Inspecting Judge. 12. The Civil

Judge should append to his report the following statements:-

(1) List of practising law yers. (2) \List of establishment \ \

Name \Educational \Official title \Pay. Remarks. \Qualifications \ \

In the remarks column it should be noted whether any member of the establishment is over 55 and, if so, reference should be made to the order granting extension of service. It should also be stated whether any members of the establishment are nearly related to one another.

(3) Statement showing the distribution of work amongst the members of the Staff.

(4) Statement of commission issued to the members of the staff.

657. RULE :-

(1) It is not proper to leave the entire work of inspection to the members of the Staff. The Inspecting Officer should himself visit the place where the Court is situated and stay there for a day or two. He should himself read the inspection notes prepared by the Office and discuss them, or at least the important matters referred to therein, with the Civil Judge.

(2) The Inspecting Judge should also meet members of the Bar so far as practicable and discuss with them and with the Civil Judge any matters, which they may wish to bring to his notice.

(3) The Inspecting Judge should give a full opportunity to the Civil Judge to bring to his notice any grievances or any difficulty that he might be experiencing. Appropriate guidance should be given wherever necessary.

658. RULE :-

The Inspecting Judge shall examine the state of file and note the steps taken by the Civil Judge to keep it under control. He shall himself examine the records of at least 5 pending special or regular suits, 2 Small Cause Suits, 3 pending darkhasts, 3 pending miscellaneous matters and also at least 5 disposed of matters. He should pay special attention to the following matters and should ascertain:

1. Whether the Civil Judge begins work punctually at the prescribed hour and whether he observes regular hours of work.

2. Whether the practice and procedure followed by him are in accordance with the provisions of the Code of Civil Procedure. Civil Manual and other High Court Circulars.

3. Whether he exercises strict supervision over the members of the staff entrusted with the work of issuing processes in order to prevent delay in the issue of such processes.

4. Whether he exercises strict supervision over the process- serving establishment to reduce the delays in the service of processes.

5. Whether substituted service is properly ordered.

6. Whether the provisions in respect of filing of addresses (Order VII, rules 19 and 20 and Order VIII, rule 11 of the Civil Procedure Code) and service of further notices etc. effected as per provisions contained in Order VII, rule 22 and 23 of the Civil Procedure Code are followed.

7. Whether a specific date is fixed for reception of documents, interrogatories etc. and reasons recorded for allowing applications for production etc. thereafter.

8. Whether the provisions of Order XII, rule 3A of the Civil Procedure Code in respect of admission of documents are duly enforced in proper cases.

9. Whether the provisions in respect of interrogatories, discovery and production of documents are properly made use of.

10. Whether a date for filing of witnesses is fixed and whether applications for examining additional witnesses not mentioned in the lists are allowed without recording reasons.

11. Whether the Civil Judge arranges his daily board properly and observes the instructions in paragraph 181, Chapter VIII, and whether he assigns some days to contested cases only.

12. Whether the issues are clear and precise.

13. Whether the provisions of Order X of the Civil Procedure Code are followed for narrowing down the issues.

14. Whether the Judge studies the case before the issues are framed and before the hearing is commenced.

15. Whether he pays personal attention at the formative stages or leaves such work to the ministerial staff.

16. Whether due control is exercised over the Commissioners appointed.

17. Whether all interlocutory applications are promptly decided.

18. Whether the Judge decides the relevancy and the admissibility of the evidence, both oral and documentary, promptly or whether he postpones these matters till Judgment.

19. Whether the hearing of contested cases once begun is continued from day to day.
20. Whether there are too many hearings in a case and whether adjournments are granted on inadequate grounds.
21. Whether arguments are heard soon after the evidence has been recorded and judgment delivered within a reasonable time thereafter.
22. Whether he gives priority to old matters.
23. Whether his disposals are adequate.
24. Whether he signs the Roznama mechanically or after scrutiny.
25. Whether he pays attention to the cancellation of the stamps and the marking of exhibits properly.
26. Whether the papers of cases are kept in proper files.

659. RULE :-

The Inspecting Judge shall also pay personal attention to the following matters:

1. Whether the Civil Judge exercises adequate and effective supervision on the work of the Staff.
2. Whether the records are kept and maintained properly.
3. Whether the forms and stationery are kept properly.
4. Whether the Court building is satisfactory or whether it needs any additions, improvements or repairs.
5. Whether the Court building and the compound are kept clean and tidy.

660. RULE :-

The other matters specified at the end of this Chapter should also be looked into at the time of the inspection by the Inspecting Staff under the guidance and supervision of the Inspecting Judge. This list is not exhaustive.

661. RULE :-

At the time of each inspection, it should be ascertained what improvement has been made in consequence of the last inspection. The Inspecting Judge should also ascertain whether the instructions issued at the time of the previous inspection have been followed and if not, why not?

662. RULE :-

- (1) After completing his inspection, the Inspecting Judge shall draw up a note of inspection. If the inspection has been done by a Judge other than the District Judge, he shall submit it to the District Judge.
- (2) The District Judge shall forward a copy of the note of inspection to the Civil Judge for his information and guidance. He should also issue suitable instructions wherever they are considered necessary, for the guidance of the Civil Judge and the members of his establishment.
- (3) The District Judge may also, if he so deems proper, circulate amongst all Judges in his District instructions issued by him on any points of general importance.
- (4) The District Judge should forward a report to the High Court in the following form, soon after the inspection has been completed by him. Inspection Report.

663. RULE :-

Inspection of Criminal Courts should be made along with that of the Civil Courts situate at the same place. If a Judge is doing both Civil and Criminal work, a combined report of the inspection of his Court should be prepared. Appraisal of judicial work

664. RULE :-

While hearing appeals and revision applications, the District Judge or the Assistant Judge, as the case may be, gets a good idea about the ability and methods of work of the Civil Judge and the manner in which the evidence is marshalled and the judgment written. Each District and Assistant Judge should keep a note-book and whenever he considers that many matters heard by him calls for a special note being made either in favour of or adverse to a Civil Judge, he should also make a note in this note-book of any serious defects noticed by him. This note-book will also be useful at the time of submitting the annual reports on the work of Civil Judges. On or before 15th February each year, each Assistant Judge should submit a report to the District Judge about the defects, etc., which he has noticed in the work of any Civil Judge, while hearing appeals and revision applications. Personal contact

665. RULE :-

It is essential for the District Judge to keep personal contacts with all the Judicial Officers in his District. He should meet them periodically, either collectively or separately and discuss with them their problems and give them suitable guidance from time to time. Judicial Conference

666. RULE :-

So far as practicable, once in every two years the District Judge should assemble a Judicial Conference of all the Judicial Officers serving in his district, for the discussion of all judicial problems pertaining to the district and the state of files in various Courts. Senior members of the Bar practising in the District may be invited to attend this

conference. The conference should begin on Monday or a day following a holiday and should ordinarily not last longer than two days. The Courts of the Officers attending the conference may be closed for those days or for such further time as they may require for rejoining their stations. Notice of the date of the conference should be given sufficiently in advance, so as to enable the Officers attending it to fix their boards accordingly. A copy of the report of the proceedings of the conference should be sent to the High Court and to each of the other District Courts in the State. Matters referred to in paragraph 660 I. Court Building.

(a) Situation.

(b) Are any improvements or repairs required?

(c) Is accommodation sufficient for the needs of the Court?

(d) Is there a witness-shed with separate arrangement for ladies?

(e) (i) Is the Record-room suitable and in good order? (ii) Are water-pans provided and filled in with water? (iii) Are the extinguishers provided?

(f) Is there a strong room arrangement for keeping the safe?

(g) Are fire buckets provided with suitable stands and marked with 'fire' and filled in with water and sand?

(h) Is there a proper compound wall or fencing?

(i) Are the rooms, the compound, urinals etc., maintained in a clean and tidy condition?

(j) Are there proper drinking water arrangements for the public and Staff?

(k) Are there adequate First-aid provisions?

(l) Is a complaint box provided? Is it locked and kept in a conspicuous place easily accessible to the public?

(m) Is the Notice-board hung in a conspicuous place? Are daily boards and other notices properly pasted and old ones removed?

(n) Is there a board showing the name of the Court at the entrance? Are there boards at the entrance of each room showing the purpose for which it is used?

(O) Is the Flag-staff provided and is it in good condition? II. Proceedings.

(a) Is a proper balance-sheet maintained and are all proceedings coining forth as per the balance-sheet? Are notes as regards 'ready', 'unready', 'early hearing', 'stayed' etc. made in the balance-sheet?

(b) Are wrappers used since the beginning and exhibits serially arranged and kept?

(c) Are documents properly marked, exhibited and filed?

(d) Is the Roznarna neatly, carefully and correctly written as per instructions in the Civil Manual?

(e) Are the costs properly taxed?

(f) Are the decided cases sent to the District Court Record Room in time?

(g) Are the stamps duly cancelled and punched?

(h) Whether orders for the refund of Court Fees are properly made?

(i) Are there any delays and irregularities on the part of the Staff and whether due steps have been taken by the Presiding Judge to prevent such delays?

III. Registers. General

(a) Are all the registers maintained neatly in the prescribed form and are they paged and sealed and do they bear endorsements to that effect under the signature of the Presiding Judge at the end?

(b) Are the entries made serially and all the columns duly filled in?

(c) Whether the decisions in all cases are duly noted? Take the balance-sheet and compare with the Register concerned.

(d) Are intimations of appeals and revision applications and the decisions in them duly noted? Take the appeal Judgment file and compare with the respective Register.

(e) Are the satisfaction and payments made duly noted? Take the Civil Court deposits Register and compare the items of at least one month. Register of Suits.

(a) Is this register correctly and neatly maintained?

(b) Are the names of all the parties duly noted?

(c) Are corrections made in the plaint duly carried over to the register and the corrections initialled by some responsible Officer?

(d) Are columns as to execution duly filled in? Take the register of applications for execution and compare the columns of at least one month.

(e) Columns 12, 13, 14- Are first appearance only entered in these columns?

(f) Are entries in columns 9 and 17 prolix?

(g) Is a separate register for special jurisdiction Suits maintained? (h) Is a separate register of Small Cause Suits maintained? Register of applications for execution.

(a) Are separate registers kept for execution of decrees made in the exercise of Small Cause jurisdiction and under the B.A.D.R. Act?

(b) Is column 3 correctly filled in as per instructions contained in paragraph 313 of Chapter XIX? Other Registers and Records.

A list of other Registers to be maintained by each Civil Court is given below. It should be seen that all the registers are maintained and properly written:

(1) Register of applications requiring judicial inquiry.

(2) Register of applications not requiring judicial inquiry.

(3) Register of Insolvency Petitions.

(4) Register of new complaints received.

(5) Register of rejected complaints.

(6) Register of complaints returned for presentation to proper Courts.

(7) Register of sale certificates.

(8) Register of Darkhasts transferred to the Collector.

(9) Register of decrees received for execution.

(10) Daily Court-fee Register.

(11) Process fee Register.

(12) Register of cases in which Nazir is appointed Guardian-ad-litem.

(13) A, B, C and D Registers of decided Suits and Darkhasts to facilitate annual returns.

(14) Register of Commissions issued.

(15) Register of Commissions received.

(16) Inward and Outward registers (both regional and English).

(17) Register of Stamp duties and penalties (see whether the extracts are sent to the Collector regularly).

(18) Register of records stored in the Record-room.

(19) Memo-books.

(20) Sine-die-list.

(21) Register of stayed proceedings.

(22) Register of intimation of charges to be carried out in Record of Rights. (Are certificates attached to Judgments and required changes communicated to the Collector?).

IV. Legal Practitioners. Number-Is a list of lawyers regularly practising maintained? V. Office.

(1) Are the lists showing the duties of each Clerk, the Process fee table and the Rules for petition-writers hung up at proper places?

(2) Is a notice put up stating the hours during which the Presiding Officer would be free to see the complaints or visitors regarding grievances, if any?

(3) Is the Dead-stock in good condition? Is a proper inventory maintained? Are orders about writing off useless articles obtained?

(4) Are the typewriters in working order? Are covers provided and used?

(5) Are the seals of Court properly maintained?

VI. Regular Establishment. Staff.

(a) Sanctioned strength of Clerks, Section-writers, bailiffs, peons and petition-writers- Is the number sufficient, less or more?

- (b) Are the duties duly apportioned and responsibilities fixed and duties changed at intervals?
- (c) Are securities furnished, where necessary, including those by clerks in charge of stamps and library? Is solvency of sureties verified every year?
- (d) Is the Muster Roll properly maintained and checked and late attendance and leave etc. duly marked?
- (e) Is the order book maintained and are the instructions given from time to time noted in the book and signature of the member of the staff concerned obtained thereon?
- (f) Check the table of each Clerk and note the arrears of work found with him. Are notices and summons issued to defendants and witnesses, etc. expeditiously and regularly? Is the work done on all tables' regularly checked by the Presiding Officer and notes made about the same?
- (g) Is the Petition-writer duly licensed? Does he maintain the prescribed Register and charge proper fees? Is the petition-writer's register checked by the Presiding Officer? Are the average fees received sufficient as a living wage? Is his attendance marked?
- (h) Are diaries maintained by Section-writers and do they turn out the prescribed average of work?
- (i) Are bailiffs provided with badges? Is their attendance marked?
- (j) Are peon provided with necessary clothes etc.? Is their dress clean?
- (k) Are individual Confidential sheets maintained and regular notes made thereon?
- (l) Is a list of Lawyers' clerks maintained? Are all clerks duly registered and do they possess proper permits as per rules?

(m) Is the quarterly inspection of the office made by the Presiding Officer and notes made thereon as per High Court Circular No. A 3959/49, dated the 30th March, 1950? Is this thorough and are defects, if any noticed cured?

VII. Process-serving Establishment. Take any month for a test and see how many bailiffs were employed as process servers and on what days and how often each man was in attendance at Court.

- (a) Is the 'Kamgiri' Book maintained as per form mentioned in paragraph 564, Chapter XXVIII?
- (b) Are the beats changed from time to time under the orders of the Presiding Judge?
- (c) Is money paid to bailiffs along with the process duly accounted for?
- (d) Are diaries properly maintained and scrutinized by the Nazir?
- (e) Whether service of notices and summonses on defendants and witnesses etc. is effected expeditiously and regularly?
- (f) Does the Civil Judge inspect the Bailiffs' work?
- (g) Take any quarter and see whether the percentage statement of the bailiffs is properly drawn up. VIII. Service-Books and Leave Accounts.
- (a) Are these books correctly maintained? (for particulars please see Annexure I to Finance Department Circular No. V.G.P. 1557-IV- 1, dated 30th December 1957).
- (b) Are duplicates prepared and handed over to the persons concerned?
- (c) Is the service verified annually and endorsements made to that effect in the service-book?
- (d) Is the leave-account correctly maintained and attested?
- (e) Are the statements of vacations enjoyed maintained?
- (f) Are the oaths of allegiance, pension declarations, etc. appended?
- (g) Are the entries on the opening page renewed or reattested every five years? Are the signatures on the opening page dated?
- (h) Are entries about medical certificates made as per G.R., G.D. No. ROS. 1054, dated 20th July 1954?
- (i) Are the pre-confirmation periods verified and necessary certificates endorsed? (Please see Finance Department Resolution No. PEN 1055, dated 24th August, 1955).

IX. Library.

- (a) In places where there is a separate Bar Library, are rules for the Bar Library framed and approved by the High Court? Is the Library functioning according to the rules? Are all practising Lawyers members of the Library?
- (b) Is the Library catalogue maintained in the prescribed form and kept up-to-date?
- (c) Are all law Reports etc. got bound?
- (d) Is an appointment of 'Library Clerk' made by name?

- (e) Are all the books forth-coming?
- (f) Are obsolete books weeded out every two years and disposed of under proper orders?
- (g) Has the Civil Judge checked the books on taking over charge and also from time to time?
- (h) Is a file of letters and memoranda concerning the books maintained?
- (i) Are the numbers assigned to the books in the catalogue endorsed thereon?

X. Accounts. Audit the accounts in detail of at least 3 months of each year since the last inspection and see that these are correct. Check the cash in hand and see whether it is correct.

- (1) Does the cash balance shown in the Treasury tally with that in the cash book?
- (2) Is the Cash-book properly maintained?
- (3) Is the cash in the hand of the Nazir checked by the Civil Judge at least once a month?
- (4) Is the quarterly inspection of accounts made and this fact noted in the relevant registers of accounts? (Paragraphs 686, Chapter XXXV, Civil Manual, Vol. I.)
- (5) Are the orders as to payments obtained Early and payment made by the Nazir immediately?
- (6) Attached property-Is all property forthcoming? Is the valuable property kept in the Government Treasury? Are steps taken to dispose of old properties?
- (7) Is the Bill Register properly maintained?
- (8) Contingent Account:-(a) Is this maintained in proper form?
- (b) Is the contingent register maintained?
- (c) Is the balance of the permanent advance in hand correct?
- (d) Check the account of one year with the Contingent Register, Contingent bills, Vouchers, and permanent advance Register and see whether it is correct?
- (9) Pay and T.A. Account:-(a) Is this correctly maintained?
- (b) Is any balance kept in hand for more than three months?
- (c) Are proper acquittances obtained?

XI. Miscellaneous Matters.

- (1) Service Stamps Account (a) Is it maintained in the prescribed Registers A and B? (b) Is the balance in hand correct? (c) Are the orders contained in Political and Services Department Circular No. 9661/46, dated the 19th December 1951, duly followed? (d) Inspect the account of at least 3 months by comparing with the service stamp Bills and see whether it is correct?
- (2) Private Postage Stamps Account (a) Is the Register maintained? (b) Are the stamps received duly accounted for? (c) Are the stamps received from private individuals returned to them?
- (3) Stationery Account (a) Is this account maintained in proper form? (b) Is the stock in hand correct?
- (4) Account of forms (a) Is this properly maintained? (b) Are the forms neatly arranged and kept in safe custody? (c) Is the account of (1) Receipt Books and (2) Cheque Books maintained separately? Are those books kept under lock and key?
- (5) Copying fee Account (a) Compare the account of at least three months and see whether it is correct. (b) Is the balance of the copying fee advances drawn? Does the balance tally? (c) Is the balance of deposits remaining after deducting the charges for copies returned immediately to the parties at the time the copies are handed over? (d) Is any copying fee due from the parties? If so, what steps are taken for its recovery? (E) Are copies furnished to the parties in the prescribed period? (f) Are stamps affixed to the copies where necessary, before they are supplied? Is a register of receipt of such stamps maintained?
- (6) Files (a) Are files properly maintained? (b) Are files destroyed after the prescribed period?

CHAPTER XXXV Accounts

667. RULE :-

It is the duty of a Civil Judge to examine and initial the receipt book for contingent charges before he signs the contingent bill for each month.

668. RULE :-

The alteration of one figure to another is prohibited. The rectification must be made by striking out the wrong figure, writing the correct one above it and initialling the correction.

669. RULE :-

The Process Fee-Book (Form O at page 398, Vol. II) will show the process-fee receipts separately from the other

money transactions of the Courts.

670. RULE :-

Form P at page 399, Vol. II, is the Bailiffs Process Service and Receipt Book ("Kamgiri Book").

671. RULE :-

Form Q at page 401, Vol. II, is the register showing the daily receipts of Court-fees. The entries are not to be made in detail, but should show the aggregate value of the stamps filed in the Court during each day. Rules and Forms of Civil Court's Accounts.

672. RULE :-

(1) Application of Rules.-These rules and forms apply to all sums received and paid by a Civil Court in connection with any suit or judicial proceeding.

(2) "Nazir" defined.-Wherever in these rules and forms the Nazir is referred to as performing any duty, the term includes any officer of the Court authorized by the Judge to perform the duty in question.

(3) List of Forms. -The following Account Forms shall be used

A. Book of receipts for money paid into Court,

C. Register of deposit receipts, viz., register of sums received in Court in connection with suits or judicial proceedings and deposited with Government [x x x].

D. Register of deposit payment, viz., register of payments from sums received in Court in connection with suits or judicial proceedings and deposited with Government [x x x]

E. Register of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827.

F. Register of attached property and property produced in Civil Proceedings.

G. Register of money received on account of subsistence money of civil prisoners, expenses of witnesses, and miscellaneous petty items required for immediate disbursement.

H. Register of payments on account of subsistence money of civil prisoners, expenses of witnesses, and miscellaneous petty items required for immediate disbursement.

I. Cash Book

J. Ledger.

K. Bank or Treasury Pass-book

L. Bank or Treasury Cheque-book.

M. Applications for refund of lapsed deposits.

N. Statement of lapsed Civil Court deposits.

(4) Language in which the accounts are to be kept.-In all District Courts, except for special reasons, the accounts shall be kept in English (except Forms A, E, F, G, H). In Subordinate and Small Cause Courts they may be kept in English or in regional language [x x x]

(5) Procedure on receipt of money.-When any person pays money into Courts in connection with any suit or judicial proceeding, or when collections of any such money are made by any officer of the Court, such person or officer shall tender such money or collections to the Nazir, who shall cause a receipt to be prepared with counterfoil, according to Form A, and shall obtain the signature or mark of the person or officer tendering the money on the counterfoil of the receipt. Both the original and the counterfoil shall be signed by the officer of the Court receiving the money and also by the Nazir. The counterfoil shall be recorded for reference and the receipt delivered to the person paying the money. When payments are made into Court by an officer of the Court, the receipt shall not be handed over to him, but shall be kept in the record of the proceedings in reference to which the collection has been made.

(6) And money orders.-When money is received by postal money order, without advice from the remitter as to the cause or purpose for which the money has been forwarded, the amount shall be entered in Register C, a note in that register being made as to unadvised accounts. Pending receipt of the information necessary to admit of the amount being credited to the cause or account for which the money was remitted, the words "Money order suspense account" shall be written across column 5 of Register C. On receipt of the required information the amount shall be adjusted by entering the item in the manner described above as a payment in Register D, and re- entering the item in Register C or G, as the case may be, as a receipt of that date, the necessary explanation being entered in the column of remarks. A note should invariably be made on the counterfoil of receipts issued in Form A for money received through the post by money order or otherwise, giving a reference to the letter or advice with which the money was forwarded, and if the money order coupon affords information it should be pasted on the counterfoil of the receipt (Form A). The original receipt, there being no person to receive the same, should be crossed and cancelled and be initialled by the Nazir.

(6A) When a cheque is received, a note of the fact should be made in the body of the Cash Book in red ink on the

day of receipt without amount being shown in the money column. When the amount of the cheque is realized, it should be entered with necessary particulars in the money column of the Cash Book on the date of realization; and a suitable note of the realization and date should be made against the original red ink entry, in the remarks column. Practically all the cheques will be cleared in the same month, and if any should be outstanding owing to their receipt in the last few days of the month or other cause, they may be detailed in the Cash Book after the closing entries for the month to serve as a guide to the officer checking the next month's entries in the Cash Book.

(7) Use of Register C.-In the Register of deposit receipts (Form C) shall be entered:

(a) All sums deposited with the Court in connection with any suit or judicial proceeding and not to be immediately credited to Government.

(b) The sums received on account of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827, attached property and the property produced before the Court.

(8) Use of Register D.-In the Register of deposit payments (Form D) shall be entered:

(a) All payments from sums deposited with the Court in connection with any suit or judicial proceeding and not to be immediately credited to Government.

(b) The payments from the sums received on account of property of which the Nazir is appointed administrator under the provisions of sections 9 and 10 of Bombay Regulation VIII of 1827, attached property and the property produced before the Court. Procedure on payment by the Nazir.-The Nazir before payment shall obtain the payee's signature or mark in column 13 of Register D x x x] unless the payment is made by money order or by a Bank Draft. The Court may at the request of the payee make payment

(1) by a Bank Draft to be sent to the payee by registered post acknowledgment due provided he submits in advance a duly stamped receipt for the amount due in the form given below:

(2) by money order if the amount does not exceed Rs. 600. The voucher for the payment shall be, in the case of payment by a Bank Draft, the stamped receipt sent by the payee and the postal acknowledgment, and in the case of payment by money order, the money order acknowledgment.

Form of receipt Received the sum of Rs..... (Rupees Naye False.....) only) by Bank Draft from the.....Court at.....being the amount deposited in the.....Court at..... in connection with Dated (Stamp) (Signature of Payee.)

Payment shall be endorsed on the copy of the decree when such is produced, the endorsement being signed by the officer actually making the payment, and attested by the Register or Nazir, who shall also initial the entry of payment in column 14 of Register C and column 11 of Register D. [XXX]

(9) Daily closing of Registers C, D.-When the accounts are closed at the end of the day, the total of all the transactions for that day, which are entered in column 8 of Register C, shall be entered in column 11 of that register. The daily total of the transactions in column 9 of Register D shall be similarly entered in column 12 of Register D. The Nazir shall each day check the entries in these registers and initial the same.

(10) Account of Intestate property, Form E.-When the Nazir of the District Court is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827, he shall keep a register in the Form E. A separate page shall be opened for each estate, and at the close of each day the total receipts on account of each such estate shall be posted from column 14 of Register E into Register C, and the total payment shall be posted from column 20 in respect of charges and from column 24 in respect of the disposal of each of the estates, into Register D, quoting in the latter the original credit entry or entries from Register C. The receipts or acquittances for these payments shall be taken from the Nazir or other officer appointed as administrator of the property in column 13 of Register D, the person actually receiving the payments signing in column 27 of Form E.

(11) Account of attached property. Form F.-Property which may be attached by a Civil Court in the course of a suit, whether before or after judgment, or produced in Court in the course of any proceeding shall be registered in Form F, and the proceeds, when realized shall be posted from Column 15 of this Register into Register C. When money is attached, it shall be taken direct from Register F to Register C. Payments shall be entered direct into Register D, quoting the original credit entry from Register C. A note of the payment shall also be made in the last column of Register F.

In the case of property other than property attached or produced in Court in any proceeding, columns 1, 10, 12 and 13 should not be filled in, and only such of the other columns should be filled in as may be necessary.

In the case of any property which is produced in Court, a short description thereof shall be noted in the remarks column.

(12) The consecutive numbers of outstanding estates and attachments etc., in the Registers E and F at the end of each year should be noted in the opening page of the same registers for the following year. A note should be made in the new register against every outstanding item showing how and on what day it was disposed of, the full details being entered in the old register.

(13) Subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for

immediate disbursement, Forms G. H.-For subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate disbursement, the registers of receipts and payments shall be in Forms G and H, respectively.

In respect of items entered in each of these registers, the Nazir should not retain in his hands except with the special permission of the Judge, a larger cash balance than Rs. 100 in the case of the Court of the Civil Judge (Junior Division), Rs. 200 in the case of the Court of the Civil Judge (Senior Division) and Rs. 200 in the case of the District Court. The daily total from column 10 of Register G and column 8 of Register H shall be entered in the cash book, Form I. Items of subsistence money of civil prisoners lapsing to Government under section 16 of Bombay Civil Jails Act, II of 1874, as amended by Bombay Act II of 1882, shall be remitted to the treasury to be credited as a final receipt of Government. The balance of sums recovered on account of expenses of witnesses, and on account of miscellaneous petty items required for immediate disbursement which remain unpaid over 12 months shall be included in the return prescribed in rule 25 and dealt with in accordance with the said rule.

The following are instances of miscellaneous petty items: 1. Money deposited for keep of attached cattle. 2. Salary of additional bailiffs. 3. Deposits of money for court-fees needed for Succession Certificates and Certificates under Regulation VIII of 1827, or similar documents, or for the issue of a fresh proclamation of sale. 4. Remittances accompanying commissions and processes from other courts. 5. Printing charges of notices under Order I, rule 8, of the Civil Procedure Code and other sections or rules. 6. Fee paid for the proclamations by beat of drums. 7. Expenses deposited for breaking open the lock in order to attach property or deliver possession of property. 8. Expenses for bringing attached property to the Court-house. 9. Any other petty item which the District Judge may direct to be entered in the Register G and H.

The money for which Registers G and H are kept should be received and disbursed by the clerk whose duty it is to write them, the balance being handed over when found correct at the close of the day to the Nazir, who should himself revise the totals.

The Nazir should also see at the end of each day's transactions that each payment in the H Register is supported by a voucher and covered by a receipt entirely in the G Register, and should sign below the day's totals in token that he has done so. When it is necessary to open a new G Register, the consecutive numbers of entries in the old register in which there are sums still to be disbursed should be noted therein with full entries before new items of receipt are entered in the Register, and all further payments from such sums in the Register should be noted in columns 11 and 12 of this Register.

(14) Use of Cash Book Form I.-In the cash book (Form I shall be entered separately on the debit or credit side, as may be necessary (a) the daily totals of each of the Registers C, D (which include the daily totals of Registers E, F) and the daily totals of G, H; (b) such items as are intended to be finally credited to Government; these shall be taken direct to the cash book, and the subsequent payment to Government or refund debited per contra. In such cases only will columns 3, 4, 5, 10, 11 and 12 be entered up. (c) the daily totals from the Daily Fee Book and payments made thereout as per rule 8 of the Copying and Translation Fee rules (Paragraph 505).

(15) Remittance to treasury with chalans.-All sums that are intended to be finally credited to Government shall be sent to the treasury at frequent intervals during the month, or daily if possible. These remittances shall not be entered in the pass-book (K), and must be sent separate from sums to be credited to the Court's deposit account mentioned in rule 20. The Court will receive from the treasury officer an acknowledgment on the chalan presented.

(16) Daily Closing of Cash Book.-The cash book shall be closed and balanced every day. The closing entry shall specify particulars of the balance thus:

Specification of Balance

Rs. nP.

1. In the Treasury

Cash with Nazir

Rs nP.

2. Deposits, etc.. From C

3. Deposits from, Form G

4. Copying Fee deposits.

5. Other sums credited direct in cash book

Total

Entry 1 must agree with the pass-book K, and the aggregate of 2, 3, 4 and 5 should be verified by counting the cash. The Nazir, having ascertained that the transactions of the day have been correctly entered in the cash book and that the arithmetical balance is correct, shall sign the cash book on the left and obtain the signature of the Judge on the right side below the closing entry. The pass book and Registers referred to in the Cash Book entries should be brought for verification of the latter entries by the Judge. In Small Cause Courts, where there is a Registrar, the Registrar of the Court shall be responsible that the amounts have been correctly entered and be responsible that the arithmetical balance is correct and shall sign the book every day on the right side below the

closing entry. When a Judge presides over more than one Court, or when he is absent from his Court, there being no locum tenens, he shall, on his return to his Court, examine and sign the accounts for the days of his absence. In District Courts, where there is an Assistant Judge, he may, by order of the Judge, sign the accounts.

(17) Use of ledger. Form J.-The ledger (Form J) is a supplementary record of all sums shown in the Registers C, D. The entries made in C and D shall be posted in J every evening or at latest the first thing the next morning. (18) Remittances to treasury with pass book. Form K.- Transactions with the treasury in regard to the Court's deposit account shall be by means of a pass book (Form K) and by cheques (Form L). Every remittance to the treasury, intended to be credited to the Court's deposit account, shall be accompanied by the pass book and a treasury chalan in a form that will be supplied on application by the treasury officer. Entries will be made in the pass book at the treasury and be receipted by the Accountant and Treasurer when the remittance is under Rs. 500, and by the treasury officer when it exceeds that sum. The Nazir shall not retain, except with the special permission of the Judge, the larger cash balance in his hands than in the case of Subordinate and Small Cause Courts, Rs. 100, and in the case of District Courts Rs. 200. All sums in excess of this amount shall be paid into the Government Treasury as a deposit with Government:

Provided that the District Judge and the Civil Judge (Senior Division) may place on deposit at a Co-operative Bank, certified by the Registrar of Co-operative Credit Societies, such part of any monies on deposit in the District Court and the Court of the Civil Judge (Senior Division) respectively as all parties concerned may agree in asking them to dispose of in this way. Such deposits, however, shall be made only with the written consent and at the risk of the parties to whom the money belongs. There shall be, as far as possible, a daily remittance from the Court to the treasury, and to secure an agreement between the treasury and the Nazir's accounts no portion of the amount entered in Form C shall be retained from deposit on the last working day of the month.

(18A) The provisions of paragraph (18) relating to maximum cash balance which can be retained by the Nazir do not apply to items entered in the "G" and "Fee" Registers. In respect of items entered in each of these Registers, the Nazir should not retain in his hands, except with the special permission of the Judge, a larger cash balance than Rs. 100 in the case of the Court of Civil Judge (Junior Division), Rs. 200 in the case of the Court of the Civil Judge (Senior Division) and Rs. 200 in the case of the District Court.

(18B) Cash transactions shall be commenced at 11 a.m. They should be closed as far as possible half an hour before the closing hour of the Treasury so that the Nazir may be in a position to arrange for sending the daily cash amount to the Treasury: provided, however, that the District Judge or the Civil Judge concerned may permit any transaction to be effected beyond the prescribed hours in exceptional circumstances.

Note 1.-The Nazir of the Umreth Court in the Kaira District has been permitted (in view of the peculiar circumstances of that Court) to retain in his hands a cash balance upto Rs. 300. The amount of his security has been fixed at Rs. 3,000 instead of Rs. 2,000.

Note 2.-The Nazir of the Pimpalgaon Court in the Nasik District has been permitted to retain in his hands a cash balance upto Rs. 300. The amount of his security has been fixed at Rs. 3,000 instead of Rs. 2,000.

Note 3.-The Nazir of the Ichalkaranji Court in the Kolhapur District has been permitted to retain in his hands a cash balance upto Rs. 1,000. The amount of his security has been fixed at Rs. 4,000.

Note 4.-The Nazir of the Dakore Civil Court in the Kaira District has been permitted to retain in his hands a cash balance upto Rs. 300. The amount of his security has been fixed at Rs. 3,000.

(19) Withdrawals from treasury, by cheque. Form L.- Withdrawals from the Court's deposit account with the treasury shall be by cheques (Form L) signed by the Judge or Assistant Judge or, with the approval of Government, the Registrar or the Clerk of the Court. In such cases the District Judge shall inform the treasury officer of the name of the officer authorized, and furnish a specimen of his signature. Whenever it is convenient to make several small payments to different persons, one cheque for the aggregate amount may be issued in favour of the Nazir; but payments to parties, when the amount exceeds Rs. 20, can be made by a cheque in favour of the payee at the option of the latter: but the payee must be informed that payment can only be made at the treasury on the date of issue. If it is late in the day, and there is a possibility that the cheque cannot be presented on the date of issue, it can bear the next day's date. If the currency of a cheque has lapsed it may be revived by an endorsement thereon for immediate payment, on satisfactory explanation being furnished.

(20) Payments otherwise than by cheque.-There is no objection to payments being made to decree holders and others from deposits received during the day; but when the account is made up in the afternoon, the amount so paid shall be recouped by drawing a cheque which could accompany the cash sent to the treasury and be adjusted on the treasury accounts, so that the gross transactions may pass on to the Government books.

(21) Posting of pass book at treasury .-The Judge shall arrange to send the pass book to the treasury during the first week of the month to be written up, balanced and signed by the treasury officer after verification with the treasury accounts. Whenever the pass book is presented at the treasury, the cheques paid must be posted in the pass book and the entry attested by the treasury officer. [xxx]

(22) Deposits not exceeding five rupees unclaimed for one whole account year, balances not exceeding five rupees of deposits partly re-paid during the year then closing and all balances unclaimed for more than three complete account years, [from the date of final adjudication of a suit or a proceeding] [x x x] will at the close of March in each year be credited to Government. In the month of January of each year a list shall be posted up in the Court-

house showing the sums of money in deposit with the Court which are due for lapse at the end of March following, as laid down above and the names of persons to whom they are due; and if no one appears before the 31st of March to claim the sum due to him, it shall be paid into the treasury to the credit of Government as a deposit unclaimed for the eventual benefit of any person who may duly establish his claim thereto to the satisfaction of the Court. To ensure the lapsed deposits being adjusted at the treasury before 31st of March the cheque should reach the treasury not later than the forenoon of that date. In the month of April following the Court shall furnish to the Accountant General in Form N corresponding with Form 29 at page 193 of the Civil Account Code, Vol. I (8th Edition), a statement of the balances written off and credited to Government prepared from the original registers (Forms C and G) and the copying Fee Register and not from the ledger (Form J).

(23) Refund of lapsed deposits.-Deposits credited to Government under rule 25 cannot be re-paid without the sanction of the Accountant General, but this sanction will be given as a matter of course on proof that the item was really received, was carried to the credit in the Government accounts as a lapsed deposit, and the preferring officer has ascertained that the amount is now claimed by the person who was entitled to draw it before the lapse, or his heir. Applications for refund shall be made in Form M by the Judge to the Accountant General who, if the credit for the amount is exhibited on his books, will authorize payment and return the document to the Judge for delivery to the party concerned, who should personally, or by an agent, claim payment from the treasury. These refunds will not be brought on the Court's accounts. On receipt by the Court of the Accountant General's sanction, a note of the number and date thereof shall be made against the original entry in Register C.

(23A) In some Courts attached properties, or properties brought by Bailiffs or produced by parties, remain unclaimed for a long time. In some cases the parties or their heirs are not known and in some parties, do not take steps to claim their properties even though they are ordered by the Court and are served with notices to do so. In all such cases a notice should be issued to the person entitled to the property, if he can be traced, to take it back within three months from the date of receipt of notice. If the property is not taken back by him within the prescribed period of three months, or if such person is untraceable, sanction of the District Judge should be obtained for its sale and the property should then be sold by public auction. The sale of such property should be held by issuing a proclamation which should be affixed to some conspicuous part of the place where the property is situated or in the Chavdi of the village, and on the Notice Board of the Court. Where, the value of the property is large, the proclamation should, in the discretion of the Court, also be published in a newspaper. The sale proceeds thus realized, after deduction of the expenses incurred, should be deposited in the Civil Court. Deposit in the name of the person entitled to the property, for the eventual benefit of the person who may duly establish his claim to the property to the satisfaction of the Court and if the amount remains unclaimed for three whole account years it should be credited to Government as a lapsed amount. The provisions of sub-paragraph (23) will, so far as may be, apply to the refund of such lapsed amounts. General Instructions

673. RULE :-

It will be noticed that the present rules and forms apply solely to moneys received and paid by Civil Courts in connection with suits or judicial proceedings. They do not apply to moneys received and paid by a Nazir in the administration of a lunatic's estate. The administration by the Nazir of any such estate will continue to be under the supervision of the Judge.

674. RULE :-

In the same way, the rules and forms do not apply to Government money which has been paid into, or drawn from the treasury on account of pay or other allowances of judicial establishments. In respect of such Government money, District and Civil and Small Cause Court Judges are bound to carry out such orders as may be issued from time to time by Government, or the Accountant General acting under Government orders. As illustrations of other items not appearing in the Civil Court accounts, the following may be noted:

- (a) Expenses of witnesses and Lawyers' fees, in criminal cases. (b) Purchase and sale of dead stock articles.
- (c) Rent and Municipal taxes.
- (d) Travelling allowances to members of the establishment.
- (e) Departmental fines inflicted on members of the establishment.

675. RULE :-

A supply of blank bilingual forms mentioned in paragraphs 672 (3) (English and regional language) can be obtained by indent on the Yeravda Central Prison Press, Poona. The book of receipts (Form A) will be in bound books of 500 forms, each receipt and counterfoil being serially numbered. If found more convenient, two or more books may be used at the same time, each being distinctively marked.

676. RULE :-

It will be noticed that the Registers, A, E, F, G, H may be kept in all Courts in English or regional language. In District Courts the Forms C, D, I, J, K, L must be used in English only, and there need be no difficulty in this respect, as no person not possessed of good knowledge of English can be appointed Nazir of a District Court. In Subordinate and Small Cause Courts, all the accounts may be kept and the forms used in the regional language, [x x x]. As the forms are bilingual this will not be difficult if care and supervision are exercised by the Judges of the Subordinate and Small Cause Courts. The application for refund of lapsed deposit (Form M) is in English only, and will be filled up in English in all Courts.

677. RULE :-

It will be noticed that moneys paid into Court in connection with suits or judicial proceedings are divided under two heads:

(a) Sums to be credited at once to Government: such as (1) fines inflicted by a Civil Court under section 480, Criminal Procedure Code, or under Order XVI, Civil Procedure Code [fines inflicted by a Sessions Court cannot appear in Civil Court account]; (2) penalties for insufficient stamp-duty; (3) comparing fees; (4) fees for copies made by paid members of the establishment and credited to Government [Nos. (3) and (4) though not necessarily paid in connection with a suit or judicial proceeding should always be shown in these accounts]; (5) commission fees paid for work done by Government servants during office hours. All these items should be taken direct to the cash-books (Form I).

(b) Sums deposited with the Court, intended to be paid to some person but which, if not so paid and unclaimed, are credited to Government, such as: (1) Sums received on account of subsistence money of civil prisoners, expenses of witnesses, and miscellaneous petty items required for immediate disbursement. These are generally disbursed at once; they are shown in Registers G, H, the daily totals, without details, being taken direct to the cash-book (Form I). (2) Sums received on account of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827 (Form E), the daily items without details, being shown seriatim in the deposit Registers (C, D). (3) Items of attached property, viz., cash and the proceeds of property, other than money which has been attached or produced (Form F), the daily items without details being shown seriatim in the deposit Registers (C, D).

(4) Sums paid in connection with suits or judicial proceedings and not appearing in the above mentioned registers, but taken direct to the deposit Registers (C, D)-such as sums paid in execution of decrees.

678. RULE :-

The Register of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827 (E) is for the use in the District Courts only. It is distinct from the return of property of person dying intestate and without known heirs. A separate page should be assigned to each estate and all transactions relating to it should be entered on that page though occurring on various dates.

679. RULE :-

Similarly in the Register of Attached and Produced property a separate page should be assigned to each attachment and production and all items referable to that attachment or production should be noted on that page. It must be understood that the Register of attached and produced property (F) in no way supersedes the Register of Applications for Execution of decrees (Form I, Chapter XIX, page 393 Vol. II) or the Register of Suits (Civil Procedure Code, Schedule I, App H, No. 14), the columns in which relating to execution must be duly filled in.

680. RULE :-

The Bailiffs Process Service and Receipt Book (Form P, Appendix E, page 399), is retained; but with respect to the 13th column of that form the money returned by the bailiff should be re-entered in Register G, unless handed over at once to the party or lawyer. (Circular No. 1177, dated 17th September 1885). In the case of expenses of witnesses sent to, or received from, other courts, the necessary information can be easily shown in the Registers G, H. Where any sum on account of expenses is paid to a witness in Court in the course of the suit or proceeding, and a receipt is taken there and then and filed in the record no entry need be made in Registers G, H. The few instances, covered by paragraph 77, Chapter VII, page 30, should be shown in the Registers G, H.

681. RULE :-

It will be noticed that while remittances of money to be credited at once to Government are sent to the treasury with a chalan only (rule 17). remittances of money to be credited to the Court's deposit account are sent to the treasury with the pass-book and a chalan (rule 20). The last working day of the month referred to in rule 20 is, in the case of sub-treasuries, usually the 25th, except in March, when they close on the 31st. Special provision will be made for the few cases in which there are no sub-treasuries at the place where the sub-courts are held.

682. RULE :-

The ledger (J) it will be noticed, will not contain any entries of any moneys not to be found in the deposit Registers C, D. The list of lapsed deposits (rule 25) must be prepared from the Registers C and G, and not from the ledger. Prefixed to the ledger there should be an index in rough alphabetical order showing the names of the defendants or persons paying the moneys, the corresponding pages of the ledger, and the numbers of the suits or proceedings. It is not necessary to have accounts in the ledger corresponding to the Register E and F.

683. RULE :-

Each page of every register and book of account shall be paged and sealed and an endorsement shall be made at the end of the book showing the number of pages and signed by the presiding Judge.

684. RULE :-

Even' alteration in the accounts shall be forthwith initialled by the Nazir, or responsible officer

(a) The Judge should not pass any payment order without referring to the deposit amount or balance at the credit of the depositor in each case. If this is done, overpayments are impossible.

(b) The Judge should not sign any cheque without referring to the payment order passed by him and to the debit entry in the account books.

685. RULE :-

Under Article 35, Civil Accounts Code, Vol. I, every Court having the power to fine is required to transmit to the Accountant General through the Treasury Officer a monthly return of all fines realized and of all remittances of fines to the Treasury. The submission of the fine-statements to the Audit Office and the checks exercised there over the receipts and refunds of fines as laid down in Article 35 of the Civil Accounts Code, and note (i) to Article 409, Audit Code, will be discontinued. A monthly comparison in detail should therefore be made in future by an officer of the Court of the fine realizations with the actual credits into the Treasury. For this purpose the Treasury Officer will return the Fine statements duly verified to the Court through the usual official channel, instead of forwarding them to the Audit Office. The above procedure will be applicable in the case of Civil, Criminal and Revenue Court fines.

686. RULE :-

The Judge should inspect the Nazir's accounts at the beginning of January, April, July and October, respectively, [and submit his report to the District Judge immediately after the inspection is over. The District Judge should forward to the High Court all such reports received from the subordinate Courts alongwith his remarks together with a report of his own Court by the end of the month in which the inspection was held]. [The Judge] should also call occasionally for the various registers and accounts mentioned in this Chapter and satisfy himself that the entries have been carefully and properly made. When such inspection is made, the Judge should note the fact with his own hand on the register or account inspected. The examination of the accounts, whether under rule (25) of the Account Rules or on any other occasion, may be carried out by the Clerk of the Court. The Nazir is allowed to lodge, for safe custody, in the Collector's Treasury, a box, or boxes containing property of which he holds charge in his official capacity as Nazir, but for the contents of these boxes the Collector's establishment cannot be held responsible.

In any special case, such as a Sessions case, where there is valuable property, and it may not be convenient to send it to the Treasury every night the District and Sessions Judge should indent on the police in his discretion for a police guard.

Any specially valuable property and also boxes containing cash and valuables, which it is considered would not be sufficiently protected if left in the Court safe or strong room when the Court is closed, should be deposited by the District Judges and the Civil Judges in the Treasury or Sub-Treasury for safe custody during the night. The Treasury Officers and Sub-Treasury Officers should be required to receive such property and cash boxes upto the closing hour every working day.

Any property sent by a Court to a Treasury or Sub-Treasury for safe custody after the closing hour should be delivered to the senior officer of the Police guard who should receive it, if it is properly secured in a sealed receptacle and should be responsible for its safe custody.

The Judge should also verify the cash in the Nazir's custody at least once a month without previous warning, comparing it with the Cash Book and the Pass Book and noting in the Cash Book in his own hand that he has verified the cash on that date. [x x x]

The cash should also be verified on the re-opening of the Court after the Summer Vacation.

The verification of the cash of a District Court may be delegated by the District Judge to a Joint or Assistant or Civil Judge.

CHAPTER 36

Land Acquisition Cases Deposits.

687. RULE :-

Instructions issued by the High Court for the guidance of the Civil Courts subordinate to it in regard to depositing into Court of Compensation Money under section 31, clause (2), and for the Investment of such Deposits under sections 32 and 33 of the Land Acquisition Act. I of 1894.

I. When a Collector, acting under clause (2), section 31 of Act I of 1894, deems it expedient to deposit in Court the amount of the compensation money therein referred to, he will remit the same by means of a cheque in favour of the presiding officer of the Court to the credit of Civil Court Deposits. The cheque will be accompanied with a receipt in triplicate, one of which shall be retained by the court for record, and the other two returned duly signed to the Collector.

II. Every sum deposited in the manner prescribed in paragraph I shall be entered on the date of such deposit in the Register of Deposit Receipts, Form C, at page 386 of Volume II.

III. Every cheque or receipt relating to such deposit shall be forwarded duly endorsed, if possible, on the day on which the deposit has been entered in the Register of Receipts or on the following day at the latest unless such day is a Sunday or a close holiday to the nearest Treasury office to be credited to the Civil Court Deposits Account.

IV. If after making the enquiries laid down in sections 21 to 25 of the Act, the Court upholds the award of the Collector, it shall proceed to make the payments to the party or parties concerned by cheque on the Treasury office where the deposit has been made under the last foregoing paragraph.

V. If an award is made in favour of more persons than one, and one or more of such persons not assenting to it have preferred an appeal against such award and desire for reasons to be stated by him or them in writing that the amount of the deposit should not be distributed among the others, he will apply without unnecessary delay to the

Court making the award which may either make an order deferring payment until the disposal of such appeal or make payments under its awards on such terms as to security or otherwise as it thinks fit.

VI. The application referred to in the last preceding paragraph may be made to the Court in which the appeal has been filed, and such Court may make such order as to payment or otherwise on such terms as it thinks fit.

VII. When the award of the Court has been confirmed on appeal the Court in which the deposit has been made shall, on receipt of the order of the Appellate Court, and on application made by the party or parties interested, proceed to pay the amount in the manner prescribed in paragraph IV.

VIII. If after making the necessary enquiries referred to in paragraph

IV, the Court makes an award in excess of the amount deposited by the Collector and the Collector has paid such excess together with the interest prescribed by section 28 of the Act, the Court shall follow the procedure in paragraphs II to IV.

IX. If the Collector prefers an appeal against the order of the Court making an award in excess of the amount deposited by him, he shall give notice thereof to such Court which may stay further proceedings until the disposal of such appeal.

X. If the Appellate Court either varies or confirms the award of the lower Court the latter on receipt of the order on appeal shall, after the Collector has made further deposit, if any, on application by the party or parties interested, proceed to make payments in conformity to such order, having regard to the instructions hereinbefore laid down.

XI. When a Court deems it expedient to invest under section 32, clause (a), the amount deposited with it under section 31, clause (2), in land or lands, it shall communicate with the Collector or other Revenue authority giving the particular description of title and conditions of ownership of the land or lands proposed to be purchased. The Collector or other Revenue authority shall thereupon proceed to ascertain what land or lands can be so purchased and make a report to the Court specifying in detail the particulars of title, conditions of ownership together with the area, boundaries and site of such land or lands, and its or their price which should be as nearly as may be equal to the amount of the deposit.

XII. On receipt of the Collector's report the Court shall forward a copy thereof to the party or parties interested together with a notice calling upon him or them to file in writing within eight days after service thereof his or their objections to the purchase of the proposed land. The time for filing such objections may for sufficient reasons be extended so as not to exceed two months in all from the date of the first notice.

XIII. If the objections are filed by the time prescribed, the Court shall fix a day for considering them, and after hearing the party or parties concerned may make such order as it thinks fit.

XIV. If no such objections are filed within the prescribed time, the Court will, after satisfying itself that the notice was duly served authorize the Collector in writing to purchase the land or lands on behalf, and in the name, of the person or persons interested, unless it sees sufficient reason to the contrary.

XV. On receipt of such authority, the Collector shall cause a draft of the conveyance to be prepared, and send the same for the approval of the Court.

XVI. On receipt of such draft, the Court shall forward a copy of it to the party or parties interested together with a notice calling upon him or them to suggest and alternations or additions which might be deemed necessary, and return the copy within 15 days after service of such notice. If such party or parties fail to suggest any additions or alterations by the time aforesaid or with such further time as the Court may grant for sufficient reasons, the Court may return the draft to the Collector duly approved or with such alterations or additions as it may of its own motion deem necessary to make.

XVII. If the party or parties referred to in paragraph XVI or their legal representatives submit within the time prescribed to the Court an amended draft, the Court shall fix a day for the consideration of the proposed alterations or additions and after hearing such parties as may wish to be heard or their legal representatives decide whether the proposed alteration or addition should be allowed or not and make such other alteration or addition as it may deem fit. The Court shall then return the draft to the Collector to be engrossed.

XVIII. As soon as such draft is engrossed, and the vendor is ready to execute it, the Collector shall intimate the same to the Court which will remit to the Collector by cheque the amount of the purchase money.

XIX. The Collector shall, before payment, cause the conveyance to be duly stamped and executed and after taking over possession from the vendor shall forward the conveyance to the Court which shall make it over to the person or persons interested or his or their duly authorised representative, and refer him to the Collector for possession.

XX. When a Court acting under section 32, clause (b), or section 33 deems it expedient to invest the amount deposited with it in Government securities, it shall communicate its intention to the Reserve Bank of India specifying the amount to be invested. The Reserve Bank of India on receipt of such communications, will make his reports to the Court as to the value of the Government securities that can be purchased for the amount specified.

XXI. On receipt, of such report, the Court shall, as soon as may be, remit the amount deposited with it for the investment referred to in the last foregoing paragraph to the Reserve Bank of India who will thereupon make the necessary investment, and remit the balance, if any, to the Court to be held in deposit at the Treasury, retaining

the investment in his custody, subject to the further order of the Court.

XXII. When a Court acting under section 32, clause (b), or section 33 deems it expedient to invest the amount deposited with it in approved securities other than Government securities, such as Port Trust, Municipal Bonds, it shall purchase out of the amount deposited such of those securities in which in its opinion it could for the time being be most profitably invested, and lodge the same with the Reserve Bank of India to be held by him subject to the further orders of the Court.

XXIII The securities purchased under the foregoing paragraphs should be deposited with the Reserve Bank of India for safe custody. subject to payment of commission at rates laid down in paragraph 111 of Chapter IX of the Government Securities Manual, 3rd Edition, if the securities are to be deposited for more than five years. The Reserve Bank will arrange for the drawal and remittance of interest thereon as and when it falls due. If, however, the securities as required to be held for five years or less than five years they should be deposited with the Treasury Officer as laid down in paragraph 107 of the Government Securities Manual.

XXIV. Every payment made by the Court out of the account deposited under the foregoing paragraphs shall be entered in the Register of Payments kept in accordance with Form D at page 488 of Volume II.

CHAPTER 37

Annual Administration Report.

688. RULE :-

In order to avoid delay in the preparation of the consolidated statements in the High Court for the purposes of the compilation of the Annual Report on the Administration of Civil Justice and to ensure that correct statements are submitted by District Judges and other/Officers, a set of instructions for the checking of such statements is given below. Before submitting their statements the District Judges and other Officers will have them checked in the light of these instructions and assure themselves that they are correctly drawn up. General

I. The Statements should be submitted early enough to reach the Registrar's Office by the 1st of February of each year.

II. The instructions printed on each form of Statement should be carefully studied and noted.

III. The information in respect of various tribunals and classes of cases should be shown in only one set of forms.

IV. (i) The Annual Reports on the Administration of Civil Justice which are submitted with the Annual Judicial Statements should be as brief as possible. It is unnecessary for the District Judges to send a detailed report every year, reviewing and reproducing the statistics of each statement in detail. It is sufficient if a very brief report containing only the explanation of really important or suggestive variations in the statistics is submitted as the reports are only used for the Administration Report of the High Court. (ii) The reports should also briefly note the variations in the constitutions or the jurisdictions of the Courts, Civil or Criminal, during the year and mention which were inspected as well as those which were assisted by the deputation of Civil Judges within the district as Joint Civil Judges, or by the appointment of extra Civil Judges. They should also contain remarks about the condition of Record-Rooms and libraries and should state whether any Judicial Conference was held during the year. (iii) The reports need not accompany the Annual Judicial Statements but may be sent afterwards as no use can be made of them till the general statements are ready. Statement No. 1.

I. The Officers shown in this Statement should be those who are at the places in that District on the 31st December of the year under report.

II. The number of Civil Judges who have done both Civil and Criminal work should be given in the remarks column No. 7.

III. The number of Nyaya Panchayats doing civil work should be shown separately in column 2 under heading "Civil Courts". Statement No. 2.

I. Figure in column 2 should correspond with the total entry in column 21 -A of Statement No. 5.

II. Figure in column 3 should correspond with the total entry in column 21-A of Statement No. 6 with the addition of the total entry in column 7 of Statement No. 13.

III. Figure in column 4 should correspond with the total entry in column 14A of Statement No. 7.

IV. Figure in column 5 should correspond with the total entry in Column 14A of Statement No. 8.

V. In the Remarks column 6, the details of column 3 should be given as under:

1. Insolvency cases. 2. Miscellaneous cases. 3. Applications for execution of decrees. Statement No. 3

I. The total of columns 3 to 6 against each sub-head should agree with the figure in column 7.

II. The total of columns 2 and 7 should correspond with the figure in column 8.

III. The District Judges should classify the suits to be shown in column No. 6 as per instructions contained in the High Court Circular No. D 3201/58, dated the 3rd September 1958, and show the classification in Remarks column No. 9.

IV. Information regarding Nyaya Panchayat should be given against the heading "Village Courts". Statement No. 4

- I. The total of columns 2 to 9 against each sub-head should correspond with the figure in column 10.
 - II. The figures in column 10 against each sub-head should respectively correspond with the figures in column 8 of Statement No. 3 as well as in column 3 of Statement No. 5.
 - III. In column 8 the suits of a value between Rs. 5,000 and Rs. 10,000 should be shown and suits of a value above Rs. 10,000 should be shown separately in column 8-A. Statement No. 5.
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- I. The figures shown in column 2 should be verified with those shown in column 22 of the Returns of the previous year.
 - II. The total of columns 2 to 5 against each sub-head should be equal to the figure in column 6 against that sub-head.
 - III. The figure in column 3 against each sub-head should correspond with the figure in column 8 of Statement No. 3 against that sub-head.
 - IV. The total of columns 7, 7A, 9, 11, 13, 15, 16, 18 and 20 against each sub-head should be equal to the figure in column 21 A.
 - V. The total of columns 21A and 22 should be equal to the figure in column 6 against each sub-head.
 - VI. The average duration of suits in columns 8, 10, 12, 14, 17, 19 and 21 should be shown in days which are to be calculated according to the instructions given on the reverse of the printed form of Statement No. 5. Statement No. 6
-
- I. The figures shown in column 2 should be verified with those shown in column 22 of the Returns of the previous year.
 - II. The total of columns 2 to 5 against each sub-head should be equal to the figure in column 6 against that sub-head.
 - III. The total of columns 7, 7A, 9, 11, 13, 15, 16, 18 and 20 against each sub-head should agree with the figure in column 21 A. rv. The total of columns 21A and 22 should agree with the figure in column 6 again each sub-head. V. The average duration of miscellaneous cases (Judicial) in columns 8, 10, 12, 14, 17, 19 and 21 should be shown in days which are to be calculated according to the instructions given on the reverse of the printed form of Statement No. 6. Statement No. 7
-
- I. The figures shown in column 2 should be verified with those shown in column 15 of the Returns of the previous year.
 - II. The total of columns 2 to 4 should agree with the figure in column 5.
 - III. The total of columns 6, 8, 9, 10, 11 and 13 should agree with the figure in column 14A.
 - IV. The total of columns 14A and 15 should agree with the figure in column 5.
 - V. The average duration of Appeals from decrees in columns 7, 12, and 14 should be shown in days which are to be calculated according to the instructions given on the reverse of the printed form of Statement No. 7. Statement No. 8.
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- I. The figures shown in column 2 should be verified with those shown in column 15 the Returns of the previous year.
 - II. The total of columns 2 to 4 should agree with the figure in column 5.
 - III. The total of columns 6, 8, 9, 10, 11 and 13 should agree with the figure in column 14A.
 - IV. The total of columns 14A and 15 should agree with the figure in column 5.
 - V. Average duration of Miscellaneous Appeals in columns 7, 12 and 14 should be shown in days which are to be calculated according to the instructions given on the reverse of the printed form of Statement No. 8.
 - VI. The number of Civil Revision Applications should be shown in Statement No. 8 against a separate heading. Statement No. 13.
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- I. The total of columns 3 to 6 against each sub-head should agree with the figure in column 7 against that sub-head.
 - II. The total of columns 7 and 8 should agree with the figure in column 2.
 - III. District Judges should show on the reverse of the Statement the number and duration of Darkhasts in which immovable property was sold by the Collector and the Civil Courts and their total number should correspond with the total of column 15 of the main statement. Statement No. 14.
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- I. The total of columns 4, 5 and 6 should respectively correspond with the totals of columns 6, 21A and 22 of Statement No. 5.
 - II. The total of columns 5 and 6 against each Court should agree with the figure in column 4.

III. The total of column 7 should correspond with the total of column 2 of Statement No. 5.

IV. The figures shown in columns 7 and 11 against each Court should be checked with the corresponding figures in columns 6 and 10 respectively of the Returns of the previous year.

V. The total of columns 9 and 10 should agree with the figure in column 8.

VI. Columns 8 to 11 and 15 should indicate the figures of Appeals from Decrees. Hence, the totals of columns 8, 9, 10, 11 and 15 should respectively correspond with the totals of columns 5, 14A, 15, 2 and 16 of Statement No. 7.

VII. The total of column 12 should correspond with the total of column 7 of Statement No. 13.

VIII. The total of column 14 should agree with the total of column 23 of Statement No. 5.

IX. The number of suits disposed of by each Court in its Ordinary and Small Cause Court Jurisdiction should be shown separately.

X. If any assistance either by appointing a Joint Civil Judge or by deputation of another Civil Judge is given to a Court, the disposal should be shown separately, under the name of the Court to which the Officer is deputed.

XI. The number of suits under Special Jurisdiction pending from the previous year, those disposed of during the year and those pending at the close of the year under report should be shown in the Remarks column 16.

XII. District Judges should append a Statement showing the names, designations and period for which the Judicial officers were in their District during the year under report.

CHAPTER 38

Miscellaneous General Orders

689. RULE :-

Where a suit is continued by the legal representative of a party who has died since its institution, the name of such legal representative should appear in the pleading after the name of the deceased and show by a sub-number of the number of the deceased in order to indicate that the party is suing or sued as the legal representative of the deceased. Even if it is customary in the regional language to put the name of the deceased first, in the English translation the name of the party who sues or is sued should be put first. Where it is proposed to continue a suit against the legal representative of a deceased defendant Form No. 6 of Appendix B to Schedule I of the Code should be used.

690. RULE :-

When a reference in any civil suit or proceeding is submitted for the decision of the High Court, the record and proceedings should be sent up at the time of making the reference.

691. RULE :-

When a Court makes a reference under Order XLVI, rule 1 of the Code of Civil Procedure, it should state whether in its opinion the suit or appeal is one in which the decree will not be subject to appeal. Mamlatdars' Courts.

692. RULE :-

Under section 14 (3) of the Mamlatdars' Courts Act, the trial of the case may be held in the Mamlatdar's office, or at or near the scene of dispute, or at any other spot which in the Mamlatdar's opinion is convenient to the parties.

693. RULE :-

A Mamlatdar trying a suit under Bombay Act II of 1906 may, if he sees sufficient cause, direct any document or back produced to be impounded and kept in custody of an officer of the Court for such period and subject to such conditions as he thinks fit. Unless a document has been impounded by order of the Court the person producing it shall be entitled to its return after the expiry of 6 months from the ultimate decision in the case. The Court may, however, return it to the person who produced it at any time before the expiry of the period, if the person applying for its return delivers to the Court a certified copy of such document and undertakes to produce original if required to do so. On the return of a document which has been admitted in evidence the party receiving it shall give a receipt on the form contained in a receipt book kept for the purpose. Miscellaneous

694. RULE :-

The following instructions for the dress of Officers and soldiers appearing before a Civil Court (other than a Court established under military law) have been approved by the Governor-General in Council (see Government Resolution in the Military Department No. 1686, dated the 29th August, 1891):

(i) An officer or soldier required to attend a Court in his official capacity should appear in uniform, with sword or side-arms. Attendance in an official capacity includes attendance: (a) As witness, when evidence has to be given on matters which came under the cognizance of the officer or soldier in his military capacity; (b) By an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command.

(ii) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform.

(iii) An officer or soldier shall not wear his sword or side-arms if he appears in the character of an accused person, or under military arrest, or if the presiding officer of the Court thinks it necessary to require the surrender of his arms, in which case a statement of the reasons for making the order shall be recorded by the presiding officer, and,

if the military authorities so request, forwarded for the information of His Excellency the Commander-in-Chief.

(iv) Fire-arms shall under no circumstances be taken into Court.

695. RULE :-

All complaints, written statements, applications, affidavits, memoranda of appeals, and other proceedings presented to the Court shall be written in ink, typewritten, printed or cyclostyled fairly and legibly, on stamped paper or foolscap paper of good quality, leaving at least one-fourth margin blank. Both sides of the paper may be used, provided it does not effect the legibility of the matter.

696. RULE :-

A document not in conformity with the above paragraph will not be accepted; where, however the proceeding is likely to be time-barred on account of the rejection of the document or where sufficient reason is shown for so doing, the document may be accepted on the party's undertaking to file a properly prepared copy thereof within a state period.

697. RULE :-

The following instructions are issued by Government regarding issue of solvency certificates for production in Civil Courts: Revenue Officers not below the rank of a Mamlatdar or Mahalkari are authorised to issue certificates of solvency to the parties for production in the Civil Courts on payment of fees of Rs. 2 per Certificate. The fees should be recovered in the shape of Court-fee stamps. Every application for a solvency certificate should be affixed with a Court-fee stamp of 65 nP. and accompanied by an affidavit showing reasons why the certificate is sought and by the following documents which should be obtained by the parties at their costs from the Officers concerned:

(a) In the case of agricultural lands:-Khata Utara and Extracts from Record of Rights.

(b) In the case of non-agricultural lands and immovable properties. A statement regarding the details of the property and its estimated price. Revenue Officers concerned should on receipt of the application, after holding the necessary enquiry and in the case of agricultural lands, after obtaining a Panch valuation, issue the certificate as expeditiously as possible.

698. RULE :-

The Adivasis are exempted from the payment of prescribed fee of Rs. 2 for the issue of solvency certificate required for production in Civil Courts and also from the Stamp Duty chargeable on affidavits executed by them for the purpose of obtaining solvency certificates. The term 'Adivasis' means and includes all the members belonging to the Scheduled Tribes specified in Section II of the Schedule accompanying Government Resolution, Political and Services Department No. 490/46, dated the 1st November, 1950, as amended from time to time.

699. RULE :-

The District Judges, Sessions Judges, Presidency Magistrates and the Chief Judge of the Presidency Small Cause Court at Bombay, should frame and publish lists of touts for their respective Courts in accordance with the provisions of section 36 of the Legal Practitioners Act, XVIII of 1879, such lists being prepared by the District Judges for their own Courts and the Civil Courts subordinate to them.

700. RULE :-

The list of persons exempted from personal appearance in Civil Courts is given in Appendix J.