

CODE OF CIVIL PROCEDURE, 1908

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CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short title, commencement and extent
2. Definitions
3. Subordination of courts
4. Savings
5. Application of the Code to revenue courts
6. Pecuniary jurisdiction
7. Provincial small cause courts
8. Presidency small cause courts

PART 1 :- SUITS IN GENERAL

9. Courts to try all civil suits unless barred
- 9A. Where at the hearing of application relating to interim relief in suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue
10. Stay of suit
11. Res Judicata
12. Bar to further suit
13. When foreign judgment not conclusive
14. Presumption as to foreign judgments
15. Court in which suits to be instituted
16. Suits to be instituted where subject-matter situate
17. Suits for immoveable property situate within Jurisdiction of different courts
18. Place of Institution of suit where local limits of Jurisdiction of courts are uncertain
19. Suits for compensation for wrong to person or moveables
20. Other suits to be instituted where defendants reside or cause of action arises
21. Objections to jurisdiction
- 21A. Bar On Suit To Set Aside Decree On Objection As To Place Of Suing
22. Power to transfer suits which may be instituted in more than one court
23. To what Court application lies
24. General power of transfer and withdrawal
25. Power of Supreme Court to transfer suits, etc
26. Institution of suits
27. Summon to defendants
28. Service of summons where defendant resides in another State
29. Service of foreign summon
30. Power to order discovery and the like
31. Summons to witness
32. Penalty for default
33. Judgment and decree
34. Interest
35. Costs
- 35A. Compensatory Costs In Respect Of False Or Vexatious Claims Or Defences
- 35B. Costs For Causing Delay

PART 2 :- EXECUTION

36. Application to orders
37. Definition of Court which passed a decree
38. Court by which decrees may be executed
39. Transfer of decree
40. Transfer of decree to Court in another State
41. Result of execution proceedings to be certified
42. Power of Court in executing transferred decree

- 43. Execution of decrees passed by civil courts in places to which this Code does not extend
- 44. Execution of decrees passed by revenue courts In places to which this Code does not extend
- 44A. Execution Of Decrees Passed By Courts In Reciprocating Territory
- 45. Execution of decrees outside India
- 46. Precepts
- 47. Questions to be determined by the Court executing decree
- 48. 48
- 49. Transferee
- 50. Legal representative
- 51. Power of Court to enforce execution
- 52. Enforcement of decree against legal representative
- 53. Liability of ancestrarproperty
- 54. Partition of estate or separation of share
- 55. Arrest and detention
- 56. Prohibition of arrest or detention of women in execution of decree for money
- 57. Subsistence allowance
- 58. Detention and release
- 59. Relase on ground of illness
- 60. Property liable to attachment and sale in execution of decree
- 61. Partial exemption of agricultural produce
- 62. Seizure of property in dwelling-house
- 63. Property attached in execution of decrees of several courts
- 64. Private alienation of property after attachment to be void
- 65. Purchasers title
- 66. Deleted
- 67. Power for State Government to make rules as to sales of land in execution of decrees for payment of money
- 68. Section 68
- 69. Section 69
- 70. Section 70
- 71. Section 71
- 72. Section 72
- 73. Proceeds of execution sale to be rateably distributed among decree- holders
- 74. Resistance to execution

PART 3 :- INCIDENTAL PROCEEDINGS

- 75. Power of Court to issue commissions
- 76. Commission to another court
- 77. Letter of request
- 78. Commissions issued by foreign courts

PART 4 :- SUITS IN PARTICULAR CASES

- 79. Suits by or against Government
- 80. Notice
- 81. Exemption from arrest and personal appearance
- 82. Execution of decree
- 83. When aliens may sue
- 84. When foreign States may sue
- 85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers
- 86. Suits against foreign Rulers, Ambassadors and Envoys
- 87. Style of foreign Rulers as parties to suit
- 87A. Definition Of "Foreign State" And "Ruler
- 87B. Application Of Secs. 85 And 86 To Rulers Of Former Indian States
- 88. Where interpleader suit may be instituted

PART 5 :- SPECIAL PROCEEDINGS

- 89. Settlement of disputes outsides the Court
- 90. Power to state a case for opinion of Court
- 91. Public nuisances and other wrongful acts affecting the public
- 92. Public charities¹
- 93. Exercise of powers of Advocate-General outside Presidency- towns.

PART 6 :- SUPPLEMENTAL PROCEEDINGS

- 94. Supplemental proceedings
- 95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds

PART 7 :- APPEALS

- 96. Appeal from original decree
- 97. Appeal from final decree where no appeal from preliminary decree
- 98. Decision where appeal heard by two or more Judges
- 99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction
- 99A. No Order Under Sec. 47 To Be Reversed Or Modified Unless Decision Of The Case Is Prejudicially Affected
- 100. Second appeal
- 100A. No Further Appeal In Certain Cases
- 101. Second appeal on no other grounds
- 102. No Second Appeal in Certain Cases
- 103. Power of High Court to determine issue of fact
- 104. Orders from which appeal lies
- 105. Other orders
- 106. What Courts to hear appeals.
- 107. Powers of Appellate Court
- 108. Procedure in appeals from appellate decrees and orders
- 109. When appeals lie to the Supreme Court
- 110. 110
- 111. Bar of certain appeals
- 111A. Appeal To Federal Court
- 112. Savings

PART 8 :- REFERENCE, REVIEW AND REVISION

- 113. Reference to High Court
- 114. Review
- 115. Revision

PART 9 :- SPECIAL PROVISION RELATING TO THE 8HIGH COURTS 9 NOT BEING THE COURT OF A JUDICIAL COMMISSIONER

- 116. Part to apply only to certain High Courts
- 117. Application of Code to High Courts
- 118. Execution of decree before ascertainment of costs
- 119. Unauthorised persons not to address Court
- 120. Provisions not applicable to High Court in original civil jurisdiction

PART 10 :- RULES

- 121. Effect of rules in First Schedule
- 122. Power of certain High Courts to make rules
- 123. Constitution of Rule Committees in certain States
- 124. Committee to report to High Court
- 125. Power of other High Courts to make rules
- 126. Rules to be subject to approval
- 127. Publication of rules
- 128. Matters for which rules may provide
- 129. Power of High Courts to make rules as to their original civil procedure
- 130. Power of other High Courts to make rules as to matter other than procedure
- 131. Publication of rules

PART 11 :- MISCELLANEOUS

- 132. Exemption of certain women from personal appearance
- 133. Exemption of other persons
- 134. Arrest other than in execution of decree
- 135. Exemption from arrest under civil process
- 135A. Exemption Of Member Of Legislative Bodice From Arrest And Detention Under Civil Process
- 136. Procedure where person to be arrested or property to be attached is outside district
- 137. Language of subordinate courts
- 138. Power of High Court to require evidence to be recorded in English
- 139. Oath and affidavit by whom to be administered

140. Assessors in causes of salvage, etc
141. Miscellaneous proceedings
142. Olden and notices to be in writing
143. Postage
144. Application for restitution
145. Enforcement of liability of surety
146. Proceedings by or against representatives
147. Consent or agreement by persons under disability
148. Enlargement of time
- 148A. Right To Lodge A Caveat
149. Power to make up deficiency of court-fees
150. Transfer of business
151. Saving of Inherent powers of Court
152. Amendment of judgments, decrees or orders
153. General power to amend
- 153A. Power To Amend Decree Or Order Where Appeal Is Summarily Dismissed
- 153B. Place Of Trial To Be Deemed To Be Open Court
154. Saving of present right of appeal
155. Amendment of certain Acts
156. Repeals
157. Continuance of orders under repealed enactments
158. Reference to the Code of Civil Procedure and other repealed enactments

ORDER 1 :- PARTIES OF SUITS

1. Who may be joined as plaintiffs
2. Power of Court to order separate trial
3. Who may be joined as defendants
- 3A. Power to order separate trials where joinder of defendants may embarrass or delay trial
4. Court may give judgment for or against one or more of joint parties
5. Defendant need not be interested in all the relief claimed
6. Joinder of parties liable on same contract
7. When plaintiff in doubt from whom redress is to be sought
8. One person may sue or defend on behalf of all in same interest
- 8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings
9. Misjoinder and nonjoinder
10. Suit in name of wrong plaintiff
- 10A. Power of Court to request any pleader to address it
11. Conduct of suit The Court may give the conduct of 1[a suit] to such persons as it deems proper
12. Appearance of one of several plaintiffs or defendants for others
13. Objections as to non-joinder or misjoinder

ORDER 2 :- FRAME OF SUIT (THE FIRST SCHEDULE)

1. Frame of suit
2. Suit to include the whole claim
3. Joinder of causes of action
4. Only certain claims to be joined for recovery of immovable property
5. Claims by or against executor, administrator or heir
6. Power of Court to separate trials
7. Objections as to misjoinder

ORDER 3 :- RECOGNIZED AGENTS AND PLEADERS (THE FIRST SCHEDULE)

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

ORDER 4 :- INSTITUTION OF SUITS (THE FIRST SCHEDULE)

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

ORDER 4A :- CONSOLIDATION OF CASES

1. Consolidation of suits and proceedings

ORDER 5 :- ISSUE AND SERVICE OF SUMMONS

1. Summons
2. Copy of plaint annexed to summons
3. Court may order defendant or plaintiff to appear in person
4. No party to be ordered to appear in person unless resident within certain limits
5. Summons to be either to settle issues or for final disposal
6. Fixing day for appearance of defendant
7. Summons to order defendant to produce documents relied on by him
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses
9. Delivery of summons by Court
- 9A. Summons given to the plaintiff for service
10. Mode of service
11. Service on several defendants
12. Service to be on defendant on person when practicable, or on his agent
13. Service on agent by whom defendant carries on business
14. Service on agent in charge in suits for immovable property
15. Where service may be on an adult member of defendants family
16. Person served to sign acknowledgement
17. Procedure when defendant refuses to accept service, or cannot be found
18. Endorsement of time and manner of service
- 18A. Chief Ministerial Officer, District Courts, may be empowered to order issue of fresh Summons
19. Examination of serving officer
- 19A. Simultaneous issue of summons for service by post in addition to personal
20. Substituted service
- 20A. Service of summons by post
21. Service of summons where defendant resides within jurisdiction of another Court
- 21A. Service of summons by prepaid post wherever defendant may be residing if plaintiff so desires
22. Service within presidency-towns of summons issued by Courts outside
23. Duty of Court to which summons is sent
24. Service on defendant in prison
25. Service where defendant resides out of India and has no agent
26. Service in foreign territory through Political Agent or Court Where
- 26A. Summonses to be sent to officer to foreign countries
27. Service on civil public officer or on servant of railway company or local authority
28. Service on soldiers, sailors or airmen
29. Duty of person to whom summons is delivered or sent for service
30. Substitution of letter for summons
31. Rule 31
32. Rule 32
33. Rule 33
34. Rule 34

ORDER 6 :- PLEADINGS GENERALLY

1. Pleading
2. Pleading to state material facts and not evidence
3. Forms of pleading
4. Particulars to be given where necessary
5. Further and better statement, or particulars
6. Condition precedent
7. Departure

8. Denial of contract
9. Effect of document to be stated
10. Malice, knowledge, etc.
11. Notice
12. Implied contract, or relation
13. Presumptions of law
14. Pleading to be signed
- 14A. Address for service of notice
15. Verification of pleadings
16. Striking out pleadings
17. Amendment of pleadings
18. Failure to amend after order

ORDER 7 :- PLAINT

1. Particulars to be contained in plaint
2. In money suits
3. Where the subject-matter of the suit is immovable property
4. When plaintiff sues as representative
5. Defendants interest and liability to be shown
6. Grounds of exemption from limitation law
7. Relief to be specifically stated
8. Relief founded on separate ground
9. Procedure on admitting plaint
10. Return of plaint
- 10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return
- 10B. Power of appellate Court to transfer suit to the proper Court
11. Rejection of plaint
12. Procedure on rejecting plaint
13. Rule 13
14. Production of document on which plaintiff sues or relies
15. Statement in case of documents not in plaintiffs possession or power
16. Suits on lost negotiable instruments
17. Production of shop-book
18. Inadmissibility of document not produced when plaint filed
19. Address to be filed with plaint or original petition
20. Nature of address to be filed
21. Consequences of failure to file address
22. Procedure when party not found at the place of registered address
23. Service of process where party engages a pleader
24. Change of registered address
25. Rule not binding on Court
26. Applicability to notice under Order XXI, rule 22

ORDER 8 :- WRITTEN STATEMENT, SET-OF AND COUNTER- CLAIM

1. Written statement
- 1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him
2. Rule 1A was inserted by Act No. 46 of 1999,section 18 and now sub-rule (3) has been substituted by Act No. 22 of 2002, section 9 (w.e.f. 1-7-2002)
3. Denial to be specific
4. Evasive denial
5. Specific denial
6. Particulars of set-off to be given in written statement
- 6A. Counter-claim by defendant
- 6B. Counter-claim to be stated
- 6C. Exclusion of counter-claim
- 6D. Effect of discontinuance of suit
- 6E. Default of plaintiff to reply to counter-claim
- 6F. Relief to defendant where counter-claim succeeds
- 6G. Rules relating to written statement to apply
7. Defence or set-off founder upon separate grounds
8. New ground of defence
- 8A. Omitted

9. Subsequent pleadings
10. Procedure when party fails to present written statement called for by Court
12. Applicability of rules 20 and 22 to 26 of Order VII
13. Defendant may set up counter-claim against the claims of the plaintiff in addition to set-off
14. Defendant setting up a counter-claim to specifically state so in the written statement
15. Where the counter-claim involves in addition to the plaintiff other persons also, the defendant to add further title of the written statement and deliver copies of his written statement to such persons as are already parties to the suit
16. Service of summons when counter-claim is against persons who are not already parties to the suit
17. Appearance of persons other than defendants to the suit, when served with counterclaim
18. Reply to counter-claim
19. Objection to counter-claim being allowed to be set up in the suit
20. Counter-claim may be proceeded with even if suit be stayed, discontinued or dismissed
21. On default of reply to counter-claim, the counter-claim may be set down for judgment
22. Judgment when set-off or counter-claim is established
23. Third Party Notice
24. From and Service of Notice
25. Effect of Service of Notice
26. Third Party to enter Appearance or Vakalatnama
27. Consequence of Failure to enter Appearance or Vakalatnama
28. Decree when Third Party makes Default in Appearance or Vakalatnama
29. Third Party to file Affidavit in Reply
30. Appearance or Vakalatnama of Third Party directions to be given
31. Defendant to apply for directions in certain cases
32. Costs
33. Setting aside Third Party proceedings
34. Right of the Third Party and of each successive Third Party to apply for Third Party Notice against other persons
35. Right of defendant to issue Third Party Notice against co-defendant
36. Third Party proceeding in a counter-claim

ORDER 8A :- THIRD PARTY PROCEDURE

1. Third party notice
2. Effect of notice
3. Default by third party
4. Procedure on default
5. Third Party directions
6. Leave to defend
7. Costs
8. Questions between co-defendants
9. Further parties

ORDER 9 :- APPEARANCE OF PARTIES AND CONSEQUENCE OF NON- APPEARANCE (THE FIRST SCHEDULE)

1. Rule 1
2. Dismissal of suit where summons not served in consequence of the plaintiffs failure to pay cost
3. Where neither party appears, suit to be dismissed
4. Plaintiff may bring fresh suit or Court may restore suit to file
5. Dismissal of suit where plaintiff after summons returned unserved, fails for one month to apply for fresh summons
6. Procedure when only plaintiff appears
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance
8. Procedure where defendant only appears
9. Decree against plaintiff by default bars fresh suit
10. Procedure in case of non-attendance of one or more of several plaintiffs
11. Procedure in case of non-attendance of one or more of several defendants
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person
13. Setting aside decree ex parte against defendant
14. No decree to be set aside without notice to opposite party

ORDER 10 :- EXAMINATION OF PARTIES BY THE COURT

1. Ascertainment whether allegations in pleadings are admitted or denied
- 1A. Direction of the Court to opt for any one mode of alternative dispute resolution
- 1B. Appearance before the conciliatory forum or authority
- 1C. Appearance before the court consequent to the failure of efforts of conciliation
2. Oral examination of party, or companion of party
3. Substance of examination to be written
4. Consequence of refusal or inability of pleader to answer

ORDER 11 :- DISCOVERY AND INSPECTION

1. Discovery by interrogatories
2. Particular interrogatories to be submitted
3. Costs of interrogatories
4. Form of interrogatories
5. Corporations
6. Objections to interrogatories by answer
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing
9. Form of affidavit in answer
10. No exception to be taken
11. Order to answer or answer further
12. Application for discovery of documents
13. Affidavit of documents
14. Production of documents
15. Inspection of documents referred to in pleadings or affidavits
16. Notice to produce
17. Time for inspection when notice given
18. Order for inspection
19. Verified copies
20. Premature discovery
21. Non-compliance with order for discovery
22. Using answers to interrogatories at trial
23. Order to apply to minors

ORDER 12 :- ADMISSIONS

1. Notice of admission of case
2. Notice to admit documents
- 2A. Document to be deemed to be admitted if not divided after service of notice to admit documents
3. Form of notice
- 3A. Power of Court to record admission
4. Notice to admit facts
5. Form of admissions
6. Judgment on admissions
7. Affidavit of signature
8. Notice to produce documents
9. Costs

ORDER 13 :- PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1. Original documents to be produced at or before the settlement of issues
2. Omitted
3. Rejection of irrelevant or inadmissible documents
4. Endorsements on documents admitted in evidence
5. Endorsements on copies of admitted entries in books, accounts and records
6. Endorsements on documents rejected as inadmissible in evidence
7. recording of admitted and return or rejected documents
8. Court may order any document to be impounded

9. Return of admitted documents
10. Court may send for papers from its own records or from other Courts
11. Provisions as to documents applied to material objects

ORDER 14 :- SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

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

ORDER 15 :- DISPOSAL OF THE SUIT AT THE FIRST HEARING

1. Parties not at issue
2. One of several defendants not at issue
3. Parties at issue
4. Failure to produce evidence

ORDER 16 :- SUMMONING AND ATTENDANCE OF WITNESSES

1. List of witnesses and summons to witnesses
- 1A. Production of witnesses without summons
2. Expenses of witnesses to be paid into Court on applying for summons
3. Tender of expenses to witness
4. Procedure where insufficient sum paid in
5. Time, place and purpose of attendance to be specified in summons
6. Summons to produce document
7. Power to require persons present in Court to give evidence or produce document
- 7A. Summons given to party for service
8. Summons how served
9. Time for serving summons
10. Procedure where witness fails to comply with summons
11. If witness appears attachment may be withdrawn
12. Procedure if witness fails to appear
13. Mode of attachment
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document
16. When they may depart
17. Application of rules 10 to 13
18. Procedure where witness apprehended cannot give evidence or produce document
19. No witness to be ordered to attend in person unless resident within certain limits
20. Consequence of refusal of party to give evidence when called on by Court
21. Rules as to witnesses to apply to parties summoned

ORDER 16A :- ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

1. Definitions
2. Power to require attendance of prisoners to give evidence
3. Expenses to be paid into Court
4. Power of State Government to exclude certain persons from the operation of rule 2
5. Officer in charge of prison to abstain from carrying out order in certain cases
6. Prisoner to be brought to Court in custody
7. Power to issue commission for examination of witness in prison

ORDER 17 :- ADJOURNMENTS

1. Court may grant time and adjourn hearing

2. Procedure if parties fail to appear on day fixed
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER 18 :- HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1. Right to begin
2. Statement and production of evidence
3. Evidence where several issues
- 3A. Party to appear before other witnesses
4. Recording of evidence
5. How evidence shall be taken in appealable cases
6. When deposition to be interpreted
7. Evidence under Section 138.
8. Memorandum when evidence not taken down by Judge
9. When evidence may be taken in English
10. Any particular question and answer may be taken down
11. Questions objected to and allowed by Court
12. Remarks on demeanour of witnesses
13. Memorandum of evidence in unappealable cases
14. Judge unable to make such memorandum to record reasons of his liability
15. Power to deal with evidence taken before another Judge
16. Power to examine witness immediately
17. Court may recall and examine witness
- 17A. Omitted
18. Power of Court to inspect
19. Power to get statements recorded on commission

ORDER 19 :- AFFIDAVITS

1. Power to order any point to be proved by affidavit
2. Power to order attendance of deponent for cross-examination
3. Matters to which affidavits shall be confined

ORDER 20 :- JUDGMENT AND DECREE

1. Judgment when pronounced
2. Power to pronounce judgment written by judges predecessor
3. Judgment to be signed
4. Judgments of Small Cause Courts
5. Court to state its decision on each issue
- 5A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders
6. Contents of decree
- 6A. Preparation of decree
- 6B. Copies of judgments when to be made available
7. Date of decree
8. Procedure where Judge has vacated office before signing decree
9. Decree for recovery of immovable property
10. Decree for delivery of movable property
11. Decree may direct payment by instalments
12. Decree for possession and mesne profits
- 12A. Decree for specific performance of contract for the sale or lease of immovable property
13. Decree in administration suit
14. Decree in pre-emption suit
15. Decree in suit for dissolution of partnership
16. Decree in suit for account between principal and agent
17. Special directions as to accounts
18. Decree in suit for partition of property or separate possession of a share therein
19. Decree when set-off or counter-claims is allowed
20. Certified copies of judgment and decree to be furnished

ORDER 20A :- COSTS

1. Provisions relating to certain items
2. Costs to be awarded in accordance with the rules made by High Court-

ORDER 21 :- EXECUTION OF DECREES AND ORDERS

1. Modes of paying money under decree
2. Payment out of Court to decree-holder
3. Lands situate in more than one jurisdiction
4. Transfer to Court of Small Causes
5. Mode of transfer
6. Procedure where Court desires that its own decree shall be executed by another Court
7. Court receiving copies of decree, etc. to file same without proof
8. Execution of decree or order by Court to which it is sent
9. Execution by High Court of decree transferred by other Court
10. Application for execution
11. Oral application
- 11A. Application for arrest to state grounds
12. Application for attachment of movable property not in judgment-debtors possession
13. Application for attachment of immovable property to contain certain particulars
14. Power to require certified extract from Collectors register in certain cases
15. Application for execution by joint decree-holders
16. Application for execution by transferee of decree
17. Procedure on receiving application for execution of decree
18. Execution in case of cross-decrees
19. Execution in case of cross-claims under same decree
20. Cross-decrees and cross-claims in mortgage-suits
21. Simultaneous execution
22. Notice to show cause against execution in certain cases
- 22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale
23. Procedure after issue of notice
24. Process for execution
25. Endorsement on process
26. When Court may stay execution
27. Liability of judgment-debtor discharged
28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to
29. Stay of execution pending suit between decree-holder and judgment- debtor
30. Decree for payment of money
31. Decree for specific movable property
32. Decree for specific performance for restitution of conjugal rights, or for an injunction
33. Discretion of Court in executing decrees for restitution of conjugal rights
34. Decree for execution of document, or endoresment of negotiable instrument
35. Decree for immovable property
36. Decree for delivery of immovable property when in occupancy of tenant
37. Discretionary power to permit judgment debtor to show cause against detention in prison
38. Warrant for arrest to direct judgment-debtor to be brought up
39. Subsistence allowance
40. Proceedings on appearance of judgement-debtor in obedience to notice or after arrest
41. Examination of judgment-debtor as to his property
42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined
43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor
- 43A. Custody of movable property
44. Attachment of agricultural produce.
45. Provisions as to agricultural produce under attachment
46. Attachment of debt, share and other property not in possession of judgment- debtor
- 46A. Notice to garnishee
- 46B. Order against garnishee
- 46C. Trial of disputed questions
- 46D. Procedure where debt belongs to third person
- 46E. Order as regards third person
- 46F. Payment by garnishee to be valid discharge
- 46G. Costs

- 46H. Appeals
- 46I. Application to negotiable instruments
47. Attachment of share in movables
48. Attachment of salary or allowances of servant of the Government or railway company or local authority
- 48A. Attachment of salary or allowances of private employees
49. Attachment of partnership property.
50. Execution of decree against firm.
51. Attachment of negotiable instruments
52. Attachment of property in custody of Court or public officer
53. Attachment of decrees
54. Attachment of immovable property
55. Removal of attachment after satisfaction of decree
56. Order for payment of coin or currency notes to party entitled under decree
57. Determination of attachment
58. Adjudication of claims to, or objections to attachment of, property
59. Stay of sale
60. Rule 60
61. Rule 61
62. Rule 62
63. Rule 63
64. Power to order property attached to be sold and proceeds to be paid to person entitled
65. Sales by whom conducted and how made
66. Proclamation of sales by public auction
67. Mode of making proclamation
68. Time of sale
69. Adjournment or stoppage of sale
70. Saving of certain sales
71. Defaulting purchaser answerable for loss on re-sale
72. Decree holder not to bid for or buy property without permission
- 72A. Mortgagee not to bid at sale without the leave of the Court
73. Restriction on bidding or purchase by officers.
74. Sale of agricultural produce
75. Special provisions relating to growing crops.
76. Negotiable instruments and shares in corporations
77. Sale by public auction
78. Irregularity not to vitiate sale, but any person injured may sue
79. Delivery of movable property, debts and shares
80. Transfer of negotiable instruments and shares.
81. Vesting order in case of other property.
82. What Courts may order sales.
83. Postponement of sale to enable judgment-debtor to raise amount of decree.
84. Deposit by purchaser and re-sale on default.
85. Time for payment in full of purchase-money.
86. Procedure in default of payment
87. Notification on re-sale
88. Bid of co-sharer to have preference
89. Application to set aside sale on deposit
90. Application to set aside sale on ground of irregularity or fraud
91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.
92. Sale when to become absolute or be set aside
93. Return of purchase-money in certain cases.
94. Certificate to purchaser
95. Delivery of property in occupancy of judgment-debtor
96. Delivery of property in occupancy of tenant
97. Resistance or obstruction to possession of immovable property.
98. Orders after adjudication.
99. Dispossession by decree-holder or purchaser
100. Order to be passed upon application complaining of dispossession
101. Questions to be determined
102. Rules not applicable to transferee pendent life
103. Orders to be treated as decrees
104. Order under rule 101 or rule 103 to be subject to the result or pending suit
105. Hearing of application
106. Setting aside order passed ex parte, etc.

ORDER 22 :- DEATH, MARRIAGE AND INSOLVENCY OR PARTIES

1. No abatement by partys death if right to sue survives
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives
3. Procedure in case of death of one of several plaintiffs or of sole plaintiff
4. Procedure in case of death of one of several defendants or of sole defendant
- 4A. Procedure where there is no legal representative
5. Determination of question as to legal representative.
6. No abatement by reason of death after hearing
7. Suit not abated by marriage of female party
8. When plaintiffs insolvency bars suit
9. Effect of abatement or dismissal
10. Procedure in case of assignment before final order in suit
- 10A. Duty of pleader to communicate to Court death of a party.
11. Application of Order to appeals.
12. Application of Order to proceedings.

ORDER 23 :- WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim
- 1A. When transposition of defendants as plaintiffs may be permitted
2. Limitation law not affected by first suit
3. Compromise of suit
- 3A. Bar to suit
- 3B. No agreement or compromise to be entered in a representative suit without leave of Court
4. Proceeding in execution of decrees not affected

ORDER 24 :- PAYMENT INTO COURT

1. Deposit by defendant of amount in satisfaction of claim
2. Notice of deposit
3. Interest on deposit not allowed to plaintiff after notice
4. Procedure where plaintiff accepts deposit as satisfaction in part

ORDER 25 :- SECURITY FOR COSTS

1. When security for costs may be required from plaintiff
2. Effect of failure to furnish security

ORDER 26 :- COMMISSIONS

1. Cases in which Court may issue commission to examine witness
2. Order for commission
3. Where witness resides within Courts jurisdiction
4. Persons for whose examination commission may issue
- 4A. Commission for examination of any person resident within the local BE limits of the jurisdiction of the Court
5. Commission or request to examine witness not within India
6. Court to examine witness pursuant to Commission
7. Return of commission with depositions of witnesses
8. When depositions may be read in evidence
9. Commissions to make local investigations
10. Procedure of Commissioner
- 10A. Commission for scientific investigation
- 10B. Commission for performance of a ministerial act
- 10C. Commission for the sale of movable property
11. Commission to examine or adjust accounts
12. Court to give Commissioner necessary instructions
13. Commission to make partition of immovable property
14. Procedure of Commissioner
15. Expenses of commission to be paid into Court
16. Powers of Commissioners

- 16A. Questions objected to before the Commissioner
17. Attendance and examination of witnesses before Commissioner
18. Parties to appear before Commissioner
- 18A. Application of Order to execution proceedings-
- 18B. Court to fix a time for return of commission
19. Cases in which High Court may issue commission to examine witness
20. Application for issue of commission
21. To whom commission may be issued
22. Issue, execution and return of commissions, and transmission of evidence to foreign Court

ORDER 27 :-SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

1. Suits by or against Government
2. Persons authorised to act for Government
3. Plaints in suits by or against Government
4. Agent for Government to receive process
5. Fixing of day for appearance on behalf of Government
- 5A. Government to be joined as a party in a suit against a public officer
- 5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement
6. Attendance of person able to answer questions relating to suit against Government
7. Extension of time to enable public officer to make reference to Government
8. Procedure in suits against public officer
- 8A. No security to be required from Government or a public officer in certain cases
- 8B. Definitions of "Government" and "Government pleader"

ORDER 27A :-SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF 2[THE CONSTITUTION] 3[OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT]

1. Notice to the Attorney General or the Advocate-General
- 1A. Procedure in suits involving validity of any statutory instrument
2. Court may add Government as party
- 2A. Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument
3. Costs
4. Application or Order to appeals

ORDER 28 :- SUITS BY OR AGAINST MILITARY OR NAVAL MEN 1[OR AIRMEN]

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them
2. Person so authorized may act personally or appoint pleader
3. Service on person so authorized, or on his pleader, to be service

ORDER 29 :- SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading
2. Service on corporation
3. Power to require personal attendance of officer of corporation.

ORDER 30 :-SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

1. Suing of partners in name of firm
2. Disclosure of partners names
3. Service
4. Rights of suit on death of partner
5. Notice in what capacity served

6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest
9. Suits between co-partners
10. Suit against person carrying on business in name other than his own

ORDER 31 :- SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.
2. Joinder of trustee, executors and administrators
3. Husband of married executrix not to join

ORDER 32 :- SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend
2. Where suit is instituted without next friend, plaint to be taken off the file-
- 2A. Security to be furnished by next friend when so ordered
3. Guardian for the suit to be appointed by Court for minor defendant-
- 3A. Decree against minor to be set aside unless prejudice has been caused to his interests
4. Who may act as next friend or be appointed guardian for the suit
5. Representation of minor by next friend or guardian for the suit
6. Receipt by next friend or guardian for the suit of property under decree for minor
7. Agreement or compromise by next friend or guardian for the suit
8. Retirement of next friend
9. Removal of next friend
10. Stay of proceedings on removal, etc., of next friend
11. Retirement, removal or death of guardian for the suit
12. Course to be followed by minor plaintiff or applicant on attaining majority
13. Where minor co-plaintiff attaining, majority desires to repudiate suit
14. Unreasonable or improper suit
15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind
16. Savings

ORDER 32A :- SUITS RELATING TO MATTERS CONCERNING THE FAMILY

1. Application of the Order
2. Proceedings to be held in camera
3. Duty of Court to make efforts for settlement
4. Assistance of welfare expert
5. Duty to inquire into facts
6. "Family"-meaning of

ORDER 33 :- SUITS BY INDIGENT PERSONS

1. Suits may be instituted by in by indigent person.
- 1A. Inquiry into the means of an indigent person
2. Contents of application
3. Presentation of application
4. Examination of applicant
5. Rejection of application
6. Notice of day for receiving evidence of applicants indigency
7. Procedure at hearing
8. Procedure if application admitted
9. Withdrawal of permission to sue as an indigent person
- 9A. Court to assign a pleader to an unrepresented indigent person
10. Costs where 1[indigent person] succeeds
11. Procedure where 1[indigent person] fails
- 11A. Procedure where indigent persons suit abates
12. State Government may apply for payment of court-fees.
13. State Government to be deemed a party
14. Recovery of amount of court-fees.
15. Refusal to allow applicant to sue as indigent person to bar subsequent application of like

nature

15A. Grant of time for payment of court-fee.

16. Costs

17. Defence by an indigent person

18. Power of Government to provide for free legal services to indigent persons

ORDER 34 :- SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

1. Parties to suits for foreclosure sale and redemption.

2. Preliminary decree in foreclosure suit

3. Final decree in foreclosure suit

4. Preliminary decree in suit for sale

5. Final decree in suit for sale

6. Recovery of balance due on mortgage in suit for sale.

7. Preliminary decree in redemption suit.

8. Final decree in redemption suit

8A. Recovery of balance due on mortgage in suit for redemption

9. Decree where nothing is found due or where mortgagee has been overpaid

10. Costs of mortgagee subsequent to decree

10A. Power of Court to direct mortgagee to pay mesne profits

11. Payment of interest

12. Sale of property subject to prior mortgage

13. Application of proceeds

14. Suit for sale necessary for bringing mortgaged property to sale.

15. Mortgages by the deposit of title deeds and charges

ORDER 35 :- INTERPLEADER

1. Plaint in interpleader-suit

2. Payment of thing claimed into Court

3. Procedure where defendant is suing plaintiff

4. Procedure at first hearing

5. Agents and tenants may not institute interpleader suits

6. Charge for plaintiffs costs

ORDER 36 :- SPECIAL CASE

1. Power to state case for Courts opinion

2. Where value of subject-matter must be stated

3. Agreement to be filed and registered as suit

4. Parties to be subject to Courts jurisdiction

5. Hearing and disposal of case

6. No appeal from a decree passed under rule 5

ORDER 37 :- SUMMARY PROCEDURE

1. The Words "On Negotiable Instruments" omitted by Act 104 of 1976, sec. 84 (w.e.f. 1 -2- 1977).

2. Institution of summary suits

3. Procedure for the appearance of defendant

4. Power to set aside decree

5. Power to order bill, etc., to be deposited with officer of Court

6. Recovery of cost of noting non-acceptance of dishonoured bill or note-

7. Procedure in suits

ORDER 38 :- ARREST AND ATTACHMENT BEFORE JUDGMENT

1. Where defendant may be called upon to furnish security for appearance-

2. Security

3. Procedure on application by surety to be discharged

4. Procedure where defendant fails to furnish security or find fresh security

5. Where defendant may be called upon to furnish security for production of property
6. Attachment where cause not shown or security not furnished
7. Mode of making attachment
8. Adjudication of claim to property attached before judgment
9. Removal of attachment when security furnished or suit dismissed
10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale
11. Property attached before judgment not to be re-attached in execution of decree
- 11A. Provisions applicable to attachment
12. Agricultural produce not attachable before judgment
13. Small Cause Court not to attach immovable property

ORDER 39 :- TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

1. Cases in which temporary injunction may be granted
2. Injunction to restrain repetition or continuance of breach
- 2A. Consequence of disobedience or breach of injunction
3. Before granting injunction, Court to direct notice to opposite party
- 3A. Court to dispose of application for injunction within thirty days.
4. Order for injunction may be discharged, varied or set aside
5. Injunction to corporation binding on its officer
6. Power to order interim sale
7. Detention, preservation, inspection, etc., of subject-matter of suit.
8. Application for such orders to be after notice
9. When party may be put in immediate possession of land the subject-matter of suit
10. Deposit of money, etc. in Court

ORDER 40 :- APPOINTMENT OF RECEIVERS

1. Appointment of receivers
2. Remuneration
3. Duties
4. Enforcement of receivers duties
5. When Collector may be appointed receiver

ORDER 41 :- APPEALS FROM ORIGINAL DECREES

1. Form of appeal. What to accompany memorandum
2. Grounds which may be taken in appeal
3. Rejection or amendment of memorandum
- 3A. Application for condonation of delay
4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all
5. Stay by Appellate Court
6. Security in case of order for execution of decree appealed from
7. [No security to be required from the Government or a public officer in certain cases. Rep. by the A.O. 1937.]
8. Exercise of powers in appeal from order made in execution of decree
9. Registry of memorandum of appeal
10. Appellate Court may require appellant to furnish security for costs
11. Power to dismiss appeal without sending notice to Lower Court
- 11A. Time within which hearing under rule 11 should be concluded
12. Day for hearing appeal
13. Omitted
14. Publication and service of notice of day for hearing appeal
115. Contents of Notice.
16. Right to begin
17. Dismissal of appeal for appellants default
118. Dismissal of appeal where notice served in consequence of appellants failure to deposit cost.
19. Re-admission of appeal dismissed for default
20. Power to adjourn hearing and direct persons appearing interested to be made respondents
21. Re-hearing on application of respondent against whom ex parte decree made
22. Upon hearing respondent may object to decree as if he had preferred a separate appeal

23. Remand of case by Appellate Court
- 23A. Remand in other cases
24. Where evidence on record sufficient, Appellate Court may determine case finally
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from
26. Finding and evidence to be put on record. Objections to finding
- 26A. Order of remand to mention date of next hearing
27. Production of additional evidence in Appellate Court
28. Mode of taking additional evidence
29. Points to be defined and recorded
30. Judgment when and where pronounced
31. Contents, date and signature of judgment
32. What judgment may direct
33. Power of Court of Appeal
34. Dissent to be recorded
35. Date and contents of decree
36. Copies of judgment and decree to be furnished to parties
37. Certified copy of decree to be sent to Court whose decree appealed from

ORDER 42 :- APPEALS FROM APPELLATE DECREES

1. Procedure
2. Power of Court to direct that the appeal be heard on the question formulated by it
3. Application of rule 14 of Order XLI

ORDER 43 :- APPEALS FROM ORDERS

1. Appeals from orders
- 1A. Right to challenge non-appealable orders in appeal against decree
2. Procedure

ORDER 44 :- APPEALS BY INDIGENT PERSONS

1. Who may appeal 1[as an indigent person]
2. Grant of time for payment of court-fee
3. Inquiry as to whether applicant is an indigent person

ORDER 45 :- APPEALS TO THE SUPREME COURT

1. "Decree" defined
2. Application to Court whose decree complained of
3. Certificate as to value or fitness
4. Consolidation of suits
5. Remission of dispute to Court of first instance
6. Effect of refusal of certificate
7. Security and deposit required on grant of certificate
8. Admission of appeal and procedure thereon
9. Revocation of acceptance of security
- 9A. Power to dispense with notices in case of deceased parties
10. Power to order further security or payment
11. Effect of failure to comply with order
12. Refund of balance deposit
13. Powers of Court pending appeal
14. Increase of security found inadequate
15. Procedure to enforce orders of the Supreme Court
16. Appeal from order relating to execution

ORDER 46 :- REFERENCE

1. Reference of question to High Court
2. Court may pass decree contingent upon decision of High Court

3. Judgment of High Court to be transmitted and case disposed of accordingly
4. Costs of reference to High Court
- 4A. Reference to High Court under proviso to section 113
5. Power to alter, etc., decree of Court making reference
6. Power to refer to High Court questions as to jurisdiction in small causes
7. Power to District Court to submit for revision proceedings had undet mistake as to jurisdiction in small causes

ORDER 47 :- REVIEW

1. Application for review of judgment
2. [To whom applications for review may be made.]
3. Form of applications for review
4. Application where rejected
5. Application for review in Court consisting of two or more Judges
6. Application where rejected
7. Order of rejection not appealable. Objections to order granting application
8. Registry of application granted, and order for re-hearing
9. Bar of certain applications

ORDER 48 :- MISCELLANEOUS

1. Process to be served at expense of party issuing
2. Orders and notices how served
3. Use of forms in appendices.

ORDER 49 :- CHARTERED HIGH COURTS

1. Who may serve processes of High Court
2. Saving in respect of Chartered High Courts
3. Application of rules

ORDER 50 :- PROVINCIAL SMALL CAUSE COURTS

1. Provincial Small Cause Courts

ORDER 51 :- STATE AMENDMENT

1. Presidency Small Cause Courts

APPENDIX A :- PLEADINGS

APPENDIX B :- PROCESS

APPENDIX C :- DISCOVERY, INSPECTION AND ADMISSION

APPENDIX D :- DECREES

APPENDIX E :- EXECUTION

APPENDIX F :- SUPPLEMENTAL PROCEEDINGS

APPENDIX G :- APPEAL, REFERENCE AND REVIEW

APPENDIX H :- MISCELLANEOUS

SCHEDULE 2 :- The Second Schedule

SCHEDULE 3 :- THIRD SCHEDULE

SCHEDULE 4 :- THE FOURTH SCHEDULE

SCHEDULE 5 :- THE FIFTH SCHEDULE

CODE OF CIVIL PROCEDURE, 1908

5 of 1908

[21 March 1908]

As amended up to date by Amendment Act No. 104 of 1976 as assented by the President of India on 10th September, 1976 An Act to consolidate and amend the laws relating to the procedure of the courts of civil judicature Whereas it is expedient to consolidate and amend the laws relating to the Procedure of the courts of civil judicature ; It is hereby enacted as follows:

CHAPTER 1 PRELIMINARY

1. Short title, commencement and extent :-

(1) This Act may be cited as the Code of Civil Procedure, 1908.

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

1 (3) It extends to the whie of India except-

(a) the State of Jammu and Kashmir;

(b) the State of Nagaland and the tribal areas: Provided that the State Government concerned may, by notification in the official Gazette extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or suchtribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation. In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in para. 20 of the Sixth Schedule to the Constitution.

(4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep, the application of this Code. shalll be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be; relating to the application of this Code.]

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. 0., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

2. Definitions :-

. In this Act, unless there is nothing repugnant in the subject or context,

(1) "Code" includes rules;

(2)"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 1[* * *] Sec. 144, but shall not include-

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

(b) any order of dismissal for default.

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

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

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

1[(5) "foreign Court" means a court situate outside India not established or continued by the

authority of the Central Government;]

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

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

2(7-A) "High Court", in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7-B) "India" except in Secs. 1, 29,43,44 [44-A], 78, 79, 82, 83 and 87-A means the territory of India excluding the State of Jammu and Kashmir;]

(8) "Judge" means the presiding officer of a civil court.

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

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

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

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

(13) "moveable property" includes growing crops;

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

(15) prescribed means prescribed by rules;

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

(a) Every Judge;

(b) every member of 1[an All-India Service];

(c) every commissioned or gazetted officer in the military, naval or air forces of 6[the Union] 7[* * *] while serving under the Government;

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

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

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or protect the public health; safety or convenience;

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

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

(18) "rules" means rules and forms contained in the First Schedule or made under Sec. 122 or Sec. 125;

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

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

(21) 8 [***]

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

3. Subordination of courts :-

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

4. Savings :-

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

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

5. Application of the Code to revenue courts :-

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

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

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

6. Pecuniary jurisdiction :-

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

7. Provincial small cause courts :-

- The following provisions shall not extend to courts constituted under Provincial Small Cause Courts Act, 1887 1[or under the Berar Small Cause Courts Law, 1905], or to courts exercising the jurisdiction of a court of small causes 2[under the said Act, or Law], 3[or to courts in 4[any part of India to which the said Act does not extend] exercising a corresponding jurisdiction), that is to say,-

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

(i) suits excepted from the cognizance of a court of small causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property and

(b) the following section, that is to say, - Section 9, section 91 and 92, section 94 and 95 5 [so far as they authorize or relate to - (i) orders for the attachment of immoveable property, (ii) injunctions, (iii) the appointment of a receiver of immoveable property, or Section 94], and Section 96 and 112 to 115.

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941, Sec. 2, and Sch. III for "under that Act".

Ins. by Act 2 of 1951, sec. 5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words "one thousand rupees" (w.e.f. 1st February, 1977).

Subs. by Act I of 1926, Sec. 3, for "so far as they relate to injunctions and interlocutory orders".

8. Presidency small cause courts :-

- Save as provided in Section 24, 38 to 41, 75, Cls (a), (b) and (c), 76, 1[77, 157 and 158] and by Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any court of Small Causes established in the towns of Calcutta, Madras and Bombay: 2[Provided that-

(1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the official Gazette, direct that any such provision not inconsistent with the express provisions of Presidency Small Cause Courts Act, 1882, and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;

(2) all rules heretofore made by any of the said High Courts under Section 9 of the Presidency Small Cause Courts Act, 1882, shall be deemed to have been validly made.]

Gujarat-In Sec. 8, in the first para after the words "Calcutta, Madras and Bombay", insert the words "and in the city of Ahmedabad" [Vide Gujarat Act 19 of 1961 as amended by Gujarat Act 32 of 1961, Sec. 21 and Schedule.]

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35. This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953; Kerala by Kerala Act 13 of 1957, Madras by Madras Act 34 of 1950 and Madras A. O., 1954, Mysore by Mysore Act 14 of 1955, Punjab by Punjab Act 7 of 1934; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

PART 1 SUITS IN GENERAL

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

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

Explanation. [1] A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Expl. 1 or whether or not such office is attached to a particular place.]

STATE AMENDMENT

Maharashtra In its application to State of Maharashtra after Sec. 9 the following Sec. 9-A has been inserted as under:

9A. Where at the hearing of application relating to interim relief in suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue :-

(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue as to the jurisdiction. Maharashtra Act (65 of 1977) (wet. 19-12-1977).

Ins. by Act 2 of 1951. sec.5.

10. Stay of suit :-

-No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in 1[India] having jurisdiction to grant the relief claimed, or in any court beyond the limits of 1[India] established or continued by 3[the Central Government] 4[* * *] and having like jurisdiction, or before 5[the Supreme Court].

Explanation. The pendency of a suit in a foreign court does not preclude the courts in 6 [India] from trying a suit founded on the same cause of action.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

11. Res Judicata :-

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

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

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

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

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

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

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

1 [Explanation VII. The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue of former suit shall be construed as references respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

Ins. by Act 2 of 1951. sec.5.

12. Bar to further suit :-

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

13. When foreign judgment not conclusive :-

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

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

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

(c) where it appears on the face of the proceeding to be founded on an incorrect view of international law or a refusal to recognize the law of [India] in cases in which such law is applicable;

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

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in 1 [India].

Inserted by Act 2 of 1951, Sec. 4.

14. Presumption as to foreign judgments :-

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

15. Court in which suits to be instituted :-

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

16. Suits to be instituted where subject-matter situate :-

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

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

(b) for the partition of immoveable property,

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

(d) for determination of any other right to or interest in immoveable property,
(e) for compensation for wrong to immoveable property,
(f) for the recovery of immoveable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal- obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

17. Suits for immoveable property situate within Jurisdiction of different courts :-

Where a suit is to obtain relief respecting, or compensation for wrong to immoveable property situate within the jurisdiction of different courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property situate: Provided that, in respect of value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. Place of Institution of suit where local limits of Jurisdiction of courts are uncertain :-

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

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

19. Suits for compensation for wrong to person or moveables :-

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

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

- Subject to the limitations aforesaid, every suits shall be instituted in a court. within the local limits of whose jurisdiction- :

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

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

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

1 [Explanation]. A corporation shall be deemed to carry on business at its sole or principal

office in 3[India] or, in respect of any cause of action arising at any place where it has also a subordinate office at such place.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

21. Objections to jurisdiction :-

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

2 [(2) No objection as to the competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection was taken by the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

21A. Bar On Suit To Set Aside Decree On Objection As To Place Of Suing :-

[-No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation. The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was" instituted prior to the suit in which the validity of such decree is questioned.]

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

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

23. To what Court application lies :-

(1) Where the several courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 22 shall be made to the Appellate Court.

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

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

24. General power of transfer and withdrawal :-

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

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

(b) withdraw any suit, appeal or other proceeding in any court subordinate to it; and

(i) try or dispose of the same; or

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

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

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

1[(3) For the purposes of this section,-

(a) courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

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

(5) 2 [A suit or proceeding may be transferred under this section from a court which has no jurisdiction to try it].

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

25. Power of Supreme Court to transfer suits, etc :-

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(1) On the application of a party, and after notice to the parties, and after hearing such of them as desired to be heard, the Supreme Court may, at any stage if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order to transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.]

26. Institution of suits :-

1(1) Institution of suits-Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

2 (2) In every plaint, facts shall be proved by affidavit.

[aaaa]Section-26 renumbered as sub-section(1) and inserted into section-27 by THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

[10000]Inserted vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

27. Summon to defendants :-

-Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in the manner prescribed.1 ["on such day not beyond thirty days from date of the institution of the suit".]

[10001]THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

28. Service of summons where defendant resides in another State :-

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

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

1 [(3) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub- section (2), a translation of the record,-

(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in Hindi or English where the language of such record is other than Hindi or English. shall also be sent together with the record sent under the sub- section.]

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

29. Service of foreign summon :-

1Summons and other processes issued by-

(a) any civil or revenue court established in any part of India to which the provisions of this Code do not extend, or

(b) any civil or revenue court established or continued by the authority of the Central Government outside India, or

(c) any other civil or revenue court outside India to which the Central Government has, by notification in the official Gazette, declared the provisions of this section to apply, may be sent to the Court in the territories to which this Code extends, and served as if they were summonses issued by such courts.]

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

30. Power to order discovery and the like :-

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

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and

- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such objects as aforesaid;
- (c) order any fact to be proved by affidavit.

31. Summons to witness :-

The provisions is Section 27 , Section 28 and section 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. Penalty for default :-

-The Court may compel the attendance of any person to whom a summons has been issued under Section 30 and-for that purpose may-

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him 1 ["not exceeding five thousand rupees"];
- (d) order him to furnish security for his appearance and in default commit him to the civil prison

[10002]Substituted for "not exceeding five hundred rupees", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

33. Judgment and decree :-

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

34. Interest :-

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(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 1[with further interest at such rate not exceeding 6 per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

2 [Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6 per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by. nationalized banks in relation to commercial transactions.

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

Explanation. 1. In this sub-section,"nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II. For the purposes of this section, transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of

Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

35. Costs :-

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

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing. 1 [* * * *]

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

35A. Compensatory Costs In Respect Of False Or Vexatious Claims Or Defences :-

(1) If in any suit or other proceeding, 2[including an execution proceeding but 3[excluding an appeal or revision], any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, 4[if it so thinks fit), may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding 5[three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less: Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a court of small causes under Provincial Small Cause Courts Act, 1887 6[or under a corresponding law in force in 7[any part of India to which the said Act does not extend]] and not being a court constituted 8[under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees: Provided further, that the High Court may limit the amount which any court or class of courts is empowered to award as costs under this section.

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

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

Uttar Pradesh(1) In the principal Act substitute the following for sub-section (1) of Sec.35-A- "(1) If in any suit or other proceeding including proceedings in execution, but not being an appeal or revision, the Court finds that the claim or defence or any part thereof is false or vexatious to the knowledge of the party, by whom it has been put forward and if such claim or defence or such part is disallowed, abandoned or withdrawn in whole or in part, the Court may after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the successful party of costs by way of compensation irrespective of the decision on other issues in the case."910 (2) In the Code of Civil Procedure 1908 in Sec. 35-A, after sub-section (1), the following sub-section shall be inserted, namely: "(1-A) The

provisions of sub-section (1) shall mutatis mutandis apply to an appeal where the Appellate Court confirms the decision of the Trial Court and the Trial Court has not awarded, or has awarded insufficient, compensatory cost under that sub-section".

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words" one thousand rupees" (w.e.f. 1st February, 1977).

Subs. by Act I of 1926. Sec.3, for "so far as they relate to injunctions and interiocutory orders".

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

Subs by Act 2 fo 1951. Sec.7, for "under that Act."

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

35B. Costs For Causing Delay :-

(1) If, on any date fixed for the hearing of suit or for taking any step therein, a part to the suit-

(a) fails to take the step which he was required by or under this Code to take on that date, or
(b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of sch order, shall be a condition precedent to the further prosecution of-

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs;

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation. Where separate-defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so

PART 2 EXECUTION

36. Application to orders :-

[- The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order.)]

37. Definition of Court which passed a decree :-

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

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

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

1 [Explanation. The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

38. Court by which decrees may be executed :-

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

39. Transfer of decree :-

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(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another court 1[of competent jurisdiction],-

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

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

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

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

(2) The Court which passed a decree may of its own motion send it for. execution to any subordinate court of competent jurisdiction. 2[(3) For the purposes of this section, a court shall be deemed to be a court of . competent jurisdiction if, at the time of making the application for the transfer of; decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]

3(4) Nothing in this section shall be deemed to authorise the Court which passed a dacrece to execute such decree against any person or property outside the local limits of its jurisdiction."

Uttar Pradesh In its application to State of Uttar Pradesh in Sec. 39 for sub- section (3) the following sub-section (3) is substituted as under: " (3) For the purposes of this section, a court shall be deemed to be a court of competent jurisdiction if the amount or value of the subject-matter of the suit wherein the decree was passed does not exceed the pecuniary limits, if any, of its ordinary jurisdiction at the time of making the application for the transfer of decree to it, notwithstanding that it had otherwise no jurisdiction to try the suit. "4

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. 0., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

Inserted by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]" in published in the Gazette of India, Extraordinary, Part II, Section No.25 I, dated May 24, 2002.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

40. Transfer of decree to Court in another State :-

Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State. S. 42

41. Result of execution proceedings to be certified :-

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

42. Power of Court in executing transferred decree :-

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

2[(2)] Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:

(a) power to send the decree for execution to another court under Section 39 ;

(b) power to execute the decree against the legal representative of the deceased judgment-debtor under Section 50 ; and

(c) power to order attachment of a decree.

(3) A court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:

(a) power to order execution at the instance of the transferee of decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in Cl. (b), or Cl. (c) of sub-rule (1) of rule 50 of Order XXI.]

Uttar Pradesh-Section 42 shall be substituted as under and shall be deemed to have been substituted, w.e.f. 2nd December, 1968: "42 Power of Court in executing transferred decree

(1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the decree shall be punishable by such Court in the same manner as if it had passed the decree, and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself. (2) Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely: (a) power to send the decree for execution to another court under Sec.39; (b) power to execute the decree against the legal representative of the deceased judgment-debtor under Sec. 50-, (c) power to order attachment of a decree; (d) power to decide any question relating to the bar of limitation to the executability of the decree; (e) power to record payment or adjustment under rule 2 of Order XXI; (f) power to order stay of execution under rule 29 of Order XXI; (g) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person other than a person as is referred to in Cl. (b) or Cl. (c) of sub-rule (1) of rule 50 of Order XXI. (3) A court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the

Court which passed the decree. (4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution, the power to order execution at the instance of the transferee of a decree."3

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

43. Execution of decrees passed by civil courts in places to which this Code does not extend :-

[—Any decree passed by any civil court established in any part of India to which the provisions of this Code do not extend, or by any court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends.]

44. Execution of decrees passed by revenue courts In places to which this Code does not extend :-

[—The State Government may, by notification in the official Gazette, declare that the decrees of any revenue court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the Stgte as if they had been passed by court in that State.]

44A. Execution Of Decrees Passed By Courts In Reciprocating Territory :-

(1) Where a certified copy of a decree of any of the superior courts of 2 [* * *] any reciprocating territory has been filed in a district court, the decree may be executed in [India] as if it had been passed by the District Court.

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

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

[Explanation. 1 "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the official Gazette, declare to be a reciprocating territory for the purposes of this section; and "Superior Court" with reference to any such territory means such courts as may be specified in the said notification.

Explanation 2. "Decree" with reference to a Superior Court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.]

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

45. Execution of decrees outside India :-

-So much of the foregoing sections of this Part as empowers a court to send a decree for execution to another court shall be construed as; empowering a court in any State to send a decree for execution to any court established 1 [* * *] by the authority of the Central Government [outside India] to which the State Government has by notification in the official Gazette declared this section to apply.]

PondicherrySection 45-A has been inserted after Sec. 45 of the Civil Procedure Code, 1908 by the Pondicherry [Extension Laws] Act 26 of 1968 with effect from 5th September, 1968, as under: 45-A. Execution of decree, etc. passed or made before the commencement of the Code in Pondicherry-Any judgment, decree or order passed or made before the commencement of this Code by any Civil Court in the Union territory of Pondicherry shall, for the purpose of execution, be deemed to have been passed or made under this Code: Provided that nothing contained in this section shall be construed as extending the period of limitation to which any proceeding in respect of such judgment, decree or order may be subject."

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

46. Precepts :-

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

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree: Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

47. Questions to be determined by the Court executing decree :-

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

(2) 1 [* * *]

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

[Explanation 1. For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II. (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

Uttar PradeshIn Sec. 47 of the Principal Act, Expl. II as inserted by the U.P.Civil Laws (Reforms and Amendment) Act, 1954 (U.R Act 24 of 1954) shall be omitted.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

48. 48 :-

[]Section 48 omitted by Sec.28 of the Limitation Act, 1963(36 of 1963) (w.e.f. 1st January, 1964)

49. Transferee :-

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

50. Legal representative :-

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

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

51. Power of Court to enforce execution :-

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder order execution of the decree- (a) by delivery of any property specifically decreed; (b) by attachment and sale or by sale without attachment of any property; (c) by arrest and detention in prison (for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section); (d) by appointing a receiver; or (e) in such other matter as the nature of the relief granted may require: [Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor with the object or effect of obstructing or delaying the execution of the decree, - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court; or (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

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

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

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

Uttar Pradesh-Clause (bb) was added after Cl. (b) by U.R Act 24 of 1954 as under: " (bb) by transfer other than by attachment or without attachment of any property".

52. Enforcement of decree against legal representative :-

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

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

53. Liability of ancestral property :-

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

54. Partition of estate or separation of share :-

Where, the decree is for the partition of an undivided estate assessed to the payment of revenue to [the Government] or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

55. Arrest and detention :-

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(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situated, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the courts of such district to be detained: Provided, firstly, that for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise: Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found: Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

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

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

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

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

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

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

57. Subsistence allowance :-

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

58. Detention and release :-

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(1) Every person detained in the civil prison in execution of a decree shall be so detained,-
(a) where the decree is for the payment of a sum of money exceeding [1["five thousand rupees"], for a period not exceeding-three months and]

2(b) 3where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:";] Provided that he shall be released from such detention before the expiration of the 4[said period of detentiion]-

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

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

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

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance : Provided, also, that he shall not be released from such detention under Cl. (ii) or Cl.(iii), without the order of the Court.

5[(1-A) For the removal of doubts, it is hereby declared that no order for detention of the judgment- debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed 6 ["two thousand rupees"].]

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

[10003]Substituted for "one thousand rupees", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Inserted by Act 2 of 1951, Sec. 4.

[10004]Substituted for "where the decree is for the payment of a sum of money exceeding five hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:]", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

[10005]Substituted for "five hundred rupees", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

59. Relase on ground of illness :-

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

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

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

(a) by the State Government, on the ground of the existence of any Infectious or contagious disease, or

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

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

60. Property liable to attachment and sale in execution of decree :-

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills-of-exchange, hundis, promissory-notes. Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf: Provided that the following particulars shall not be liable to such attachment or sale, namely:

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

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

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to 1[an agriculturist or a labourer or a domestic servant];

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government 3[or of a local authority or of any other employer], or payable out of any service family pension fund 3[notified in the official Gazette] by [the Central Government or the State Government] in this behalf, and political pensions :

State Amendment Maharashtra In its application to State of Maharashtra in Sec. 60 after Cl. (g) the following Cl. (gg) shall be inserted as under : "(gg) in the Hyderabad areas of the State of Maharashtra, any pension granted or contained by the Central Government or the Government of the former State of Hyderabad or any other State Government, on account of past services or present infirmities or as a compassionate allowance, which is not covered by Cl. (g); "55(h) the wages of labourers and domestic servants whether payable in money or kind; 7[* * *] 6[(i) salary to extent of the 97["one thousand rupees"]and two-thirds of the remainder] 8[in execution of any decree other than a decree for maintenance]: 10[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.] 11[(1-a) one-third of the salary in execution of any decree for maintenance.] 1[(j) the pay and allowances of persons to whom Air Force Act, 1950, or Arms Act, 1950, or Navy Act, 1957 , applies;] (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act 2[1925] (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment; 3[K-a all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act is as not to be liable to attachment ; (k-b) all moneys payable under a policy of insurance

on the life of the judgment-debtor; 16[any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and (p) where the judgment-debtor is a person liable for the payment of land revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue. [Explanation I. The money payable in relation to the matters mentioned in Cls. (g), (h), (i), (i-a), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

4[5[Explanation II. In Cls. (i) and (i-a)] "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of Cl. (1), derived by a person from his employment whether on duty or on leave.]Ins. by the A.O., 1937. Explanation (III). In cl (1) "appropriate Government" means

(i) as respects any 1[person] in the service of the Central Government or any servant of 2[a Railway Administration] or of a cantonment authority or of the Port authority-of a major port, the Central Government;

(ii) 3[* * * *]

(iii) as respects any other 1[servant of the Government] or a servant of any other 2[* * *] or local authority, the State Government].

2[Explanation IV. For the purposes of this proviso, wages" includes bonus, and labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V. For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI. For the purposes of Expln. V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land (a) by his own labour, or (b) by the labour of any member of his family, or (c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both :]

Andhra Pradesh(a) In its application to the Andhra area of the State in Cl. (g) of the proviso to sub-section (1), after Inc words "stipends and gratuities allowed to the pensioners of the Government insert the words or of a local authority [vide Code of Civil Procedure (Andhra Area) Amendment Act (XXXIV) of 1950 with effect from 2nd January, 1951.] (b) In its application to Hyderabad area of the State in the proviso to sub-section (1)- (i) insert Cl. (gg) after Cl. (g): 26; (i i) after Cl. (k), the following clause shall be inserted, namely: "(kk) amounts payable under policies issued in pursuance of the Rules for the Andhra Pradesh Government Life Insurance and Provident Fund and the Hyderabad State Life Insurance and Provident Fund²⁷"; (i i i) after Expl. 2, insert the following Expl. 2-A: " (c) Explanation 2-A, as given above with the addition of the word, brackets and letters "Cl. (gg) or" after the words "under the provisions of" has been added (vide Andhra Pradesh Act of 1953). GujaratSame as Maharashtra. HaryanaSame as Punjab. Himachal PradeshIn Sec. 60, sub-section (1),- (i) at the end of Cl. (c), add the following words, namely : "or compensation paid for such houses and building (including compensation for the materials and the sites and the land referred to above) acquired for a public purpose;" and (i i) after Cl. (c), insert the following, namely: "(cc) compensation paid for agricultural lands belonging to agriculturists and acquired for a public purpose."²⁸KeralaIn the proviso to sub-section (1) of Sec. 60 of the Code of Civil Procedure, 1908, after Cl. (g), the following clause shall be inserted, namely: "(gg) all money payable to the beneficiaries under the family-benefit scheme for the employees of the Government of Kerala".²⁹MadrasIn sub-section (1) (g),after the words "pensioner of the Government" insert the words "or of a local authority".³⁰MaharashtraIn sub-section (1) of Sec. 60- (1) after Cl. (g) of the proviso, the following new clause shall be inserted, namely: "(gg) stipends and gratuities allowed to pensioners of a local authority"; (2) in Explanation I, after the brackets and letter " (g)", the brackets and letters "(gg)" shall be inserted. In its application to the Hyderabad area of the State of Bombay, see the amendment in Andhra Pradesh vide Hyderabad Act 11 of 1953 adapted by Bombay Adaptation of Laws Order, 1956 and Bombay A O. 1957.³¹(3) in its application to the Hyderabad area of the State of Bombay- (a) after Cl. (k), insert the following: "(kk) amounts payable under policies issued in pursuance of the rules for"; (4) after Explanation 2, insert the following: "Explanation 2-AWhere any sum payable to Government

servant is ex-empt from attachment under the provisions of Cl. (kk), such sum shall remain exempt from attachment notwithstanding the fact that owing to the death of the Government servant is payable to some other person." Hyderabad Act 11 of 1953 as adapted by Bom. (H) AL.O. 1956 and Bom. A. O. 1957. Amendments in (1) and (3) relate to Bombay area while those in (2) and (4) apply to whole State of Maharashtra. Mysore In its application to the State of Mysore except Bellary District, in the proviso to sub-section (1), add Cl. (pp) after Cl. (p), namely: 32 Punjab In its application to the State of Punjab including the Pepsu area thereof as it was immediately before the 1st November, 1956- (a) in sub-section (1), in the proviso- (i) in Cl. (c), for the words "occupied by him" the following words shall be deemed to be substituted, viz : "Not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, son, daughter, daughter-in-law, brother, sister or other dependents or left vacant for a period of a year or more"; (ii) after Cl. (c), the following clauses shall be deemed to be inserted, viz : "(cc) milch animals whether in milk or in calf, kids, animals used for the purposes of transport or draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure; (ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a Judgment-debtor other than an agriculturist and occupied by him: Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered;" (b) after sub-section (2), the following sub-sections shall be deemed to be inserted, viz "(3) Notwithstanding any other law for the time being in force an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void. (4) For the purposes of this section the word agriculturist shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land as defined in the Punjab Alienation of Land Act, 1900. (5) Every member of a tribe notified as agriculturist under the Punjab Alienation of Land Act, 1900, and every member of a scheduled caste shall be presumed to be an agriculturist until the contrary is proved. (6) No order for attachment shall be made unless the Court is satisfied that the property sought to be attached is not exempt from attachment or sale". 33 Rajasthan In the proviso to sub-section (1) of Sec. 60,- (i) in Cl. (b), after the word "agriculturist" add the words "his milch cattle and those likely to calve within two years; 34 (ii) after Cl. (k), add the following: "(kk) money payable under Life Insurance Certificates issued in pursuance of the Rajasthan Government Servants Insurance Rules, 1963;" (iii) after Explanation 3, add the following:

Tamil Nadu In its application to the State of Madras including the Kanyakumari District and the Shencottah Taluk of the Triunelveli District, and the added territories, the amendment made in Sec. 60 is the same as that of Kerala Code of Civil Procedure (Madras Amendment) Ad (34 of 1950), Sec. 2 and Madras Act 22 of 1957, Sec. 3 and Madras (A.T.) A.L.O. 1961.

Uttar Pradesh Insert the following Expl. 35(I-A) after Expl. 1: Union Territory (Chandigarh) 36 In its application to Union Territory of Chandigarh, amendments in the section are the same as in Punjab. 37

Union Territory (Pondicherry) In its application to Union Territory of Pondicherry amendment in the section is the same as in Tamil Nadu.

[10006] Substituted for " [four hundred rupees ", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Ins. by Act 66 of 1956, Sec. 6.

Subs. by Act 104 of 1976, Sec. 23, for Cl. (j) (w.e.f. 1st February, 1977).

Subs. by Act 9 of 1937, Sec. 2, for "1897".

Ins. by Act 104 of 1976, Sec. 23 (w.e.f. 1st February, 1977).

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words " one thousand rupees" (w.e.f. 1st February, 1977).

Subs. by Act I of 1926. Sec.3, for "so far as they relate to injunctions and interlocutory orders".

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

Subs by Act 2 of 1951. Sec.7, for "under that Act."

Subs. by Act 104 of 1976, Sec. 23 (w.e.f. 1st February, 1977).

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

61. Partial exemption of agricultural produce :-

The State Government 1 [* * *] may, by general or special order published in the official Gazette declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

62. Seizure of property in dwelling-house :-

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

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

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

63. Property attached in execution of decrees of several courts :-

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

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

64. Private alienation of property after attachment to be void :-

1(1)Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

2 (2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

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

Section 64 of this Act renumbered as sub-section (1) by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]" and after sub-section (1), sub-section (2) shall be inserted, in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

65. Purchasers title :-

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

66. Deleted :-

Deleted by the Benami Transactions (Prohibition) Act, 1988, Sec. 7 (w.e.f. 19th May, 1988)

67. Power for State Government to make rules as to sales of land in execution of decrees for payment of money :-

1[(1)] The State Government 2[* * * *] may, by notification in the official Gazette, make rules (or any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the State Government, to make it impossible to fix their value.

3[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the State Government may, by notification in the official Gazette, declare such rules to be in force, or any 4[* * * *] by a like notification, modify the same. Every notification issued in the exercise of the powers conferred by this sub- section shall set out the rules so continued or modified.]

5 [(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words" one thousand rupees" (w.e.f. 1st February, 1977).

68. Section 68 :-

[Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (6 of 1976), Section 7 .

69. Section 69 :-

[Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (6 of 1976), Section 7 .

70. Section 70 :-

[Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (6 of 1976), Section 7 .

71. Section 71 :-

[Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (6 of 1976), Section 7 .

72. Section 72 :-

[Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (6 of 1976), Section 7 .

73. Proceeds of execution sale to be rateably distributed among decree- holders :-

Where assets are held by a court and more persons than one have, before the receipt of such .assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons : Provided as follows:

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

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

(c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an encumbrancer thereon, the proceeds of sale shall be applied- first, in defraying the expenses of the sale; secondly, in discharging the amount due under the decree; thirdly, in discharging the interest and principal monies due on subsequent encumbrances (if any); and fourthly, rateably among the holders of decrees (or the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

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

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

74. Resistance to execution :-

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

PART 3 INCIDENTAL PROCEEDINGS

75. Power of Court to issue commissions :-

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

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

1 [(e) to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(g) to perform any ministerial act.]

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

76. Commission to another court :-

(1) A Commission for the examination of any person may be issued to any court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

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

77. Letter of request :-

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

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. 0., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

78. Commissions issued by foreign courts :-

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

(a) courts situate in any part of India to which the provisions of this Code do not extend; or

(b) courts established or continued by the authority of the Central Government outside India; or

(c) courts of any State or country outside India.]

PART 4 SUITS IN PARTICULAR CASES

79. Suits by or against Government :-

[In a suit by or against the Government the authority to be named as plaintiff or defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, 2 [the Union of India], and

(b) in the case of a suit by or against a State Government, the State.]

Inserted by Act 2 of 1951, Sec. 4.

80. Notice :-

1[(1)] 2[Save as otherwise provided in sub-section (2), no suit, 2[shall be instituted] against the Government (including the Government of the State, of Jammu and Kashmir] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been 4[delivered

to, or left at the office of-

(a) in the case of a suit against the Central Government, 3[except where it relates to a railway], a Secretary to that Government;

64[b)] in the case of suit against the Central Government where it relates to a railway, the General Manager of that railway:] 8[* * *]

5[(bb) in the case of suit against the Government of the State of Jammu and Kashmir the Chief Secretary to the Government or any other officer authorized by the government in this behalf.]

(c) in the case of a suit against 10[any other State Government], a Secretary to that Government of the Collector of the District; 11[*] 12[* * *] and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

13[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit: Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and relief claimed by the plaintiff had been substantially indicated.]

State Amendment Madhya Pradesh In Sec. 80 of the Principal Act,- (i) in sub-section (1), for the words, brackets and figures "sub-section (2)", the words brackets and figures" sub-section (2) or sub-section (4) "shall be substituted: (ii) after sub-section (3), the following sub-section shall be inserted namely: "(4) Where in a suit or proceeding referred to in rule 3-B, of Order I, the State is joinder as a defendant or non-applicant or where the court orders joinder of the State as defendant or non-applicant in exercise of powers under sub-rule (2) of rule 10 of Order I such suit or proceeding shall not be dismissed by reason of omission of the plaintiff or applicant to issue notice under sub-section (1)"¹⁴

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words" one thousand rupees" (w.e.f. 1st February, 1977).

Subs. by Act I of 1926. Sec.3, for "so far as they relate to injunctions and interiocutory orders".

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

81. Exemption from arrest and personal appearance :-

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

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

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

82. Execution of decree :-

1[(1) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).]

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

3[(3) The provisions of sub-sections (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award-

(a) is passed or made against 4 [the Union of India] or a State or a public officer in respect of any such act as aforesaid, whether by a court or by any other authority, and

(b) is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were as decree.]

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

83. When aliens may sue :-

Alien enemies residing in India with the permission of the Central Government, and alien friends may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such Court.

84. When foreign States may sue :-

A foreign State may sue in any competent court: Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers :-

(1) The Central Government may, at the request of the ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of

such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons, so appointed shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

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

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

86. Suits against foreign Rulers, Ambassadors and Envoys :-

(1) No 2[* * *] foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government: Provided that a person may, as a tenant of immoveable property, sue without such consent as aforesaid 3[a foreign State] from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits," the Court in which .1[the foreign State] may be sued, but it shall not be given, unless it appears to the Central Government that 4[the foreign State]-

(a) has instituted a suit in the Court against the person desiring to sue 2[it], or

(b) by 6[itself] or another, trades within the local limits of the jurisdiction of the Court, or

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

(d) has expressly or impliedly waived the privilege accorded to 3[it] by this section.

8[(3) Except with the consent of the Central Government, certified in writing by a Secretary to the Government, no decree shall be executed against the property of any foreign State.]

(4) The preceding provisions of this section shall apply in relation to-

4[(a) any Ruler of a foreign State;]

[(aa)] any ambassador or envoy of a foreign State;

10(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff 11[of the foreign State or the staff or retinue of the Ambassador] or Envoy of a foreign State or the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf, 12[as they apply in relation to a foreign State.)

13 [(5) The following persons shall not be arrested under this Code, namely:

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.]

Ins. by Act 2 of 1951. sec.5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words" one thousand rupees" (w.e.f. 1st February, 1977).

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

87. Style of foreign Rulers as parties to suit :-

The Ruler of a foreign State may sue, and shall be sued, in the name of his State: Provided that in giving the consent referred to in Section 86 , the Central Government may direct that the Ruler may be sued in the name of an agent or in an other name.

87A. Definition Of "Foreign State" And "Ruler :-

"

(1) In this Part,-

(a) "foreign State" means any State outside India which has been recognized by the Central Government; and

(b) "Ruler" in relation to a foreign State, means, the person who is for the time being recognized by the Central Government to be the head of that State.

(2) Every Court shall take judicial notice of that fact-

(a) that a State has not been recognized by the Central Government;

(b) that a person has or has not been recognized by the Central Government to be the head of a State.

87B. Application Of Secs. 85 And 86 To Rulers Of Former Indian States :-

1[(1) In the case of any suit by or against the Ruler or any former Indian State which is based wholly or in part upon a cause of action which arose before the commencement of the Constitution or any proceeding arising out of such suit, the provision of Section 58 and sub-sections (1) and (3) of Section 86 shall apply in relation to such Ruler as they apply in relation to the ruler of a foreign State.)

(2) In this section,-

(a) "former Indian State" means any such Indian State as the Central Government may, by notification in the official Gazette, specify for the purposes of this section ; 2[* * *]

3 [(b) "commencement of the Constitution" means the 26th day of January, 1950; and

(c) "Ruler", in relation to a former Indian State, has the same meaning as in Art. 363 of the Constitution.]

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

88. Where interpleader suit may be instituted :-

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

PART 5 SPECIAL PROCEEDINGS

89. Settlement of disputes outside the Court :-

. 1

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation,
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

[10007]THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

90. Power to state a case for opinion of Court :-

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

91. Public nuisances and other wrongful acts affecting the public :-

[2 [(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted- (a) by the Advocate-General, or (b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

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

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

92. Public charities1 :-

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

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

2[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries;

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

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

(g) setting a scheme; or

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

(2) Save as provided by Religious Endowments Act, 1863[or by any corresponding law in force in 4[the territories which immediately before the 1st November, 1956, were comprised in Part B States]] no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

5[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:

(a) where the original purposes of the trust, in whole or in part-

(i) have been, as far as may be, fulfilled;

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

Utter Pradesh- In sub-section (1), after Cl. (b) the following clause shall be added, namely "(bb) for delivery of possession of any trust property against a person who has ceased to be trustee or has been removed."

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force; and (2) The first day of May, 1977 as the

date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

Inserted by Act 2 of 1951, Sec. 4.

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Ins. by Act 2 of 1951. sec.5.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. 0., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

93. Exercise of powers of Advocate-General outside Presidency- towns. :-

The powers conferred by Section 91 and 92 on the Advocate-General may, outside the Presidency-towns be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in his behalf.

PART 6 SUPPLEMENTAL PROCEEDINGS

94. Supplemental proceedings :-

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

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

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

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

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

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

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

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

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

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same, the defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, 1["not exceeding fifty thousand rupees"], as it deems reasonable compensation to the defendant for the2 [expense or injury (including injury to reputation) caused to him]: Provided that a court shall not award, under this section, an amount exceeding the

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

[10014]Substituted for "not exceeding one thousand rupees", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

PART 7 APPEALS

96. Appeal from original decree :-

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

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

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

1[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject-matter of the original suit does not exceed 2 ["ten thousand rupees"].

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

[10008]Substituted for "three thousand rupees", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

97. Appeal from final decree where no appeal from preliminary decree :-

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

98. Decision where appeal heard by two or more Judges :-

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

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed: Provided that where the Bench hearing the appeal is 1[composed of two or other even number of Judges belonging to a court consisting of more Judges than those constituting the Bench] and the Judges, composing the Bench differ in opinion on a

2 [(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court.]

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

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

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder 1[or non- joinder or parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court: 2 [Provided that nothing in this section shall apply to non-joinder of a necessary party.]

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the

date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

99A. No Order Under Sec. 47 To Be Reversed Or Modified Unless Decision Of The Case Is Prejudicially Affected :-

[Without prejudice to the generality of the provisions of Section 99 , no order under Section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

100. Second appeal :-

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

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

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]

100A. No Further Appeal In Certain Cases :-

1 Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

Subs. by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]", in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

101. Second appeal on no other grounds :-

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

102. No Second Appeal in Certain Cases :-

1 No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty- five thousand rupees."

Subs. by "THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002 [22 of 2002]", in published in the Gazette of India, Extraordinary, Part II, Section No. 25 I, dated May 24, 2002.

103. Power of High Court to determine issue of fact :-

[In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100 .]

104. Orders from which appeal lies :-

- (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders: 1[* * *]
2[(ff) an order under Section 35A ;]
3[(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92 , as the case may be;]
(g) an order under Section 95 ;
(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
(i) any order made under rules from which an appeal is expressly allowed by rules :
4 [Provided that no appeal shall lie against any order specified in Cl. (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]
(2) No appeal shall lie from any order passed in appeal under this section.

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Subs. by C.P.C. (Amendment) Act 104 of 1976, Sec. 14, for the words" one thousand rupees"
(w.e.f. 1st February, 1977).

105. Other orders :-

- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.
(2) Notwithstanding anything contained in sub-section (1) where any party aggrieved by an order of remand 1 [* * *] from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

106. What Courts to hear appeals. :-

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

107. Powers of Appellate Court :-

- (1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power-
- (a) to determine a case finally;
 - (b) to remand a case;
 - (c) to frame issues and refer them for trial;
 - (d) to take additional evidence or to require such evidence to be taken.
- (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders :-

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

(a) from appellate decrees; and

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

109. When appeals lie to the Supreme Court :-

[Subject to the provisions in Chapter IV or Part V of the Constitution and such rules as may from time to time, be made by the Supreme Court regarding appeals from the courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final-order in a civil proceeding of a High Court, if the High Court certifies- (i) that the case involves a substantial question of law of general importance; and (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

110. 110 :-

[] Section 110 omitted by ibid. Sec. 3

111. Bar of certain appeals :-

[Omitted by the A.O. 1950].

111A. Appeal To Federal Court :-

[Omitted by the Federal Court Act, 94 (21 of 1941), Section 2]

112. Savings :-

1 [(1) Nothing contained in this Code shall be deemed-

(a) to affect the powers of the Supreme Court under Art. 136 or any other provision of the Constitution, or

(b) to interfere with any rules made by the Supreme court, and for the time being in force, for the presentation of appeals to that Court or their conduct before that Court.]

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

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

PART 8 REFERENCE, REVIEW AND REVISION

113. Reference to High Court :-

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit: 1[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance, Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.]

Explanation:-In this Section "Regulation" means any regulation of the Bengal Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State

Andhra Pradesh- In the explanation after the words "Madras Code", the words "or any regulation of the Madras Code in force in the State of Andhra as it existed immediately before the 1st November, 1956" were inserted by the Andhra Adaptation of Laws (Second Amendment) Order, 1954, and the Andhra Pradesh Adaptation of Laws (Amendment) Order,

1957.

Tamil Nadu-In the explanation after the words "Madras Code" insert the words or any Regulation of the Madras Code in force in the territories specified in the Second Schedule to the Andhra Pradesh and Madras (Alteration of boundaries Act, 1959 (LVI of 1959)".2

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

114. Review :-

Subject as aforesaid, any person considering himself aggrieved,-

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

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

(c) by a decision on a reference from a court of small causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. Revision :-

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

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

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

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High court may make such order in the case as it thinks fit: 63["Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.";]

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of Justice or cause irreparable injury to the party against whom it was made.]

4[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation. In this section, the expression any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.]

5(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Madhya Pradesh For Sec. 115 of the principal Act, the following section shall be substituted, namely: "115. Revision The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears- (a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested; or (c) to have acted in the exercise of the jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit: Provided that the High Court shall not, under this section, vary or reverse any order made or any order deciding one issue, in the course of a suit or other proceeding, except where- (a) the order, if it had been made in favour of the party applying for the revision, would have finally disposed of the suit or proceeding; or (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to party against whom it was made. (2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Orissa In the Code of Civil Procedure, V of 1908, for Sec. 115, the following section shall be substituted, namely: "115. Revision The High Court, in cases arising out of original suits or other proceedings of the value exceeding one lakh rupees, and the District Court, in any other

case including a case arising out of an original suit or other proceedings instituted before the commencement of Code of Civil Procedure (Orissa Amendment) Act, 1991, may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears- (a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit: Provided that in respect of cases arising out of original suits or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section : Provided further that the High Court or the District Court shall not, under this section, vary or reverse any order, including an order deciding an issue, made in the course of a suit or other proceedings; except where- (i) the order, if so varied or reversed, would finally dispose of the suit or other proceedings; or (ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. Explanation In this section, the expression "any case which has been decided" included any order deciding an issue, in the course of a suit or other proceeding."6Uttar Pradesh In its application to State of Uttar Pradesh for Sec. 115 the following Sec. 115 shall be substituted as under: "115. revision The High Court, in cases arising out of original suits or other proceedings7[of the value exceeding one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may from time to time fix, by notification published in the official Gazette including such suits or other proceedings instituted before the date of commencement of the Uttar Pradesh Civil Laws (Amendment) Act, 1991, or as the case may be the date of commencement of such notifications,] and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any Court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears- (a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit: Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section: Provided further that the High Court or the District Court shall not under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where,- (i) the order, if so varied or reversed, would finally dispose of the suit or other proceeding, or (ii) the order. If allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. 8[Provided also that where a proceeding of nature in which the District Court may call for the record and pass orders under this section as pending immediately before the relevant date of commencement referred to above in the High Court, such Court shall proceed to dispose of the same.]

West Bengal In its application to State of West Bengal after Sec. 115 the following section shall be inserted : "115-A. District Courts powers of revision (1) A District Court may exercise all or any of the powers which may be exercised by the High Court under Sec. 115. (2) Where any proceeding by way of revision is commenced before a District Court in pursuance of the provisions of sub-section (1), the provisions of Sec.115 shall, so far as may be, apply to such proceeding and references in the said section to the High Court shall be construed as references to the District Court. (3) Where any proceeding for revision is commenced before the District Court, the decision of the District Court on such proceeding shall be final and no further proceeding by way of revision shall be entertained by the High Court or any other Court. (4) If any application for revision has been made by any party either to the High Court under Sec. 115 or to the District Court under this section, no further application by the same party shall be entertained by either of them. (5) A Court of an Additional Judge shall have and may exercise all the powers of a District Court under this section in respect of any proceeding which may be transferred to it by or under any general or special order of the District Court.9

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

[10011]Substituted for " [Provided that the High Court shall not, under the section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-", vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Ins. by Act 2 of 1951. sec.5.

[10012]Inserted vide THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

PART 9 SPECIAL PROVISION RELATING TO THE 8HIGH COURTS 9 NOT BEING THE COURT OF A JUDICIAL COMMISSIONER

116. Part to apply only to certain High Courts :-

This part applies only to High Courts [not being the Court of a Judicial Commissioner].

117. Application of Code to High Courts :-

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

118. Execution of decree before ascertainment of costs :-

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

119. Unauthorised persons not to address Court :-

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

120. Provisions not applicable to High Court in original civil jurisdiction :-

(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdction, namely, Section 16 , 17 and 20 . 1 [* * *]

Subs by Act 2 fo 1951. Sec.7, for "under that Act."

PART 10 RULES

121. Effect of rules in First Schedule :-

The rules in the First Schedule shall have effect as if enacted in the body of this Code untill

annulled or altered in accordance with the provisions of this Part.

122. Power of certain High Courts to make rules :-

[High Court, 1[not being the Court of a Judicial Commissioner], 2 [I* * * *] may from time to time alter previous publication, make rules relating their own procedure and the procedure of the civil courts subject to their superintendency, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

123. Constitution of Rule Committees in certain States :-

(1) A committee, to be called the Rule Committee, shall be constituted at [the town which is the usual place of sitting of each of each of the High Courts [* * *] referred to in Section 122 .]

(2) Each such committee shall consist of the following persons, namely:

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as District Judge or 1[* * *] a Divisional Judge for three years.

2[(b) two legal practitioners enrolled in that Court],

[(c) a Judge of Civil Court subordinate to the High Court 3[* * *] 4[* * * *]

(3) The members of each such Committee shall be appointed by the 5[High Court] who shall also nominate one of their members to be President. 6[* * *]

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

(5) There shall be a secretary to each such Committee who shall be appointed by the 7[High Court] and shall receive such remuneration as may be provided in this behalf 8 [by the State Government].

Assam and Nagaland By Assam Act 8 of 1953; in sub-section (2), for Cl. (a), the following Cl. (a) was substituted, namely :- "(a) three Judges of the High Court established at the town at which such Committee is constituted, provided that the Chief Justice may appoint only two Judges of the High Court on the Committee if the number of Judges of the High Court does not exceed three".

Subs. by Act I of 1926. Sec.3, for "so far as they relate to injunctions and interlocutory orders".

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

Subs by Act 2 of 1951. Sec.7, for "under that Act."

Subs. by Act 104 of 1976, Sec. 23 (w.e.f. 1st February, 1977).

Ins. by Act 66 of 1956, Sec. 6.

Ins. by Act 2 of 1951. sec.5.

Subs. by Act 104 of 1976, Sec. 23, for Cl. (j) (w.e.f. 1st February, 1977).

124. Committee to report to High Court :-

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

125. Power of other High Courts to make rules :-

High Courts, other than the courts specified in Section 122 , may exercise the powers conferred by that section in such manner and subject to such conditions 1[as 2 [the State Government] may determine] : Provided that any such High Court may, after previous publication make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

126. Rules to be subject to approval :-

[Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the State in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any State, to the previous approval of the 2 [Central Government.]
Inserted by Act 2 of 1951, Sec. 4.

127. Publication of rules :-

Rules so made and 1[approved shall be published in the 2 [official Gazette], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court, which made them, as if they had been contained in the First Schedule.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

128. Matters for which rules may provide :-

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

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

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

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

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

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

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

(f) summary procedure-

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising- on a contract, express or implied, or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or on a trust; or

- (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such payment;
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil courts.

129. Power of High Courts to make rules as to their original civil procedure :-

Notwithstanding anything in this Code, any High Court [not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent 1[or order] 2 [or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

130. Power of other High Courts to make rules as to matter other than procedure :-

[A High Court 2[not being a High Court to which Section 129 applies] may, with the previous approval of the State Government, make with respect to any matter other than procedure any rule which a High Court 3[for a [* * *] State) might under 4 [Art. 227 of the Constitution], make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency town.]

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

Ins. by Act 2 of 1951. sec.5.

Subs. by Act I of 1926. Sec.3, for "so far as they relate to injunctions and interiocutory orders".

131. Publication of rules :-

Rules made in accordance with Section 129 or Se 130 shall be published in the 1 [official Gazette] and shall from the date of publication or from such other dates as may be specified have the force of law.

Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "a Part B State".

PART 11 MISCELLANEOUS

132. Exemption of certain women from personal appearance :-

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

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

133. Exemption of other persons :-

1 [(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:

- (i) The President of India;

- (ii) the Vice-President of India;
- (iii) the Speaker of the House of the People;
- (iv) the Ministers of the Union;
- (v) the Judges of the Supreme Court;
- (vi) the Governors of States and the Administrators of Union territories;
- (vii) the Speakers of the State Legislative Assemblies ;
- (viii) the Chairmen of the State Legislative Councils;
- (ix) the Ministers of States;
- (x) the Judges of the High Court; and
- (xi) the persons to whom Section 87B applies]

2[* * * *]

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

Subs by Act 2 fo 1951. Sec.7, for "under that Act."

Subs. by Act 104 of 1976, Sec. 23 (w.e.f. 1st February, 1977).

Ins. by Act 66 of 1956, Sec. 6.

134. Arrest other than in execution of decree :-

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

135. Exemption from arrest under civil process :-

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

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

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

135A. Exemption Of Member Of Legislative Bodice From Arrest And Detention Under Civil Process :-

1 [(1) No person shall be liable to arrest or detention in prison under civil process-

(a) if he is a member of-

(i) cither House of Parliament, or

(ii) the Legislative Assembly or Legislative Council of a State, or

(iii) a Legislative Assembly of a Union Territory, during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of-

(i) either House of Parliament, or

(iii) the Legislative Assembly of a State or Union Territory, or

(iii) the Legislative Council of a State, during the continuance of any meeting of such committee;

(c) if he is a member of-

(i) cither House of Parliament, or

(iii) a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses or Parliament of Houses of the State Legislature, as the case may be; and during the forty days before and after such meeting, sitting or conference.

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

For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 179 ; and for Report of the Select Committee, see Gazette of India, 1908, Pt. V, p. 35, This Act has been amended in its application to- Assam by Assam Acts 2 of 1941 and 8 of 1953 ; Kerala by Kerala Act 13 of 1957 , Madras by Madras Act 34 of 1950 and Madras A. O., 1954 , Mysore by Mysore Act 14 of 1955, Panjab by Punjab Act 7 of 1934 ; Rajasthan by Rajasthan Act 19 of 1958 and U.P. Acts 4 of 1925, 35 of 1948 and 24 of 1954.

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

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

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

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

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, [* * *] the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras 1 [or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

137. Language of subordinate courts :-

(1) The language which on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the State Government otherwise directs.

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

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

1Rajasthan-In Sec. 137 of the Code of Civil Procedure, 1908 (Central Act V of 1908), in its application to the State of Rajasthan, for sub-section (3), the following sub-section shall be substituted, namely: (3) Wherever this Code requires or allows anything other than the recording of evidence to be done in writing in any such court, such writing shall be in Hindi in Devnagri Script with the international form of Indian numerals: Provided that the Court may in its discretion accept such writing in English on the undertaking of the party filing such writing, to file a Hindi translation of the same, within such time as may be granted by the Court and the opposite party shall have a right to have a copy of such writing in Hindi.2Uttar PradeshAn Sec. 137 of the Code of Civil Procedure, 1908, in sub-section (3), the following proviso thereto shall be inserted namely: Provided that with effect from such date as the State Government in consultation with the High Court may by notification in the Gazette appoint, the language of every judgment, decree or order passed or made by such courts or classes of courts subordinate to the High Court and in such classes of cases as may be specified Whall only be Hindi in Devnagri script with the international form of Indian numerals.3 Substituted by Act. 2 of 1951, Sec. 4, for the original clause. Inserted by Act 2 of 1951, Sec. 4.

138. Power of High Court to require evidence to be recorded in English :-

[The 2[High Court) may, by notification in the official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taten down by him in the English language and in manner prescribed. S. 138

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

Assam and Nagaland--For Sec. 138 the following section shall be substituted:- 138. The High Court may, by notification in the official Gazette, direct with respect of any Judge specified in the notification, or falling under a description set forth therein, that in cases in which an appeal is allowed, he shall take down, or cause to be taken down the evidence in the {English language and in the form and manner prescribed.3

G.S.R. 15 (E)In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

139. Oath and affidavit by whom to be administered :-

In the case of any affidavit under this Code-_____

(a) Any Court or Magistrate, or 1(aa) any notary appointed under Notaries Act, 1952 , or

(b) an officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the State Government may administer the oath to the deponent.

Uttar PradeshIn its application to the State of Uttar Pradesh for CIs. (b) and (c) the following shall be substituted : (b) any person appointed in this behalf by a High Court or by a District Court; or (c) any person appointed in this behalf by such other court as the State Government may, by general or speciall order, empower in this behalf 2 .

Inserted by Act 2 of 1951, Sec. 4.

Subs. by Act 4 of 1941. Sec.2, and Sch. III for " under that Act".

140. Assessors in causes of salvage, etc :-

(1) In any admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon

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

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

141. Miscellaneous proceedings :-

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

142. Orders and notices to be in writing :-

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

143. Postage :-

Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made: Provided that the State Government [* * *] may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof. G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

144. Application for restitution :-

(1) Where and in so far as a decree 1[or an order] is 2 [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order), or [such part thereof as has been varied, reversed, set aside or modified]; and for this purpose, the Court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation. For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

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

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

Uttar Pradesh By the U.P. Act No. 24 of 1954 for sub-section (1) of Sec. 144, the following sub-section (1) has been substituted : "(1) Where and in so far as a decree or an order is varied or reversed in appeal, revision or otherwise, the Court of first instance shall, as the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed, and,

for this purpose, the Court may make any orders including orders for the refund of costs and to" the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal." N.B. The amendment of Sec. 144 by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) has been made on the lines of the amendment carried out in U.P. by the U.R Act No. 24 of 1954. Substituted by Act. 2 of 1951, Sec. 4, for the original clause. Inserted by Act 2 of 1951, Sec. 4.

145. Enforcement of liability of surety :-

. Where any person 1[has furnished security or given a guarantee]-

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

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

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

2 [the decree or order may be executed in the manner herein provided for the execution of decrees, namely :

(i) if he has rendered himself personally liable, against him to that extent;

(ii) if he has furnished any property as security, by sale of such property to the extent of the security;

(iii) if the case falls both under Cls. (i) and (ii), then to the extent specified in those clauses;

and such person shall be deemed to be a party within the meaning of Section 47]: Provided that such notice as the Court .in each case thinks sufficient has been given to the surety.

Uttar Pradesh For the existing Sec. 145 substitute the following : "145. Where any person has become liable as surety or given any property as security- (a) for the performance of any decree or any part thereof; or (b) for the restitution of any property taken in execution of any decree; or (c) for the payment of any money, or for fulfilment of any condition imposed on any person under an order of the Court in any suit or in any proceeding consequent thereon, the decree or order may be executed in the manner herein provided for the execution of decrees- (i) if he has rendered himself personally liable, against him to that extent; and (ii) if he has given any property as security, by sale of such property to the extent of the security; and such person shall for the purposes of appeal, be deemed to be a party within the meaning of Sec. 47 : Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

G.S.R. 15 (E) In exercise of the powers conferred by sub-section (2) of Sec. 1 of the Code of Civil Procedure (Amendment) Act, 1976 (10 of 1976), the Central Government hereby appoints: (1) The first day of February, 1977 as the date on which the provision of the said Act (except Secs. 12, 13 and 50) shall come into force ; and (2) The first day of May, 1977 as the date on which Secs. 12 and 50 of the said Act shall come into force. Published in the Gazette of India, Extraordinary, Pt. II, Sec. 3 (i), dated 14th January, 1977.

Substituted by Act. 2 of 1951, Sec. 4, for the original clause.

146. Proceedings by or against representatives :-

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

147. Consent or agreement by persons under disability :-

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

148. Enlargement of time :-

. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code the Court may, in its discretion from time to time enlarge such period, 1 ["not exceeding thirty days in total,"] even though the period originally fixed or granted may have expired.

[10013]THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 (46 Of 1999), Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

148A. Right To Lodge A Caveat :-

(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted or about to be instituted, in a court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been or is expected to be, made under sub- section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveators expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.]

149. Power to make up deficiency of court-fees :-

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

150. Transfer of business :-

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

151. Saving of Inherent powers of Court :-

. Nothing In this Code shall be deemed to limit or otherwise affect the Inherent power of the Court to make such orders as may be necessary for the ends of Justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders :-

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

153. General power to amend :-

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

153A. Power To Amend Decree Or Order Where Appeal Is Summarily Dismissed :-

Where an appellate court dismisses an appeal under rule 11 of Order XXI, the power of the Court to amend, under Section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.)

153B. Place Of Trial To Be Deemed To Be Open Court :-

The place in which any civil court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them: Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.]

154. Saving of present right of appeal :-

(Repealed by the Repealing and amending Act, 1952 (48 of 1952), Section 2 and Sch. I.]

155. Amendment of certain Acts :-

. . [Repealed by Sec. 2 and Sch. I, the Repealing and amending Act, 1952.]

156. Repeals :-

. . [Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), Sec. 3 and Sch. II.)

157. Continuance of orders under repealed enactments :-

. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act 8 of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. Reference to the Code of Civil Procedure and other repealed enactments :-

. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any chapter or section of Act 8 of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or its corresponding part, order, section or rule.

ORDER 1 :- PARTIES OF SUITS :-

1. Who may be joined as plaintiffs :- . .

All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.]

1. Subs, by Act No. 104 of 1976, sec. 52 for the former rule (w.e.f. 1-2-1977).

2. Power of Court to order separate trial :- .

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

3. Who may be joined as defendants :- .

All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.]

1. Subs, by Act No. 104 of 1976 for the former rule (w.e.f. 1-2-1977).

STATE AMENDMENT

Bihar.-In its application to the Scheduled Areas in the State of Bihar, in Order I, Rule 3, following proviso added:-

"Provided that in suits for declaration of title or for possession relating to immovable properties of a member of the Scheduled Tribes as specified in Part HI to the Schedule to the Constitution (Scheduled Tribes) Order, 1950, the Deputy Commissioner concerned shall also be joined as a defendant."

[Vide Bihar Scheduled Areas Regulation, 1969 (1 of 1969), sec. 3 and Sch. (w.e.f. 8-2-1969).]

3A. Power to order separate trials where joinder of defendants may embarrass or delay trial :-

.

Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

STATE AMENDMENT

Madhya Pradesh.-In Order I of First Schedule to the Principal Act, after Rule 3-A, the following rule inserted:-

"3-B. Conditions for entertainment of suits.

(1) No suit or proceeding for-

(a) declaration of title or any right over any agricultural land, with or without any other relief;
or

(b) specific performance of any contract for transfer of any agricultural land, with or without any other relief, shall be entertained by any Court, unless the plaintiff or applicant, as the case may be, knowing or having reason to believe that a return under section 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) in relation to land aforesaid has been or is required to be filed by him or by any other person before competent authority appointed under that Act, has impleaded the State of Madhya Pradesh as one of the defendants or non-applicants, as the case may be, to such suit or proceeding.

(2) No Court shall proceed with pending suit or proceeding referred to in sub-rule (1) unless, as soon as may be, the State Government is so impleaded as a defendant or non-applicant.

Explanation.-The expression "suit or proceeding" used in this sub-rule shall include appeal, reference or revision, but shall not include any proceeding for or connected with execution of any decree or final order passed in such suit or proceeding".

[Vide M.P. Act 29 of 1984, sec. 5 (w.e.f. 14-8-1984).]

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

Judgment may be given without any amendment-

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

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

5. Defendant need not be interested in all the relief claimed :- .

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

6. Joinder of parties liable on same contract :- .

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

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

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

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

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

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

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiffs expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.]

1. Subs, by Act No. 104 of 1976, sec. 52, for rule 8 (w.e.f. 1-2-1977).

8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings :- .

While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take part in the proceedings of the suit as the Court may specify.]

1. Ins. by Act No. 104 of 1976, sec. 52 (w.e.f. 1-2-1977).

9. Misjoinder and nonjoinder :- .

No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court

may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

1[Provided that nothing in this rule shall apply to nonjoinder of a necessary party.]

1. Ins. by Act No. 104 of 1976, sec. 52 (w.e.f. 1-2-1977).

10. Suit in name of wrong plaintiff :- .

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is

necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.-

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

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

(4) Where defendant added, plaint to be amended-

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

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

HIGH COURT AMENDMENT

Karnataka:-

In Order I, in rule 10, after sub-rule (5), insert the following sub-rule, namely:-

"6. The Court may on the application of any party and after notice to the other parties affected by the application and on such terms and conditions as it may impose, transpose a plaintiff to the position of a defendant or subject to the provisions of the sub-rule (3), a defendant to the position of a plaintiff." (w.e.f. 30-3-1967)

10A. Power of Court to request any pleader to address it :- .

The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.]

1. Ins. by Act No. 104 of 1976, sec. 52 (w.e.f. 1-2-1977).

11. Conduct of suit The Court may give the conduct of 1[a suit] to such persons as it deems proper :- . .

1. Subs, by Act No. 104 of 1976, sec. 52 for "the suit" (w.e.f. 1-2-1977).

12. Appearance of one of several plaintiffs or defendants for others :- .

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

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

13. Objections as to non-joinder or misjoinder :- .

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

ORDER 2 :- FRAME OF SUIT (THE FIRST SCHEDULE) :-

1. Frame of suit :- .

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

2. Suit to include the whole claim :- .

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

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

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

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

Illustration

A lets a house to B at a yearly rent of Rs. 1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

STATE AMENDMENT

Uttar Pradesh.-In Order II, Rule 2.-

(a) the existing Explanation shall be numbered as Explanation I, and after Explanation I, as so numbered the following Explanation II shall be inserted, namely:-

"Explanation II.-For the purposes of this rule a claim for ejection of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action":

(b) for the illustration, the following illustration shall be substituted, namely:-

"Illustration.-A lets immovable property to B at a yearly rent. The rent for the whole of the years 1905,1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. A may afterwards sue B for ejection but not for the rent due for 1905 or 1907".

[Vide U.P. Civil Laws (Reforms and Amendment) Act, 1956 (Act 57 of 1976), sec. 4 (w.e.f. 1-1-1977)].

3. Joinder of causes of action :- .

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

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

4. Only certain claims to be joined for recovery of immovable property :- .

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

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

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

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

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

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

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

6. Power of Court to separate trials :- .

Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

1. Subs, by Act No. 104 of 1976, sec. 53 for rule 6 (w.e.f. 1-2-1977).

7. Objections as to misjoinder :- .

All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection to so taken shall be deemed to have been waived.

HIGH COURT AMENDMENTS

Delhi:-

"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint (by striking out the remaining causes of action).

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit (amended plaints for the remaining causes of action) and for making up the court-fees that may be necessary. Should the plaintiff not comply with the Courts order, the Court shall proceed as provided in Rule 18 of Order VI and as required by the provisions of the Court-fees Act." (w.e.f. 9-6-1959).

Himachal Pradesh:-

"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint (by striking out the remaining causes of action).

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit (amended plaints for the remaining causes of action) and for making up the court-fees that may be necessary. Should the plaintiff not comply with the Courts order, the Court shall proceed as provided in Rule 18 of Order VI and as required by the provisions of the Court-fees Act." (w.e.f. 9-6-1959).

Kerala:-

In Order II, after rule 7, insert the following sub-rule, namely:-

"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint suitably.

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit (the amended plaints for the remaining causes of action) and for making up the court-fees that may be necessary. Should the plaintiff not comply with the Courts order, the Court shall proceed as provided in Rule 18 of Order VI and as required by the provisions of the Court-fees Act." (w.e.f. 9-6-1959).

Punjab:-

"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint (by striking out the remaining causes of action).

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit (amended plaints for the remaining causes of action) and for making up the court-fees that may be necessary. Should the plaintiff not comply with the Courts order, the Court shall proceed as provided in Rule 18 of Order VI and as required by the provisions of the Court-fees Act." (w.e.f. 9-6-1959).

[Vide Notification No. 33/SRO, dated 12th May, 1909.]

Rajasthan:-

"8. (1) Where such objection, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint (by striking out the remaining causes of action).

(2) When the plaintiff has selected the cause of action with which he will proceed, the Court may on his application pass an order giving him time within which to submit (amended plaints for the remaining causes of action) and for making up the court-fees that may be necessary. Should the plaintiff not comply with the Courts order, the Court shall proceed as provided in Rule 18 of Order VI and as required by the provisions of the Court-fees Act." (w.e.f. 14-8-1954).

ORDER 3 :- RECOGNIZED AGENTS AND PLEADERS (THE FIRST SCHEDULE) :-

1. Appearances, etc., may be in person, by recognized agent or by pleader :- .

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

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

2. Recognized agent :- .

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

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

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

HIGH COURT AMENDMENTS

Bombay:-

In Order III, in rule 2, for clause (a), substitute the following clause, namely:-

"(a) Persons holding on behalf of such parties either (i) a general power of attorney, or (ii) in the case of proceedings in the High Court of Bombay an Attorney of such High Court or an Advocate, and in the case of proceedings in any district, any such Attorney or any Advocate or a Pleader to whom a sanad for that district has been issued, holding the requisite special power of attorney from parties not resident within the local limit of the jurisdiction of the Court within which limits the appearance, application or Act made or done, authorising them or him to make and do such appearances, applications and Acts on behalf of such parties."

[Vide Notification No. 3236, dated 27-11-1936.]

Gujarat:-

In Order III, in rule 2, for clause (a), substitute the following clause, namely:-

"(a) Persons holding on behalf of such parties either (i) a general power of attorney, or (ii) in the case of proceedings in the High Court of Gujarat an Advocate, and in the case of proceedings in any district, an Advocate or a Pleader to whom a sanad for that district has been issued, holding the requisite special power of attorney from parties not resident within the local limit of the jurisdiction of the Court within which limits the appearance, application or Act made or done, authorising them or him to make and do such appearances, applications and Acts on behalf of such parties." (w.e.f. 17-3-1961)

Madhya Pradesh:-

In Order III, in rule 2, for clause (a), substitute the following clause, namely:-

"(a) Persons holding on behalf of such parties either (i) a general power of attorney, or (ii) in the case of proceedings in the High Court of Madhya Pradesh an Advocate of that High Court, and in the case of proceedings in any district, any Advocate or a Pleader to whom a sanad for that district has been issued, holding the requisite special power of attorney from parties not resident within the local limit of the jurisdiction of the Court within which limits the appearance, application or Act made or done, authorising them or him to make and do such appearances, applications and Acts on behalf of such parties."(w.e.f. 16-9-1960)

3. Service of process on recognized agent :- .

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

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

HIGH COURT AMENDMENTS

Punjab, Haryana and Chandigarh:-

In Order III, in rule 3, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Process served on the recognised agent or on an Advocate of the party shall be effectual as if the same had been served on the party in person unless the Court otherwise directs."

[Vide G.S.R. 539/CA5/1908/74, dated 11-4-1975.]

4. Appointment of pleader :- .

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

(2) Every such appointment shall be 1[¹filed in Court and shall, for the purposes of sub-rule (1), be] deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

2[Explanation.-For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,-

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]

3[(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1)].

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

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

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

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

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

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order III, in rule 4, in sub-rule (2), in Explanation,-

(i) after clause (a), insert the following clause, namely:-

"(aa) a proceeding for revision of an order in the suit,"

[Vide Notification No. 714-IV H-36-A, dated 9th December, 1980 (w.e.f. 21-3-1981).]

(ii) after clause (d), insert the following clauses, namely:-

"(e) an application or proceedings for transfer under sections 22,24 and 25 of this Code.

(f) an application under rule 4 or rule 9 or rule 13 of Order IX of this code,

(g) an application under rule 4 of Order XXXVII of this Code,

(h) a reference arising from or out of suit,

(i) an application for execution of any decree or order in the suit,

(j) any application relating to or incidental to or arising from or out of any proceedings referred to in clauses (a) to (i) of this sub-rule (including an application for leave to appeal) to Supreme Court:

Provided that where the venue to the suit or the proceedings shifts from one Court (subordinate or otherwise) to another situate at a different station, the pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, Act or plead in the latter Court unless he files or has already filed a memorandum signed by him that he has instructions from his client to appear, act or plead in that Court."

[Vide Notification No. 439/vii-b-123, dated 8th August, 1994 (w.e.f. 22-10-1994).]

Andhra Pradesh.-

Same as in Madras.

Bombay.-

(1) In order III, in rule 4, for sub-rule (3), substitute the following sub-rule, namely:-

"(3) For the purposes of sub-rule (2) above, (i) an application or a proceeding of ; transfer under section 23, 24 or 25 of this Code, (ii) an application under rule 9 or rule 13 of Order IX of this Code, (iii) an application under rule 4 of Order 38 of this Code, (iv) an application for review of Judgment, (v) an application under section 152 of this Code, (vi) a reference arising from or out of the suit, (vii) an application for amendment of the decree or order or the record in the suit, (viii) an application for the execution of any decree or order in the suit, (ix) an application under section 144 of this Code, (x) any appeal (including an appeal under Letters Patent of the High Court) or revision or a reference arising from or out of the suit, (xi) any application relating to or incidental to or arising in or out of such appeal or revision or a

reference arising from or out of the suit (including an application for leave to appeal under Letters Patent of the High Court or for leave to appeal to the Supreme Court), (xii) any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings mentioned hereinbefore, or any appeal or revision arising from and out of any order passed in such application or proceedings, (xiii) any application or act for the purposes of obtaining copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned hereinbefore, (xiv) any application for the withdrawal or for obtaining the refund or payment of or out of moneys paid or deposit into the Court in connection with the suit or any of the proceedings mentioned hereinbefore, (including withdrawal, refund or payment of or out of the moneys deposited as security for costs or for covering the costs of the preparation, printing and transmission of the Transcript Record of the appeal to the Supreme Court), (xv) any application for expunging any remarks or observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review from or out of the suit, (xvi) any application for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit and (xvii) any application under rule 15 of Order XLV of this Code, shall be deemed to be proceedings in the suit:

Provided that where the venue of the suit or the proceeding shifts from one Court (subordinate or otherwise) to another the pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court."

[Vide Maharashtra Gazette, Pt. IVC, p. 1278, dated 24th August, 1972.]

Chandigarh.-
Same as in Punjab.

Delhi.-
Same as in Punjab.

Haryana.-
Same as in Punjab.

Himachal Pradesh.-
Same as in Punjab.

Gujarat.-
In Order III, in rule 4, in sub-rule (3), between the words "order in the suit" and "any application or act", insert the words "or any application relating to such appeal".

[Ed.-This amendment relates to sub-rule (3) prior to its substitution by the Central Act 104 of 1976, sec. 54 (w.e.f. 1-2-1977).]

Karnataka.-
In Order III, for rule 4, substitute the following rule, namely:-
"4. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document subscribed with his signature in his own hand by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and the appointment has been accepted in writing by the pleader.

(2) Every such appointment shall be filed into Court. Except as otherwise provided in this rule, no such appointment shall be deemed to have been until its determination with the leave of the Court by a document subscribed with his signature in his own hand by the client or his

recognised or authorised agent or by the pleader, as the case may be, and filed into Court; or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purpose of sub-rule (2), proceedings in the suit shall mean all interlocutory and miscellaneous proceedings connected with the suit or any decree or order passed therein taken in the Court in which the suit has been instituted or by which the suit has been disposed of, and shall include applications for review of judgment, applications for amendment for correction of the decree, application for execution of the decree or any order in the suit or for restitution under section 144 of the Code or otherwise, applications for leave to appeal against decree or order passed in the suit, and applications or acts for the purpose of obtaining copies of documents or copies of judgments, decrees or orders, or for the return of documents produced or filed in the suit or for obtaining payment or refund of monies paid into Court in connection with the suit or any decree or order therein.

(4) (a) In the case of applications for execution of a decree, applications for review of judgment and application for leave to appeal, a pleader whose appointment continues in force by virtue of sub-rule (2) of this rule and who has been served with the notice in any such application shall be at liberty to intimate to the Court in writing in the form of a memorandum filed into Court at or before the first hearing of any such application or appeal that he has not received instructions from his client and to retire from the case.

(b) Where, however, the pleader does not so report the absence of instructions to the Court but proposed to continue to act on the strength of the original appointment, he shall file into Court at or before the first hearing of such matter a formal memorandum stating that he will continue to appear and act for his client in the said application or appeal, as the case may be.

(c) If a pleader files the memorandum referred to in clause (a) or omits to file the memorandum referred to in clause (b) within the time prescribed therefor, the Court shall proceed as provided in sub-rule (2) of rule 5 of this Order.

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

(6) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party unless he has filed into Court a memorandum or appearance signed by himself and stating (a) the names of the parties to the suit, (b) name of the party for whom he appears, and (c) the name of the person by whom he is authorised to appear:

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

(7) No Government Pleader or other pleader appearing on behalf of the Government or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act, but such pleader shall file into Court a memorandum of appearance signed by him and stating the particulars : mentioned in sub-rule (6)." (w.e.f. 30-3-1967)

Kerala.-

In Order III, in rule 4-

(i) in sub-rule (2), after the words "Every such appointment", insert the words "when accepted by the pleader in writing".

(ii) in old sub-rule (3), after the words "section 152", insert the words "or applications under Order IX rule 9 or 13".

[Ed.-This amendment relates to sub-rule (3) prior to its substitution by the Central Act 104 of 1976, sec. 54 (w.e.f. 1-24977).]

(iii) omit sub-rule (5).

(iv) after sub-rule (5), insert the following sub-rule, namely:-

"(6) No pleader appearing on behalf of the Government or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating:

(a) the name of the parties to the suit,

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

(c) the name of the person by whom he is authorised to appear." (w.e.f. 9-6-1959)

Madhya Pradesh.-

In Order III, in rule 4, for sub-rule (3), substitute the following sub-rule, namely:-

"(3) For the purposes of sub-rule (2) above, (i) an application or a proceeding for transfer under sections 23,24 or 25 of this Code, (ii) an application under rule 9 or rule 13 of Order 9, of this Code, (iii) an application under rule 4 of Order 38 of this Code, (iv) an application for review of judgment, (v) an application under section 152 of this Code, (vi) a reference arising from or out of the suit, (vii) an application for amendment of the decree or order or the record in the suit or an appeal, reference or revision arising from or out of the suit, (viii) an application for the execution of any decree or order in the suit, (ix) an application under section 144 of this Code, (x) any appeal (including an appeal under the Letters Patent of the High Court) or revision application from any decree or order in the suit or an appeal arising from or out of the suit, (xi) any application relating to or incidental to or arising in or out of such appeal or revision or a reference arising from or out of the suit (including an application for leave to appeal under the Letters Patent of the High Court or for leave to appeal to the Supreme Court), (xii) any application or proceeding for sanctioning prosecution under Chapter 35 of the Code of Criminal Procedure, 1898, relating to the suit of any of the proceedings mentioned hereinbefore, or any appeal or revision arising from and out or any order passed in such application or proceeding, (xiii) any application or act for the purposes of obtaining copies of documents or the return of documents produced or filed in the suit or in any of the proceeding mentioned hereinbefore, (xiv) any application for the withdrawal or for obtaining the refund or payment of or out of the moneys paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the moneys deposited as security for costs or for covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme Court), (xv) any application for expunging any remarks or observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit, (xvi) any application for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit, and (xvii) any application under rule 15 of Order 45 of this Code, shall be deemed to be proceedings in the suit: Provided that where the venue of the suit or the proceedings shifts from one Court (Subordinate or otherwise) to another the Pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court."

[Vide Madhya Pradesh Rajpatra, dated 18th October, 1968.]

Madras.-

In Order III, in rule 4,-

(a) in sub-rule (1), for the words "in writing signed", substitute the words "subscribed with his signature in his own hand".

(b) in sub-rule (2), for the words "a writing signed", substitute the words "a document subscribed with his signature in his own hand";

(c) after sub-rule (5), insert the following sub-rule, namely:-

"(6) No Government or other appearing on behalf of the [Government] or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating the particulars mentioned in sub-rule (5)."

Orissa.-

In Order III, in rule 4-

(i) omit sub-rule (4); (ii) after sub-rule (5), insert the following sub-rule, namely:-

"(6) No pleader shall be entitled to make any application or do any appearance, or act for any person, unless he presents an appointment in writing duly signed by such person or his recognised agent or by some other agents duly authorised by power of attorney to act on his behalf; or unless he is instructed by an attorney or pleader duly authorised so as to act on behalf of such person."

[Vide Notification No. 5596-RX-2188 (w.e.f 14-5-1984).]

Patna.-

In Order III, in rule 4, for sub-rule (4), substitute the following sub-rule, namely:-

"(4) Notwithstanding anything contained in Or. III; rule 4(3) of the First Schedule of the Code of Civil Procedure, 1908, no advocate shall be entitled to make or do any appearance, application or act for any person unless he presents an appointment in writing, duly signed by such person or his recognised agent or by some other agent duly authorised by power of attorney to act in his behalf; or unless he is instructed by an attorney or pleader authorised to act on behalf of such person."

Punjab.- In Order III, in rule 4, for sub-rule (3), substitute the following sub-rule, namely:-

"(3) For the purpose of sub-rule (2)-

(i) an application or a proceeding for transfer under section 22, 24 or 25 of this Code,

(ii) an application under rule 4 or rule 9 or rule 13 of Order IX of this Code,

(iii) an application under rule 4 of Order XXXVII of this Code,

(iv) an application for review of judgment,

(v) a reference arising from or out of the suit,

(vi) an application for amendment of the decree or order or the record in the suit or an appeal,

reference or revision arising from or out of the suit,

(vii) an application for the execution of any decree or order in the suit

(viii) an application for restitution under section 144 or section 151 of this Code,

(ix) an application under section 151 of this Code,

(x) an application under section 152 of this Code,

(xi) any appeal (including an appeal under the Letters Patent of the High Court) or revision application from any decree or order in the suit or an appeal arising from or out of the suit,

(xii) any application relating to or incidental to or arising from or out of such appeal or revision or a reference arising from or out of the suit {including an application for leave to appeal under the Letters Patent of the High Court or leave to appeal to the Supreme Court),

(xiii) any application for directing or proceeding for prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898, relating to the suit or any of the proceedings mentioned hereinbefore or an appeal or revision arising or revision arising from and out of any order passed in such application or proceeding,

(xiv) any application or act for the purpose of obtaining copies of documents or the return of documents produced or filed in the suit or in any of the proceedings mentioned hereinbefore,

(xv) any application for the withdrawal or for obtaining the refund or payment or out of the monies paid or deposited into the Court in connection with the suit or any of the proceedings mentioned hereinbefore (including withdrawal, refund or payment of or out of the monies deposited as security for costs or covering the costs of the preparation and printing of the Transcript Record of the appeal to the Supreme Court),

(xvi) any application for expunging any remarks or observations on the record of or made in the judgment in the suit or any appeal, revision, reference or review arising from or out of the suit,

(xvii) any application for certificate in regard to the substitution of heirs in appeal to the Supreme Court arising from the suit, and

(xviii) any application under rule 15 of Order XLV of the Code, shall be deemed to be proceedings in the suit:

Provided that where the venue of the suit or the proceedings shifts from one Court {subordinate or otherwise) to another, situate at a different station, the pleader filing the appointment referred to in sub-rule (2) in the former Court shall not be "bound to appear, act or plead in the latter Court, unless he files or he has already filed a memorandum signed by him that he has instructions from his client to appear, act and plead in that Court." (w.e.f. 10-9-1968)

Rajasthan.-

In Order III, in rule 4,-

(a) in sub-rule (3) same as in Gujarat;

(b) after sub-rule (5), insert the following sub-rule, namely:-

"(6) No Government pleader within the meaning of Order XXVII, rule 8 B shall be required to

present any document empowering him to act, but such pleader shall file a memorandum of appearance signed by himself and stating the particulars mentioned in sub-rule (5)."

N.B.-It may be noted that provisions of old sub-rule (3) have been drafted into Explanation to sub-rule (2) (w.e.f. 14-8-1954).

1. Subs, by Act No. 104 of 1976, sec. 54 for "filed in Court and shall be" (w.e.f. 1-2-1977).
2. Ins. by Act No. 104 of 1976, sec. 54 (w.e.f. 1-2-1977).
3. Subs, by Act No. 104 of 1976, sec. 54, for sub-rule (3) (w.e.f. 1-2-1977).
4. Subs. by Act 22 of 1926, sec. 2, for rule 4.
5. Service of process on pleader.

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-
Same as in Madras.

Bombay.-
In Order III, for rule 5, substitute the following rule, namely:-

5. Service of Process on pleader :- .

Any process served on a pleader who has been appointed to act for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs shall be as effectual for all purposes as if the same had been given to or served on the party in person." (w.e.f 11-6-1966)

Gujarat.-
In Order III, in rule 5, for the words "on the pleader of any party", substitute the words "on a pleader who has been appointed to act for any party". (17-8-1961)

[Ed.-The amendment relates to rule 5 prior to its amendment by the Central Act 104 of 1976, sec. 54 (w.e.f, 1-2-1977).]

Karnataka.-
In Order III, for rule 5, substitute the following rule, namely:-

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

Explanation.-Service on a pleader engaged only to plead and who does not act his client shall not raise the presumption under this rule.

(2) A pleader appointed to act shall be bound to receive notice on behalf of his client in all proceedings in the suit as defined in sub-rule (3) of Rule 4. Where however, such pleader having been served with notice reports to Court absence of instructions from his client under sub- rule 4 of Rule 4, the Court shall direct that notice shall be issued and served personally on the party in the manner prescribed for service of summons on a defendant under Order V of this Code." (w.e.f. 30-3-1967)

Madhya Pradesh.-

Same as in Gujarat. (w.e.f. 16-9-1960)

Madras.-In Order III, in rule 5, insert the following Explanation, namely:-

"Explanation.- Service on a pleader who does not act for his client, shall not raise the presumption under this rule."

[Vide R.CO.NO. 1810 of 1926, dated 20th December, 1927.]

Orissa.-

Same as in Patna.

Patna.-

In Order III, after rule 5, insert the following rule, namely:-

"5B. Notwithstanding anything contained in Order III, sub-rules (2) and (3) of rule 4 of the First Schedule of the Code of Civil Procedure, 1908 no pleader shall act for any person in the High Court, unless he has been appointed for the purpose in the manner prescribed by sub-rule (1) and the appointment has been filed in the High Court." (w.e.f. 26-7-1948)

Rajasthan.-

Same as in Gujarat.

1. Subs, by Act No. 104 of 1976, sec. 54, for "Any process served on the pleader of any party" (w.e.f. 1 -2-1977).

6. Agent to accept service :- .

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

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

1[(3)The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.]

HIGH COURT AMENDMENTS

Bombay.-

In Order III, in rule 6, after sub-rule (2), insert the following sub-rule with marginal note, namely:-

"(3) Court may order appointment of agent for service within its jurisdiction.-The Court may, at any stage of a suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, to appoint within a specified time an agent within the jurisdiction of the Court to accept service of process on his behalf."

Note.-In Order III, in rule 6, the marginal note and sub-rule (3), have been superseded vide Maharashtra Government Gazette, Pt. IV, p. 397, dated 15th September, 1983.

Gujarat.-

Same as in Bombay, except marginal note, (w.e.f. 17-8-1961)

1. Ins. by Act No. 104 of 1976, sec. 54 (w.e.f. 1-2-1977).

ORDER 4 :- INSTITUTION OF SUITS (THE FIRST SCHEDULE) :-

1. Suit to be commenced by plaint :- .

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

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

2[(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).]

HIGH COURT AMENDMENTS

Allahabad.-

In Order IV, in rule 1,-

(a) for sub-rule (1), substitute the following sub-rules, namely:-

"(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint, together with a true copy for service with the summons upon each defendant, unless the Court for good cause shown allows time for filing such copies.

(2) The court-fee chargeable for such service be paid in the case of suits when the plaint is filed and in the case of all other proceedings when the process is applied for."

(b) re-number sub-rule (2) as sub-rule (3).

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.]

Bombay.-

In Order IV, for rule 1, substitute the following rule, namely:-

"1. Suit to be commenced by a plaint.-

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

(b) The plaintiff shall, except in the Bombay City Civil court, file as many true copies on plain paper of the plaint with annexes as there are defendants, for service with the summons upon the defendants, unless the Court by reason of the length of the plaint or the number of defendants or for any other sufficient reason permits him to present a like number of concise statements of the nature of the claim made or of the relief claimed in the suit in which case, he shall present such statement. Such copies or statements shall be filed along with the plaint unless the Court, for good cause shown, allows time for filing such copies or statements.

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

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

(4) The fee, chargeable for service of the summons upon the defendants, shall be paid when the plaint is filed or within such time as may be extended by the Court.

(5) Every plaint shall comply with the rules contained in Orders VI and VII so far as they are applicable."(w.e.f. 1-10-1983)

Madhya Pradesh.-

In Order IV, in rule 1,-

(a) for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint, together with as many true copies on plain paper of the plaint as there are defendants, for service with the summons upon each defendant, unless the Court, for good cause shown, allows time for filing such copies."

(b) after sub-rule (1), insert the following sub-rule, namely:-

"(2) The Court-fee chargeable for such service shall be paid in the case of suits when the plaint is filed, and in the case of all other proceedings when the process is applied for."

(c) renumber sub-rule (2) as sub-rule (3). (w.e.f. 29-6-1943)

Rajasthan.-

Substitute sub-rule (1) as in Madhya Pradesh.

[Vide Notification No. 33/SRO, dated 21st July, 1954.]

1. Subs, by Act No. 46 of 1999 section 14 (w.e.f. 1-7-2002) for "plaint to the court".

2. Added by Act No. 46 of 1999 section 14 (w.e.f. 1-7-2002).

2. Register of suits :- .

The Court shall cause the particulars of every suit to be entered in a book to be kept for the

purposes and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

HIGH COURT AMENDMENTS

Calcutta:-

In order IV, in rule 2, after the words "particulars of every suit", insert the words "except suits triable by a Court invested with the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887". (w.e.f. 1-1-1939)

Gauhati.-

Same as in Calcutta.

STATE AMENDMENTS

Uttar Pradesh-

In its application to the State of Uttar Pradesh after Order IV, the following Order shall be inserted:-

ORDER 4A :- CONSOLIDATION OF CASES :-

1. Consolidation of suits and proceedings :- .

When two or more suits or proceedings are pending in the same Court, and the Court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, where upon all such suits and proceedings may be decided upon the evidence in all or any of such suits or proceedings." [U.P. Act 57 of 1976].

ORDER 5 :- ISSUE AND SERVICE OF SUMMONS :-

1. Summons :-

1[(1) When a suit has been duly instituted, a summons may issued to the defendant to appear and answer the claim and to file the writ statement of his defence, if any, within thirty days from the date of service summons on that defendant;

Provided that no such summons shall be issued when a defendant has appeal at the presentation of the plaint and admitted the plaintiffs claim :

Provided further that where the defendant fails to file the written statement wit! the said period of thirty days, he shall be allowed to file the same on such other days as may be specified by the Court for reasons to be recorded in writing, but whi shall not be later than ninety days from the date of service of summons.;

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

(a) in person, or

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

(c) by a pleader accompanied by some person able to answer all such questiot

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

1. Sub-rule (1) was substituted by Act No. 46 of 1999, section 15 and now further substituted Act No. 22 of 2002, section 6 (w.e.f. 1-7-2002).

2. Copy of plaint annexed to summons :- .

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

HIGH COURT AMENDMENTS

Bombay:

In order V, for rule 2, substitute the following rule, namely:- "2. Copy of plaint to accompany summons.- Every summons except in the case of one issued by the City Civil Court, shall be accompanied by a copy of the plaint with annexures or if so permitted, by concise statement." (w.e.f. 1-10-1983)

1. Subs, by Act No. 46 of 1999, section 15 for rule 2 (w.e.f. 1-7-2002).

3. Court may order defendant or plaintiff to appear in person :- .

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

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

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

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

(a) within the local limits of the Courts ordinary original jurisdiction, or

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order V, after rule 4, insert the following rule, namely:-

"4A. Except as otherwise provided, in every interlocutory proceeding and in every proceeding after decree in the trial Court, the Court may, either on the application of any party, or of its own motion, dispense with service upon any defendant who has not appeared or upon any defendant who has not filed a written statement." (w.e.f. 24-7-1926.)

Bombay:-

In Order V, for rule 4, substitute the following rule, namely:-

"4. No party shall be ordered to appear in person unless he resides:-

(a) Within the local limits of the Courts Ordinary Original jurisdiction, or

(b) Without such limits but at a place less than 100 or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate), less than five hundred kilometres distance from the Court House." (w.e.f. 1-10-1983)

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

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

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

HIGH COURT AMENDMENTS

Andhra Pradesh:-

Same as in Madras.

Bombay:-

In Order V, in rule 5 , after the words "whether it shall be for", insert the words "filing of written statement and the ". (w.e.f. 1-10-1983).

Calcutta:-

In Order V, in rule 5, after the words "issues only", insert the words "for the ascertainment whether the suit will be contested".

[Vide Notification No. 1242-G, dated 25th August, 1927.]

Gauhati.-

Same as in Calcutta.

Karnataka.-

In Order V, for rule 5, substitute the following rule, namely:-

"5. The Court shall determine, at the time of issuing the summons, whether it shall be-

(a) for the settlement of issues only, or

(b) for the defendant to appear and state whether he contests to or does not contest the claim and directing him if he contests to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest for final disposal of the suit at once, or

(c) for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for final disposal of the suit," (w.e.f. 30-3-1967)

Kerala.-

In Order V, for rule 5, substitute the following rule, namely:-

"5. Summons to be either (1) to ascertain whether the suit is contested or not or (2) for the final disposal of the suit. The Court shall determine at the time of issuing the summons, whether it shall be-

(i) for the defendant to appear and state whether he contests, or does not contest the claim and directing him if he contests, to receive directions as to the date on which he has to file his written statement, the date of trial and other matters and if he does not contest, for final disposal of the suit at once; or

(ii) for the final disposal of the suit at once; and the summons shall contain a direction accordingly:

Provided that in every non-appealable case the summons shall be for the final disposal of the suit." (w.e.f. 9-6-1959)

Madras.-

In Order V for rule 5, substitute the following rule, namely:-

"5. Summons to be either (1) to settle issues, or (2) to ascertain whether the suit is contested or not or (3) for final disposal.-The Court shall determine, at the time of issuing the summons, whether it shall be-(1) for the settlement of issues only, or (2) for the defendant to appear and state whether he contests or does not contest the claim and directing him, if he contests, to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest, for final disposal of the suit at once; or (3) for the final disposal of the suit; and the summons shall contain a direction accordingly:

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

6. Fixing day for appearance of defendant :- .

The day for the appearance of the defendant 1[under sub-rule (1) of the rule 1] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

1. Subs. by Act 46 of 1999, sec. 15, for "for the appearance of the defendant" (w.e.f. 1-7-2002).

7. Summons to order defendant to produce documents relied on by him :- .

The summons to appeal and answer shall order the defendant to produce1[all documents or copies thereof specified in rule 1A of Order VIII] in his possession or power upon which he intends to rely in support of his case.

HIGH COURT AMENDMENTS

Bombay.-

In Order V, for rule 7, substitute the following rule, namely:-

"7. Summons to order defendant to produce documents relied on by him.-

The summons to appear and answer and/or filing a written statement within a time specified therein shall order the defendant to produce all documents in his possession or power upon which he bases his defence, claim or set-off or counter claim, and shall further order that where he relies on any other documents {whether in his possession or power or not) as evidence in support of his defence, claim for set-off or counter claim, he shall file a list of such documents." (w.e.f. 1-11-1966)

Delhi.-

Same as in Punjab.

Haryana.-

Same as in Punjab.

Himachal Pradesh.-

Same as in Punjab.

Punjab.-

In Order V, for rule 7, substitute the following rule, namely;-

"7. Summons to order defendant to produce documents relied on by him.-

The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he bases his defence or any claim for set-off and shall further order that where he relies on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement."

[Vide Notification No. 233-R/XI-Y-17, dated 24th July, 1936.]

1. Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for certain words.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses :-

.

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

Service of Summons

9. Delivery of summons by Court :- .

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

(2) The proper officer may by an officer of a Court other than that in which the suit is

instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal articles containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

1. Rule 9 was substituted by Act No. 46 of 1999 section 15 and now further substituted by Act No.22 of 2002, section 6 (w.e.f. 1-7- 2002).

9A. Summons given to the plaintiff for service :- .

(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

10. Mode of service :- .

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

HIGH COURT AMENDMENTS

Karnataka.-

In Order V, in rule 10, insert the following proviso, namely:-

"Provided that, in any case the Court may either on its own motion or on the application of the plaintiff, either in the first instance or when summons last issued is returned unserved direct the service of summons by registered post prepaid for acknowledgment, instead of the mode of service laid down in this rule. The postal acknowledgment purporting to contain the signature of the defendant may be deemed to be prima facie proof of sufficient service of the summons on the defendant on the day on which it purports to have been signed by him. If the postal cover is returned unserved, an endorsement purporting to have been made thereon by the delivery peon or either an employee or officer of the Postal Department shall be prima facie evidence of the statements contain therein." (w.e.f. 30-3-1967)

Patna.-

In Order V, in rule 10, insert the following proviso, namely:-

"Provided that in any case the Court may, on its own motion, or on the application of the plaintiff, send the summons to the defendant by post in addition to the mode of service laid in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal servant that the defendant refused to take delivery may be deemed by the Court issuing the summons to be prima facie proof of service."

Rajasthan.-

In Order V, in rule 10, insert the following proviso, namely:-

"Provided that in any case the Court may in its discretion send the summons to the defendant by registered post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal servant that the defendant refused to take the delivery may be deemed by the Court issuing the summons to be prima facie proof of service." (w.e.f. 14-8- 1954)

STATE AMENDMENTS

Delhi.-

Same as in Punjab.

Haryana.-

Same as in Punjab.

Himachal Pradesh.-

Same as in Punjab.

Punjab.-

In Order V, in rule 10, insert the following proviso, namely:-

"Provided that in any case if the plaintiff so wishes the Court may serve the summons in the first instance by registered post (acknowledgment due) instead of in the mode of service laid down in this rule."

[Vide Act 31 of 1966; secs. 29 and 32 (w.e.f. 1-11-1966).]

11. Service on several defendants :- . .

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

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

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

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

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

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

14. Service on agent in charge in suits for immovable property :- .

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

15. Where service may be on an adult member of defendants family :- .

Where in a suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

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

HIGH COURT AMENDMENT

Bombay.-

In Order V, for rule 15, substitute the following rule, namely:-

"15. Where service may be on male member of defendants family.-

When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.-A servant is not a member of the family within the meaning of this rule." (w.e.f. 1-10-1983)

1. Subs. by Act No. 104 of 1976, sec. 55, for rule 15 (w.e.f. 1-2-1977).

16. Person served to sign acknowledgement :- .

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

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

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, 1[who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

HIGH COURT AMENDMENTS

Calcutta.-

In Order V, for rule 17, substitute the following rule, namely:-

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

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person upon whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued with a report ordered thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed." (w.e.f. 25-7-1928)

Gauhati.-
Same as in Calcutta.

Karnataka.-
In Order V, for rule 17, substitute the following rule, namely:-

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

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is not present at the house in which he ordinarily resides or carries on business or personally works for gain at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time and there is no agent empowered to accept service of the summons on his behalf nor any other person upon whom service can be made under rule 15, the serving officer shall affix a copy of the summons on the outer door of or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was to affixed." (w.e.f. 30-3-1967)

Madhya Pradesh.-
In Order V, in rule 17, insert the following proviso, namely:-

"Provided that where a special service has been issued and the defendant refuses to sign the acknowledgment it shall not be necessary to affix a copy as directed hereinafter." (w.e.f. 16-9-1960)

1. Ins. by Act No. 104 of 1976, sec. 55 (w.e.f. 1-2-1977).

18. Endorsement of time and manner of service :- .

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-
In Order V, after rule 18, insert the following rule, namely:-

18A. Chief Ministerial Officer, District Courts, may be empowered to order issue of fresh Summons :- .

A District Judge, within the meaning of the Madras Civil Courts Act, 1873, may delegate to the Chief Ministerial Officer of the District Court the power to order the issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within seven days after the return has been notified on the notice board."

Karnataka.-

In Order V, after rule 18, insert the following rule, namely:-

"18A.-The Presiding Officer of a Civil Court may delegate to the Chief Ministerial Officer of the Court, the power to order issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within 7 days after he has been required to deposit the necessary process fee for the issue of fresh summons. If the plaintiff objects, the matter shall be placed before the Presiding Officer for his orders." (w.e.f. 30-3-1967)

Madras.-

In Order V, for rule 18A which was inserted in 1929, substitute the following rule, namely:-

"18A.-A District Judge, a subordinate Judge and a District Munsif within the meaning of the Madras Civil Courts Act, 1873, and a City Civil Judge within the meaning of the Madras City Civil Court Act, 1892 may delegate to the Chief Ministerial Officer of their respective Courts the power to issue fresh summons to a defendant when (i) the return on the previous summons is to the effect that the defendant was not served and (ii) the plaintiff does not object to the issue of fresh summons within 7 days after the return has been notified on the Notice Board."

[Vide Fort St Geo Gaz, dated 9th November, 1955.]

19. Examination of serving officer :- . . .

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

HIGH COURT AMENDMENTS

Calcutta.-

In Order V,-

(a) for rule 19, substitute the following rule, namely:-

"19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the declaration of the serving officer, and may, if it has been so verified, examine the serving officer, on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit." (w.e.f. 25-7-1928)

(b) after rule 19, insert the following rule, namely:-

"19A. A declaration made and subscribed by a serving officer shall be received as evidence of the facts as to the service or attempted service of the summons."

[Vide Notification No.10428-G, dated 25th July, 1928.]

Gauhati.-

Same as in Calcutta.

19A. Simultaneous issue of summons for service by post in addition to personal :- . service]

1. Rule 19A was inserted by Act No. 104 of 1976, sec. 55 (w.e.f. 1-2-1977) now omitted by Act No. 46 of 1999, section 15 (w.e.f. 1-7- 2002).

20. Substituted service :- .

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

1(A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

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

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

HIGH COURT AMENDMENT

Punjab, Haryana and Chandigarh.-

In Order V, in rule 20, insert the following proviso, namely:-

"Provided that if service in the ordinary manner or by registered post is not effected for the first date of hearing the Court may direct substituted service, in such manner as the Court deem fit even if no application is made by or on behalf of the plaintiff for the purpose."

[Vide Punjab Gazette, Pt. III (L.S.), p. 303, dated 11th April, 1975; Haryana Government Gazette, Pt. III (L.S.) p. 189, dated 25th March, 1975, Chandigarh Administration Gazette, Pt. II, p. 95, dated 1st May, 1975.]

1. Ins. by Act No. 104 of 1976, sec. 55 (w.e.f. 1-2-1977).

20A. Service of summons by post :-

Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 55 (w.e.f. 1-2-1977).]

1. Ins. by Act 66 of 1956, sec. 14 (w.e.f. 1-1-1957).

21. Service of summons where defendant resides within jurisdiction of another Court :- .

A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers 1[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

HIGH COURT AMENDMENTS

Allahabad.-

In order V, re-number rule 21 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) In lieu of, or in addition to, the procedure indicated in sub-rule (1), such summons may also be served by sending it by registered post addressed to the defendant at the place where he ordinarily resides or carries on business or works for gain. Unless the cover is returned undelivered by the post office on account of want of proper address or other similar reason the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in the ordinary course."

[Vide Notification No. 43vii-d-29, dated 1st June, 1967.]

Andhra Pradesh.-

In Order V, in rule 21, insert the following proviso, namely:-

"Provided that summons intended for service in the twin cities of Hyderabad and Secunderabad shall be sent to the City Civil Court, Hyderabad at Secunderabad." (w.e.f. 23-3-1967)

Bombay.-

In Order V, after rule 21, insert the following rule, namely:-

21A. Service of summons by prepaid post wherever defendant may be residing if plaintiff so desires :-

Notwithstanding anything in the foregoing rules and whether the defendant resides within the jurisdiction of the Court or not, {the Court may in addition to or in substitution for, any other mode of service), cause the summons to be addressed to the defendant at the place where he is residing, (or where he ordinarily carries on business) and sent to him by registered post prepaid for acknowledgement, provided that at such place there is a regular daily postal service. An acknowledgement purporting to be signed by the defendant shall be deemed by the Court issuing the summons to be prima facie proof of service. In all other case the Court shall hold such enquiry as it thinks fit and declare the summons to have been duly served or order such further service as may in its opinion be necessary." (w.e.f. 1-11-1966)

Gujarat.-

Same as in Bombay with the following modifications:-

(i) insert the words "The Court may" at the beginning.

(ii) omit the words within brackets.

Madhya Pradesh.-

In Order V, after rule 21, insert the following rule, namely:-

"21A. The Court may, notwithstanding anything in the foregoing rules, cause the summons of its own Court or of any other Court in India to be addressed to the defendant at the place

where he ordinarily resides or carries on business and sent to him by registered post prepaid for acknowledgement provided that such place is a town or village in the Akola revenue taluq. An acknowledgement purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be prima facie proof of service."

[Vide Notification Nos. 6634 & 6635, dated 23rd September, 1932.]

1. Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for "or by post"

22. Service within presidency-towns of summons issued by Courts outside :- .

Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras 1[and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

HIGH COURT AMENDMENTS

Bombay.-

In Order V, in rule 22, insert the following proviso, namely:-

"Provided that where any such summons is to be served within the limits of Greater Bombay, it may be addressed to the defendant at the place within such limits where he is residing (or where ordinarily carries on business) and may be sent to him by the Court by post registered for acknowledgement. An acknowledgement purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service shall be deemed by the Court issuing the summons to be prima facie proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may in its opinion be necessary." (w.e.f. 1-11-1966)

Gujarat.-

Same as in Bombay with the following modifications.-

(i) omit the words within bracket; and

(ii) insert the words "purporting to be" between the words "endorsement" and "by a postal servant".

Rajasthan.-

Same as in Bombay with the following modifications:-

For the words "Provided that where any such summons is to be served within the limits of Greater Bombay, it may be addressed to the defendant at the place within such limits where he is residing (or where ordinarily carries on business)", substitute the words "Provided that any such summons may instead be addressed to the defendant at the place within such limits where he is residing", (w.e.f. 25-7-1957)

1. Subs. by the A.O. 1937, for "Bombay and Rangoon".

23. Duty of Court to which summons is sent :- .

The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court

of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison :- .

Where the defendant is confined in a prison, the summons shall be delivered or sent 1[by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to the officer in charge of the prison for service on the defendant.

1. Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for certain words.

25. Service where defendant resides out of India and has no agent :- .

Where the defendant resides out of 4[India] and has no agent in 4[India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him 1[by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the Court is situate :

5[Provided that where any such defendant 2[resides in Bangladesh or Pakistan] the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer 3[in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military naval or air forces)] or is servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

HIGH COURT AMENDMENTS

Allahabad.-

In Order V,-

(i) for rule 25, substitute the following rule, namely:-

"25. Where the defendant resides out of India but has an agent empowered to accept service of summons on his behalf residing in India but outside the jurisdiction of the Court, the summons, unless directed otherwise by the Court, may be addressed to such agent and sent to him by registered post if there is postal communication between such place and the place where the Court is sitting. Unless the cover is returned undelivered for want of proper address or any other sufficient reason, the summons may be deemed to have been delivered to the addressee at the time when it should have reached him in ordinary course." (w.e.f. 29-3-1958)

(ii) after rule 25, insert the following rule, namely:-

"25A. Where the defendant resides out of India but has an agent empowered to accept service of summons on his behalf residing in India but outside the jurisdiction of the Court the summons, unless directed otherwise by the Court, may be addressed to such agent and sent to him by registered post if there is a post communication between such place and the place

where the court is sitting. Unless the cover is returned undelivered for want of proper address or any other sufficient reasons the summon may be deemed to have been delivered to the addressee at the time when it should have reached him in ordinary course." {w.e.f. 14-4-1962}

Andhra Pradesh.-

Same as in Madras, except-

Delete first proviso.

[Vide Notification No. ROC No 6842/51-B-I, dated 29th August, 1957.]

Bombay.-

In Order V, for rule 25, substitute the following rule, namely:-

"25 Service where defendant resides out of India and has no agent.-

Where the defendant resides out of India and has no agent in India empowered to accept service, the summons may be addressed to the defendant at the place where the Court is situated: Provided that where any such defendant resides in Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan military, naval or air force) or is a servant of railway company or local authority in that country, the summons together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in that behalf." (w.e.f. 30-3-1967)

Karnataka.-

In Order V, for rule 25, substitute the following rule, namely:-

"25. (1) Where the defendant resides outside the State of Mysore but within the territories of India, the Court may direct the proper officer within the meaning of rule 9 to cause the summons to be addressed to the defendant at the place where he ordinarily resides or carries on business, or works for gain and sent to him by registered post prepaid for acknowledgment. When it is so sent by registered post, the provisions of the proviso to rule 10 shall apply thereto.

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

Provided that, if by any arrangement between the Central Government and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in the same manner as by the said arrangement may have been agreed upon:

Provided further that, where any such defendant resides in Pakistan, the summons together with a copy thereof, may be sent for service on the defendant to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that, where any such defendant is a public officer in Pakistan (not belonging to Pakistan military, naval or air force) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by

notification in the Official Gazette, specify in that behalf." (w.e.f. 30-3-1967)

Kerala.-

In Order V, in rule 25,-

(i) before the existing provisos, insert proviso as in Madras.

(ii) in the last proviso for the word "company", substitute the words "Administration".

[Vide Notification No. B 1-331-2/58, dated 9th June, 1959.]

Madhya Pradesh.-

In Order V, in rule 25.-

(a) in para 1, for the word "shall" substitute the word "may".

(b) after rule 25, insert the following rule, namely:-

"25A. Service where defendant resides in India.-

Where the defendant resides in India, the Court may, in addition to any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgement purporting to be signed by him, or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be prima facie proof of service."

Madras.-

In Order V, in rule 25,-

(i) in para 1, for the words "summons shall", substitute the words "summons may",

(ii) after para 1, insert the following proviso, namely:-

"Provided that, if, by any arrangement between the Government of the State in which the Court issuing summons is situate and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in such manner as by the said arrangement may have been agreed upon."

(iii) omit existing first proviso, (w.e.f. 23-12-1964)

1. Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for "by post".

2. Subs, by Act No. 104 of 1976, sec. 53, for "resides in Pakistan" (w.e.f. 1-2-1977).

3. Subs, by Act No. 104 of 1976, sec. 55, for "resides in Pakistan" (w.e.f. 1-2-1977).

4. Subs. by Act 2 of 1951, sec. 3 for "the States".

5. Ins. by Act 19 of 1951, sec. 2.

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

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a

summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant: and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

1. Subs. by Act No. 104 of 1976, sec. 55, for rule 26 (w.e.f. 1-2-1977).

26A. Summonses to be sent to officer to foreign countries :-

Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.

27. Service on civil public officer or on servant of railway company or local authority :- .

Where the defendant is a public officer (not belonging to 1[the Indian] military, 2[naval or air] forces 3[***]) or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant.

HIGH COURT AMENDMENTS

Allahabad.-

In Order V, in rule 27, insert the following notes, namely:-

"Note 1.-A list of heads of offices to whom summons shall be sent for service on the servants of Railway Companies working in whole or in part in these States is given in Appendix 2 of the General Rules (Civil).

Note 2.-In every case where a Court sees fit to issue summons direct to any public servant other than a soldier under order 16, simultaneously with the issue of the summons, notice shall be sent to the head of office in which the person concerned is employed in order that arrangements may be made for the performance of the duties of such persons.

If the Court sees fit to issue a summons to a Kunungo or Patwari it shall inform the Collector of the district, and if to a Sub-Registrar it shall inform the District Registrar to whom the Sub-

Registrar is subordinate."

Andhra Pradesh.-
Same as in Madras.

Bombay.-

In Order V, in rule 27, after the words "send it", insert the words "by registered post pre-paid for acknowledgement", (w.e.f. 1-11-1966)

Karnataka.-

In Order V, in rule 27, after the words "send it", insert the words "by registered post pre-paid for acknowledgement", (w.e.f. 30-3-1967) "

Kerala.-

In Order V, in rule 27,-

(i) for the words "railway company", substitute the words "railway administration",

(ii) after the words "send it", insert the words "by registered post pre-paid for acknowledgement".

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-

In Order V, in rule 27, after the words "send it", insert the words "by registered post pre-paid for acknowledgement".

[Vide Dis No. 209 of 1912.]

1. Subs. by the A.O. 1950, for "His Majestys".

2. Subs. by Act 10 of 1927, sec. 2 and Sch. 1, for "or naval".

3. The words "or His Majestys Indian Marine Service" omitted by Act 35 of 1934, sec. 2 and Sch.

28. Service on soldiers, sailors or airmen :- .

Where the defendant is a soldier, 1[sailor] 2[or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

HIGH COURT AMENDMENTS

Allahabad.-

In Order V, in rule 28,-

(a) renumber rule 28 as sub-rule (1) thereof;

(b) after sub-rule (1) as so renumbered, insert the following sub-rules, namely:-

"(2) Where the address of such commanding officer is not known, the Court may apply to the officer commanding the station in which the defendant was serving when the cause of action arose to supply such address, in the manner prescribed in sub-rule (4) of this rule.

(3) Where the defendant is an officer of the Indian military forces, wherever it is practicable service shall be made on the defendant in person.

(4) Where the defendant resides outside the jurisdiction of the Court in which the suit is instituted, or outside India, the Court may apply over the seal and signature of the Court to the officer commanding the station in which the defendant was residing when the cause of action arose, for the address of such defendant, and the officer commanding to whom such application is made shall supply the address of the defendant or all such information that it is in his power to give, as may lead to the discovery of his address.

(5) Where personal service is not practical, the Court shall issue the summons to the defendant at the address so supplied by registered post."

[Vide Notification No. 1442/59, dated 5th March, 1927.]

Andhra Pradesh.-
Same as in Madras.

Bombay.-
In Order V, in rule 28, after the words "shall send", insert "by registered post pre-paid for acknowledgement", (w.e.f. 1-10-1983)

Karnataka.-
Same as in Madras.

Kerala.-
Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-
In Order V, in rule 28, after the words "shall send", insert the words "by registered post pre-paid for acknowledgement".
[Vide Notification No. 209 of 1912.]

1. Ins. by Act 35 of 1934, sec. 2 and Sch.
2. Ins. by Act 10 of 1927, sec. 2 and Sch. I.

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

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

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

HIGH COURT AMENDMENTS

Allahabad.-
In Order V, in rule 28, in sub-rule (1), for the word and figures "rule 28", substitute the word, bracket and figures "rule 29 (1)". (w.e.f. 5-3 -1927)

Andhra Pradesh.-
Same as in Madras.

Karnataka.-

Same as in Madras omitting the words "of India" after the words "Military, Naval or Air Force", (w.e.f. 30-3-1967)

Kerala.-

Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-

In Order V, after rule 29, insert the following rule, namely:-

"29A. Notwithstanding anything contained in the foregoing rules, where the defendant is a public officer (not belonging to the Military, Naval or Air Force [of India]) sued in his official capacity, service of summons shall be made by sending a copy of the summons to the defendant by registered post pre-paid for acknowledgement together with the original summons, which the defendant shall sign and return to the Court which issued the summons."

[Vide Dis No. 209 of 1912 as amended on 28th May, 1958.]

30. Substitution of letter for summons :- .

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

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

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order V, after rule 30, insert the following rules, namely:-

31. Rule 31 :- . An application for the issue of a summons for a party or a witness shall be made in the form prescribed for the purpose. No other forms shall be received by the Court.

32. Ordinarily every process, except those that are to be served on Europeans, shall be written in the Court vernacular. But where a process is sent for execution to the Court of a district where a different language is in ordinary use, it shall be written in English and shall be accompanied by a letter in English requesting execution.

In case where the returns of service is in a language different from that of the district from which it is issued, it shall be accompanied by a English translation."

[Vide Notification No. 1953/35 (a), dated 22nd May, 1915 and Notification No. 1903/35 (a)-1(6), dated 19th March, 1921.]

Andhra Pradesh.-
Same as in Madras.

Karnataka.-

In Order V, after rule 30, insert the following rules, namely:-

"31. (1) The Court may on the application of the plaintiff and on such terms as to security or otherwise as the Court thinks fit, dispense with service of summons on a defendant who is resident in a territory belonging to or occupied by a State at war with the Central Government:

Provided that an order dispensing with the service of summons shall not be made unless the Court is satisfied that the defendant is a resident in such territory and that the service of summons on him in the manner prescribed by this Code is not possible.

(2) The Court may before making any such order direct such publication of the application as it considers necessary in the circumstances.

(3) Where in any suit an order dispensing with the service of summons on a defendant is made under this rule and a decree or order is passed against him, the Court may on his application and on such terms as may be just set aside such decree or order and appoint a day for proceeding with the suit.

(4) The provisions of the first proviso to rule 13 of Order IX of this Code and the provisions of rule 14 of the said Order shall apply to an order setting aside the decree or order made under sub-rule (3).

(5) The application under sub-rule (3) shall be filed within one year from the date of cessation of hostilities with the said State.

(6) The provision of section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule (3).

(7) The provisions of this rule shall apply mutatis mutandis to a respondent in an appeal or a civil petition who is resident in such territory as is referred to in sub-rule (1).

32. Rule 32 :-

Where any party in a suit is represented by a pleader, the plaint or the written statement as the case may be, shall give the address of the pleader within the

local limits of the city, town or place where the Court is situate and the said address of the pleader for purposes of all notices and processes issued in the suit. All such notices and processes in the suit or in any interlocutory matter in the suit shall be sufficiently served if left by a party of pleader or by a person employed by the defendant or by an officer or employee of the Court at the said address for service on the party intended to be served.

33. Rule 33 :-

Unless the Court otherwise directs, notice of an interlocutory application in the suit need not be served on a party who having been duly served with summons in the main suit has failed to appear and has been declared ex parte by the Court:

Provided that the Court shall direct such notice to be issued and served on any such party in applications for the amendment of any pleading in the suit, if the Court is of the opinion that such party may be interested in or affected by the proposed amendment.

34. Rule 34 :-

The provisions of rules 32 and 33 shall also apply mutatis mutandis to appeals and revision petitions."

Kerala.-

Same as in Madras with the exception that in sub-rule (1) for the word "India", substitute the words "the Government", (w.e.f. 9-6-1959)

Madras.-

In Order V, after rule 30, insert the following rule, namely:-

"31. (1) The Court may, on the application of the plaintiff and on such terms as to security or otherwise as the Court thinks fit, dispense with the service of summons on a defendant who is resident in territory belonging to or occupied by a State at war with India:

Provided that an order dispensing with service of summons shall not be made unless the court is satisfied that the defendant is resident in such territory and that service of summons on him in the mode prescribed by the Code is not possible.

(2) The Court may before making the said order direct such publication of the application as it considers necessary in the circumstances.

(3) Where in any suit an order dispensing with service of summons on a defendant is made under this rule and a decree or order is passed against him the Court may on his application and on such terms as may be just, set aside such decree or order and appoint a day for proceeding with the suit.

(4) The provisions of the first proviso to rule 13 of Order IX, and the provisions of rule 14 of the said order shall apply to an order setting aside a decree or order under sub-rule (3).

(5) The application under sub-rule (3) shall be filed within one year from the date of cessation of hostilities with the said State.

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

(7) The provisions of this rule shall apply mutatis mutandis to a respondent in an appeal or a civil Revision Petition who is resident in such territory as is referred to in sub-rule (1)."

[Vide R.O.C. No. 2108/44, dated 29th March, 1945 as amended on 28th May, 1958.]

ORDER 6 :- PLEADINGS GENERALLY :-

1. Pleading :- .

"Pleading", shall mean plaint or written statement.

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

(1) Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]

1. Subs, by Act No. 104 of 1976, sec. 56, for rule 2 (w.e.f. 1-2-1977).

3. Forms of pleading :- .

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

4. Particulars to be given where necessary :- .

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

HIGH COURT AMENDMENT

Karnataka:-

In Order VI, renumber rule 4 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) In a suit of infringement of a patent, the plaintiff shall state in his plaint or annex thereto the particulars of the breaches relied upon, and defendant if he disputes the validity of the patent shall state in his written statement or annex thereto the particulars of the objections on which he relies in support of such invalidity; at the hearing of any such suit no evidence, shall, except with the leave of the Court (to be given upon such terms as to the Court may seem just), be admitted in proof of any alleged infringement or objections not raised in the particulars of breaches or objections respectively." (w.e.f. 30-3-1967)

STATE AMENDMENTS

Andhra Pradesh.- Same as in Madras.

Kerala.- Same as in Madras.

Madras.- In Order VI, after rule 4, insert the following rule, namely.-

"4A. (1) In a suit for infringement of a patent, the plaintiff shall state in his plaint or annex thereto the particulars of breaches relied upon.

(2) In any such suit the defendant if he disputes the validity of the patent shall state in his written statement or annex thereto the particulars of the objections which he relies in support of such invalidity.

(3) At the hearing of any such suit no evidence shall, except by leave of the Court (to be given upon such terms as to the Court may seem just), be admitted in proof of any alleged infringement or objections not raised in the particulars of breaches or objections respectively."

Madhya Pradesh.-

After rule 4, the following rule shall be inserted, namely:-

"4-A. Particulars of pleading for agricultural land.-In any suit or proceeding contemplated under rule 3-B of Order 1, the parties, other than the State Government, shall plead the particulars of total agricultural land which is owned, claimed or held by them in any right and shall further

declare whether the subject-matter of suit or proceeding is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (20 of 1960), and whether any proceedings in relation to such subject-matter are to the knowledge of the party pending before the competent authority." [M.P. Act 29 of 1984]

5. Further and better statement, or particulars :- .

1. Omitted by Act No. 46 of 1999, section 16 (w.e.f. 1-7-2002).

6. Condition precedent :- .

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

7. Departure :- .

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

8. Denial of contract :- .

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

9. Effect of document to be stated :- .

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

10. Malice, knowledge, etc. :- .

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

11. Notice :- .

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

12. Implied contract, or relation :- .

Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letter, conversations or circumstances without setting them out in detail. And if in such case the person so pleading

desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Presumptions of law :- .

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

14. Pleading to be signed :- .

Every pleading shall be signed by the party and his pleader (if any):

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

HIGH COURT AMENDMENT

Karnataka:-

In Order VI, renumber rule 14 as sub-rule (2) and insert the following sub-rule, namely:-

"(1) Every pleading shall contain the party's full address for service, that is to say, full address of his place of residence as well as place of business, if any, in addition to his pleader's address for service as required by rule 32 of Order V of this Code. Such address for service furnished by the party, unless a change therein has been notified to the Court by filing a memorandum to that effect, shall be presumed to be his correct address for service for purposes of suit, any appeal or revision or other proceeding directed against the decree or order passed in that suit, when a memorandum of change of address is filed by any party, a note to that effect shall be made in the cause title of the pleading and if the pleading happens to be the written statement also in the cause title of the plaint." (w.e.f. 30-3-1967)

14A. Address for service of notice :- .

(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) the Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such term as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.]

HIGH COURT AMENDMENT

Bombay:-

In Order VI, for rule 14A, substitute the following rule, namely:-

"14A. Address for service of notice:-

(1) Every pleading when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in Rule 14, regarding the address of the party. Parties subsequently added shall immediately on being so added file a memorandum in writing of this nature.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. Notice of such change shall be given to such other parties as the Court may deem it necessary and the form showing the change may be served either on the pleader or such parties or be sent to them by registered post pre-paid for acknowledgment as the Court thinks fit.

(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of six years after the final determination of the cause or matter.

(4) (i) Where a party is not found at the registered address and no agent or adult male member of his family, on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgement (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(ii) Where the party engages a pleader, notice or process issued against the party shall be served in the manner prescribed by Order 11, rule 5, unless the Court directs service at the registered address of the party.

(5) Where the registered address of a party is not filed within the specified time or is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in case where the default in furnishing registered address is by plaintiff or where such registered address was furnished by a plaintiff, rejection of the plaint, or

(b) in case where the default in furnishing registered address is by the defendant or where such registered address was furnished by a defendant, his defence is struck out and he be placed in the same position as if he had not put any defence.

(6) Where a plaint is rejected or defence is struck out under sub rule (5), the plaintiff or as the case may be defendant after furnishing his true address, apply to the Court for an order to set aside the rejection of the plaint or as the case may be, the order striking out the defence.

(7) The Court is satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the rejection of the plaint or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Where a party is not found at the registered address and no agent or adult member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgement (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(9) Where the Court has struck out the defences under sub-rule (5) and has consequently passed a decree or an order, the defendant or the opposite party as the case may be, may apply to the Court by which the decree or order was passed for an order setting aside the decree or order and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or proceeding, provided that where the decree or order is of such a nature that it cannot be set aside as against the defendant or opposite party only, it may be set aside as against all or any of the defendant or opposite party.

(10) Nothing in this rule shall prevent the Court from directing service of a process at any other address, if for any reason it thinks fit to do so.

(11) Where a party engages a pleader, a notice or process issued against the party shall be served in the manner prescribed by Order 11, rule 5 unless the Court directs service at the registered address of the party." (w.e.f. 1-10-1983)

1. Ins. by Act No. 104 of 1976, sec. 56 (w.e.f. 1-2-1977).

15. Verification of pleadings :- .

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

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

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

1[(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.]

HIGH COURT AMENDMENTS

Bombay.-

In Order VI, in rule 15, in sub-rule (1), at the end, substitute colon for the full-stop and insert the following proviso, namely:-

"Provided that in respect of pleading to be filed in the Bombay City Civil Court such verification shall within the local jurisdiction of the Court, be made before one of the officers of the said Court empowered to administer oath and elsewhere, before any other mentioned in section 139 of the Code of Civil Procedure, 1908." {w.e.f. 1-10-1983}

Orissa.-

Same as in Patna.

Patna.-

In Order 6, in rule 15, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Save as otherwise provided by any law for the time being in force, the facts stated in every pleading shall be verified by solemn affirmation or on oath of the party or of one of the parties pleading or of some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, before any officer empowered to administer oath under section 139 of the Code." (w.e.f. 27-9-1961)

1. Sub-rule (4) added by Act No. 46 of 1999, section 16 (w.e.f. 1-7-2002).

16. Striking out pleadings :- .

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

1. Subs, by Act No. 104 of 1976, sec. 56, for rule 16 (w.e.f. 1-2-1977).

17. Amendment of pleadings :- .

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

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not

have raised the matter before the commencement of trial.

1. Rules 17 and 18 which were omitted by Act No. 46 of 1999, section 16.

2. Subs. by Act 22 of 2002, sec. 7 for rules 17 and 18 [as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) (w.e.f. 1-7-2000).

18. Failure to amend after order :- . .

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

ORDER 7 :- PLAINT :-

1. Particulars to be contained in plaint :- .

The plaint shall contain the following particulars:-

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

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

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

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

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

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

(g) the relief which the plaintiff claims;

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

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

HIGH COURT AMENDMENTS

Andhra Pradesh:-

Same as in Madras

Bombay:-

In Order VII, in rule 1, in clause (i), at the end, substitute comma for the full stop and thereafter insert the words "showing the provisions of law under which the valuation of the court-fees and jurisdiction is separately made." (w.e.f. 1-10-1983).

Karnataka:-

In Order VII, in rule 1.-

(i) for clause (b) and (c), substitute the following clauses, namely:-

"(b) the name, age, description, place of residence and the place of business, if any of the plaintiff;

(c) the name, age, description, place of residence and place of business, if any, of the defendant, so far as can be ascertained by the plaintiff;"

(ii) for clause (d), substitute the following clause, namely:-

"(d) Where plaintiff or the defendant is a minor, a statement to that effect, and in the case of minor, his age to the best of the knowledge and belief of the person verifying the plaint:

Provided that where, owing to the large number of defendants or any other sufficient reason, it is not practicable to ascertain with reasonable accuracy the age of the minor defendant, it may be stated that the age of minor defendant is not known."

Kerala-

Same as in Madras omitting the proviso.

[Vide Notification No. B1-3312/50, dated 7-4-1959.]

Madras:-

In Order VII, in rule 1, for clause (d), substitute the following clause, namely:-

"(d) Where plaintiff or the defendant is a minor or a person of unsound mind, a statement of that effect, and in the case of minor, a statement regarding his age to the best of knowledge and belief of the person verifying the plaint:

Provided that where, owing to the large number of defendants or any other sufficient reason, it is not practicable to ascertain with reasonable accuracy the age of the minor defendant, it may be stated that the age of minor defendant is not known;"

Punjab:-

In Order VII, in rule 1, after clause (i), insert the following clause, namely:-

"(j) a statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results." (w.e.f. 15-3-1991)

2. In money suits :- .

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sue for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, 1[or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for].

HIGH COURT AMENDMENT

Karnataka:-

In Order VII, in rule 2, in para 1, at the end, insert the words "and wherever a statement of account or a memorandum of calculation is necessary for the purpose, such statement or memorandum shall be set out in the schedule to the plaint or separately annexed thereto". (w.e.f. 30-3-1967)

1. Subs, by Act No. 104 of 1976, sec. 57 for "the plaint shall state approximately the amount sued for" (w.e.f. 1-2-1977).

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

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

HIGH COURT AMENDMENTS

Bombay:-

In Order VII, in rule 3, at the end, insert the words "In case of encroachment, sketch showing as approximately as possible the location and the extent of the encroachment shall also be filed along with the plaint.". (w.e.f. 1-10-1983)

Calcutta:-

In Order VII, in rule 3, at the end, insert the words "and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measures".

Gauhati:-

Same as in Calcutta.

4. When plaintiff sues as representative :- .

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

HIGH COURT AMENDMENT

Karnataka:-

In Order VII, renumber rule 4 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) When the permission of the Court under rule 8 of Order 1 of this Code is sought, before or at the time of institution of the suit, the plaint shall be accompanied by an application supported by an affidavit stating the number or approximate number of parties interested, the places where they respectively reside, that they have all the same interest in the subject-matter of the suit and the nature of the said interest, and the best means of giving notice of the institution of the suit to the said parties. If the permission sought is granted, the plaint shall state, or be amended so as to state that the plaintiff sues on behalf of himself and all other persons interested in the subject-matter of the suit and that he has been permitted by

the Court to do so by an order of Court made on a particular date, in the application mentioned above." (w.e.f. 30-3-1967)

5. Defendants interest and liability to be shown :- .

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

6. Grounds of exemption from limitation law :- .

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

1[Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.]

1. Added by Act No. 104 of 1976 (w.e.f. 1-2-1977).

7. Relief to be specifically stated :- .

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

8. Relief founded on separate ground :- . .

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

9. Procedure on admitting plaint :- .

Where the court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order alongwith requisite fee for service of summons on the defendants]

1. Rule 9 was substituted by Act No. 46 of 1999, section 19. Now again substituted by Act No 22 of 2002, Section 8 (w.e.f. 1-7- 2002).

10. Return of plaint :- .

(1) 1[Subject to the provisions of rule 10A, the plaint shall] at any state of the suit be returned to be presented to the Court in which the suit should have been instituted.

2[Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

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

HIGH COURT AMENDMENT

Bombay:-

In Order VII, in rule 10, in sub-rule (1), at the end, insert the words "The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint." (w.e.f. 1-10-1983)

1. This rule has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act, 1908 (Ben. 6 of 1908) s. 265.

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return :- .

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing, so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and (c) requesting that the notice of the date so fixed may be given to him and to the defendant. :

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

10B. Power of appellate Court to transfer suit to the proper Court :- .

(1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while

returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the suit should have been instituted, (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

(2) The direction made by the Court under sub-rule (1), shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.

11. Rejection of plaint :- .

The plaint shall be rejected in the following cases:-

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

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

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

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

1[(e) where it is not filed in duplicate;

3[(f) where the plaintiff fails to comply with the provisions of rule 9];

2[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

HIGH COURT AMENDMENT

Andhra Pradesh:-

Same as in Madras.

Karnataka:-

In Order VII, in rule 11, for clause (c), substitute the following clause, namely:-

"(c) where the relief claimed is properly valued, but the court-fee actually paid is insufficient, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court;" (w.e.f. 30-6-1967)

Madras:-

In Order VII, in rule 11, for clause (c), substitute the following clause, namely:-

"(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court;"

1. Ins. by Act No. 46 of 1999, section 17 (w.e.f. 1-7-2002).

2. Added by Act No. 104 of 1976, sec. 57 (w.e.f. 1-2-1977).

3. Clauses (f) and (g) were inserted by Act No. 46 of 1999, section 17 and substituted by Act No 22 of 2002, Section 8 (w.e.f. 1-7- 2002).

12. Procedure on rejecting plaint :- .

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

13. Rule 13 :- .

Where rejection of plaint does not preclude presentation of fresh plaint

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

HIGH COURT AMENDMENT

Bombay.- In Order VII, in rule 13, after the words "hereinbefore mentioned", insert the words "or on the grounds mentioned in rule 14A(5 (a) Order VI". (w.e.f. 1-10-1983).

Documents relied on in plaint

14. Production of document on which plaintiff sues or relies :- .

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such document in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

2[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.];

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.]

1. Subs, by Act No. 46 of 1999, section 17 (w.e.f. 1-7-2002).

2. Sub rule (3) substituted by Act No. 22 of 2002, section 8 (w.e.f. 1-7-2002).

15. Statement in case of documents not in plaintiffs possession or power :- .

1. Rule 15 omitted by Act No. 46 of 1999, section 17 (w.e.f. 1-7-2002).

16. Suits on lost negotiable instruments :- .

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

17. Production of shop-book :- .

(1) Save in so far as is otherwise provided by the Bankers Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in shop-book or other account in his possession or power the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order VII, in rule 17, in sub-rule (2), insert the following proviso, namely:-

"Provided that, if the copy is not written in English or is written in a character other than the ordinary Persian or Nagri character in use, the procedure laid down in Order XIII, rule 12, as to verification shall be followed and in that case the Court or its officer need not examine or compare the copy with the original."

Bombay.-

In Order VII, in rule 17, in sub-rule (2), insert the following proviso, namely:-

"Provided that where the entry referred to in this rule is in language other than English or the language of the Court, the plaintiff shall file with the plaint a true copy of the entry together with its translation either in English or in the language of the Court, such translation being verified as regards the correctness by an affidavit of the person making translation:

Provided further that the Court may accept a plaint without the translations and permit the party to file the said translation within a time to be fixed by the Court.

In either of such cases the Court or its officer need not examine and compare the copy with the original and certify the same to be correct." (w.e.f. 1-11-1966)

Delhi.-

Same as in Punjab.

Gujarat.-

Same as in Bombay with the following modifications:-

(i) in the first proviso omit the words "English or" and "either in English or".

(ii) omit second proviso.

(iii) in the last sentence for the words "In either of such cases", substitute the words "In such a case", (w.e.f. 17-8-1961)

Himachal Pradesh.-
Same as in Punjab.

Karnataka.-

In Order VII, in rule 17, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Where the document is not in the language of the Court, the Chief Ministerial Officer of the Court shall take the directions of the judge or Presiding Officer of the Court as to whether the procedure prescribed in rule 12 of Order XIII, of this Code shall be followed." (w.e.f. 30 -3-1967)

Punjab.-

In Order VII, in rule 17, after sub-rule (2), insert the following Explanation, namely:-

"Explanation.-When a shop-book or other account written in a language other than English or the language of the Court is produced with a translation or transliteration of the relevant entry the party producing it shall not be required to present a separate affidavit as to the correctness of the translation or transliteration, but shall add a certificate on the document itself, that it is a full and true translation or transliteration of the original entry, and no examination or comparison by the ministerial officer shall be required except by a special order of the Court."

18. Inadmissibility of document not produced when plaint filed :- .

HIGH COURT AMENDMENTS

Allahabad.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. Every plaint or original petition shall be accompanied by a proceeding giving an address written in Hindi written in Devnagri script at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature.

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

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

22. Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served.

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

24. A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of

such petition shall be given to such other parties to the suit as the court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.

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

Bombay.-

In Order VII, after rule 18, insert the following rules, namely:-

19. Address to be filed with plaint or original petition :- .

(1) Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a memorandum in writing of this nature.

(2). This address shall be called the "registered address", and it shall, subject to rule 24 of this Order, hold good in all proceedings in the suit and in appeals and also for a further period of six years from the date of final decision for all purposes including those of execution.

20. Nature of address to be filed :- . . -

The registered address filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed or, if a party cannot conveniently give an address as aforesaid at a place where the party ordinarily resides.

21. Consequences of failure to file address :- . . -

(1) Where a plaintiff or petitioner after being required to file the registered address within a specified time, fails to file the registered address, he shall be liable to have his plaint or petition rejected by the Court suo motu, or any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(2) When default may be condoned.-

Where a plaint or petition is rejected under sub-rule (1), the plaintiff or the petitioner may apply for an order to set aside the rejection and, if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing a registered address at proper time, the Court shall set aside the rejection on such terms as to costs or otherwise as it deems fit and shall appoint a date for proceeding with the suit or petition.

22. Procedure when party not found at the place of registered address :- . . -

Where a party is not found at the registered address and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgement (which payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

23. Service of process where party engages a pleader :- . . -

Where a party engages a pleader, notice or process on him shall be served in the manner prescribed by Order III, Rule 5, unless the Court directs service at the registered address of the party.

24. Change of registered address :- .

A party who desires to change the registered address given by him as aforesaid shall file a fresh memorandum in writing to this effect, and the Court may direct the amendment of the record accordingly. Notice of such memorandum shall be given to such other parties as the Court may deem it necessary to inform, and may be served either upon the pleaders of such parties or be sent to them by registered post pre-paid for acknowledgment as the Court thinks fit.

25. Rule not binding on Court :- .

Nothing in rules 19, 22, 23 and 24 of this Order shall prevent the Court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so.

26. Applicability to notice under Order XXI, rule 22 :- .

Nothing in rules 19, 22, 23 and 24 of this Order shall apply to the notice prescribed by clause (b) of sub-rule (i) of rule 22 of Order XXI of this Code."

Delhi and Himachal Pradesh.-

Same as in Punjab except, that for Himachal Pradesh in rule 20 for the words "High Court of Judicature at Lahore", substitute the words "Judicial Commissioner Court, Himachal Pradesh".

Gujarat.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. Address to be filed with plaint or original petition.-

Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall immediately on being so added, file a memorandum in writing of this nature. The address so given shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of the final decision and for all purposes including those of execution.

20. Nature of address to be filed.-

An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or if he cannot conveniently give an address as aforesaid, at the place where a party ordinarily resides.

21. Consequences of failure to file address.-

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

22. Procedure when party is not found at the place of address.-

Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the address supplied by that party by registered post pre-paid for

acknowledgment (high pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

23. Service of notice on pleaders.-

Where a party engages a pleader, notice or process on him shall be served in the manner prescribed by Order 3, rule 5 unless the Court directs service at the address for service given by the party.

24. Change of the registered address.-

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

25. Service of notice or process in any other manner.-

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

26. Applicability of notice under Order XXI, rule 22.-

Nothing in these rules shall apply to the notice prescribed by Order XXI, rule 22." (w.e.f. 17-8-1961)

Madhya Pradesh.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. Registered address.-

Every plaint or original petition shall be accompanied by a memorandum giving an address at which service of process may be made on the plaintiff or the petitioner. The address shall be within the local limits of the Civil District in which the plaint or original petition is filed or, if an address within such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides.

This address shall be called registered address and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.

20. Registered address by a party subsequently added as plaintiff or petitioner.-

Any party subsequently added as plaintiff or petitioner shall in like manner file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner.

21. Consequence of non-filing of registered address.-

(1) If the plaintiff or the petitioner fails to file a registered address as required by rule 19 or 20, he shall be liable, at the discretion of the Court, to have his suit dismissed or his petition rejected.

And order under this rule may be passed by the Court suo motu or on the application of any party.

22. Affixing of process and its validity.-

Where the plaintiff or the petitioner is not found at his registered address and no agent or adult male member of his family on whom a process can be served is present, a copy of the process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the process had been personally served.

23. Change of registered address.-

A plaintiff or petitioner who wishes to change his registered address shall file a verified petition and the Court shall direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit or proceedings as the Court may deem it necessary to inform."

Patna.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. Every plaint or original petition shall be accompanied by a statement giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner, and every plaintiff or petitioner subsequently added, shall, immediately on being so added, file a similar statement.

20. An address for service filed under the preceding rule shall state the following particulars:-

(1) the name of the street and number of the house (if in a town);

(2) the name of the town or village;

(3) the post office;

(4) the district; and

(5) the munsiff (if in Bihar) or the District Court (if outside Bihar).

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

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

Punjab.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added, shall, immediately on being so added, file a proceeding of this nature.

20. An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides, or within the limits of the territorial jurisdiction of the High Court of Judicature at Lahore (now Punjab and Haryana High Court).

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

22. Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice summons or other process can be served is

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

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

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

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

Rajasthan.-

In Order VII, after rule 18, insert the following rules, namely:-

"19. (A) Every plaint or original petition shall be accompanied by a memorandum giving an address at which service of process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a memorandum of this nature.

(B) This address shall be called the registered address and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.

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

21. (1) Where a plaintiff or petitioners fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo motu or any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(2) Where a suit is dismissed or a petition rejected under sub-rule (1) the plaintiff or the petitioner may apply for an order to set the dismissal or the rejection aside and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the registered address at the proper time, the Court shall set aside the dismissal or the rejection upon such terms as to costs or otherwise as it think is fit and shall appoint a day for proceeding with the suit or petition.

22. Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a process can be served, is present, a copy of the process shall be affixed to the outer door of the house. If on the date fixed, such party is not present and the process is not declared by the Court under rule 19 of Order 5, to have been duly served, another date shall be fixed and a copy of the process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the process had been personally served.

23. Where a party engages a pleader, process for service on him shall be served in the manner

prescribed by Order 3, rule 5, unless the Court directs service at the address for service given by the party.

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

25. Nothing in these rules shall prevent the Court from directing the service of a process in any other manner, if for any reasons it thinks fit to do so." (w.e.f. 24-7-1954)

1. Rule 18 was amended by Act No. 46 of 1999, section 17 and now has been omitted by Act No. 22 of 2002, Section 8 (w.e.f. 1-7- 2002).

ORDER 8 :- WRITTEN STATEMENT, SET-OF AND COUNTER- CLAIM :-

1. Written statement :- . .

The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

1. Subs, by Act No. 46 of 1999, section 18. Now again substituted by Act No. 22 of 2002 section 9 (w.e.f. 1-7-2002).

1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him :- .

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

2(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.].

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiffs witnesses, or

(b) handed over to a witness merely to refresh his memory.]

1. Added by Act No. 46 of 1999, section 18 (w.e.f. 1-7-2002).

2. Rule 1A was inserted by Act No. 46 of 1999, section 18 and now sub-rule (3) has been substituted by Act No. 22 of 2002, section 9 (w.e.f. 1-7-2002) :- .

2. New facts must be specially pleaded.

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

3. Denial to be specific :- .

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

4. Evasive denial :- . .

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

5. Specific denial :- . .

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

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

2[(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]

1. Rule 5 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976, (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

6. Particulars of set-off to be given in written statement :- . .

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

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

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

Illustrations

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

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

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

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

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

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

(g) A sues B and C for Rs. 1000. B cannot set-off a debt due to him alone by A.

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

HIGH COURT AMENDMENTS

Karnataka.-

In Order VIII, in rule 6, in sub-rule (1), at the end, insert the words "and the provisions of rules 14 to 16 of Order VII of this Code, shall mutatis mutandis, apply to a defendant claiming set-off as if he were a plaintiff", (w.e.f. 30-3-1967)

Orissa.-

Same as in Patna.

Patna.-

In Order VIII, in rule 6, in sub-rule (1), at the end, insert the words "and the provisions of Order VII, rules 14 to 18 shall, mutatis mutandis, apply to a defendant claiming set-off as if he were a plaintiff".

6A. Counter-claim by defendant :- .

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

6B. Counter-claim to be stated :- .

Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6C. Exclusion of counter-claim :- .

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

6D. Effect of discontinuance of suit :- .

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

6E. Default of plaintiff to reply to counter-claim :- . .

If the plaintiff makes default in putting in reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him or make such order in relation to the counter-claim as it thinks fit.

6F. Relief to defendant where counter-claim succeeds :- .

Where in any suit a set-off or counter-claim is established as defence against the plaintiffs claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G. Rules relating to written statement to apply :- .

The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.]

7. Defence or set-off founded upon separate grounds :- .

Where the defendant relies upon several distinct grounds of defence or set-off 1[or counter-claim] founded separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

HIGH COURT AMENDMENT

Karnataka-

In Order VIII, after rule 7, insert the following rule, namely:-

"7A. Where the defendant seeks the permission of the Court under rule 8 of Order I of this Code to defend the suit on behalf of or for the benefit of himself and other persons having the same interest as the defendant in the subject-matter of the suit he shall file an application supported by an affidavit setting out the particulars detailed in sub-rule (2) of rule 4 of Order VII of this Code. Notice of such an application shall be given to all parties to the suit, and if the permission sought is granted the plaint may be amended by inserting a statement that the defendant is with leave of the Court sued as the representative of all persons interested in subject-matter of the suit." (w.e.f. 30-3-1967)

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

8. New ground of defence :- .

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off 1[or counter-claim] may be raised by the defendant or plaintiff as the case may be, in his written statement.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

8A. Omitted :- .

1. Omitted by Act No. 46 of 1999 (w.e.f. 1-7-2002).

9. Subsequent pleadings :- . .

No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or

additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

1. Rule 9 were omitted by Act No. 46 of 1999, section 18 but now again substituted by Act No. 22 of 2002 (w.e.f. 1-7-2002).

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

Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."].

1. Rule 10 were omitted by Act No. 46 of 1999, section 18 but now again substituted by Act No. 22 of 2002 (w.e.f. 1-7-2002).

HIGH COURT AMENDMENTS

Allahabad.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing file in Court proceeding stating his address for service, written in Hindi written in Devnagri Script, and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks just

12. Rules 20, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, addressed for service, filed under the preceding rule."

[Vide Amended by Uttar Pradesh Gazette, Ft. II, dated 17th December, 1970.]

Bombay.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. (1) (a) Parties to fix addresses.-

Every party, whether original, added or substituted, who appears in any suit or other proceeding, shall file in the Court on or before the date fixed in the summons on notice served on him as date for his appearance or within such further time as may be allowed by the Court, a memorandum in writing stating the address at which he may be served.

(b) Registered address.-

This address shall be called the "registered address" and it shall subject to rule 24 of Order VII read with rule 12 of this Order, hold good in all proceedings in the suit and in appeals and also for a further period of six years from the date of the final decision for all purposes including those of execution.

(c) Consequences of default in filing registered address.-

If, after being registered to file the registered address within a specified time, he fails to do so, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect, the Court may add suo motu or on the application of any party for an order to such effect and the Court may make such order as it thinks fit.

(2) When default may be condoned.-

Where the Court has struck out the defences under sub-rule (1) and has adjourned the hearing

of the suit or the proceeding and where the defendant or the opposite party at or before such hearing appears and assigns sufficient cause for his failure to file the registered address and also files the unregistered address, he may, upon terms as the Court directs as to costs or otherwise, be heard in answer to the suit or the proceeding as if the defences had not been struck out.

(3) When decree passed on default can be set aside.-

Where the Court has struck out the defences under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order as against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a date for proceeding with the suit or proceeding:

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

12. Applicability of rules 20 and 22 to 26 of Order VII :- .

Rules 20, 22, 23, 24, 25 and 26 of Order VII shall apply so far as they may be applicable, to registered address filed under the last preceding rule.

Counter-Claim

13. Defendant may set up counter-claim against the claims of the plaintiff in addition to set-off :- .

A defendant in a suit, in addition to his right of pleading a set-off under Order VIII, Rule 6 of the Code of Civil Procedure, 1908 may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to the defendant either before or after the filing of the suit, but before the defendant has delivered his defence and before the time limited for delivering his defence has expired, whether such counter-claim sounds in damages or not, and such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the counter-claim, and the plaintiff (if so advised) shall be at liberty to file a written statement in answer to the counter-claim of the defendant within four weeks after service upon him or his pleader of a copy of the defendants counter-claim, and the Court or a Judge may, on the application of the plaintiff before, trial, if in the opinion of the Court or Judge such counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit in respect thereof.

14. Defendant setting up a counter-claim to specifically state so in the written statement :- . . -

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

15. Where the counter-claim involves in addition to the plaintiff other persons also, the defendant to add further title of the written statement and deliver copies of his written statement to such persons as are already parties to the suit :- .

Where a defendant by a written statement sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his written statement a further title similar to the title in a plaint, setting-forth the names of all the persons who, in such counter-claim were to be enforced by a cross-suit, would be defendants to such cross-suit, and shall deliver copies of his written statement to such of them as are already parties to the suit within the period within which he is required to deliver it to the plaintiff.

16. Service of summons when counter-claim is against persons who are not already parties to the suit :- . . -

Where any such person as is mentioned in the last preceding rule, is not already a party to the suit, he shall be summoned to appear by being served with a copy of the written statement and such service shall be regulated by the same rules as are contained in the Code of Civil Procedure, 1908, with respect to the service of a writ of summons.

17. Appearance of persons other than defendants to the suit, when served with counterclaim :- .

Any person not a defendant to the suit, who is served with a written statement and counter-claim as aforesaid, must appear therein as if he had been served with a writ of summons to appear in the suit.

18. Reply to counter-claim :- . . -

A person named in a written statement as a party to a counter-claim whereby made, may deliver a reply within the time, within which he might deliver a written statement if it were a plaint.

19. Objection to counter-claim being allowed to be set up in the suit :- . . -

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

20. Counter-claim may be proceeded with even if suit be stayed, discontinued or dismissed :- .

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

21. On default of reply to counter-claim, the counter-claim may be set down for judgment :- .

If the defendant to the counter-claim makes default in putting in reply to the counter-claim, the defendant in the suit, who is the plaintiff to the counter-claim, may in such cases get the suit set down for judgment on the counter-claim, and such judgment shall be given as the

Court shall consider him to be entitled to.

22. Judgment when set-off or counter-claim is established :- . .-

Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled upon the merits of the case, (w.e.f. 1-11-1966)

Third Party Procedure

23. Third Party Notice :- . .-

Where in a suit a defendant claims against any person not already a party to the suit (hereinafter called the Third Party)-

(a) that he is entitled to contribution or indemnity, or

(b) that he is entitled to any relief or remedy to or connected with the subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or

(c) that any question or issue relating to or connected with the subject-matter of the suit is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the Third Party or between any or either of them, he may apply to the Court for leave to issue a notice (hereinafter called the Third Party Notice) to that effect. The application shall be made by affidavit, stating the nature of the claim made by the defendant and the facts on which proposed- Third Party Notice is based and may be made ex parte. The application shall be made within four weeks from the service of the summons upon defendant.

24. Form and Service of Notice :- .

(1) Third Party Notice shall state the nature of the claim made by the plaintiff against the defendant and the nature and grounds of the claim made by the defendant against the Third Party or the nature and extent of any relief or remedy by him against Third Party or the nature of the question or issue sought to be determined and shall be sealed with the seal of the Court. It shall be served on the Third Party according to the rules relating to service of summons and shall, unless otherwise ordered, be served within two weeks from the date of the order granting leave to issue the Third Party Notice. A copy of the plaint and copy of the affidavit of the defendant in support of the Third Party Notice shall be served on the Third Party along with the Third Party Notice.

(2) A copy of the Third Party Notice and of the affidavit of the defendant in support of the Third Party Notice shall be furnished to all parties to the suit within two weeks from the date of the order granting leave to issue the Third Party Notice.

25. Effect of Service of Notice :- .

The Third Party shall, as from the time of the service upon him the Notice, be a party to the suit with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

26. Third Party to enter Appearance or Vakalatnama :- . .-

If the Third Party desires to dispute the plaintiffs claim in the suit as against the defendant on whose behalf the Notice has been issued or his own liability to the defendant the Third Party shall enter an appearance in-person or a Vakalatnama, in the suit within two weeks from the service of the Notice:

Provided that a person so served and failing to appear within the said period of two weeks may apply to the Court for leave to appear and such leave may be given on such terms, if any, as the Court may think fit.

27. Consequence of Failure to enter Appearance or Vakalatnama :- . . -

If the Third Party does not enter an appearance in person or a Vakalatnama he shall be deemed to admit the claim stated in the Third Party Notice and shall be bound by any judgment or decision in the suit whether by consent or otherwise, in so far as it is relevant to any claim, question or issue stated in the Notice.

28. Decree when Third Party makes Default in Appearance or Vakalatnama :- . . .

Where the Third Party makes Default in entering an appearance in person or a Vakalatnama in the suit,-

(1) in cases where the suit is tried and results in favour of the plaintiff, the Court which tries the suit may, at or after the trial, pass such decree in favour of the defendant against the Third Party as the nature of the case may require:

Provided that, execution thereof shall not issue without the leave of the Court until the decree against the defendant has been satisfied, and

(2) in cases where the suit is decided in plaintiffs favour, otherwise than by trial the Court may, at any time after the decree against the defendant has been satisfied, on the application of the defendant pass such decree in favour of the defendant against the Third Party as the nature of the case may require.

29. Third Party to file Affidavit in Reply :- . . -

If the Third Party enters an appearance in person or a Vakalatnama he shall file within two weeks thereafter an affidavit in reply to the affidavit of the defendant in support of the Third Party Notice, setting out his case in respect of the Third Party Notice, and his case, if any, in respect of the plaint.

30. Appearance or Vakalatnama of Third Party directions to be given :- . . -

(1) Where the Third Party enters an appearance in person or a Vakalatnama and files his affidavit as required by the last preceding rule, and the suit appears on Board for directions before the Court it may,-

(a) order any claim, question or issue stated in the Third Party Notice to be tried in such manner, before, at or after the trial of the suit, as the Court may think fit and may, in that event, give the Third Party leave to defend the suit either along or jointly with any defendant, upon such terms as he may think just, or to appear at the trial and take such part therein as he may think just and generally may make such orders and give such directions as may appear proper for having the questions and the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the Third Party shall be bound or made

liable by any decree in the suit, or

(b) dismiss the Third Party Notice.

(2) Any order made or direction given under this rule may be varied or rescinded by the Court at any time before the disposal of the suit.

31. Defendant to apply for directions in certain cases :- .

Where for any reason it is not possible for the Court to give direction on the Third Party Notice at the time when the suit appears on the Board by directions, the defendant issuing the Third Party Notice shall, within two weeks, after the filing of the affidavit in reply by the Third Party apply for directions. Upon the hearing of such applications, the Court may pass such orders and give such directions as are mentioned in the last preceding rule.

32. Costs :- .

The Court may decide all questions of costs as between a Third Party and the other parties to the suit, and may order any one or more to pay the costs of any other, or others or give such directions to costs as the justice of the case may require.

33. Setting aside Third Party proceedings :- . .-

Proceedings on a Third Party Notice may, at any stage of the proceedings, be set aside by the Court.

34. Right of the Third Party and of each successive Third Party to apply for Third Party Notice against other persons :- . .-

(1) Where the Third Party makes against any person not already a party to the suit (to be called the Second Third Party) such a claim as is mentioned in rule 23 he may by leave of the Court issue a Third Party Notice to that effect.

(2) Where the Second Third Party in his turn makes such a claim as is mentioned in rule 23 against any person not already a party to the suit (to be called the Third Party) or where each successive Third Party in his turn makes such a claim against any person not already a Party to the suit, such Second Third Party or any successive Third Party may, by leave of the Court issue a Third Party Notice to that effect.

(3) The provisions contained in the preceding rules as to Third Party Procedure shall, with any necessary modification apply to all cases where Third Party Notice have been issued, where at the instance of the Third Party or any successive Third Party.

35. Right of defendant to issue Third Party Notice against co-defendant :- . .-

(1) Where a defendant makes against a co-defendant such a claim as is mentioned in rule 23 he may, without leave of the Court, issue and serve on such co-defendant within six weeks from the service of the summons upon him (the defendant making the claim) a notice stating the nature and ground of such claim and shall at the same time file an affidavit in support of such claim and furnish copies thereof to all parties in the suit.

(2) The provisions contained in the preceding rules regarding Third Party Procedure shall, with necessary modification, apply to cases where a defendant has issued such notice against a co-

defendant, but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the suit.

36. Third Party proceeding in a counter-claim :- .

Where in any suit a counter-claim is made by a defendant the provisions contained in the preceding rules regarding Third Party Procedure shall, with any necessary modifications, apply in relation to the counter-claim as if the subject-matter of the counter-claim were the subject - matter of the suit, and as if the person making the counter-claim were the plaintiff and the person against whom it is made a defendant."]

1. Rules 23 to 36 subs, for rules 23 to 30 by Notification No. P. 0102/77, published in the Maharashtra Government Gazette, Pt. IV-ka, dated 31st December, 1987.

Delhi.-

Same as in Punjab.

Gujarat.-

In Order VIII, after rule 10, insert the following rules, namely:- ;

"11. Parties to addresses.-

Every party, whether original, added or substituted, who appears in any suit or other proceedings shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in court a memorandum in writing stating his address for service, and if he fails to do so, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks fit. The address so given shall hold good throughout the interlocutory proceedings and appeals and also for a further period two years from the date of final decision and for all purposes including those of execution:

Provided that this rule shall not apply to a defendant who has not filed a written statement but who is examined by the Court under section 7 of the Dekkhan Agriculturists Relief Act, 1879, or otherwise, or in any case where the Court permits the address for service to be given by a party on a date later than that specified in this rule.

12. Applicability of Rules 20, 22, 24 and 25, Order VII, to addresses for service.- Rules 20, 22, 24 and 25 of Order VII shall apply, so far as may be, addresses for service filed under the last preceding rule." (w.e.f. 1-11-1966)

Himachal Pradesh.-

Same as in Punjab.

Madhya Pradesh.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. Registered address.-

Every defendant in a suit or opposite party in any proceedings, shall on the first day of his appearance in Court, file a memorandum giving an address for service on him of any subsequent process. The address shall be within the local limits of such Civil District in which the suit or petition is filed, or if an address within the local limits of such Civil District cannot conveniently be given, within the local limits of such Civil District in which the party ordinarily resides.

This address shall be called the registered address and it shall hold good throughout interlocutory proceedings and appeal and also for a further period of two years from the date of

final decision and for all purposes including those of execution.

12. Consequence of non-filing of registered address.-

(1) If the defendant or the opposite party fails to file a registered address as required by Rule 11, he shall be liable, at the discretion of the Court, to have his defence struck out and to be placed in the position as if he had made no defence.

An order under this Rule may be; passed by the Court suo motu or on the application of any party.

(2) Where the Court has struck out the defence under sub-rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the opposite party at or before such hearing appears and assigns sufficient cause for his failure to file the registered address he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit or the proceedings as if the defence had not been struck out.

(3) Where the Court has struck out the defence under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order; and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside decree or order as against him upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or proceeding:

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

13. Rules 20, 22 and 23 of Order VII shall apply, so far as may be, to addresses for service filed under Rule 11." (w.e.f. 16-9-1960)

In Order VIII, omit rules 11 and 12. (w.e.f. 14-5-1984)

Patna.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. Every party whether original, added or substituted, who appears in any suit or other proceedings shall, at the time of entering appearance to the summons, notice or other process served on him file in court a statement stating his address for service and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect and the Court may make such order as it thinks just.

12. Rules 20 and 22 of Order VII shall apply, so as far as may be to address for service filed under the preceding rule."

Punjab and Haryana.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. Every party, whether original, added or substituted, who appears in any suit or other proceedings shall on or before the date fixed in the summons, notice or other process served on him as the date of hearing, file in Court a proceeding stating his address for service and if he fails to do so, he shall be have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect and the Court may make such order as it thinks just.

12. Rules 20, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule." (w.e.f. 24-11-1927)

Note.-Rule 11 (Punjab). This rule applies to defendants who are corporations as well as the other defendants. The Rule is mandatory so far as the filing of the proceeding stating the addresses for service is concerned; but the matter is left to the discretion of the Court and it is not bound to strike off the defence of the defaulting party in every case.

Rajasthan.-

In Order VIII, after rule 10, insert the following rules, namely:-

"11. (1) Every party whether original, added or substituted who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a memorandum stating his address for service and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks just.

(2) Where the Court has struck out the defence under sub-rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the opposite party at or before such hearing, appears and assigns good cause for his failure to file the registered address he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit or the proceeding as if the defence has not been struck out.

(3) Where the Court has struck out the defence under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order, and if he files a registered address, and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order as against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or proceeding:

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

12. Rules 19(2), 20, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule." (w.e.f. 24-7-1954)

ORDER VIIIA

Andhra Pradesh.-

Same as in Madras.

Karnataka.-

After Order VIII, insert the following Order, namely:-

ORDER 8A THIRD PARTY PROCEDURE

(1) Where in respect of the claim made against him in the suit, a defendant claims to be entitled to contribution from or indemnity against any person not already a party to the suit (hereinafter called the third party) he may, by leave of Court, issue a notice {hereinafter called the third party notice} to that affect sealed with the seal of the Court.

(2) An application for leave to issue such notice shall be filed along with the written statement of the said defendant and be accompanied by a draft of the notice sought to be issued. The notice shall state the nature and grounds of the claim and when the draft of the same is approved by Court with or without corrections, it shall be served on the third party together with a copy of the plaint and a copy of the said defendants written statement in the manner prescribed for the service of summons.

(1) On being served with such notice the third party does not enter appearance on or before the date fixed therein for his appearance he shall be deemed to admit the validity of the decree that may be passed against the defendant, on whose behalf the notice was issued, whether, upon contest or consent or otherwise, and to admit his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice:

Provided that a person so served and failing to appear may, at any time before the disposal of the suit, apply to Court leave to appear and the Court may grant such leave upon such terms, if any, as it may think fit to impose.

(2) Where the third party does not enter appearance in the suit and the suit is decreed upon contest or consent or otherwise against the defendant on whose behalf the notice was issued, the Court may in the said decree make such directions as to contribution or indemnity, as the case may be, against the third party and in favour of the said defendant as the circumstances of the case may require:

Provided that the execution thereof shall not issue against the third party without the leave of the Court until after satisfaction by such defendant of the decree against him.

If the third party desires to dispute either the claim made against him in the third party notice or the plaintiffs claim in the suit or both, he shall enter appearance in the suit or before the date fixed therefor in the notice.

When the third party enters appearance under rule 3 or upon leave being granted under the proviso to sub-rule (1) of rule 2 he shall apply to Court for directions as to further proceedings to be taken on the notice setting out his case or pleas in respect of the same. Notice thereof shall be given both to the defendant on whose behalf the third party notice was issued as well as to the plaintiff, fixing as early date for its hearing.

(1) On hearing of such application,-

(a) if the Court is of the opinion either that the claim made in the third party notice is prima facie not warranted or that is not so intimately connected with the plaintiffs claim in the suit as to render its being conveniently tried along with the plaintiffs claim in the suit, or that its trial in the suit will unduly prolong or hamper the trial of the suit, the Court may dismiss the proceedings on the third party notice;

(b) if the Court is satisfied that there is a question to be tried as to the liability of the third party to make the contribution or pay the indemnity claimed, in whole or in part, and that it is just and convenient to try the same in the suit itself the Court may order the question of such liability as between third party and the defendant giving notice, to be tried in such manner as it may direct, and may by the said order also give liberty to the third party to defend the suit itself upon such terms as may just.

(2) When the Court proceeds under clause (b) of sub-rule (!) it shall also give such directions as may be necessary for the delivery of pleadings, production of documents or the taking of further appropriate proceedings in the suit.

(3) If upon trial a decree comes to be passed either on contest or otherwise against the defendant on whose behalf notice was given, the Court shall in such decree makes such

direction as to contribution or indemnity, as the case may be, against the third party and in favour of the said defendant as the circumstances of the case may require, and also as to whether execution in respect of such direction against the third party shall or shall not be conditional upon the defendant satisfying the decree against him.

(4) The Court, while making such decrees, may decide all questions of costs as between the third party and other parties and may order any one or more to pay the costs of any other or others and give such directions as the costs as the justice of the case may require.

(1) Where the Court dismisses the proceedings on a third party notice under clause (a) of sub-rule (1) of rule 5, the claim made in the third party notice shall be deemed to have been left undecided, and the defendant on whose behalf notice was issued will be at liberty to take such other independent proceeding in respect thereof as may be open to him, as if no such notice had been issued by him.

(2) Where the Court decides to proceed under clause (b) of sub-rule (1) of rule 5, the third party shall, as from the date on which third party notice was served on him, be a party to the suit and shall have-

(a) the same rights as respects the claims made against him by or the decree passed against him in favour of the defendant on whose behalf the notice was issued, as if he had been sued in the ordinary way by the said defendant; and

(b) where he is given the liberty to defend the suit itself, the same rights as respects his defence in the decree passed therein as if he had been sued in the ordinary way by the plaintiff in the suit.

(3) On the making of an order under clause (b) of sub-rule (1) of rule 5, the cause-title of the suit shall be amended by inserting the name of the third party in the array of defendants, with the addition in brackets after his name the words Third party on the notice of the defendants served on." (w.e.f. 30-3-1967).

Kerala.-

Same as in Madras. (9-6-1959)

Madras.-

After Order VIII, insert the following Order, namely:-

ORDER 8A :- THIRD PARTY PROCEDURE :-

1. Third party notice :- .

Where a defendant claims to be entitled to contribution from indemnity against any person not already a party to the suit (hereinafter called a Third Party) he may, by leave of the Court, issue a notice (hereinafter called a Third Party Notice) to that effect, sealed with the seal of the Court. The notice shall state the nature and grounds of the claim. Such notice shall be filed into Court with a copy of the plaint and shall be served on the Third Party according to the rules relating to the service of summons.

2. Effect of notice :- .

The Third Party shall, as from the time of the service upon him of the notice, be deemed to be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

3. Default by third party :- .

If the Third Party desires to dispute the plaintiffs claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the Third Party may enter appearance in the suit on or before the date fixed for his appearance in the notice. If he does not enter appearance he shall be deemed to admit the validity of the decree that may be obtained against such defendant whether by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the Third Party Notice:

Provided always that a person so served and failing to appear may apply to the Court for leave to appeal, and leave may be given upon such terms, if any, as the Court shall think fit.

4. Procedure on default :- .

Where Third Party does not enter appearance in the suit and the suit is decreed by consent or otherwise in favour of the plaintiff, the Court may pass such decree as the nature of the case may require against the Third Party and in favour of the defendant on whose behalf notice was issued:

Provided that execution thereof shall not be issued without leave of the Court until after satisfaction by such defendant of the decree against him.

5. Third Party directions :- .

If the Third Party enters appearance, the defendant on whose behalf notice was issued may apply to the Court for directions; and the Court may, if satisfied that there is a question to be tried as to the liability of the Third Party to make the contribution or pay the indemnity claimed, in whole or in part, order the question of such liability, as between the Third Party and the defendant giving the notice, to be tried in such manner, at or after the trial of the suit, as the Court may direct; if not so satisfied may pass such decree or order as the case may require.

6. Leave to defend :- .

The Court may upon the hearing of the application mentioned in rule 5, give the Third Party liberty to defend the suit upon such terms as may be just, or to appear at the trial and taken such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered or amendments to be made and give such directions as proper for the most convenient determination of the question or questions in issue, and as to the mode and extent is or to which the Third Party shall be bound or made liable by the decree in the suit.

7. Costs :- .

The Court may decide all questions of costs, as between the Third Party and the other parties to the suit, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

8. Questions between co-defendants :- .

Where a defendant claims to be entitled to contribution from or indemnity against any other defendant to the suit, a notice may be issued and the same procedure shall be adopted for the determination of such questions between the defendants as would be issued and taken, if such

last-mentioned defendant were Third Party; but nothing herein contained shall prejudice the rights of the plaintiffs against any defendant in the suit.

9. Further parties :- .

Where any person served with a Third Party Notice by a defendant under these rules to be entitled to contribution from or indemnity against any person not already a party to the suit, he may, by leave of the Court, issue a Third Party Notice to that effect, and the preceding rules as to the Third Party procedure shall apply mutatis mutandis to every notice so issued and the expressions "Third Party Notice" and "Third Party" in these rules shall apply to and include every notice so issued and every person served with such notice respectively." (w.e.f. 5-9-1968)

ORDER 9 :- APPEARANCE OF PARTIES AND CONSEQUENCE OF NON- APPEARANCE (THE FIRST SCHEDULE) :-

1. Rule 1 :-

2. Dismissal of suit where summons not served in consequence of the plaintiffs failure to pay cost :- .

Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made, if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.]

1. Rule 2 was substituted by Act No. 46 of 1999. section 19 and now again substituted by Act No. 22 of 2002. Section 10(w.e.f. 1-7- 2002).

3. Where neither party appears, suit to be dismissed :- .

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

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

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for 1[such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

HIGH COURT AMENDMENTS

Delhi.-

Same as in Gujarat.

Gujarat.-

In Order IX, renumber rule 4 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) The provisions of section 5 of Indian Limitation Act, 1908 (9 of 1908), shall apply to applications under this rule."

Himachal Pradesh.-

Same as in Gujarat.

Madhya Pradesh.-

Same as in Gujarat.

Orissa.-

In Order IX, in rule 4, insert the following proviso, namely:-

"Provided that in cases where the defendant had entered into contract by filing his defence, no suit shall be restored without notice to him." (w.e.f 14-5-1984)

Punjab.-

Same as in Gujarat.

1. Ins. by Art No. 104 of 1976 (w.e.f. 1-2-1977).

5. Dismissal of suit where plaintiff after summons returned unserved, fails for one month to apply for fresh summons :- .

2[(1) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved the plaintiff fails, for a periods of 1[seven days] from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

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

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

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.]

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

HIGH COURT AMENDMENTS

Bombay.-

In Order IX, in rule 5, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of two months from the next hearing of the suit to apply for issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff within the said period satisfied the Court that-

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

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

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it think fit."

[Vide Maharashtra Notification No. P.O. 102/77, dated 31-12-1987.]

Gujarat-

Same as in Bombay.

Kerala.-

In Order IX, in rule 5,-

(i) for the marginal heading, substitute the following marginal heading-
"Dismissal of suit where plaintiff fails to apply for steps".

(ii) in sub-rule (i), for the words "from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers", substitute the words "from the next hearing of the suit or from the notice regarding the non-service of summons given by the Court to the plaintiff or counsel".

Orissa.-

In Order IX, for rule 5, substitute the following rule, namely:-

"5. Dismissal of suit where plaintiff, after summons returned unserved, fails to file necessary requisites for fresh summons.-

(1) Where after summons has been issued to the defendant, or to one of several defendants and returned unserved, the plaintiff fails to file necessary requisites for a fresh summons, within the period fixed by the Court, it shall make an order that the suit be dismissed as against such defendant, and

(2) In such a case, the plaintiff may (subject to the law of limitation) bring a fresh suit." (w.e.f. 3-5-1968)

1. Subs. by Act 104 of 1976, sec. 59, for "three months" (w.e.f. 1-2-1977) and again subs. by Act No. 46 of 1999, section 19 (w.e.f. 1-7- 2002) for one months".

2. Subs. by Act 24 of 1920, sec. 2, sub-rule (1)

6. Procedure when only plaintiff appears :- .

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

1[(a)] When summons duly served-if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex pane.]

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

(c) When summons served but not in due time-if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons,

the Court shall postpone the hearing of the suit to future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

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

HIGH COURT AMENDMENT

Patna.-

In Order IX, in rule 6, in sub-rule (1), in clause (c), omit the words "and shall direct notice of such day to be given to the defendant" and substitute a full stop for the comma after the word "Court", (w.e.f. 6-5-1946)

1. Subs, by Act No. 104 of 1976 for clause (a) (w.e.f 1-2- 1977).

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

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

HIGH COURT AMENDMENT

Rajasthan.-

In Order IX, for rule 7, substitute the following rule, namely:-

"7. Where the Court has adjourned the hearing of the suit after making an order that it be heard ex parte and the defendant at or before such hearing appears and assigns good cause for his previous non-appearance, the Court may upon such terms as it directs as to costs or otherwise, set aside the order for the hearing of the suit ex parte and hear the defendant in answer to the suit as if he had appeared on the day fixed for his appearance."

[Vide Notification No. 13/SRO, dated 30th June 1956.]

8. Procedure where defendant only appears :- .

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

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

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

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

HIGH COURT AMENDMENTS

Calcutta.-

In Order IX, in rule 9,-

(i) after sub-rule (1), insert the following sub-rule, namely:-

"(2) The plaintiff shall, for service on the opposite parties, present along with his application under this rule either-

(i) as many copies thereof on plain paper as there are opposite parties, or

(ii) if the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements."

(ii) renumber sub-rule (2) as sub-rule (3).

(iii) in sub-rule (3) as so renumbered, after the words "notice of application" insert the words "with a copy thereof (or concise statement) as the case may be".

Delhi.-

Same as in Punjab.

Gauhati.-

Same as in Calcutta.

Himachal Pradesh.-

Same as in Punjab.

Punjab.-

In Order IX, in rule 9, in sub-rule (1), insert the following proviso, namely:-

"Provided that the plaintiff shall not be precluded from bringing another suit for redemption of a mortgage, although a former suit may have been dismissed for default."

[Vide Notification No. 2212-G, dated 12th May, 1909.

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

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

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

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

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

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

Setting aside decrees ex parte

13. Setting aside decree ex parte against defendant :- .

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

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

1[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim]

2[Explanation.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]

HIGH COURT AMENDMENTS

Allahabad.-

In Order IX, in rule 13, after second proviso, insert the following proviso, namely:-

"Provided also that no such decree shall be set aside merely on the ground of irregularity in the service of summons if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim."

Andhra Pradesh.-

Same as in Madras.

Bombay.-

In Order IX, for rule 13, substitute the following rule, namely:-

"13. Setting aside decree ex parte against defendant.-

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

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

Provided also that no such decree shall be set aside merely on the ground of irregularity of service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim.

Explanation I.-Where a summons has been served under Order V, rule 15, 01, adult male member having an interest adverse to that of the defendant in the subject matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule.

Explanation II.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree." (w.e.f. 1-10-1983)

Calcutta.-

In Order IX, renumber rule 13 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) The defendant shall, for service on the opposite party, present along with his application under this rule either-

(i) as many copies thereof of plain paper as there are opposite parties, or

(ii) in the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements."

[Vide Notification No. 3316-G, dated 3rd February, 1933.]

Delhi.-

Same as in Madhya Pradesh.

Gauhati.-

Same as in Calcutta.

Gujrat.-

Same as in Madhya Pradesh.

Himachal Pradesh.-

Same as in Madhya Pradesh.

Kerala.-

In Order IX,-

(i) renumber rule 13 as sub-rule (1) thereof;

(ii) at the end of the existing proviso insert the words "after notice to them"

;

(iii) after the existing proviso so amended, insert a further proviso as in Madras;

(iv) after sub-rule (1) as so renumbered, insert sub-rule (2) as in Madras, (w.e.f. 9-6-1959).

[Ed.-This amendment relates to rule 13 prior to its amendment by Central Act 104 of 1976, sec. 59 (w.e.f. 1-2-1977).]

Madhya Pradesh.-

In Order IX:-

(a) renumber rule 13 as sub-rule (1) thereof;

(b) in sub-rule (1) as so renumbered, substitute the words "there was sufficient cause for his failure to appearing" for the words "he was prevented by any sufficient cause from appearing".

(c) in sub-rule (1) as so renumbered, second proviso and Explanations are same as in Bombay;

(d) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

"(2) The provisions of section 5 of the Indian Limitation Act, 1908 (9 of 1908), shall apply to applications under sub-rule (1)."

Madras.-

In Order IX,-

(a) renumber rule 13 as sub-rule (1) thereof;

(b) same as in Madhya Pradesh (b).

Orissa.-

In Order IX-

(a) renumber rule 13 as sub-rule (1) thereof;

(b) same as in Madhya Pradesh (b);

(c) in sub-rule (1) as so renumbered, renumber Explanation as Explanation I and insert the following Explanation, namely:-

"Explanation II.-A summons served under Order V, rule 15 on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit shall not be deemed to have been duly served within the meaning of the rule."

[Vide Notification No. 24-X-7-52, dated 14th May, 1954.]

[Ed.-These amendments relate to rule 13 prior to its amendment by Central Act 104 of 1976, sec. 59 (w.e.f. 1-2-1977).]

1. Added by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

14. No decree to be set aside without notice to opposite party :- .

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

HIGH COURT AMENDMENTS

Bombay.-

In Order IX, after rule 14, insert the following rule, namely-

"15. Application of the provisions of this order to Appeals.-In the application of this Order to appeals, so far as may be, the word plaintiff shall be held to include an appellant, the word defendant a respondent, and the word suit, an "appeal." {w.e.f. 1-10-1983}

Calcutta.-

In Order IX, in rule 14, substitute the words "together with a copy thereof (or concise statement as the case may be) "for the word "thereof".

[Vide Notification No. 3516-G, dated 3rd February, 1933.]

Gauhati.-

Same as in Calcutta.

Gujarat-

Same as in Bombay.

Bombay.-

In Order IX, after rule 14, insert the following rule, namely-

"R.15. Application of the provisions of this Order to Appeals:-In the application of this Order to appeals, so far as may be, the word plaintiff shall be held to include an appellant, the word defendant, a respondent, and the word suit and appeal." (w.e.f. 1-10-1983)

ORDER 10 :- EXAMINATION OF PARTIES BY THE COURT :-

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

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

1A. Direction of the Court to opt for any one mode of alternative dispute resolution :- . . .

After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section .(1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1. Added by Act No. 46 of 1999, Section 20 (w.e.f. 1 -7-2002).

1B. Appearance before the conciliatory forum or authority :- .

Where a suit is referred under rule 1 A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation :- .

Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the court on the date fixed by it.

2. Oral examination of party, or companion of party :- .

(1) At the first hearing of the suit, the Court-

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.]

1. Sub. by Act No. 104 of 1976, for rule 2, (w.e.f. 1-2-1977).

3. Substance of examination to be written :- .

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

1. This rule is not applicable to the Chief Court of Oudh, see the Oudh Court Act, 1925 (U.P. 4 of 1925), sec. 16(2).

4. Consequence of refusal or inability of pleader to answer :- .

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court 1[may postpone the hearing of the suit to a day not later than seven days from the date of first hearing] and direct that such party shall appear in person on such day.

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

thinks fit.

1. Subs, by Act No. 46 of 1999, section 20 (w.e.f. 1-7-2002) for "may postpone the hearing of the suit to a future day".

ORDER 11 :- DISCOVERY AND INSPECTION :-

1. Discovery by interrogatories :- .

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose : Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. Particular interrogatories to be submitted :- .

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court¹[and that court shall decide within seven days from the day of filing of the said application]. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

1. Ins. by Act No. 46 of 1999, section 21 (w.e.f. 1-7-2002).

3. Costs of interrogatories :- .

In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Form of interrogatories :- .

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

5. Corporations :- .

Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories

to any member or officer of such corporation or body, and an order may be made accordingly.

6. Objections to interrogatories by answer :- .

Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, 1[or on the ground of privilege or any other ground], may be taken in the affidavit in answer.

1. Subs, by Act No. 104 of 1976, for certain words (w.e.f. 1-2-1977).

7. Setting aside and striking out interrogatories. :- .

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

8. Affidavit in answer, filing :- . .

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

9. Form of affidavit in answer :- .

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

10. No exception to be taken :- .

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

11. Order to answer or answer further :- .

Where any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

12. Application for discovery of documents :- .

Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is

not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit:

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

13. Affidavit of documents :- .

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

14. Production of documents :- .

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

15. Inspection of documents referred to in pleadings or affidavits :- .

Every party to a suit shall be entitled 1[at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document 2[or who has entered any document in any list annexed to his pleadings] or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse with the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs as otherwise as the Court shall think fit.

1. Subs, by Act No. 46 of 1999, section 21 for certain words (w.e.f. 1-7-2002).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

16. Notice to produce :- .

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

17. Time for inspection when notice given :- .

The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of

custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. Order for inspection :- .

(1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

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

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

19. Verified copies :- .

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

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

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege¹[unless the document relates to matters of State.]

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

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

20. Premature discovery :- .

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

or any part thereof, the Court may if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

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

1[(1)] Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and 2[an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]

3[(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]

1. Rule 21 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976, (w.e.f. 1-2-1977).

2. Subs, by Act No. 104 of 1976 for "an order may be made accordingly" (w.e.f. 1-2-1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

22. Using answers to interrogatories at trial :- .

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

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

23. Order to apply to minors :- .

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

HIGH COURT AMENDMENT

Karnataka.-

In Order XI, after rule 23, insert the following rules, namely-

"24. If where inspection has been ordered out of Court or is to be given out of Court, it found that a satisfactory inspection cannot be obtained, or if it is shown that the documents are being or likely to be tampered with, an application may be made to Court for an order for the deposit and inspection of the documents in Court. Such application shall be supported by affidavit. Notice of such application shall be given to the party effected thereby and orders passed only after hearing both sides, if they appear on the date fixed for hearing in the notice, or on any other date to which the hearing of the same may be adjourned thereafter.

25. A defendant upon whom summons to appear and answer the plaint has been served, shall

on entering, appearance before filing his written statement be entitled along with his pleader, if any, to inspect all documents to produced with the plaint and lying in the custody of the Court.

26. A plaintiff as well as every defendant on whom summons has been served and who has entered appearance shall be entitled along with his pleader, if any, to inspect all documents produced into Court by any party to the suit." (w.e.f. 30-3-1967)

ORDER 12 :- ADMISSIONS :-

1. Notice of admission of case :- .

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

2. Notice to admit documents :- .

Either party may call upon the other party¹[to admit, within 2[seven] days from the date of service of the notice any document,] saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

HIGH COURT AMENDMENTS

Allahabad.-

In Order XII, after rule 2,-

(a) after the words "neglect to admit", insert the words "without sufficient cause";

(b) for the word "the" occurring between the words "after such notice" and the words "costs of printing" substitute the words "such special";

(c) after the words "any such document", insert the words "as may be fixed by the Court not exceeding fifty rupees for each document;";

(d) after the words "the result of the suit may be" omit the comma and the words "unless the Court otherwise directs and the semicolon thereafter occurring.

[Vide Notification No. 43/VII-d-29, dated 1-6-1957.]

Patna:- In Order XII, in rule 2, at the end, insert the following words, namely:-

"The Court may allow a penal cost in case of wrongful or unreasonable refusal to admit documents irrespective of the result of the litigation." (w.e.f. 26-7-1972)

1. Subs, by Act No. 104 of 1976 for "to admit any document" (w.e.f. 1-2-1977).

2. Subs. Act No. 46 of 1999, section 22 for "fifteen" (w.e.f. 1-7-2002).

2A. Document to be deemed to be admitted if not divided after service of notice to admit documents :- .

(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability :

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. Form of notice :- . .

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

3A. Power of Court to record admission :- .

Notwithstanding that no notice to admit documents has been given under rule 2, the Court, may at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall in such a case, record whether the party admits or refuses or neglects to admit such document.]

1. Ins. By Act 66 of 1956, sec. 14 (w.e.f. 1-1-1957)

4. Notice to admit facts :- .

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

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

1. Second proviso omitted by Act No. 46 of 1999, section 22 (w.e.f. 1-7-2002).

5. Form of admissions :- . Y

A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

6. Judgment on admissions :- .

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]

1. Subs, by Act No. 104 of 1976 for rule 6 (w.e.f. 1-2-1977).

7. Affidavit of signature :- .

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

8. Notice to produce documents :- .

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

9. Costs :- .

If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby, shall be borne by the party giving such notice.

ORDER 13 :- PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS :-

1. Original documents to be produced at or before the settlement of issues :- .

(1) The parties or their pleader shall produce, on or before the settlement of issues, all the documentary evidence of in original where the copies thereof have been filed along with plaint or written statement.

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

(3) Nothing in sub-rule (1) shall apply to documents,-

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory.]

1. Subs, for rule 1 and 2 by Act No. 46 of 1999, section 23 (w.e.f. 1-7-2002).

2. Omitted :- .

1. Subs, for rule 1 and 2 by Act No. 46 of 1999, section 23 (w.e.f. 1-7-2002).

3. Rejection of irrelevant or inadmissible documents :- .

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. Endorsements on documents admitted in evidence :- .

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted, and the endorsement shall be signed or initialled by the Judge.

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

HIGH COURT AMENDMENTS

Bombay.-

In Order XIII, in rule 4, insert the following proviso, namely:-

"Provided that in proceedings filed in Bombay Civil Court, the endorsement may be signed or initialled by such officer as the Principal Judge may authorise in this behalf." (w.e.f. 1-10-1983)

Patna.-

In Order XIII, in rule 4, in sub-rule (1) and sub-rule (2), after the word "Judge", insert the following words, namely:-

"or, in the case of the High Court, by an officer in Court under the order for the Judge or one of the Judges", (w.e.f. 5-2-1971)

Punjab and Haryana.-

In Order XIII, in rule 4, insert the following proviso, namely:-

"Provided that where the Court is satisfied that the documents, not endorsed in the manner laid down in the above rule, was in fact, admitted having been properly admitted in evidence unless non-compliance with this rule has resulted in miscarriage of justice." (w.e.f. 11-6-1974)

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

(1) Save in so far as is otherwise provided by the Bankers Books Evidence Act, 1891 (18 of

1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

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

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

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

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after accusing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book account or record in which it occurs to be returned to the person producing it.

HIGH COURT AMENDMENTS

Bombay.-

In Order XIII, in rule 5, in sub-rule (3), insert the following proviso, namely:-

"Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the provision contained in the proviso to sub-rule (2) of rule 17 of Order VII shall apply mutatis mutandis to such an entry."

[Vide Notification No. C 0403/52, dated 1st October, 1983.]

Gujarat.-

Same as in Bombay omitting the words "English or".

6. Endorsements on documents rejected as inadmissible in evidence :- .

When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b), and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge

HIGH COURT AMENDMENT

Bombay.-

In Order XIII, in rule 6, insert the following proviso, namely:-

"Provided that in proceedings filed in Bombay City Civil Court the endorsement may be signed by such officer as the principal Judge may authorise in this behalf." (w.e.f. 1-10-1983)

7. recording of admitted and return or rejected documents :- .

(1) Every document which has been admitted in evidence or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

HIGH COURT AMENDMENTS

Andhra Pradesh.-
Same as in Madras.

Bombay.-
In Order XIII, in rule 7, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Documents in language other than English or Court Language, or in script other than Devnagri.-

Every document produced in evidence which is not written in the Court language or in English, shall be accompanied by a correct translation into English or the Court language; and every document which is written in the Court language or in a script other than Devnagri shall be accompanied by a correct transliteration into Devnagri script. If the document is admitted in evidence, the opposite party shall either admit the correctness of the translation or transliteration or submit his own translation or transliteration of the document." (w.e.f. 1-10-1983)

Kerala.-
Same as in Madras, (w.e.f. 9-6-1959)

Madhya Pradesh.-
In Order XIII, in rule 7, after sub-rule (2), insert sub-rule (3) which is same as in Bombay with the following modifications:-

- (a) omit the words "or the Court language" after the words "translation into English";
- (b) between the words "Court language" and "in a script", substitute the word "but" for "or".
(16-9-1943)

Madras.-
In Order XIII, in rule 7, in sub-rule (2), insert the following proviso, namely:-
"Provided that no document shall be returned which by force of the decree has become wholly void or useless."

[Vide Dis No. 434 of 1916.]

8. Court may order any document to be impounded :- .
Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court think fit.

9. Return of admitted documents :- .
(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

1[Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefore-

(a) delivers to the proper officer for being substituted for the original,-

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub- rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so :]

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

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-

Same as in Madras.

Bombay.-

In Order XIII, in rule 9, in sub-rule (1), after the first proviso, insert the following proviso, namely:-

"Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XLI rule 1, may be returned after the appeal has been disposed of by the Court." (w.e.f. 1-10-1983).

Gujarat.-

(i) In Order XIII, in rule 9, in sub-rule (1), after first proviso insert a second proviso which is same as in Bombay.

Karnataka.-

In Order XIII, in rule 9, after sub-rule (2), insert sub-rules (3) and (4) as in Madras with substitution in sub-rule (3) of the words "verified in the manner prescribed for verification of plaints" for the words "made by a verified petition".

Kerala.-

Same as in Madras, (w.e.f. 9-6-1959)

Madras.-

In Order XIII, in rule 9, after sub-rule (2), insert the following sub-rules, namely:-

"(3) Every application for return a document under the first proviso to sub-rule (1) shall be made by a verified petition and shall set forth facts justifying the immediate return of the original.

(4) The Court may make such order as it thinks fit for the costs of any or all the parties to any application under sub-rule (1). The Court may further direct that any costs incurred in complying with or paid on application under sub-rule (1) or incurred in complying with the provisions of the rule 5 of this Order, shall be included as costs in the cause."

Patna.-

In Order XIII, in rule 9, after sub-rule (1), insert the following sub-rule, namely:-

"(1A) Where a document is produced by a person who is not a party in the proceeding the Court may require the party on whose behalf the document is produced, to substitute a certified copy for the original as hereinafter provided."

1. Subs, by Act No. 104 of 1976, for the proviso (w.e.f. 1-2-1977).

10. Court may send for papers from its own records or from other Courts :- . -

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

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

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

11. Provisions as to documents applied to material objects :- . -

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order XIII, after rule 11, insert the following rules, namely:-

"12. Every document not written in the Court vernacular or in English, which is produced (a) with a plaint, or (b) at the first hearing, or (c) at any other time tendered in evidence in any suit, or proceeding, shall be accompanied by a correct translation of the document into the Court vernacular. If any such document is written in the Court vernacular but in characters other than the ordinary Persian or Nagri characters in use, it shall be accompanied by a correct transliteration of its contents into the Persian or Nagri character.

The person making the translation or transliteration shall give his name and address and verify that the translation or transliteration is correct. In case of a document written in a script or language not known to the translator or to the person making the transliteration, the person who reads out the original document for the benefit of the translator or the person making the transliteration shall also verify the translation and transliteration by giving his name and address and stating that he has correctly read out the original document.

13. When a document included in the list, prescribed by rule 1, has been admitted in evidence, the Court shall, in addition to making the endorsement prescribed in rule 4(1), mark such document with serial figures in the case of documents admitted as evidence for a plaintiff, and with serial letters in the case of documents admitted as evidence for a defendant, and shall initial every such serial number or letter. When there are two or more parties defendants, the documents of the first party defendant may be marked A-1, A-2, A-3, etc. and those of the second party B-1, B-2, B-3, etc. When a number of documents of the same nature is admitted, as for example a series of receipts for rent, the whole series shall bear one figure or capital

letter or letters and a small figure or small letter shall be added to distinguish each paper of the series."

Karnataka.-

In Order XIII, after rule 11, insert the following rule, namely:-

"12. Where any document not written in the language of the Court is produced either with the plaint or with the written statement or at the first hearing or is at any other time tendered in evidence in any suit the Court may require that it shall be accompanied by a correct translation of the document into the language of the Court. Such translation shall be made either by the translator or interpreter of the Court, if any, or by any other competent person, and in the latter case the translation shall be verified by an affidavit of the person making the same declaring that he is acquainted with the character and language of the document and with the language of the Court and that the translation is true and correct to the best of his knowledge." (w.e.f. 9-2-1967)

Orissa.-

In Order XIII, after rule 11, insert the following rule, namely:-

"12. Every document not written in Oriya or English which is produced (a) with a plaint or (b) at the first hearing or (c) at any other time tendered in evidence in any suit, appeal or proceeding, shall be accompanied by a correct translation of the document into English. The person making the translation shall give his name and address and verify that the translation is correct. If the document is admitted in evidence the opposite party shall either admit the correctness of the translation or submit his own translation of the document." {w.e.f. 19- 12- 1961)

ORDER 14 :- SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON :-

1. Framing of issues :- .

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

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

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

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and 1[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at

the first hearing of the suit makes no defence.

1. Subs, by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977)

2. Court to pronounce judgment on all issues :- .

(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

1. Subs, by Act No. 104 of 1976, for rule 2 (w.e.f. 1-2-1977).

3. Materials from which issues may be framed :- .

The Court may frame the issues from all or any of the following materials :-

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

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

(c) the contents of documents by either party.

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

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it 1[may adjourn the framing of the issues to a day not later than seven days], and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

1. Subs, by Act No. 46 of 1999 section 24 (w.e.f. 1-7-2002) for certain words.

5. Power to amend, and strike out, issues :- . .

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

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

1. Rule 5 which was omitted by Act No. 46 of 1999, section 24 have now been substituted for the original Rule by Act No. 22 of 2002, section 11 (w.e.f. 1-7-2002).

6. Questions of fact or law may by agreement be stated in form of issues- :- .

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

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

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

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

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

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

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

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

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court, and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement, and, upon the judgment so pronounced a decree shall follow.

ORDER 15 :- DISPOSAL OF THE SUIT AT THE FIRST HEARING :-

1. Parties not at issue :- .

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

2. One of several defendants not at issue :- .

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

2[(2)] Wherever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was

pronounced.]

1. Rule 2 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. Parties at issue :- .

(1) Where the parties are at issue on some question of law or of fact, and issues have been frame by the Court as herein before provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and , if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence :- .

Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or any, if it thinks fit, after framing and recording issues, adjourn the suit for production of such evidence as may be necessary for its decision upon such issues.

STATE AMENDMENTS

Punjab:-

In Order XV, after rule 4, insert the following rule, namely:-

"5. Striking off defence for failure to deposit admitted rent:-

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent. per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike of his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2. The expression "entire amount admitted by him to be due" means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessors account and the

amount, if any, deposited in any Court.

Explanation 3. (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessors account.

(2) Before making an order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1) as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provide further that if the amount deposited includes any sums claimed by the depositor to be deductible or any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

Uttar Pradesh.-

In its application to the State of Uttar Pradesh add the following rule 5 after rule 4.

"5. Striking off defence for failure to deposit admitted rent, etc.-

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent, per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.-The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.-The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessors account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessors account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff.

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

[U.P. Act (57 of 1976) amended vide U.P. Govt. Gazette dated 3.10.1981].

HIGH COURT AMENDMENT

Bombay:-

After Order XV, insert the following Order, namely:-

"ORDER XVA STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect or prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation:- The suit for eviction shall include suit for mandatory injunction seeking removal of licence from the premises for the purpose of this rule." (w.e.f. 1-10-1983 and 11-1-1990).

ORDER 16 :- SUMMONING AND ATTENDANCE OF WITNESSES :-

1. List of witnesses and summons to witnesses :- .

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such part shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]

1. Subs, by Act No. 104 of 1976 for rule 1 (w.e.f. 1-2-1977).

2. Subs, by Act No. 46 of 1999, section 25 (w.e.f. 1-7-2002) for certain words.

1A. Production of witnesses without summons :- .

A subject to the provisions of sub-rule (3) of rule 1, and party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.]

HIGH COURT AMENDMENTS

Bombay.-

In Order XVI, after rule IB, insert the following rule, namely:-

"(1B) Court may permit service of summons by party applying for summons.-

(1) The Court may, on the application of any party for a summons for the attendance of any person, permit the service of summons to be effected by such party.

(2) When the Court has directed service of the summons by the party applying for the same and such service is not effected, the Court may, if it is satisfied that reasonable diligence has been used by such party to effect such service, permit service to be effected by an officer of the Court." (w.e.f. 1-11-1966)

Gujarat.-

Same as Bombay without the marginal note (w.e.f. 17-8-1961).

1. Subs, by Act No. 104 of 1976, for rule 1A (w.e.f. 1-2-1977).

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

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed 1[which shall not be later than seven days from the date of making application under sub-rule (4) of rule 1], pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one days attendance.

(2) Experts-In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

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

2[(4)] Expenses to be directly paid to witnesses-Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.]

1. Certain words added by Act No. 46 of 1999, section 25 (w.e.f. 1-7-2002).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

STATE AMENDMENTS

Uttar Pradesh.-

In its application to the State of Uttar Pradesh:

(i) In rule 2, sub-rule (1), insert, at the end, the following proviso,
"Provided, where Government is the party applying for a summons to a Government servant, it shall not be necessary for it to make any such payment into Court."

(ii) After sub-rule (4) insert the following, namely:-

"(4-A) Allowances, etc., of Government servant witnesses to be taxed as costs.-

Any travelling and daily allowances and the salary, payable to a Government servant who attends the Court to give evidence or to produce a document shall, on the amount being certified by such witness, be taxable as costs.

Explanation 1.-The travelling and daily allowances shall be in accordance with the rules governing such allowances, applicable to the Government servant in question.

Explanation 2.-The daily allowance and salary of the Government servant shall be proportionate to the number of days of his attendance required by the Court." [U.P. Act 57 of 1976].

HIGH COURT AMENDMENTS

Andaman and Nicobar Islands, Assam, Calcutta and Nagaland.-

In Order XVI, in rule 2, for sub-rules (1) and (2), substitute the following sub-rules, namely:-

"(1) The Court shall fix in respect of each summons such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the persons summoned, in passing to and from the Court in which he is required to attend, and for one days attendance.

(2) In fixing such an amount the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case."

Bombay.-

In Order XVI, in rule 2, in sub-rule (1), insert the following proviso, namely:-

"Provided that where Government or a public officer being a party to a suit or proceeding as such public officer supported by Government in the litigation, applies for a summons to any public officer to whom the Civil Service Regulations apply to give evidence of facts which have come to his knowledge or of matters with which he has to deal as a public officer, or to produce any document from public records, the Government or the aforesaid officer shall not be required to pay any sum of money on account of the travelling and other expenses of such witness." (w.e.f. 1-10-1983).

Chandigarh, Delhi, Himachal Pradesh, Haryana and Punjab.-

In Order XVI, in rule 2, in sub-rule (1), insert the following as an Exception, namely:-

"Exception.-When applying for a summons for any of its own officers, Government will be exempt from the operation of clause {!}." (w.e.f. 1-11-1966)

Gauhati.-
Same as in Bombay.

Gujarat.-
Same as in Bombay.

Madhya Pradesh.-
In Order XVI, in rule 2, in sub-rule (1), insert the following as an Exception, namely:-

"Exception.-When applying for a summons for any of its own officers, Government and State Railway Administrations will be exempt from the operation of sub-rule (1)." (w.e.f. 16-9-1960)
Orissa.-Same as that of Patna.

Patna.-
In Order XVI, in rule 2, to sub-rule (1), insert the following proviso, namely:-
"Provided that the Government shall not be required to pay any expenses into Court under this rule when it is the party applying for the summons, and the person to be summoned is an officer serving under Government, who is summoned to give evidence of facts which have come to his knowledge, or of matters with which he has to deal, in his public capacity." (w.e.f. 13-2-1952)

3. Tender of expenses to witness :- .

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

HIGH COURT AMENDMENTS

Andhra Pradesh.-
Same as in Madras.

Bombay.-
In Order XVI,-

(i) in rule 3, insert the following proviso, namely:-
"Provided that where the witness is a public officer to whom the Civil Service Regulations apply and is summoned to give evidence of facts which have come to his notice or of facts with which he has had to deal in his official capacity, or to produce a document from public records, the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him. Such officer, shall, however, be required to produce a certificate duly signed by the Head of his office showing the rates of travelling and other allowances admissible to him as for a journey on tour." (w.e.f. 1-10-1983)

(ii) after rule 3, insert the following rule, namely:-
"3A. Special provision for public servants summoned as witnesses in suits in which the Government is not a party.-

(1) Notwithstanding anything contained in the foregoing rules, in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a Railway employee is summoned to give evidence and/or to produce documents in his official capacity, the Court shall direct the party applying for summons to deposit such sum of money as will, in the opinion of the Court be sufficient to defray the travelling and other expenses of

the officer concerned as for a journey on tour, and on the deposit of such sum, the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for summons to deposit, the Court shall on the appearance before the court of the officer summoned, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.

(2) The officer appearing before the Court in accordance with sub-rule (1) shall produce a certificate duly signed by the Head of his office, showing the rates of travelling and other allowances admissible to him as for a journey on tour, and the amount payable to him by the Court shall be computed on the basis of the rates specified in such certificate." (w.e.f. 15-7-1954)

Calcutta.-

In Order XVI, for rule 3, substitute the following rule, namely:-

"3. The sum so fixed shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally:

Provided-

(i) that where the person summoned is a servant of any State Government whose pay exceeds Rs. 10 per mensem or whose headquarters are situated more than five miles from the Court, and he has been summoned to appear as a witness in his official capacity in a civil case to which Government is a party, the sum so fixed shall be credited to the Treasury;

(ii) that where the person summoned is a Finger Print Expert of the Criminal Investigation Department and he is summoned to give evidence in private cases, the sum so fixed, other than his travelling allowance, shall be credited to the Treasury;

(iii) that where the person summoned is the Government Examiner of Questioned Documents or his Assistant and he is summoned to give evidence or his opinion is sought in private cases, the sum so fixed shall be credited to the Treasury;

(iv) that where the person summoned is a servant of the Central Government or a State Railway or any other Commercial Department of Government and he is summoned to give evidence in his public capacity in a civil case, whether Government is or is not a party, the sum so fixed shall be credited in the Treasury to the Government or the State Railway, as the case may be, to which the employee belongs; and

(v) that where the person summoned is a State Railway employee and he is summoned to give evidence in his private capacity in a Civil Court in Assam, the sum so fixed shall be credited to the Railway to which he belongs."

[Vide Notification No. 10428-G, dated 25th July, 1928 and Notification No. 1501-G, dated 8th March, 1948.]

Delhi.-

Same as in Punjab.

Gauhati.-

Same as in Calcutta.

Gujarat-

Same as in Bombay omitting the last sentence of the proviso.

Himachal Pradesh.-

Same as in Punjab.

Kerala.-

In Order XVI, in rule 3, insert the following as para 2, namely:-

"In the case of employees of the Central Government or the State Government or Railway Administration sums paid into Court as subsistence allowance or compensation shall be credited in the Treasury to the credit of the Central Government or the State Government or the Railway Administration as the case may be."

Madhya Pradesh.-

In Order XVI, for rule 3, substitute the following rule, namely:-

"3. (1) The sum so paid into Court shall except in case of a Government servant, or a State Railway employees, be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

(2) Where a party other than Government in a suit requests the Court to summon a Government servant or a Railway employee as a witness or to produce official documents, the party shall deposit with the Court a sum, which in the opinion of the Court, will be sufficient to defray the travelling and other allowances of the Government servant or the Railway employee, as the case may be, as for a journey on tour and out of the sum so deposited the Court shall pay to the Government servant or the Railway employee concerned, the amount of travelling and other allowances admissible to him as for a journey on tour." (w.e.f. 16-9-1960)

Madras.-

In Order XVI, in rule 3, insert the following as a separate paragraph, namely:-

"In the case of employees of the Central Government or a State Railway, sums paid into Court as subsistence allowance or compensation shall be credited in the Treasury to the credit of the Central Government or State Railway as the case may be."

[Vide P Dis No. 11 of 1942.]

Orissa.-

Same as in Patna except for the word and figures "Rs. 10" substitute the word and figures "Rs. 200". (w.e.f. 14-5-1984)

Patna.-

In Order XVI, in rule 3, insert the following proviso, namely:-

"Provided that when the person summoned is an officer of Government, who has been summoned to give evidence in a case to which Government is a party, of facts which have come to his knowledge, or of matters which he has had to deal, in his -"public capacity, then-

(i) if the officers salary does not exceed Rs. 10 a month, the Court shall at the time of the service of the summons make payment to him of his expenses as determined by rule 2 and recover the amount from the Treasury,

(ii) if the officers salary exceeds Rs. 10 a month, and the Court is situated not more than 5 miles from his headquarters, the Court may, at its discretion, on his appearance, pay him actual travelling expenses incurred;

(iii) if the officers salary exceeds Rs. 10 a month and the Court is situated more than 5 miles from his headquarters no payment shall be made to him by the Court. In such cases any expenses paid into Court under rule 2 shall be credited to Government."

Punjab.-

In Order XVI, for rule 3, substitute the following rule, namely:-

"3. Tenders of expenses to witnesses.-

(1) The sum paid into a Court shall, except in the case of a Government servant, be tendered to the person summoned at the time of serving the summons if it can be served personally,

(2) When the person summoned is a Government servant, the sum so paid into Court shall be credited to Government.

Exception (1).- In cases in which Government servants have to give evidence at a Court situate not more than five miles from their headquarters, actual travelling expense incurred by them may, when the Court considers it necessary, be paid to them.

Exception (2).-A Government servant, whose salary does not exceed Rs. 10 per mensem, may receive his expenses from the Court."

[Vide Notification No. 156-G, dated 9th January, 1919.]

Rajasthan.-

In Order XVI, for rule 3, substitute the following rule, namely:-

"3. The sum so paid into Court and if so required by the person summoned shall be tendered to him at the time of serving the summons if it can be served personally." (w.e.f. 24-7-1954)

4. Procedure where insufficient sum paid in :- .

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

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

STATE AMENDMENTS

Uttar Pradesh.-In its application to the State of Uttar Pradesh, in Order XVI, rule 4, add the following proviso:-

"Provided that nothing in this rule shall apply to a case where the witness is a Government servant summoned at the instance of Government as a party. [U.P. Act., 57 of 1976].

HIGH COURT AMENDMENTS

Andhra Pradesh.-

Same as in Madras.

Calcutta.-

In Order XVI, in rule 4, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum

so fixed is not sufficient to cover such expenses or reasonable remuneration the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account and in the case of default in payment may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons or the Court may discharge the person summoned without requiring him to give evidence or may both order such levy and discharge the person as aforesaid." (w.e.f. 25-7-1928)

Delhi.-

Same as in Punjab.

Gauhati.-

Same as in Calcutta.

Himachal Pradesh.-

Same as in Punjab.

Karnataka-

In Order XVI,-

(i) after rule 4, insert the following rule, namely:-

"4A. (1) In the cases provided for in this rule the provisions of the foregoing rules shall not apply or shall apply only subject to the provisions of this rule.

(2) Where a Government or a public officer being a party to a suit or proceeding as such public officer supported by Government in the litigation, applies for a summons to any Government servant whose salary exceeds Rs. 10 per month and whose attendance is required in a Court situate more than 5 miles from his headquarters, no payment in accordance with rule 2 or with rule 4 shall be required, and the expenses incurred by the Government on such public officer in respect of the attendance of such witness shall not be taken into consideration in determining the costs incidental to the suit or proceeding.

(3) Where any other party to such a suit as is referred to in sub-rule (2) applies for a summons to such Government servant as is mentioned in the said sub-rule, the party summoning shall deposit in Court along with his application a sum of money for the travelling and other expenses of the officer determined by the Court under the provisions of rule 2 of this Order and shall also pay and deposit any further sum that may be required by Court to be paid or deposited under rule 4 of this Order, and the money so deposited or paid shall be credited to the Government in the treasury. Where the witness summoned under this sub-rule is the employee of the Central Government or the State Railway or other Commercial Department of the Government to whom the provisions of the Payment of Wages Act apply, sums paid into Court shall be credited in the Treasury to the credit of the Central Government, the Railway or the Commercial Department as the case may be.

(4) In all cases where a Government servant appears in accordance with the foregoing sub-rules the Court shall grant him a certificate of attendance containing the prescribed particulars."

(ii) after rule 4, insert rule 4B which is same as in Madras with the following modifications, namely:-

In sub-rule (1),-

(i) for the words "Notwithstanding anything in the foregoing rules, in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a railway employee is summoned to give evidence and/ or to produce documents in his public capacity" substitute the words "Notwithstanding anything contained in

the foregoing rules and in this rule, in all suits or other proceedings to which Government is not a party, where a servant of the Central Government or of any Railway or of any other Commercial Department of the Government to whom the provisions of the Payment of Wages Act apply is summoned to give evidence of facts which have come to his knowledge or of matters with which he has to deal as a public officer or to produce any document for public capacity."

(ii) for the words "such sum" substitute the words "the said sum" and for the words "officer summoned" substitute the words "officer concerned".

(iii) at the end, insert the words "The said officer shall be required to produce certificate duly signed by the Head of his office showing the rules of travelling and other allowances admissible to him as for a journey on tour and the amount payable to him by the Court shall be computed on the basis of the rates specified in the certificate." {w.e.f. 30-34967}

Kerala.-

In Order XVI, after rule 4, insert rules 4A and 4B which are same as in Madras with the following modifications:-

(1) in rule 4A,-

(a) in sub-rule (1), omit the words "whose salary exceeds Rs. 10 per mensem and";

(b) in sub-rule (2), omit the words "along with this application"; and for the words "any further sum" substitute the words "any other sum";

(c) in sub-rule (3), for the words "a State Railway" and "State Railway" substitute "the Railway Administration";

(2) in Rule 4B, after the words "where a servant of the Central Government" insert the words "or a State Government", {w.e.f. 9-6-1959}

Madhya Pradesh.-

In Order XVI, in rule 4, in sub-rule (1), between the words "summoned" and "as appears" insert the following words, namely:-

"or, when such person is a Government servant or a State Railway employee to be paid into Court."

[Vide Notification No. 3409, dated 29th June, 1934.]

Madras.-

In Order XVI, after rule 4, insert the following rules, namely:-

"4A. Special provision for public servants summoned as witnesses in suits to which the Government is a party.-

(1) Notwithstanding anything contained in the foregoing rules, in any suit by or against the Government, no payment in accordance with rule 2 or rule 4 shall be required when an application on behalf of Government is made for summons to a Government servant whose salary exceeds Rs. 10 per mensem and whose attendance is required in a Court situated more than five miles from his headquarters; and the expenses incurred by Government in respect of the attendance of the witness shall not be taken into consideration in determining costs incidental to the suit.

(2) When any other party to such a suit applies for a summons to such an officer, he shall deposit in Court along with his application a sum of money for the travelling and other

expenses of the officer according to the scale prescribed by the Government under whom the officer is serving and shall also pay any further sum that may be required under rule 4 according to the same scale, and the money so deposited or paid shall be credited to Government.

(3) In the case of employees of the Central Government or of [a State Railway], sums paid into Court as subsistence allowance or compensation shall be credited in the Treasury to the credit of the Central Government or State Railway as the case may be.

(4) In all cases where a Government servant appears in accordance with this rule, the Court shall grant him a certificate of attendance."

[Vide Ft St Geo Gaz, Supplt to Part II, dated 10th March, 1942.]

"4B. Special provision for public servants summoned as witnesses in suits in which the Government is not a party.-

(1) Notwithstanding anything contained in the foregoing rules, in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a Railway employee is summoned to give evidence and/or to produce documents in his public capacity, the Court shall direct the party applying for summons to deposit such sum of money as will in the opinion of the Court, be sufficient to defray the travelling and other expenses of the officer concerned as for a journey on tour, and on the deposit of such sum, the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for the summons to deposit, the Court shall, on the appearance before Court of the officer summoned or as soon thereafter as is practicable, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.

(2) The officer appearing before court in accordance with sub-rule (1) shall produce a certificate duly signed by the head of his office, showing the rates of travelling and other allowances admissible to him as for a journey on tour and the amount payable to him by the Court shall be computed on the basis of the rates specified in such certificate."

[Vide P Dis No. 851/52, dated 28th November, 1952.]

Punjab.-

In Order XVI, in rule 4, in sub-rule (1), between the words "summoned" and "as appears" insert the following words, namely:-

"or, when such person is a Government servant, to be paid into Court."

[Vide Notification No. 156-G, dated 9th January, 1919.]

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

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

6. Summons to produce document :- .

Any person may be summoned to produce a document, without being summoned to give

evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

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

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

HIGH COURT AMENDMENTS

Calcutta.-

In Order XVI, after rule 7, insert the following rule, namely:-

"7A. (i) Except where it appears to the court that a summons under this order should be served by the Court in the same manner as a summons to a defendant the Court shall make over for service all summons under this Order to the party applying therefor. The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

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

(iii) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgement of service or if for any reason such summons cannot be served personally, the Court shall, on the application of party, re-issue such summons to be served by the Court in like manner as a summons to a defendant" (w.e.f. 25-7-1928)

Gauhati.-

Same as in Calcutta.

Orissa.-

Same as in Calcutta, (w.e.f. 29-12-1961)

7A. Summons given to party for service :- .

(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

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

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

(4) If such summons, when tendered, is refused or if the person served refuses to sign and acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

8. Summons how served :- .

Every summons¹[under this Order, not being a summons delivered to a party for service under rule 7A,] shall be served as nearly as may be in the same manner as a summons to a defendant and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

HIGH COURT AMENDMENTS

Andhra Pradesh.-

In Order XVI, for rule 8, substitute the following rule, namely:-

"8. A summons under this Order may be delivered by the Court to the party applying for such summons for making service on the witness, provided that when the service is not effected by the party or the party is unwilling to do so the summons shall be delivered through the proper officer of the Court. The rules in Order V as to proof of service shall apply in the case of all summons served under this rule."

Calcutta.-

Same as in Gauhati.

Gauhati.-

In Order XVI, for rule 8, substitute the following rule, namely:-

"8. (1) Every summons under this Order not being a summons made over to a party for service under rule 7A (1) of this Order shall be served as nearly as may be in the same manner as a summons to a defendant and the rule in Order V as to proof of service shall apply thereto.

(2) The party applying for a summons to be served under this rule shall before the summons is granted and within a period to be fixed pay into Court the sum fixed by the Court under rule 2 of this Order.

Exception.-When applying for a summons for any of its own officers in his official capacity, Government will be exempt from the operation of this rule."

Kerala.-

In Order XVI, for rule 8, substitute following rule, namely:-

"8. (1) A summons under this Order may be delivered by this Court to the party applying for such summons for making service on the witness:

Provided that when the party so desires in the first instance or is unable after due diligence to effect such service, the summons shall be delivered through the proper officer of the Court,

(2) Service of summons on a witness by the party or by the proper officer shall, as nearly as may be, in the same manner as on a defendant and the rules in Order V as to proof of service shall apply in the case of all summons served under this rule." (w.e.f. 9-6-1959)

Madras.-

Same as in Andhra Pradesh. (w.e.f. 1-11-1951)

Orissa.-

Same as in Gauhati except that omit sub-rule (1) and renumber sub-rule (2) as rules (w.e.f. 29-12-1961)

Patna.-

In Order XVI, in rule 8, insert the following proviso, namely:-

"Provided that a summons under this Order may by leave of the Court served by the party or his agent applying for the same by personal service. If such service is not effected and the Court is satisfied that reasonable diligence has been used by the party or his agent to effect such service then the summons shall be served by the Court in the usual manner."

Rajasthan.-

In Order XVI, in rule 8, insert the following proviso, namely:-

"Provided that any party may by leave of the Court, by himself or through his agent, serve any of his witness or witnesses personally." (w.e.f. 24-7-1954)

1. Subs, by Act No. 104 of 1976, for certain words (w.e.f. 1-2-1977).

9. Time for serving summons :- .

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure whose witness fails to comply with summons :- .

1[(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-

(a) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.]

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

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

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVI, in rule 10,-

(i) in sub-rule (1), substitute a colon (:) for the full stop (.) after the words "summons", and insert the following proviso, namely:-

"Provided that the Court need not examine the serving-officer if the person has been summoned only to produce a document and has attended and admitted receipt of the summons but has failed to produce the documents." (ii) in sub-rule (2),-

(a) between the word "proclamation" and the word "requiring" insert the following words, namely:-

"or, if he is present, an order in writing to be signed by him";

(b) for the words "and a copy of such proclamation" substitute the following words, namely:-
"and a copy of the proclamation if issued";

(iii) in sub-rule (3) between the word "proclamation" and the words "or at any time afterwards" insert the following words, namely:-
"or an order in writing".

[Vide Notification No. 6745/35{a)-I(8), dated 11th September, 1938.]

Kerala.-

In Order XVI, in rule 10, for the proviso, substitute the following proviso, namely:-

"Provided that no Court exercising Small Cause jurisdiction shall make an order for the attachment of immovable property." (w.e.f. 9-6- 1959)

1. Subs, by Act No. 104 of 1976, for sub-rule (1) (w.e.f. 1-2-1977).

11. If witness appears attachment may be withdrawn :- .

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

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

(b) where he has failed to attend at the time and place named in a proclamation issued under the last proceeding rule, that he had no notice of such proclamation in time to attend.

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear :- .

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

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

2[(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why

the fine should not be imposed.]

1. Rule 12 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins by Act No. 104 of 1976 (w.e.f. 1-2-1977).

13. Mode of attachment :- .

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

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

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary 1[to examine any person, including a party to the suit] and not called as witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.

1. Subs, by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

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

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

16. When they may depart :- .

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

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

HIGH COURT AMENDMENTS

Delhi.-

Same as in Punjab.

Himachal Pradesh.-

Same as in Punjab.

Punjab.-

In Order XVI, in rule 16, after sub-rule (2), insert the following sub-rule, namely:-

"(3) In the absence of the presiding officer the powers conferred by sub-rule (2) may be exercised by the Senior Subordinate Judge of the first class exercising jurisdiction at the headquarters of the district, or by any Judge or Court-official nominated by him for the

purpose:

Provided that a Court-official nominated for the purpose, shall not order a person, who fails to furnish such security as may be required under sub-rule (2), to be detained in prison, but shall refer the case immediately to the Presiding Officer on his return."

[Vide Notification No. 209-R/XI-Y-11, dated 25th July, 1938 and Notification No. 24-R/XI-Y-11, dated 23rd January, 1940.]

17. Application of rules 10 to 13 :- .

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

18. Procedure where witness apprehended cannot give evidence or produce document :- .

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

19. No witness to be ordered to attend in person unless resident within certain limits :- .

No one shall be ordered to attend in person to give evidence unless he resides-

(a) within the local limits of the Courts ordinary original jurisdiction, or

(b) without such limits but at a place less than 1[one hundred] or (where there is railway or steamer communication .or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than 2[five hundred kilometers] distance from the Court house:

3[Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.]

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVI, in rule 19, in clause (b), between the words "public conveyance" and "for five sixths" insert the following words, namely:-

"or private conveyances run for hire".

[Vide Notification No. 24/VII-d-154, dated 4th April, 1959.]

Punjab.-

In Order XVI, in rule 19, in clause (b), insert the following proviso, namely:-

"Provided that any Court in the State of Punjab may require the personal attendance of any witness residing in the Punjab or Delhi State."

[Vide Notification No. 60-Genl-XI-Y-8, dated 4th March, 1955.]

1. Subs, by Act No. 104 of 1976 for "fifty" (w.e.f. 1-2-1977).

2. Subs, by Act No. 104 of 1976 for "two hundred miles" (w.e.f. 1-2-1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

20. Consequence of refusal of party to give evidence when called on by Court :- .

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

21. Rules as to witnesses to apply to parties summoned :- .

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVI, after rule 21, insert the following rules, namely:-

"22. (1) Save as provided in this rule and in rule 2, the Court shall allow witnesses reasonable actual travelling expenses. Other expenses to be allowed to them shall be on the following scale, namely:-

(a) in the case of witnesses of the class of cultivators, labourers and persons, including Government servants of corresponding rank-rupee one per day.

(b) in the case of witnesses of a better class, such as bhumidars and sirdars, traders, pleaders and persons including Government servants, of corresponding rank-rupee one and fifty naya paise to rupee three per day.

(c) in the case of witnesses of a superior rank, including Government servants-

from rupees three and fifty naya paise to rupees six per day:

Provided that where a Government servant is summoned to produce official documents or to give evidence of facts which came to his knowledge in the discharge of his public duties, he shall be paid travelling and other expenses at the rate admissible to him as for journeys on tour in accordance with the travelling allowance rules applicable to him.

[Vide Notification No. 2110/VII-d-57, dated 14th March, 1953.]

(2) If a witness demands any sum in excess of what has been paid to him, such sum shall be allowed if he satisfies the Court that he has actually and necessarily incurred the additional expense.

Illustration.-A post office or railway employee summoned to give evidence is entitled to demand from the party, on whose behalf or at whose instance he is summoned, the travelling and other expenses allowed to witnesses of the class or rank to which he belongs and in addition the sum for which he is liable as payment to the substitute officiating during his absence from duty. The sum so payable in respect of the substitute will be certified by the official superior of the witness on a slip, which the witness will present to the Court from which the summons issued.

(3) If a witness be detained for a longer period than one day the expenses of his detention

shall be allowed at such rate, not usually exceeding that payable under clause (1) of this rule, as may seem to the Court to be reasonable and proper:

Provided that the Court may, for reasons stated in writing, allow expenses on a higher scale than that hereinbefore prescribed.

[Vide Notification No. 1953/35, dated 22nd May, 1915.]

23. In cases of which Government is a party, Government servants whose salary exceeds Rs. 10 per mensem and all police constables, whatever their salary may be, who are summoned to give evidence in their official capacity at a Court situate than five miles from their headquarters, shall be given a certificate of attendance by the Court in lieu of travelling and other expenses."

[Vide Notification No. 359/35(a)1(1), dated 7th February, 1920.]

Andhra Pradesh.-
Same as in Madras.

Calcutta.-

In Order XVI, for rule 21, substitute the following rule, namely:-

"21. (1) When any party to a suit is required by any other thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

(2) When any party to a suit gives evidence on his own behalf, the Court may in its discretion permit him to include as costs in the suit a sum of equal to the amount payable for travelling and other expenses to the other witnesses in the case of similar standing."

Assam and Nagaland.-
Same as in Calcutta.

[Vide Notification No. 15264-G, dated 11th November, 1927.]

Karnataka.-
Same as in Madras, (w.e.f. 30-3-1967)

Kerala.-
Same as in Madras.

[Vide Notification No. B-I-3312/58, dated 7th April, 1959.]

Madras.-
Same as in Calcutta with the addition of marginal note "Rules in the case of parties appearing as witnesses."

[Vide GOMs No, 402 Law (Genl.), dated 4th February, 1936; P Dis No. 98 of 1936.]

ORDER 16A :- ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS :-

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

1. Definitions :-
In this Order,-

(a) "detained" includes detained under any law providing for preventive detention;

(b) "prison" includes-

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(ii) any reformatory, borstal institution or other institution of a like nature.

2. Power to require attendance of prisoners to give evidence :- .

Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence :

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometres, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

3. Expenses to be paid into Court :- .

(1) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(2) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rule made by the High Court in that behalf.

4. Power of State Government to exclude certain persons from the operation of rule 2 :- .

(1) The State Government may, at any time, having regard to the matters specified in sub-rule (2) by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely :-

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(c) the public interest, generally.

5. Officer in charge of prison to abstain from carrying out order in certain cases :- .

Where the person in respect of whom an order is made under rule 2-

(a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under rule 4 applies,

the officer in charge of the prison shall abstain from carrying out the Courts order and shall send to the Court a statement of reason for so abstaining.

6. Prisoner to be brought to Court in custody :- .

In any other case, the officer in charge of the prison shall, upon delivery of the Courts order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

7. Power to issue commission for examination of witness in prison :- .

(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person]

ORDER 17 :- ADJOURNMENTS :-

1. Court may grant time and adjourn hearing :- .

1[(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.]

(2) Costs of adjournment-In every such case the Court shall fix a day for the further hearing of the suit and 2[shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit]:

3[Provided that,-

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the

exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

HIGH COURT AMENDMENTS

Bombay.-

In Order XVII, in rule 1, in sub-rule (2), after the words "costs occasioned by the adjournment", insert the words "ordinarily not exceeding fifty rupees in ordinary suits and one hundred rupees in special suit", (w.e.f. 1-11-1966)

Delhi.-

Same as in Punjab.

Gujarat-

In Order XVII, in rule 1, in sub-rule (2), insert the words as in Bombay substituting "thirty" and "forty-five" for "fifty" and "one hundred" respectively.

Himachal Pradesh.-

Same as in Punjab.

Punjab.-

In Order XVII, in rule 1, in sub-rule (1),-

(i) at the beginning, insert the following words, namely:-
"Subject to the provisions of Order XXIII, rule 3".

(ii) after sub-rule (2), insert the following sub-rule, namely:-

"(3) where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith."

[Vide Notification No. 95-G, dated 26th February, 1925 and Notification No. 211-R/ XI-Y-22, dated 21st July, 1937.]

1. Subs, by Act No. 46 of 1999, section 26 (w.e.f 1-7-2002).

2. Subs. Act No. 46 of 1999, section 26 for certain words (w.e.f 1-7-2002).

3.Subs, by Act No. 104 of 1976, for the previous proviso (w.e.f. 1-2-1977)

2. Procedure if parties fail to appear on day fixed :- .

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

1[Explanation.-Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.]

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVII, in rule 2, insert the following, namely:-

"Where the evidence, or a substantial portion of the evidence, of any party has already been recorded, and such party fails to appear on such day, the Court may in its discretion proceed with the case as if such party were present, and may dispose of it on the merits.

Explanation.-No party shall be deemed to have failed to appear if he is either present or is represented in Court by an agent or pleader, though engaged only for the purpose of making an application." (w.e.f. 28-5-1943}

[Ed.-This amendment relates to rule 2 prior to its amendment made by the Central Act 104 of 1976, sec. 68 (w.e.f. 1-2-1977).]

Andhra Pradesh.-

In Order XVII, in rule 2, insert the following Explanation, namely:-

"Explanation.-The mere presence in Court of a party or his counsel not duly instructed shall not be considered to be an appearance of the party within the meaning of this rule." (w.e.f. 27-4-1961)

[Ed.-This amendment relates to rule 2 prior to its amendment made by the Central Act 104 of 1976, sec. 68 (w.e.f. 1-24-1977).]

1. Ins. by Act No. 104 of 1976 (w.e.f.1-2-1977).

3. Court may proceed notwithstanding either party fails to produce evidence, etc. :- .

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, 1[the Court may, notwithstanding such default,-

(a) if the parties are present, proceed to decide the suit forthwith, or

(b) if the parties are, or any of them is, absent, proceed under rule 2].

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVII, in rule 3, put a comma after the first word "where" and insert thereafter the

words "in a case to which rule 2 does not apply", {w.e.f. 17-1-1953)

Andhra Pradesh.-

In Order XVII, in rule 3, insert the following proviso, namely:-

"Provided that in a case where there is default under this rule as well as default of appearance under rule 2 the Court will proceed under rule 2." (w.e.f. 27-4-1961)

1 Subs, by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

ORDER 18 :- HEARING OF THE SUIT AND EXAMINATION OF WITNESSES :-

1. Right to begin :- .

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

2. Statement and production of evidence :- .

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

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

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

1[(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time limits for the oral arguments by either of the parties in a case, as it thinks fit."]

2[(4) Omitted]

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVIII, for rule 2, substitute the following rule, namely:-

"2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned the party having the right to begin shall state his case, indicating the relevancy of each of the documents produced by him, and the nature of the oral evidence which he proposes to adduce and shall then call his witnesses in support of the issues which he is bound to prove.

(2) The other party shall then state his case in the manner aforesaid and produce his evidence (if any)." (w.e.f. 24-7-1926)

Andhra Pradesh.-
Same as in Madras.

Bombay.-
Same as in Madras.

Karnataka.-
Same as in Madras (w.e.f. 9-2-1967).

Madras.-
In Order XVIII, in rule 2, at the end, insert the following Explanation, namely:-

"Explanation.-Nothing in this rule shall affect the jurisdiction of the Court for reasons to be recorded in writing to direct any party to examine any witness at any stage."

Orissa.-
In Order XVIII, in rule 2, insert the Explanation as in Madras.
Punjab.-

In Order XVIII, in rule 2, insert the Explanation as in Madras as Explanation 1 and after the so renumbered Explanation, insert the following Explanation, namely:-

"Explanation 2.-The expression "witness" in Explanation 1 shall include any party as his own witness." (w.e.f. 9-6-1942}

Calcutta and Gauhati.-
In Order XVIII, after rule 2, insert the following rule, namely:-

"2A. Notwithstanding anything contained in clauses (1) and (2) of Rule 2, the Court may for sufficient reason go on with the hearing although the evidence of the party having the right to begin has both been concluded, and may also allow either party to produce any witness at any stage of the suit."

1. Sub-rules (3A) (3B) (3C) and (3D) inserted by Act No. 22 of 2002, section 12 (w.e.f. 1-7-2002).

2. Omitted by Act No. 46 of 1999, section 27 (w.e.f. 1-7-2002).

3. Evidence where several issues :- .

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

HIGH COURT AMENDMENT

Allahabad.-
In Order XVIII, for rule 3, substitute the following rule, namely:-

"3. (1) Where there are several issues the burden of proving some of which lies on the other party, the party beginning may, at his option, either state his case in the manner aforesaid and produce his evidence on those issues or reserve the statement of his case and the production of his evidence on those issues by way of answer to the evidence produced by the other party; and, in the later case, the party beginning may state his case in the manner aforesaid and produce evidence on those issues after the other party has produced all his evidence.

(2) After both parties have produced their evidence, the party beginning may address the Court on the whole case; the other party may then address the Court on the whole case; and the party beginning may reply generally on the whole case, provided that in doing so he shall not, without the leave of the Court, raise questions which should have been raised in the opening address."

[Vide Notification No. 3837/35 (a)-2(I), dated 20th June, 1936.]

3A. Party to appear before other witnesses :- .

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage.]

1. Ins. by Act No. 104 of 1976 (w.e.f.1-2-1977).

4. Recording of evidence :- .

(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit:

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commissions under this rule.]

1. Rule 4 which was substituted by Act No. 46 of 1999, section 27 has now again been substituted by Act No. 22 of 2002, section 12 (w.e.f. 1-7-2002).

5. How evidence shall be taken in appealable cases :- .

In cases in which an appeal is allowed, the evidence of each witness shall be,-

(a) taken down in the language of the Court,-

(i) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(ii) from the dictation of the Judge directly on a typewriter, or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.]

1. Subs, by Act No. 104 of 1976, for the former rule 5 (w.e.f. 1-2-1977).

2. The provisions of rules, 5,6,7, 8,9,11,13,14,15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P 4 of 1925).

6. When deposition to be interpreted :- .

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

1. The provisions of rules, 5, 6,7,8,9, 11,13,14,15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

7. Evidence under Section 138. :- .

Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

1. The provisions of rules, 5, 6,7,8,9, 11,13,14,15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P 4 of 1925).

8. Memorandum when evidence not taken down by Judge :- .

Where the evidence is not taken down in writing by the Judge, 2[or from his dictation in the

open Court, or recorded mechanically in his presence,] he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

HIGH COURT AMENDMENTS

Allahabad.-

In Order XVIII, in rule 8,-

(a) after the words "in writing by the Judge", insert the words "or from his dictation";

(b) for the words "and signed by the Judge", substitute the words "by the Judge or typed to dictation, shall be signed by him".

[Vide Notification No. 92/X-4, dated 19th May, 1956.]

Bombay.-

In Order XVIII, for rule 8, substitute the following rule, namely:-

"8. Memorandum when evidence not taken down by Judge.-

Where the evidence is not taken down in writing by the Judge, he shall be bound as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes and such memorandum shall be written or dictated and signed by the Judge and shall form part of the record.

Exception.-However in matters outside Greater Bombay, the State of Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli and from which there is no first appeal to the High Court the depositions given by the witnesses shall be recorded only in Marathi or in English where the witness deposes in English. In such matter it is not necessary to maintain memorandum as mentioned in the rule."

[Vide Maharashtra Notification No. P.O. 102/77, dated 31st December, 1987.]

Calcutta.-

In Order XVIII, omit rule 8. (w.e.f. 6-7-1967)

Madhya Pradesh.-

In Order XVIII, in rule 8, between the words "Judge" and "comma," insert the words "or at his dictation in open Court", {w.e.f. 27-7-1956)

Punjab and Haryana.-

In Order XVIII, in rule 8,-

(i) between the words "in writing by the Judge" and "he shall be bound" insert the words "or from his dictation" .

(ii) for the words "and signed by the Judge", substitute the words "by the Judge typed to has dictation, shall be signed by him".

1. The provisions of rules, 5, 6,7,8,9, 11,13,14,15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P 4 of 1925).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

9. When evidence may be taken in English :- .

(1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.]

1. Subs, by Act No. 104 of 1976 for rule 9 (w.e.f. 1-2-1977).

2. The provisions of rules, 5, 6,7,8,9, 11,13,14,15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P 4 of 1925).

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

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

HIGH COURT AMENDMENT

Calcutta.-

In Order XVIII, in rule 10, after the words "take down" insert the words, "or cause to be taken down from his dictation in open Court, in the language of the Court or in English", (w.e.f. 6-7-1967)

11. Questions objected to and allowed by Court :- .

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

HIGH COURT AMENDMENT

Calcutta.-

In Order XVIII, in rule 11, after the words "take down", insert the words "or cause to be taken down from his dictation in open Court, in the language of the Court or in English", (w.e.f. 6-7-1967)

1. The provisions of rules, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 so far as they relate to the manner of taking evidence are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P 4 of 1925).

12. Remarks on demeanour of witnesses :- .

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

HIGH COURT AMENDMENT

Calcutta.-

In Order XVIII, in rule 12, at the end, insert the following words, namely:- "or cause the same to be recorded under his dictation in open Court, in the language of the Court or in English", (w.e.f. 6-7-1967)

13. Memorandum of evidence in unappealable cases :- .

In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.]

HIGH COURT AMENDMENT

Bombay.-

In Order XVIII, for rule 13, substitute the following rule, namely:-

"13. Memorandum of evidence in unappealable cases.-

In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of substance of what the witness deposes and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record. However, such memorandum outside Greater Bombay, the State of Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli shall be in Marathi or in English wherever the witnesses depose in English."

[Vide Maharashtra Notification No. P.O. 102/77, dated 31st December, 1978.] 14. Judge unable to make such memorandum to record reasons of his inability.-[Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), sec. 69 (w.e.f. 1-2-1977).]

1. Subs, by Act No. 104 of 1976, for the former rule (w.e.f. 1-2-1977).

2. The provisions of rule 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

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

Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 69 (w.e.f. 1-2-1977).

1. The provisions of rule 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

15. Power to deal with evidence taken before another Judge :- .

(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which

his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

1. The provisions of rule 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

16. Power to examine witness immediately :- .

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

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

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

1. The provisions of rule 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

17. Court may recall and examine witness :- .

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

17A. Omitted :- .

1. Omitted by Act No. 46 of 1999, section 27 (w.e.f. 1-7-2002).

18. Power of Court to inspect :- .

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise 1[and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.]

HIGH COURT AMENDMENT

Allahabad.-

In Order XVIII, after rule 18, insert the following rule, namely:-

"19. (1) The Judge shall record in his own hand in English all orders passed on applications, other than orders of a purely routine character.

(2) The Judge shall record in his own hand in English all admissions and denials of documents,

and the English proceedings shall show how all documents tendered in evidence have been dealt with from the date of presentation down to the final order admitting them in evidence or rejecting them.

(3) The Judge shall record the issues in his own hand in English, and the issues shall be signed by the Judge and shall form part of the English proceedings."

[Vide Notification No. 794/35 (a), dated 17th March, 1923.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

19. Power to get statements recorded on commission :- .

Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI].

1. Added by Act No. 46 of 1999, section 27 (w.e.f 1-7-2002).

ORDER 19 :- AFFIDAVITS :-

1. Power to order any point to be proved by affidavit :- .

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

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

STATE AMENDMENTS

Uttar Pradesh.-For the existing proviso, substitute the following:-

"Provided that if it appears to the Court, whether at the instance of either party or otherwise and whether before or after the filing of such affidavit, that the production of such witness for cross-examination is necessary and his attendance can be procured, the Court shall order the attendance of such witness, whereupon the witness may be examined, cross-examined and re-examined.". [U.P. Act (57 of 1976)].

Madhya Pradesh.-Insert the following rule, after rule 1:-

"1-A. Proof of fact by affidavit in certain cases.-

Notwithstanding anything contrary to rule 1, the Court shall, in a suit or proceeding referred to in sub-rule 3-B of Order 1 and whether or not any proceeding under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 are pending before the Competent Authority appointed under that Act, call upon the parties to prove any particular fact or facts as it may direct, by affidavit, unless the Court looking to the nature and complexity of the suit or proceeding and for reasons to be recorded in writing deems it just and expedient to dispense with the proof of a fact or facts by affidavits."

[M.P. Act 29 of 1984].

HIGH COURT AMENDMENT

Allahabad.-

In Order XIX, after rule 1, insert the following rule, namely:-

"1A. Power to permit ex parts evidence on affidavit.-Where the case proceeds ex parte the Court may permit the evidence of the plaintiff to be given an affidavit."

[Vide Notification No. 121/IV-K-36 D, dated 10th February, 1981.]

2. Power to order attendance of deponent for cross-examination :- .

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

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

3. Matters to which affidavits shall be confined :- .

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

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

HIGH COURT AMENDMENT

Allahabad.-

In Order XIX, after rule 3, insert the following rules, namely:-

"4. Affidavits shall be entitled in the Court of..... or(naming such Court). If the affidavit be in support of, or in opposition to, an application respecting any case in the Court, it shall also be entitled in such case. If there be no such case it shall be entitled In the matter of petition of.

5. Affidavits shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as may be, shall be confined to a distinct portion of the subject.

[Vide Notification No. 1953/35 (a), dated 22nd May, 1915; Notification No. 572/35 ia)-(2), dated 18th February, 1928.]

6. Every person making any affidavit shall be described therein in such manner as shall serve to identify him clearly; and where necessary for this purpose, it shall contain the full name, the name of his father, of his caste or religious persuasion, his rank or degree in life, his profession, calling, occupation or trade, and the true place of his residence.

7. Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his own knowledge, and such facts shall be stated in separate paragraphs.

8. When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" or "I make oath and say".

9. Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarants own knowledge, but is stated from information obtained from others, the declarant shall use the expression

"I am informed", and, if such be the case, "and verily believe it to be true", and shall state the name and address of and sufficiently describe for the purposes of identification, the person or persons from whom he received such information. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of justice or other source, the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such documents.

10. When any place is referred to in an affidavit, it shall be correctly described. When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person, shall be given in the affidavit.

11. Every person making an affidavit for use in a Civil Court shall, if not personally known to the person before whom the affidavit is made, be identified to that person by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name, address, and description of him by whom the identification was made as well as the time and place of such identification.

11A. Such identification may be made by a person-

(a) personally acquainted with the person to be identified, or

(b) satisfied, from papers in that persons possession or otherwise, of his identity.

Provided that in case (b) the person so identifying shall sign on the petition or affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified:-

FORM

I..... (name, address and description) declare that the person verifying this petition (or making this affidavit) and alleging himself to be A B has satisfied me (here state by what means, e.g., from papers in his possession or otherwise) that he is A B.

12. No verification of a petition and no affidavit purporting to have been made by a pardahnashin woman who has not appeared unveiled before the person before whom the verification or affidavit was made, shall be used unless she has been identified in manner already specified and unless such petition or affidavit be accompanied by an affidavit of identification and such women made at the time by the person who identified her.

13. The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make such affidavit states that he has not read the affidavit or appears not to understand the contents thereof, or appears to be illiterate, the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same, and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made.

14. The person before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of the affidavit before him and the time and place when and where it was made, and shall for the purpose of identification mark and initial and exhibits referred to in the affidavit.

15. If it be found necessary to correct any clerical error in any affidavit, such correction may be made in the presence of the person before whom the affidavit is about to be made, and before, but not after the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such manner, as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made."

ORDER 20 :- JUDGMENT AND DECREE :-

1. Judgment when pronounced :- .

2 [(1)] The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

3[(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment,

4[* * *]

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.]

HIGH COURT AMENDMENTS

Andhra Pradesh.-
Same as in Madras.

Bombay.-

In Order XX, in rule 1, in sub-rule (3), omit the words "if the Judge is specially empowered by High Court in this behalf", (w.e.f. 1-10-1983)

Karnataka.-

In Order XX, renumber rule 1 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) The judgment may be pronounced by dictation to a shorthand writer in open Court, where the Presiding Judge has been specially empowered in that behalf by the High Court. Where the Presiding judge is not so empowered the judgment shall be reduced to writing before it is pronounced." (w.e.f. 30-3-1967}

Kerala.-

In Order XX, renumber rule 1 as sub-rule (1) thereof and insert the following sub-rule, namely:-

"(2) The judgment may be pronounced by dictation to a shorthand writer in open Court." (w.e.f. 9-6-1959)

Madras.-

In Order XX, for rule 1, substitute the following rule, namely:-

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

(2) The judgment may be pronounced by dictation to a shorthand writer in open Court where the Presiding Judge has been specially empowered in that behalf by the High Court." (w.e.f. 6-5-1930)

1. The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh; see the Outh Court Act, 1925 (U.P. 4 of 1925), s. 16 (2).

2. Rule which was renumbered as sub rule (1) by Act No. 104 of 1976 has been substituted by Act No. 22 of 2002, section 13 (w.e.f. 1-7- 2002).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

4. Certain words omitted by Act No. 46 of 1999 section 28 (w.e.f. 1-7-2002).

2. Power to pronounce judgment written by judges predecessor :- .

1[A Judge shall] pronounce a judgment written, but not pronounced, by his predecessor.

1. Subs, by Act No. 104 of 1976 for "A Judge may" (w.e.f. 1-2-1977).

3. Judgment to be signed :- .

The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

HIGH COURT AMENDMENTS

Andhra Pradesh.-

Same as in Madras.

Gujarat.-

In Order XX, for rule 3, substitute the following rule, namely:-

"3. Judgment to be signed.-

The judgment shall be dated and initialled by the Judge. When the judgment is once initialled by the Judge it shall not afterwards be altered or added to save as provided by section 152 or on review:

Provided that where the judgment is pronounced by dictation to a shorthand-writer in open Court, the transcript of the judgment so pronounced shall after making such corrections therein as may be necessary be signed by the Judge and shall bear the date of its pronouncement, and when the judgment is once so signed by the Judge it shall not afterwards be altered or added to save as provided by section 152 or on review."

Karnataka.-

In Order XX, for rule 3, substitute the rule as in Madras with the substitution of the words "section 152 of the Code or upon review" for the words "section 152 or on review", (w.e.f. 30-3-1967)

Kerala.-

Same as in Madras with the changes that for the words "provided also that where the Judge pronounces his judgment by dictation", substitute the words "provided that where the Judgment is pronounced by dictation", (w.e.f. 9-5-1959)

Madras.-

In Order XX, for rule 3, substitute the following new rule, namely:-

"3. Judgment to be signed-Transcript of Shorthand.-

The judgment shall bear the date on which it is pronounced and shall be signed by the Judge and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review, provided also that where the Judge pronounces his judgment by dictation to a shorthand writer in open Court the transcript of the Judgment so pronounced shall after such revision as may be deemed necessary, be signed by the Judge." (w.e.f. 6-5-1930).

Rajasthan.-

Renumber the existing rule 3 as sub-rule (1) of that rule and insert the following sub-rules, namely:-

"(2) Where the judgment is pronounced by dictation to a shorthand writer in open Court the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement.

(3) In cases where judgment is not written by the Judge in his own hand, and dictated and taken down verbatim by another person, each page of the judgement shall be initialled by the Judge."

[Vide Notification, dated 23rd December, 1964.]

1. The provisions of rules 1, 3, 4, and 5 are not applicable to the Chief Court of Oudh; see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

4. Judgments of Small Cause Courts :- .

(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts-Judgments of other Courts contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

HIGH COURT AMENDMENT

Kerala.-

In Order XX, in rule 4.-

(a) in sub-rule (1), for the marginal note "Judgment of Small Cause Courts", substitute the marginal note "Judgment in suits tried as Small Cause"; and for the words "Judgments of a Court of Small Causes", substitute the words "Judgments in suits tried as Small Causes".

(b) in sub-rule (2), for the marginal note "Judgment of other Courts", substitute the marginal note "Judgment in other cases"; and for the words "Judgments of other Courts" substitute the words "Judgment in all other cases."

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

1. The provisions of rules 1, 3, 4, and 5 are not applicable to the Chief Court of Oudh; see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

5. Court to state its decision on each issue :- .

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

1. The provisions of rules 1, 3, 4, and 5 are not applicable to the Chief Court of Oudh; see the Oudh Courts Act, 1925 (U.P. 4 of 1925).

5A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders :- .

Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.]

1. Ins. by Act No. 104 of 1976.

6. Contents of decree :- .

(1) The decree shall agree with the judgment; it shall contain the number of the suit, the 1[names and descriptions of the parties, their registered addresses,] and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

HIGH COURT AMENDMENTS

Andhra Pradesh.-

In Order XX, in rule 6,-

(a) in sub-rule (1), after the words "description of the parties", insert the words "their addresses for service",

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(2A) In all cases in which an element of champerty or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant."

Bombay.-

In Order XX, in rule 6, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) The decree shall agree with the judgment; it shall contain the date of presentation of the plaint, the number of the plaint, the number of the suit, the names and descriptions of the parties, their registered addresses and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit." (w.e.f. 1-10-1983)

Delhi.-

Same as in Himachal Pradesh.

Himachal Pradesh.-

In Order XX, in rule 6, after sub-rule (1), insert the following sub-rule, namely:-

"(1A) In addition to the particulars mentioned in clause (1), the decree shall contain the addresses of the plaintiff and the defendant as given in O. VII, R. 19 and O. VIII, R. 11 or as subsequently altered under O. VII, R. 24 and O. VIII, R. 12 respectively."

Karnataka.-

In Order XX, for rule 6, substitute the following rule, namely:-

"6. Contents of decree.-

(1) The decree shall agree with the judgment; it shall contain the number of the suit, names and descriptions of the parties, their respective addresses for service as originally set out in their pleadings or where they have been subsequently changed in accordance with rule 14 of Order VI of this Code, such modified addresses, the particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

(4) In all cases in which an element of champerty or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant." (w.e.f. 30-3-1967)

Kerala.-

Same as in Andhra Pradesh (a), (w.e.f. 9-6-1959)

Madras.-

Same as in Andhra Pradesh. (w.e.f. 6-5-1930)

Punjab, Haryana and Chandigarh.-

In Order XX, in rule 6,-

(a) for rule (1), substitute the following sub-rule, namely:-

"(1) The decree shall agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, their correct and latest addresses, {which shall be filed by the parties at or before the final arguments) and particulars of the claim and shall specify clearly the relief granted or other determination of the suit."

[Vide Notification G.S.R. 39/C.A. 5/1908/S. 12257 (w.e.f. 11-4-1975).]

(b) after sub-rule (1), insert sub-rule (1A) as in Himachal Pradesh.

1. Subs, by Act No. 104 of 1976 for "names and descriptions of the parties" (w.e.f. 1-2-1977).

6A. Preparation of decree :- .

(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

1. Subs, by Act No. 46 of 1999, section 28 (w.e.f. 1-2-2002)

6B. Copies of judgments when to be made available :- .

Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment, of such charges as may be specified in the rules made by the High Court.]

7. Date of decree :- .

The decree shall bear the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

HIGH COURT AMENDMENTS

Bombay.-

In Order XX, in rule 7, insert the following proviso, namely-

"Provided that in proceeding taken in the Bombay City Civil Court the decree shall bear date the day on which the judgment was pronounced and it shall be engrossed in the office of the Registrar and be signed by him and sealed with the seal of the Court." (w.e.f. 1- 10-1983)

Kerala.-

In Order XX, in rule 7, insert the following proviso, namely:-

"Provided that the decrees of the High Court may be signed by the officer empowered in that behalf." {w.e.f. 9-6-1959)

Allahabad.-

In Order XX, after rule 7, insert the following rule, namely:-

"7A. format Order.-

A Court, other than a Court subordinate to the District Court exercising insolvency jurisdiction, passing an order under section 144 or an order against which an appeal is allowed by section 104 or Rule 1 of Order XLII, or an order in any case, against which an appeal is allowed by law, shall, if a party applies for a copy of formal order or the Court so directs, draw up a formal order embodying its adjudication and the memorandum of costs incurred by the parties." {w.e.f. 3-10-1981)

8. Procedure where Judge has vacated office before signing decree :- .

Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Decree for recovery of immovable property :- .

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

10. Decree for delivery of movable property :- .

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

11. Decree may direct payment by instalments :- .

(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason 1[incorporate in the decree after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that] payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable,

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-

Same as in Madras.

Madhya Pradesh.-

In Order XX, in rule 11, in sub-rule (2), for the words "and with the consent of the decree-holder", substitute the words "and after notice to the decree-holder".

Madras.-

In Order XX, in rule 11, in sub-rule (2), for the words "with the consent of", substitute the words "after notice to".

Orissa.-

Same as in Madhya Pradesh.

[Vide Notification No. 24-X-7-52, dated 30th March, 1954.]

1. Subs, by Act No. 104 of 1976, for certain words (w.e.f. 1-2-1977).

12. Decree for possession and mesne profits :- .

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

(a) for the possession of the property;

1[(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to mesne profits;]

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-

Same as in Madras.

Karnataka.-

Same as in Madras except that for the words "the final decree", substitute the words "a final decree", (w.e.f. 30-3-1967)

Kerala.-

Same as in Madras, (w.e.f. 9-6-1959)

Madras.-

In Order XX, in rule 12, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Where an Appellate Court directs such an inquiry, it may direct the Court of first instance to make the inquiry; and in every case the Court of first instance may of its own accord, and shall whenever moved to do so by the decree-holder, inquire and pass the final decree."

[Vide Dis. No 93 of 1941.]

1. Subs, by Act No. 104 of 1976 for cl. (b) (w.e.f. 1-2-1977).

12A. Decree for specific performance of contract for the sale or lease of immovable property :-

Where a decree for the specific performance of contract for the sale or lease of immovable property orders that the purchase money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

13. Decree in administration suit :- .

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

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit, is pending with respect to the estates of persons adjudged or declared insolvent, and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. Decree in pre-emption suit :- .

(1) Where the Court decrees a claim to preemption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall-

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decrees against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,-

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emption shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

HIGH COURT AMENDMENTS

Bombay.-

In Order XX, in rule 14, in sub-rule (1)7 after clause (b), insert the following proviso, namely:-

"Provided that if there are crops standing on the property, possession of the property shall not be delivered to the plaintiff until such crops have been reaped. The plaintiff shall however, be entitled to simple interest not exceeding 6 per cent, per annum at the discretion of the Court on the amount deposited by him in Court in respect of the period between the date of payment into Court by him of the purchase money and the costs (if any) and the date on which delivery of possession to him by the defendant take place." (w.e.f. 1-10-1983)

Karnataka.-

In Order XX, in rule 14, in sub-rule (2), after clause (b), insert the following proviso, namely:-

"Provided that if there are crops standing on the property the Court may postpone the delivery of property to the plaintiff till after the crops have been reaped and direct that the plaintiff be paid by the defendant simple interest at such rate as may be fixed not exceeding 6 per cent, per annum on the amount deposited by the plaintiff in Court in respect of the period between the date of deposit into Court of the purchase money and costs, if any, and the date to which delivery of possession has been postponed." (w.e.f. 30-3-1967)

Madhya Pradesh.-

Same as in Bombay.

15. Decree in suit for dissolution of partnership :- .

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

16. Decree in suit for account between principal and agent :- .

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

17. Special directions as to accounts :- .

The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

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

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property,-but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.

HIGH COURT AMENDMENT

Kerala.-

In Order XX, for rule 18, substitute the following rule, namely:-

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

19. Decree when set-off or counter-claims is allowed :- .

(1) Where the defendant has been allowed a set-off 1[or counter-claim] against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Appeal from decree relating to set-off or counter-claim-Any decree passed in a suit in which a set-off 1[or counter-claim] is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if not set-off1[or counter-claim] had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

HIGH COURT AMENDMENT

Allahabad.-

In Order XX, in rule 19, in sub-rule (1), at the end, for the full-stop, substitute a comma and insert the following words, namely:-

"but no decree shall be passed against the plaintiff unless the claim to set off was within limitation on the date on which the written statement was presented."

[Vide Notification No. 1353/35 (a)-3, dated 21st March, 1936.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

20. Certified copies of judgment and decree to be furnished :- .

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

HIGH COURT AMENDMENTS

Bombay.-

In Order XX, renumber rule 20 as sub-rule (1) of that rule and insert the following sub-rule, namely:-

"(2) Application may be made by the party himself or by his pleader and may also be sent by post. Whenever such application is sent by post the same shall be sent by the Registered post prepaid for acknowledgement. When the application is sent by post, it shall be deemed to have been made on the date of posting if the application is made by registered post, but only on the date of its receipt by the office of the Court in case when it is sent by post other than registered post." (w.e.f. 1-10-1983}

Madhya Pradesh.-In Order XX, for rule 20, substitute the following rule, namely:-

"20. Certified copies of Judgment and decree shall be furnished to the parties on application, and at their expense.-Applications for copies may be presented in person or by an agent or a pleader or sent by post to the head copyist of the office at the place where the record from which the copies are applied for, will eventually be deposited for safe custody. When copies from a record in the temporary custody of a Court at a station where there is no record room are required, applications may be presented in person by an agent or a pleader to the Senior Judge at that station:

Provided that the Judge shall neither comply with applications received by post nor send copies by post." (w.e.f. 13-6-1952}

Allahabad.-

In Order XX, after rule 20, insert the following rule, namely:-

"21. (1) Every decree and order as defined in section 2, other than a decree or order of a Court of Small Causes or of a Court in the exercise of the jurisdiction of a Court of Small Causes, shall be drawn up in the Court vernacular, or in English, if the Court so orders. As soon as such decree or order has been drawn up, and before it is signed, the Munsarim shall cause a notice to be posted on the notice board stating that the decree or order has been drawn up, and that, any party or the pleader, of any party may, within six working days from the date of such notice, peruse the draft decree or order and may sign it, or may file with the Munsarim an objection to it on the ground that there is in the Judgment a verbal error or some accidental defect not affecting a material part of the case, or that such decree or order is at variance with the judgment or contains some clerical or arithmetical error. Such objection shall state clearly what is the error, defect, or variance alleged, and shall be signed and dated by the person making it.

(2) If any such objection be filed on or before the date specified in the notice, the Munsarim shall enter the case in the earliest weekly list practicable and shall, on the date fixed put up the objection together with the record before the Judge who pronounced the judgment, or, if such Judge has ceased to be the Judge of the Court, before the Judge then presiding.

(3) If no objection has been filed on or before the date specified in the notice, or if an objection has been filed and disallowed, the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.

(4) If an objection has been duly filed and has been allowed, the correction or alteration directed by the Judge shall be made. Every such correction or alteration in the judgment shall be made by the Judge in his own handwriting. A decree amended in accordance with the correction or alteration directed by the Judge shall be drawn up, and the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.

(5) When the Judge signs the decree he shall make an autograph note stating the date on which the decree was signed."

[Notification No. 1953/35(a), dated 22nd May, 1915 and Notification No. 6056/35(a)-4(3), dated 1st November, 1941.]

ORDER 20A :- COSTS :-

1. Provisions relating to certain items :- .

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of -

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court, and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

2. Costs to be awarded in accordance with the rules made by High Court- :- .

The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.]

1. Order XXA (containing rules 1 to 2) ins. by Act 104 of 1976, sec. 71 (w.e.f. 1-2-1977).

ORDER 21 :- EXECUTION OF DECREES AND ORDERS :-

Payment under decree

1. Modes of paying money under decree :- .

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

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

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

(2) Where any payment is made under clause (a) or clause (c) of sub rule (1), the judgment-debtor shall give notice thereof to the decree- holder either through the Court or directly to him by registered post, acknowledgement due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely : -

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1) interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1) interest, if any, shall cease to run from the date of such payment :

Provided that, where the decree-holder refuses to accept the postal order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

HIGH COURT AMENDMENT

Orissa.-

In Order XXI, in rule 1, after the word "decree" wherever it occurs, insert the words "or order". (w.e.f. 14-5-1984).

1. Subs, by Act No. 104 of 1976, sec. 72, for rule 1 (w.e.f. 1-2-1977).

2. Payment out of Court to decree-holder :- .

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

(2) The judgment-debtor 1[or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court record the same accordingly.

2[(2A) No payment or adjustment shall be recorded at the instance of the Judgment-debtor unless-

(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, on before the Court.]

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

1. Subs, by Act No. 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. In the application of the Act, to Punjab, sub-rule (3) has been repealed by the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934), sec. 36

STATE AMENDMENT

Punjab, Haryana and Chandigarh.-
In Order XXI, in rule (2), omit sub-rule (3).

[Vide Punjab Relief Indebtedness Act, 1934 (Punjab Act VII of 1934, sec. 36 (w.e.f. 19-4-1935) read with Punjab Act XLIV of 1960, sec. 3 (w.e.f. 30-12-1960); see also Act 31 of 1966, secs. 29 and 32 (w.e.f. 1-11-1966).]

HIGH COURT AMENDMENTS

Andhra Pradesh.-
Same as in Madras.

Bombay.-
In Order XXI, in rule 2, in sub-rule (2), after the words "inform the Court", insert the words "by an application in writing supported by an affidavit", (w.e.f. 1-10-1983)

Delhi.-
Same as in Punjab.

Himachal Pradesh.-
Same as in Punjab.

Madras.-
In Order XXI, in rule 2, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Any person to the suit or his legal representatives or any person who has become surety for the decree-debt also may inform the Court to such payment or adjustment and apply to the Court to issue notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly."

Orissa.-

Same as in Patna (i).

Patna.-

(i) In Order XXI, in rule 2, in sub-rule (2), for the words "and if, after service of such notice", substitute the words "and where certification has been made by an endorsement of such payment or adjustment by the decree-holder or by any person authorised by him in that behalf upon the process issued by the Court, the Court shall issue such notice of its own motion. If after service of the notice".

(ii) Omit sub-rule (3). (w.e.f. 5-4-1961)

Courts executing decrees

3. Lands situate in more than one jurisdiction :- .

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

4. Transfer to Court of Small Causes :- .

Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras or Bombay, such Court may send to the Court of Small Causes in Calcutta, Madras or Bombay, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

HIGH COURT AMENDMENT

Bombay.-

In Order XXI,-

(i) renumber rule 4 as sub-rule (1) thereof;

(ii) in sub-rule (1) as so renumbered, omit the words "or Bombay" wherever they occur;

(iii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

"(2) A decree in a suit of the nature described in sub-rule (1) but in which the value as set forth in the plaint did not exceed rupees ten thousand may be sent for execution to and be executed by the Presidency Court of Small Causes at Bombay in the manner prescribed in sub-rule (1)." (w.e.f. 1-10-1983)

Gujarat.-

Same as in Bombay.

5. Mode of transfer :- .

Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.]

1. Subs. by Act No. 104 of 1976, for rule 5 (w.e.f. 1-2-1977).

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

The Court sending a decree for execution shall send-

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order XXI -

(i) renumber rule 6 as sub-rule (1) thereof;

(ii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

"(2) Such copies and certificates may, at the request of the decree-holder, be handed over to him or to such person as he appoints, in a sealed cover to be taken to the Court to which they are to be sent."

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.] ,

Madras.-

In Order XXI, after rule 6, insert the following rule, namely:-

"6A. A copy of the judgment bearing the formule exécutoire, sent by a Court in the Union Territory of Pondicherry, shall be deemed to be a decree and to comply with the requirements of rule 6:

Provided that notwithstanding anything contained in rule 2, where any question as to the satisfaction or the discharge in whole or in part, of such a decree arise, the Court executing the decree shall decide it." (w.e.f. 15-3-1967)

Orissa.-

Same as in Patna.

Patna.-

In Order XXI, in rule 6, in clause (a), after the word "decree" insert the following words, namely:-

"and a copy of the suit register relating to the suit in which the decree was passed and a memorandum showing the costs allowed to the decree-holder subsequent to the passing of the decree".

7. Court receiving copies of decree, etc. to file same without proof :- .

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

8. Execution of decree or order by Court to which it is sent :- .

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Execution by High Court of decree transferred by other Court :- .

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in exercise of its ordinary original civil jurisdiction.

HIGH COURT AMENDMENT

Kerala.-

In Order XXI, omit rule 9. (w.e.f. 9-6-1959)

Application for execution

10. Application for execution :- .

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

HIGH COURT AMENDMENTS

Delhi,-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Punjab.-In Order XXI, in rule 10, insert the following proviso, namely:-

"Provided that if the judgment-debtor has left the jurisdiction of the Court which passed the decree, or of the Court to which the decree has been sent, the holder of the decree may apply to the Court within whose jurisdiction the judgment-debtor is, or to the officer appointed in the behalf, to order immediate execution on the production of the decree and of an affidavit of non-satisfaction by the holder of the decree pending the receipt of an order of transfer under section 39."

[Vide Notification No. 125-Gaz. XI-Y-14, dated 7th April, 1932.]

11. Oral application :- .

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

(2) Written application-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely-

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether-

(i) by the delivery of any property specifically decreed;

1[(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person; (iv) by the appointment of a receiver;

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

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

1. Subs, by Act No. 104 of 1976 for sub-clause (ii) (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 11, in sub-rule (2),-

(i) for clause (f), substitute the following clause, namely:-

"(f) the date of the last application, if any;"

(ii) insert the following proviso, namely:-

"Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h), need not be given in the application."

[Vide Notification No. 4048/35(a)-3(7), dated 24th July, 1926.]

(iii) In Order XXI, in rule 11, after sub-rule (3), insert the following sub-rule, namely:-

"(4) Where a decree for money is sought to be executed under sub-rule (2) by the arrest and detention in prison of the judgment-debtor, the application shall also state on which of the grounds mentioned in the proviso to section 51, detention is claimed."

[Vide Notification No. 92/X-14, dated 19th May, 1956.]

Andhra Pradesh.-Same as in Madras. Karnataka.-In Order XXI, in rule 11, in sub-rule (2),-

(i) after clause (f), insert clause (ff) as in Madras with the omission of the word "original" before "decree-holder";

(ii) in clause (j), after sub-clause (v), insert para as in Madras (b) (w.e.f. 30-3-1967).

Kerala.-In Order XXI, in rule 11, in sub-rule (2), after clause (f),-

(i) insert the following clause, namely:-

"(ff) whether the original decree-holder has transferred any part of his interest in the decree, and if so, the date of the transfer and the name and address of the parties to the transfer;"

(ii) for clause (j), substitute the following clause, namely:-

"(j) the mode in which the assistance of the Court is required, whether- (i) by the delivery of any property, specifically decreed; (ii) by the attachment and sale, or by the sale without attachment, of any property;

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

(iv) by the appointment of a receiver;

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

In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there shall not be included any other relief mentioned in this clause." (w.e.f. 9-6-1959).

Madhya Pradesh.-In Order XXI, in rule 11, in sub-rule (2), insert the following proviso, namely:-

"Provided that when the applicant files with his application a certified copy of the decree the particulars specified in clauses (b), (c), and (h) need to be given in the application."

[Vide Notification No. 3409, dated 26th, June, 1943.]

Madras.-In Order XXI, in rule 11, in sub-rule (2),-

(a) after clause (f), insert the following clause, namely:-

"(ff) whether the original decree-holder has transferred any part of his interest in the decree and if so, the date of the transfer and the name and address of the parties to the transfer;"

[Vide P Dis. No. 776 of 1929.]

(b) in clause (j), after sub-clause (v), insert the following para, namely:-

"In an execution petition praying the relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this Order, there shall not be included any other relief mentioned in this clause."

[Vide G.O. Ms. No. 2084-Home, dated 2nd September, 1936, H.C.P. Dis. No. 691, dated 13th October, 1936.]

(c) insert the following proviso, namely:-

"Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application."

Patna.-In order XXI, in rule 11,-

(a) after sub-rule (1), insert the following sub-rule, namely:-

"(1A) Where an order has been made under section 39 for the transfer of a decree for the payment of money for execution to a Court within the local limits of the jurisdiction of which the judgment-debtor resides, such Court may on the production by the decree-holder of a certified copy of the decree and an affidavit of non satisfaction forthwith order immediate execution of the decree by the arrest of the judgment-debtor."

(b) in sub-rule (2), for the words and figure "sub-rule (1)", substitute the words and figures "sub-rules (1) and (1A)".

(c) in sub-rule (2), omit clauses (b), (c), (d), (f) and (h). (w.e.f. 5-4-1961)

11A. Application for arrest to state grounds :- .

Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

12. Application for attachment of movable property not in judgment-debtors possession :- .

Where an application is made for the attachment of any movable property belonging to a judgment-debtor in his possession, the decree- holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

13. Application for attachment of immovable property to contain certain particulars :- .

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

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtors share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Power to require certified extract from Collectors register in certain cases :- .

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

HIGH COURT AMENDMENT

Kerala.-In Order XXI, in rule 14, in the marginal note for the words "Collectors register in certain cases", substitute the words "registers of revenue accounts". In the body of the rule for the words "in the office of the Collector", substitute the words "in the revenue accounts". (w.e.f. 9-6-1959)

15. Application for execution by joint decree-holders :- .

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

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

16. Application for execution by transferee of decree :- .

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

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

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

1[Explanation.-Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]

HIGH COURT AMENDMENTS

Bombay.-In Order XXI, in rule 16,-

(i) in para 1, after the words "to the Court which passed it", insert the words "or to the Court which it has been sent for execution".

(ii) after the first proviso, insert the following proviso, namely:-

"Provided further that where the transferee Court holds the assignment proved, it shall forthwith communicate its decision in that behalf to the Court which passed the decree, and the latter Court shall make an entry in the Register of Suits indicating that the assignment has been held to be proved."

(iii) renumber Explanation as Explanation II;

(iv) before Explanation II as so renumbered, insert the following Explanation namely:-

"Explanation 1.-In an application under this rule, any payment of money made under a decree or any adjustment in whole or in part of the decree arrived at to the satisfaction of the decree-holder, which payment or adjustment has not been certified or recorded by the Court under rule 2 of this Order, shall not be recognised by the Court entertaining the application." (w.e.f. 1-10-1983)

Calcutta.-In Order XXI, in rule 16, in the first proviso for the words "and the decree shall not be executed until the Court has heard their objections (if any) to its execution", substitute the following words, namely:-

"and until the Court has heard their objections (if any) the decree shall not be executed provided that if, with the application for execution, an affidavit by the transferor admitting the transfer or an instrument of transfer duly registered be filed, the Court may proceed with the execution of the decree pending the hearing of such objections".

[Vide Notification No. 3516-G, dated 3rd February, 1993.]

Gauhati.-Same as in Calcutta.

Gujarat.-In Order XXI, in rule 16, same as in Bombay (iii) and (iv).

Madhya Pradesh.-In Order XXI, in rule 16, after the words "to the Court which passed it", insert the words "or to any Court for which it has been sent for execution", (w.e.f. 16-9-1960)

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 16, for the first proviso, substitute the following proviso, namely:-

"Provided that where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor unless an affidavit of the transferor admitting the transfer is filed with the application and the decree shall not be executed until the Court has heard his objection (if any) to its execution."

1. Ins. by Act No. 104 of 1976, (w.e.f. 1-2-1977).

17. Procedure on receiving application for execution of decree :- .

(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and if, they have not been complied with, 1 [the Court shall allow] the defect to be remedied then and there or within a time to be fixed by it.

2[(1A) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.]

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

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

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-Same as in Madras, with omission of the words "or order" in both places where they occur.

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXI, after rule 17, insert the following rule, namely:-

"17A. Where an application is made to a Court for the execution of a decree or order passed against a defendant in respect of whom service of summons has been dispensed with under rule 31 or Order V, the Court shall ordinarily direct stay of the execution of the decree or order against such defendant till the expiry of a period of one year after cessation of hostilities with the State in whose territory such defendant was resident:

Provided that the Court may, if it considers that the interests of justice so require, order execution on such terms as to security, or, otherwise as it thinks fit."

[Vide ROC No. 2108, dated 29th March, 1945.]

1. Subs, by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976, (w.e.f. 1-2-1977).

18. Execution in case of cross-decrees :- .

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

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

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

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

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

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

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree against him singly in favour of one or more of such persons.

Illustrations

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

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

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 1,000 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as cross-decree under this rule.

HIGH COURT AMENDMENT

Madhya Pradesh.-In Order XXI, for rule 18, substitute the following rule, namely:-

"18. (1) Where decree-holders apply to a Court for execution of cross-decrees in separate suits between the same parties for the payment of two sums of money passed and capable of execution at the same time by such Court, then-

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

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

Provided that-

(i) each party files the same character in both suits, and

(ii) the sums due under the decrees are definite.

(2) This rule shall be deemed to apply when either applicant is an assignee of one of the decrees as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself: Provided that-

(i) where the decrees were passed between the same parties, each party fills the same character in each suit;

(ii) where the decrees were not passed between the same parties, the decree-holder in one of the suits is the judgment-debtor in the other suit and fills the same character in both suits; and

(iii) the sums due under the decrees are definite.

(3) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons." (w.e.f. 16-9-1960)

19. Execution in case of cross-claims under same decree :- .

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

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

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

20. Cross-decrees and cross-claims in mortgage-suits :- .

The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

21. Simultaneous execution :- .

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

22. Notice to show cause against execution in certain cases :- .

(1) Where an application for execution is made,-

(a) more than 1[two years] after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, [or]

2[(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,]

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be

executed against him :

Provided that no such notice shall be necessary in consequence of more than 3[two years] having elapsed between the date of the decree and the application for execution if the application is made within 3[two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

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

HIGH COURT AMENDMENTS

Allahabad.-

In Order XXI, in rule 22, in sub-rule (2), insert the following proviso, namely:-

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission." (w.e.f. 21-6-1957)

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 22, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Notwithstanding anything contained in sub-rules (1) and (2) above, no order for the execution of a decree shall be invalid merely by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained injury by reason of such omission." {w.e.f. 1-11-1966).

Calcutta.-In Order XXI, in rule 22, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Omission to issue a notice in a case where notice is required under sub-rule (1), or to record reasons in a case where notice is dispensed with under sub-rule (2), shall not affect the jurisdiction of the Court in executing the decree."

[Vide Notification No. 3516-G, dated 3rd February, 1993.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Karnataka.-In Order 21, for rule 22, substitute the following rule, namely:-

"22. (1) Where an application for execution is made-

(a) more than two years after the date of decree, or

(b) against the legal representative of a party to the decree, or

(c) where the party to the decree has been declared insolvent against the assignee or receiver in insolvency, or

(d) for the execution of a decree filed under the provisions of section 44A of this Code, the Court executing the decree shall issue a notice to the person against whom execution is applied

for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

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

(2) Where from the particulars mentioned in the application in compliance with rule 11(2)(ff) of this order or otherwise the Court has information that the decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer other than the petitioner, where he is a party to the transfer.

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

Provided that no order for the execution of a decree shall be invalid owing to the omission of the Court to issue a notice as required by sub-rule (1) or to record its reasons where notice is dispensed with under sub-rule (3) unless the judgment-debtor has sustained substantial injury as a result of such omission." (w.e.f. 30-3-1967)

Kerala.-Same as in Madras, (w.e.f. 9-6-1959)

Madhya Pradesh.-In Order XXI, in rule 22, in sub-rule (2), insert proviso as in Allahabad.

[Vide Notification No- 3409, dated 29th June, 1943.]

Madras.-In Order XXI, in rule 22,-

(a) after sub-rule (1), insert the following sub-rule, namely:-

"(1A) Where from the particulars mentioned in the application in compliance with rule 11(2) (ff) supra or otherwise the Court has information that the original decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer other than the petitioner, where he is a party to the transfer."

(b) in sub-rule (2), insert the following proviso, namely:-

"Provided that no order for execution of a decree shall be invalid owing to the omission of the Court to record its reasons unless the judgment-debtor has sustained substantial injury as the result of such omission."

Orissa.-Same as in Parna.

Patna.-In Order XXI, in rule 22,-

(a) for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Where an application for execution is made in writing under rule 11(2) the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed why the decree should not be executed against him."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) Proceedings held in execution of a decree shall not be invalid solely by reason of any omission to issue or failure to serve a notice under sub-rule (1) or to record reasons where such notice is dispensed with under sub-rule (2) unless the judgment-debtor has sustained substantial injury thereby." (w.e.f. 9-5-1947)

Punjab.-In Order XXI, in rule 22, in sub-rule (2), at the end, insert the following words, imely:-

"Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction."

[Vide Notification No. 125-Gaz XI-Y-14, dated 7th April, 1932.]

1. Subs, by Act No. 104 of 1976, for "one year" (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976(w.e.f. 1-2-1977).

3. Subs, by Act No. 104 of 1976 for one year (w.e.f. 1-2-1977).

22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale :- .

Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.]

1. Subs, by Act No. 104 of 1976, for "one year" (w.e.f. 1-2-1977).

23. Procedure after issue of notice :- .

(1) Where the person to whom notice is issued under 1[rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed the Court shall order the decree to be executed.

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

1. Subs, by Act No. 38 of 1978, for "the last preceding rule".

Process for execution

24. Process for execution :- .

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

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

1[(3)] In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.]

HIGH COURT AMENDMENTS

Bombay.-In Order XXI, in rule 24, in sub-rule (2), insert the following proviso, namely:-

"Provided that a Civil Judge, Senior Division, may in his special jurisdiction, send the process to another Court in the same district for execution by the proper officer in that Court." (w.e.f. 1-10-1983)

Gujarat.-In Order XXI, in rule 24, in sub-rule (2), insert the following proviso, namely:-

"Provided that a Civil Judge, Senior Division, may, in exercise of his special jurisdiction, send a process to another subordinate Court in the same district for execution by the proper officer in that Court." (w.e.f. 17-8-1961)

1. Subs, by Act No. 104 of 1976 s. 72, for sub-rule (3) (w.e.f. 1-2-1977).

25. Endorsement on process :- .

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

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 25, in sub-rule (2), for the words "shall examine him", substitute the words "may examine him personally or upon affidavit".

[Vide Notification No. 2381/35(a)7(3), dated 7th September, 1918.]

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 25, in sub-rule (2), insert the following proviso, namely:-

"Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this rule." (w.e.f. 1-10-1983)

Gujarat.-Same as in Bombay.

Karnataka.-In Order XXI, for rule 25, substitute the following rule, namely:-

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

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court may on its own motion and shall upon an application by the petitioner in the execution application examine the officer touching his alleged inability and may, if it thinks fit, summon and examine witnesses as to such inability and shall record that result. Such examination of the process server as well as of witnesses summoned under this,, rule shall be made after notice to the petitioner in execution application or his pleader.

(3) Where in the case of a decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder. On receipt of the process with an endorsement so signed and attested, the Court shall issue notice to the decree-holder to show cause, on a day to be fixed by the Court why such satisfaction should not be recorded as certified and if after service of such notice the decree-holder fails to show such cause the Court shall record the same accordingly. A record of satisfaction under the provisions of this sub-rule shall have the same effect as one made under the provisions of sub-rule (2) of rule 2 of this order." (w.e.f. 30-3-1967)

Kerala.-Same as in Madras, (w.e.f. 9-6-1959)

Madras.-In Order XXI, in rule 25,-

(a) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Where in the case of a-decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) Where the endorsement of such officer is to the effect that he is unable to execute the process, the Court shall examine him or cause him to be examined by any other Court touching his alleged inability, and if it thinks fit, summon and examine witnesses as to such inability and shall record the result: ;

Provided that an examination of the officer entrusted with the execution of a process by the Nazir or [the Deputy Nazir] under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause.

Where the inability to execute the process is stated to be due to the satisfaction of the decree and such satisfaction has been endorsed on the process as mentioned in sub-rule (2) above, the Court shall issue notice to the decree-holder to show cause on a day to be fixed by the Court, why such satisfaction should not be recorded as certified, and, if, after service of such notice, the decree-holder fails to show cause why the satisfaction should not be recorded as certified, the Court shall record the same accordingly.

A record of satisfaction under the provisions of this sub-rule shall have the same effect as one under the provisions of Order XXI, rule 2, sub-rule (2)."

Stay of execution

26. When Court may stay execution :- .

(1) the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or

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

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

(3) Power to require security from, or impose conditions upon, judgment-debtor-Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, 1[the Court shall require] such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

1. Subs, by Act No. 104 of 1976 for "the Court may require" (w.e.f. 1-2-1977).

27. Liability of judgment-debtor discharged :- .

No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to :- .

Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

29. Stay of execution pending suit between decree-holder and judgment- debtor :- .

Where a suit is pending in any Court against the holder of a decree of such Court 1[or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

1[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in, rule 29,-

(a) after the words "the person against whom the decree was passed", insert the words "or any person whose interest are affected by the decree, or by any order made in execution thereof";

(b) omit the words "on such terms as to security or otherwise";

(c) for the word "as" appearing before the words "it thinks fit", substitute the word "if";

(d) insert the following as proviso, namely:-

"Provided that in all cases where execution of the decree is stayed under this rule the Court shall require the person seeking such stay to furnish such security as it may deem fit."

[Vide Notification No. 43/VIIId-29, dated 1st June, 1957.]

Karnataka.-In Order XXI, in rule 29, for the words "on the part of the person against whom the decree was passed", substitute the words "instituted by the person against whom the said decree was passed", (w.e.f. 30-3-1967)

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

Mode of execution

30. Decree for payment of money :- .

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

HIGH COURT AMENDMENT

Allahabad.-In Order XXI, -in rule 30, between the words "and sale" and "of his property", insert the words "or any other kind of transfer", (w.e.f. 13-2-1960)

31. Decree for specific movable property :- .

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

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

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 1[three months] from the date of attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 31, in sub-rules (2) and (3), for the words "six months" wherever they occur, substitute the words "three months or such extended time as the Court may for good cause direct".

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926]

[Ed.-This amendment relates to sub-rules (2) and (3) prior to the amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2- 1977).]

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 31, in sub-rules (2) and (3), for the words "six months" wherever they occur, substitute the words "three months or such further time as the Court may, in any special case, for good cause shown, direct".

[Ed.-This amendment relates to sub-rules (2) and (3) prior to the amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

Delhi.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXI, in rule 31, after sub-rule (3), insert the following sub-rule, namely:-

"(4) The Court may on application extend the period of three months mentioned in sub-rules (2) and (3) to such period not exceeding six months on the whole as it may think fit." {w.e.f. 30-3-1967}

Kerala.-Same as in Madras.

Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madhya Pradesh.-Same as in Bombay, (w.e.f. 16-9-1960)

Madras,-In Order XXI, in rule 31, after sub-rule (3), insert the following sub-rule, namely:-

"(4) The Court may on application extend the period of three months mentioned in sub-rules (2) and (3) to such period not exceeding six months on the whole as it may think fit."

[Vide GOMs No. 2084-Home, dated 2nd September, 1936; HCP Dis No. 691, dated 13th October, 1936).]

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 31, after sub-rule (3), insert the following sub-rule, namely:-

"(4) The Court may, for sufficient cause, extend the period of three months mentioned in sub-rules (2) and (3) to such period, not exceeding six months in the whole, as it may think fit."

Punjab.-In Order XXI, in rule 31,-

(a) after sub-rule (2), insert the following proviso, namely:-

"Provided that the Court may, in any special case, according to the special circumstances thereof, extend the period beyond three months; but it shall in no case exceed six months in all."

(b) in sub-rule (3), for the words "six months", substitute the words "three months or such other period as may have been prescribed by the Court".

[Ed.-This amendment relates to sub-rules (2) and (3) prior to the amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

1. Subs by Act No. 104 of 1976 for "six months" (w.e.f. 1-2-1977).

32. Decree for specific performance for restitution of conjugal rights, or for an injunction :- .

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

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

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 1[six months] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or here, at the end of 1[six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

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

2[Explanation.-For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.]

Illustration

A, a person of little substance, effects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of As property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 32, in sub-rule (3), at the end, after the words "on his application", insert the words "and the Court may for good cause extend the time".

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.] ,

Andhra Pradesh.-Same as in Madras.

Delhi.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab. [

Kerala.-Same as in Madras, (w.e.f. 9-6-1959) -:-"

Madhya Pradesh.-In Order XXI, in rule 32--

(a) in sub-rule (3), at the end, after the word "application", insert the words "and the Court may also, for good cause shown, extend the time for the attachment remaining in force for a

period not exceeding one year", and

(b) in sub-rule (4), for the words "one year", substitute the words, "three (now six) months or such further time as may have been fixed by the Court under sub-rule (3)". (w.e.f. 16-9-1960)

[Ed.-This amendment relates to sub-rule (4) prior to its amendments by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

Madras.-In Order XXI, in rule 32-

(a) in sub-rule (3), at the end, after the word "application" insert the words "The Court may on application extend the period of three (now six) months mentioned herein to such period not exceeding one year on the whole as it may think fit."

(b) in sub-rule (4), after the words "the date of the attachment", insert the words "or of such extended period which the Court may order under sub-rule (3)".

[Vide GOMs No. 2084-Home, dated 2nd September, 1936; HCP Dis No. 691, dated 13th October, 1936.]

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 32, in sub-rule (3), for the words "for one year" substitute the words "for three (now six) months or for such further period, not exceeding one year in the whole, as may on sufficient cause shown, be fixed by the Court".

[Ed.-This amendment relates to sub-rule (3) prior to its amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

Punjab.-In Order XXI, in rule 32,-

(a) in sub-rule (3), insert the following proviso, namely:-

"Provided that the. Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three (now six) months; but it shall in no case exceed one year in all."

(b) in sub-rule (4), for the words "one year" substitute "three (now six) months or such other period as may have been prescribed by the Court".

[Ed.-This amendment relates to sub-rule (4) prior to its amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).] , -

1. Subs, by Act No. 104 of 1976 for "one year" (w.e.f. 1-2-1977).

2. Explanation inserted to sub-rule (5) by Act No. 22 of 2002, section 14 (w.ef. 1-7-2002).

Payment under decree

33. Discretion of Court in executing decrees for restitution of conjugal rights :- .

(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree 1[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree 2[shall be executed in the manner provided in this rule.]

(2) Where the Court has made an order under sub-rule (1) 3[* * *] it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the

judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

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

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

1. Ins. by Act 29 of 1923, sec. 3

2. Subs. by Act 29 of 1923, sec. 3, for "shall not be executed by detention prison."

3. The words "and the decree-holder is the wire" omitted by Act 29 of 1923, sec. 3.

34. Decree for execution of document, or endorsement of negotiable instrument :- .

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

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

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

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :-
"CD., Judge of the Court of

(or as the case may be), for A.B. in suit by E.F. against A.B.", and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

1[(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such

order as it thinks fit as to the expenses of registration.]

1. Subs, by Act No. 104 of 1976 for sub-rule (6) (w.e.f. 1-2- 1977).

35. Decree for immovable property :- .

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

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

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

HIGH COURT AMENDMENT

Madras.-In Order XXI, in rule 35, after sub-rule (3), insert the following as sub-rule, namely:-

"(4) Where delivery of possession of a house is to be given and it is found to be locked, orders of Court shall be taken for breaking open the lock for delivery of possession of the same to the decree-holder.

If it is found at the time of delivery that there are movables in the home to which the decree-holder has no claim and the judgment-debtor is absent, or if present, does not immediately remove the same, the officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value, in the presence of respectable persons on the spot, have the same attested by them and leave the movables in the custody of the decree-holder after taking a bond from him for keeping the articles in safe-custody pending orders of Court for disposal of the same.

The officer shall then make a report to the Court and forward therewith the attested inventory taken by him.

The Court shall, thereupon, issue a notice to the judgment-debtor requiring him to take delivery of the said movable within thirty days from the date of the notice and in default they will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the Judgment-debtor:

Provided that if movable articles referred to above are perishable, the officer shall sell them in public auction immediately, and bring the proceeds into Court. The notice to the Judgment-debtor shall in such a case call upon him to receive the amount from Court within three months." (w.e.f. 17-8-1966)

36. Decree for delivery of immovable property when in occupancy of tenant :- .

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property. Arrest and detention in the civil prison

Arrest and detention in the civil prison

37. Discretionary power to permit judgment debtor to show cause against detention in prison :- .

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

1[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 37, in sub-rule (1), for the word "shall", substitute the word "may" and omit the proviso.

[Vide Notification No. 43/IIM-29, dated 1st June, 1957.]

Patna.-In Order XXI, in rule 37, in sub-rule (1), for the word "shall", substitute the word "may", (w.e.f. 5-4-1961)

1. Ins. by Act 21 of 1936, sec. 3.

38. Warrant for arrest to direct judgment-debtor to be brought up :- .

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XXI, in rule 38, at the end, insert the words "or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in sub-rule (3) of rule 25 of this Order", (w.e.f. 30-3-1967)

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/58, dated, 7th April, 1959.]

Madras.-In Order XXI, in rule 38, at the end, insert the words "or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in rule 25(2) above". (w.e.f. 30-3-1967)

39. Subsistence allowance :- .

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

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

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

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

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

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 39, in sub-rule (5), omit the words "in the civil prison".

[Vide Notification No. 4084/35{a)-3(7)/ dated 24th July, 1926.]

Andhra Pradesh.-Same as in Madras.

Bombay.-*(i)* In Order XXI, in rule 39, in sub-rule (1), at the end, insert the words "and for the cost of conveyance of the judgment-debtor from the place of his arrest to the Court-house".

(ii) for sub-rules (4) and (5), substitute the following sub-rules, namely:- *

"(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and costs of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison on his release, to his usual place of residence, together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remain! unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison, and the subsequent payments {if any) shall be paid to the officer in charge of the civil prison.

(5) Sums disbursed under this rule by the decree-holder for the substance and costs of conveyance (if any) of the judgment-debtor shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on

account of any sum so disbursed."

Calcutta.-In Order XXI, in rule 39, in sub-rule (5), omit the words "in the civil prison".

[Vide Notification No. 3516-G, dated 3rd February, 1933.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Gujarat.-Same as in Bombay.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXI, in rule 39, for sub-rules (4) and (5), substitute sub-rules (4) and (5) as in Bombay (ii). (w.e.f. 30-3-1967)

Kerala.-In Order XXI, in rule 39, substitute sub-rules (4) and (5) as in Bombay (ii) without the proviso.

Madhya Pradesh.-Same as in Bombay (i) and (ii) without the proviso, (w.e.f. 16-9-1960)

Madras.-*(i)* In Order XXI, in rule 39, in sub-rule (1), at the end, insert the words "and for payment of the charges for conveyance of the judgment-debtor by bus, train or otherwise whichever is available from the place of arrest to the Court-house".

(ii) for sub-rules (4) and (5), substitute sub-rules (4) and (5) as in Bombay (ii) without the proviso.

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 39, in sub-rule (5), omit the words "in the civil prison" in the first place where they occur.

Punjab.-In order XXI, in rule 39, in sub-rule (5), omit the words "in the civil prison".

[Vide Notification No. 125-Gaz-XI-Y-14, dated 17th April, 1932.]

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest :- .

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. i (2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or, release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of the Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

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

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

1. Subs. by Act 21 of 1936, sec. 4, for rule 40.

HIGH COURT AMENDMENTS

Bombay.-In Order XXI, in rule 40, after sub-rule (5), insert the following sub-rules, namely:-

"(6) When a judgment-debtor is ordered to be detained in the custody of an officer of the Court under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as having regard to the specified or probable length of detention, will provide-

(a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scales fixed under section 57, and

(b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed of such fees""(including lodging charges) in respect thereof as the Court may by order fix:

Provided (i) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and (ii) that the Court may from time to time require the decree-holder to deposit such further sums as it deems necessary.

(7) If a decree-holder fails to deposit any sum as required under sub-rule

(6) above, the Court may disallow the application and direct the release of the judgment-debtor.

(8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed." (w.e.f. 1-10- 1983)

Gujarat.-In Order XXI, in rule 40, after sub-rule (5), insert sub-rules (6) and (7) as in Bombay.

Karnataka.-In Order XXI, in rule 40, after sub-rule (5), insert sub-rules (6) and (7) as in Madras with the following modifications:-

(i) in sub-rule (6), after rule 37, omit the words and figures "or 38";

(ii) in sub-rule (6), for the words "Subordinate Judge or District Munsif" substitute the words "Judge";

(iii) in sub-rule (6), omit the words "and the Judge signing the warrant of committal in the above cases shall also have the same powers as the Judge who issued the warrant in respect of passing such orders as may be appropriate under sub-rule (1), (3) and (5) of this rule".

Kerala.-In Order XXI, in rule 40,-

(i) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Pending the conclusion of the inquiry under sub-rule (1), the Court shall release the judgment-debtor on his furnishing security to the satisfaction of the Court for his appearance when required and if the judgment-debtor fails to furnish the security ordered, the Court may order the judgment-debtor to be detained in the custody of an officer of the Court on the decree-holder depositing in Court the necessary amounts payable to the judgment-debtor and the officer of the Court in connection with such detention." (w.e.f 16-1-1990)

(ii) substitute the sub-rules (6) and (7) as in Madras but in sub-rule (6) for the words "District Munsif", substitute the word "Munsif". (w.e.f 16-9-1960)

Madhya Pradesh.-In Order XXI, in rule 40, insert sub-rules (6), (7) and (8) as in Bombay. (16-9-1960)

Madras.-In Order XXI, in rule 40, insert the following sub-rule, namely:-

"(6) During the temporary absence of the Judge who issued the warrant under rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality or where the arrest is made on a warrant issued by the District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsif empowered in writing by the District Judge in this behalf and the Judge signing the warrant of committal in the above cases shall also have the same powers as the Judge who issued the warrant in respect of passing such orders as may be appropriate under sub-rules (1), (3) and (5) of this rule.

(7) No judgment-debtor shall be committed to the civil prison or brought before the Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (1) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort. sub-rule (5) of rule 39 shall apply to such payments." (w.e.f. 5-9-1968)

Attachment of property

41. Examination of judgment-debtor as to his property :- .

1[(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) The judgment-debtor, or

(b) 2[where the judgment-debtor is a corporation], any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

3[(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the

judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.]

1. Rule 41 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976, (w.e.f. 1-2-1977).

2. Subs, by Act No. 104 of 1976, for "in the case of a corporation" (w.e.f. 1-2-1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined :- .

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor :- .

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

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

HIGH COURT AMENDMENTS

Andhra Pradesh.- Same as in Madras.

Calcutta.-In Order XXI, for rule 43, substitute the following sub-rule, namely:-

"43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure at the identification of the decree-holder or his agent, save as otherwise prescribed, the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that when the property seized does not, in the opinion of the attaching officer, exceed twenty rupees in value or is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once."

[Vide Notification No. 25585-G, dated 3rd November, 1933 and Notification No. 4440-G, dated 29th May, 1941.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Gujarat.-Same as in Madhya Pradesh. (w.e.f. 17-8-1961)

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXI, in rule 43, same as in Madras with the following modifications:-

(i) in the second proviso omit the words "agricultural implements"

(ii) for clause (a), substitute the following clause, namely:-

"(a) in the charge of the person at whose instance the property is retained if such person enters into a bond in the prescribed form with one or more sureties for its production when called for, or."

Kerala.-In Order XXI, for rule 43, substitute the following rule, namely:-

"43. Attachment of moveable property other than agricultural produce, in possession of judgment-debtor.- (1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of any of his subordinates and shall be responsible for the due custody thereof:

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

Provided also that when the property attached consists of livestock, agricultural implements or other articles which cannot be conveniently removed and the attaching officer does not act, under the first proviso to this rule, he may, at the instance of the judgment-debtor, or of the decree-holder, or of any person claiming to be interested in such property, leave it in the village or at the place where it has been attached.

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in Form No. 15A of Appendix E to this Schedule with one or more sufficient sureties for its production when called for; or

(b) in the charge of an officer of the Court, if a suitable place for its safe custody is provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High court be paid in advance.

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment.

(3) When attached property is kept in the village or place where it is attached.-Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the properties seized.

(4) Procedure when attached property is neither sold nor kept in the village or place where it is attached.-If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court.

(5) Where attached property kept in the village etc. is livestock.-Whenever attached property kept in the village or place where it is attached is livestock, the person at whose instance it is so retained shall provide for its maintenance, and, if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house.

Nothing in his rule shall prevent the judgment-debtor or any person claiming to be interested in such live stock from making such arrangements, for feeding the same as may not be inconsistent with its safe custody.

(6) Direction for sums expended by attaching officer.-The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings."

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madhya Pradesh.-(i) In Order XXI,-

(i) renumber rule 43 as sub-rule (1) thereof;

(ii) in sub-rule (1) as so renumbered, in the proviso, at the end before semi colon, insert the word "and";

(iii) in sub-rule (!) as so renumbered, after the proviso, insert the following further proviso, namely:-

"Provided also that when the property attached consist of live-stock, agricultural implements or other articles which cannot be conveniently removed, and the attaching officer does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or of the decree-holder or any person claiming to be interested in such property, leave it in the village or at the place where it has been attached-

(a) In the charge of the judgment-debtor, or of the station pound-keeper, if any, or

(b) In the charge of the decree-holder, or of the person claiming to be interested in such property or of such respectable person as will undertake to keep such property, on his entering into a bond with one or more sureties in an amount not less than the value of the property, that he will take proper care of such property and produce it when called for." (iv) after sub-rule (1) as so renumbered insert the following sub-rule namely:- "

"(2) The attaching officer shall make a list of the property attached and shall obtain thereto the acknowledgment of the person in whose custody the property is left, and if possible of the parties to the suit, and of at least one respectable person in attestation of the correctness of the list. If the property attached include both livestock and other articles, a separate list of (tie livestock shall similarly be prepared and attested." (w.e.f. 16-94960)

Madras.-In Order XXI,-

(i) renumber rule 43 as sub-rule (1) thereof;

(ii) in sub-rule (1) as so renumbered, in the proviso, at the end, before colon insert the word "and";

(iii) in sub-rule (1) as so renumbered, after the proviso, insert the following further proviso, namely:-

"Provided also that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached-

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in Form No ISA of Appendix E to this Schedule with one or more sufficient sureties for its production when called for, or

(b) in the charge of an officer of -the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance."

(iv) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment."

Orissa.-Same as in Patna.

Patna.-(a) In Order XXI, in rule 43, omit the words "shall keep the property in his own custody or in the custody of one of his subordinates, and."

Punjab.-(i) In Order XXI,-

(i) re-number rule 43 as sub-rule (1) thereof;

(ii) in sub-rule (1) as so renumbered, insert a further proviso which is same as in Madras with addition of the following clause, namely:-

"(c) in the charge of a village lambardar or such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No. 15B of Appendix E, with one or more sureties for its production.";

(iii) Insert sub-rule (2) which is same as in Madras (iv);

(iv) after sub-rule (2) insert the following sub-rule, namely:-

"(3) When property is made over to custodian under sub-clause as (a) or (c) of clause (1), the Schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by;

(a) the custodian and his sureties;

(b) the officer of the Court made the attachment;

(c) the person whose property is attached and made over;

(d) two respectable witnesses.

One copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings under which the attachment has been ordered, one copy will be made over to

the person whose property is attached and one copy will be made over to the custodian."

Rajasthan.-In Order XXI, renumber rule 43 as sub-rule (1) thereof and insert a further proviso with clauses (a), (b) and (c), sub-rules (2) and (3) as in Punjab with the following modifications:-

(ii) in the proviso, in clause (c) for the words "village lambardar", substitute the words "village Patwari."

43A. Custody of movable property :- .

(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,-

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage cause by his default; and

(b) such liability may be enforced-

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.]

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras. Bombay.-In Order XXI, after rule 43A, insert the following rule, namely:-

"43B. Attachment of live-stock.- (1) When an application is made for the attachment of live-stock the Court may demand in advance in cash at rate to be fixed half-yearly, or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the live-stock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance and all other charges requisite for the maintenance and custody of the livestock.

(2) If the live-stock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the live-stock or a part thereof, may, at the discretion of the Court, be paid to the custodian of the live-stock for their maintenance. The produce, such as milk, eggs, etc. if any, may either be sold, as promptly as possible for the benefit of the judgment-debtor, or may, at the discretion of the Court, be set-off against the

cost of maintenance of the live-stock." (w.e.f. 1-10-1983)

Delhi.-Same as in Punjab, (w.e.f 31-10-1966)

Gujrat-Same as in Madhya Pradesh. (w.e.f 17-8-1961)

Himachal Pradesh.-Same as in Punjab, (w.e.f. 31-10-1966)

Karnataka.-Same as in Madras, (w.e.f. 30-3-1967)

Madhya Pradesh.-In Order XXI, after rule 43, insert the following rule, namely:-

"43A. Attachment of livestock.-(1) When an application is made for the attachment of livestock the Court may demand, in advance in cash at rates to be fixed half yearly or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the livestock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance, and all other charges requisite for the maintenance and custody of the livestock.

(2) If the livestock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the livestock or a part thereof, may, at the discretion of the Court, be paid to the custodian of the livestock for their maintenance. The produce, such as milk, eggs, etc. if any, may either be sold as promptly as possible for the benefit of the judgment-debtor or may, at the discretion of the Court, be set off against the costs of maintenance of the livestock." (w.e.f. 16-9-1960)

Madras.-In Order XXI, after rule 43, insert the following rules, namely:-

"43A. (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the property seized.

(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court house and delivered to the proper officer of the Court.

43B. (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is so retained shall provide for its maintenance, and, if he fails to do so and if it is in charge of an officer of the Court it shall be removed to the Court-house.

Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody.

(2) The Court may direct that any sums which have been expended by the attaching officer or care payable to him, if not duly deposited or paid, be removed from the proceeds of property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachments from any party to the proceedings." (w.e.f. 5-9-1968)

Orissa.-Same as in Patna.

Patna.-In Order XXI, after rule 43, insert the following rule, namely:-

"43A. (1) The attaching officer shall, in suitable cases, keep the attached property in the village or locality either-

(a) in his own custody in any suitable place provided by the judgment-debtor, or in his absence by any adult member of his family who is present, on his own premises or elsewhere;

(b) in the case of live-stock, and provided the decree-holder furnishes the necessary funds, in the local pound, if a pound has been established in or near the village in which case the pound-keeper will be responsible for the property to the attaching officer, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description, or such less rate as may be agreed upon;

(c) in the custody of a respectable surety, provided the decree-holder furnishes the cost of maintenance and other costs, if any.

(2) If in the opinion of attaching officer the attached property cannot be kept in the village or locality, through lack of a suitable place, or satisfactory surety, or through failure of the decree-holder to provide necessary funds, or for any other reason, the attaching officer shall remove the property to the Court at the decree-holders expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn.

(3) Whenever attached property is kept in the village or locality as aforesaid, the officer shall forthwith report the fact to the Court and shall with his report forward an accurate list of property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by rule 66.

(4) If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the terms prescribed in rule 68, the officer shall receive the same and forward it without delay to the Court for its orders.

(5) When property is removed to the Court it shall be kept by the Nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature of bulk, be conveniently kept on the Court premises, or in the personal custody of the Nazir, he may, subject to approval by the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical, and the Court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

(6) When property remains in the village or locality where it is attached and any person other than the judgment-debtor shall claim the same, or any part of it, the attaching officer shall nevertheless unless the decree-holder desires to withdraw the attachment of the property so claimed, maintain the attachment, and shall direct the claimant to prefer his claim to the Court.

(7) (a) If the decree-holder shall withdraw an attachment or it shall be withdrawn under sub-rule (5) or sub-rule (9) the attaching officer shall inform the debtor, or in his absence any adult member of his family, that the property is at his disposal.

(b) In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

(8) Whenever live-stock is kept in the village or locality where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer; but the latter shall, if required by the decree-holder, and on his paying for the same at the rate to be fixed by the District Judge, and subject to the orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary, for the safe custody of it.

(9) In the event of the judgment-debtor failing to feed the attached live-stock in accordance with sub-rule (8), the officer shall call upon the decree-holder to pay forthwith for feeding the same. In the event of his failure to do so, the officer shall proceed as provided in sub-rule (2), and shall report the matter to the Court without delay.

(10) When attached live-stock is brought to Court, the Nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

(11) If a pound has been established in or near the place where the Court is held, the Nazir shall be at liberty to place in it such attached livestock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description, or such less rate may be agreed upon.

(12) If there be no pound available, or if, in the opinion of the Court it be inconvenient to lodge the attached live-stock in the pound, the Nazir may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Court. The Nazir will in all cases remain responsible for the custody of the property.

(13) Each Court shall from time to time fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The District Judge may make any alteration he deems fit in the rates prescribed by Courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court."

Punjab.-In Order XXI, after rule 43, insert the following rules, namely:-

"43A. (1) Same as sub-rule (1) of Madras.

(2) Same as sub-rule (2) of Madras.

(3) A custodian appointed under the second proviso to rule 43, may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him.

(4) When any property is taken back from a custodian, he shall be granted a receipt for the same. ji

43B. (1) Same as sub-rule (1) of Madras. ---

(2) Same as sub-rule (2) of Madras.

43C. When an application is made for the attachment of live-stock or other moveable property, the CPC-63 decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for 15 days. If within the clear days, before the expiry of any such period of 15 days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper office, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

43D. Any person who has undertaken to keep attached property under rule 43(I)(c) shall be liable to be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him."

[Ed.-All the amendments quoted above relating to rule 43A (rule 43B, 43C, 43D) were made prior to the insertion of rule 43A by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

44. Attachment of agricultural produce. :- .

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

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

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited, and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

HIGH COURT AMENDMENTS

Bombay.-In Order XXI, after rule 44, insert the following rule, namely:-

"44A. Copy of the warrant of attachment to be sent to the Collector where agricultural produce is attached.-Where the property to be attached is agricultural produce, a copy of the warrant or the order of attachment shall be sent by post to the office of the Collector of the district in which the land is situate." (w.e.f. 1-10-1983)

Calcutta.-In Order XXI, in rule 44, after the words "attachment shall be made", insert the words "at the identification of the decree-holder or his agent".

[Vide Notification No. 4440-G, dated 29th May, 1941.]

Gauhati.-Same as in Calcutta. Gujarat-Same as in Bombay.

45. Provisions as to agricultural produce under attachment :- .

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

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

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

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

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

be cut or gathered.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 45, in sub-rule (1), at the end, insert the words "and the applicant shall deposit in Court at the time of the application such sum as the Court shall deem sufficient to defray the cost of watching and tending the crop till such time", (w.e.f. 1-10-1983)

Calcutta.-In Order XXI, in rule 45, in sub-rule (1), at the end, insert the following words "and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time".

[Vide Notification No. 3516-G, dated 3rd February, 1933.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Gujarat.-Same as in Bombay.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-Same as in Madras, (w.e.f. 30-3-1967)

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-

In Order XXI, in rule 45, in sub-rule (1), at the end, insert the words "and the applicant shall deposit in Court within a date to be fixed by Court, such sum as the Court may deem sufficient to defray the cost of watching and tending the crop till such time".

[Vide GOMs No. 2084-Home, dated 2nd September, 1936-HCP Dis No. 691, dated 13th October, 1936),]

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 45, in sub-rule (1), at the end, insert the words "and the applicant shall pay into Court such Sums as he may from time to time be required by the Court to pay in order to defray the cost of such arrangements".

Punjab.-In Order XXI, in rule 45, in sub-rule (1), at the end, insert the words "and with every such application such charges as may be necessary for the custody of the crop up to the time at which it is likely to be fit to be cut or gathered shall be paid to the Court".

[Vide Notification No. 125-Gaz-XI-Y-14, dated 7th April, 1932.]

46. Attachment of debt, share and other property not in possession of judgment- debtor :- .

(1) In the case of-

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,-

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

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

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

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

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

46A. Notice to garnishee :- .

(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

1. Ss. 46A to 46I Ins. by Act. No. 104 of 1976 (w.e.f. 1-2-1977).

46B. Order against garnishee :- .

Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

46C. Trial of disputed questions :- .

Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

46D. Procedure where debt belongs to third person :- .

Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

46E. Order as regards third person :- .

After hearing such third person and any person or persons who any subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

46F. Payment by garnishee to be valid discharge :- .

Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46G. Costs :- .

The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

46H. Appeals :- .

An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

46I. Application to negotiable instruments :- .

The provisions of rule 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.]

HIGH COURT AMENDMENT

Bombay.-In Order XXI, for rules 46A to 46-1, substitute the following rules, namely:-

"46A. *[Payment of debt or amount under negotiable instrument or delivery of movable property in Court, etc., in the hands of Garnishee].-

(1) Upon the application of the decree-holder, the Court may in case of,-

(1) any debt (other than a debt secured by a mortgage or a charge or a negotiable instrument) of which the Civil Courts are not precluded from adjudicating upon by any law for the time being in force and which has been attached under rule 46 of this Order; or

(2) any movable property not in possession of the judgment-debtor which has been attached under rule 46 of this Order; or

(3) any negotiable instrument which has been attached under rule 51 of this Order; or

(4) any movable property of the nature referred to in (1) to (3) above in the custody of any public officer other than officer of any Court, which has been attached under rule 52 of the Order,

issue notice to any person liable to pay to the judgment-debtor such debt or the amount due under such negotiable instrument or liable to deliver such movable property or to account for it to the judgment-debtor (hereafter referred to as "the Garnishee") calling upon him within the period specified in the notice either to pay into Court the said debt or amount payable under the said negotiable instrument or deliver into Court the said movable property, as the case may be, or so much thereof as may be sufficient to satisfy the decree or order and the cost of execution or to appear before the Court and show cause why he should not be ordered to do so.

The notice shall be served on the garnishee and, if the Court so directs on the judgment-debtor also. The notice be served eight clear days before the returnable date thereof:

Provided that, subject to the proviso of rule 46C if by any law for the time being in force, the jurisdiction to adjudicate upon the debt or claim relating to the negotiable instrument or movable property in respect of which the application aforesaid is made is conferred on a Civil Court other than the execution Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court shall transfer the case to the competent Court and on such transfer the Court to which the case is transferred will deal with it in the same manner as if it had been originally instituted in that Court.

Explanation.-(1) When the District Court itself is the competent Court it may deal the case in the same manner as if it had been originally instituted in that Court.

(2) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor or that the property belongs to the judgment-debtor.

46B. *[Order against Garnishee].-Where the garnishee does not within the time specified in the notice within such time as the Court may allow to pay into Court the said debt or the amount payable under the said negotiable instrument or does not deliver into Court the said property as is sufficient to satisfy the decree or order and the cost of the execution or does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice or pass such other as it may deem fit.

46C. *[Determination of disputed qualifications].-If the garnishee disputes his liability, the Court instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the deter-

mination of such issue shall pass order upon the notice as it may think fit:

Provided that if the amount of the debt or the amount payable under the negotiable instrument or the value of the property in respect of which the application aforesaid is made exceeds the pecuniary jurisdiction of the Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court or any other competent Court to which it may be transferred by the District Court will deal with it in the same manner as if it had been originally instituted in that Court.

46D. *[Discharge of Garnishes].-If the garnishee appears in answer to the garnishee notice shows cause to the satisfaction of the Court, the notice shall be dismissed and upon such dismissal the attachment ordered under rule 46, 51 or 52 of this Order shall stand raised and the prohibitory order, if any, shall stand discharged.

46E. *[Adjudication of claims by third party].-Whenever in the course of proceedings against the garnishee it is alleged or appears to the Court to be probable that some person other than the judgment-debtor is or claims to be entitled to the debt attached or the amount payable under the negotiable instrument or the property attached or claims to have a charge or lien upon or interest in such debt or amount or property the Court may order such third person to appear before it and state the nature of his claim with particulars thereof and, if necessary, prove the same.

46F. *[Claim of third person to be tried as in a suit].-After hearing such third person and any other person who may subsequently be ordered to appear, or in case of such third person or other persons not appearing when ordered, the Court may pass such order as is provided under rule 46B, 46C or 46D or such order or orders upon such terms, if any, with respect to the lien or charge or interest if any of such third or other person as it may deem fit and proper including an order that any question or issue necessary for determining the validity of the claim of the third or other person be tried as though it were an issue in a suit.

46G. *[Execution of order under rules 46B, 46C and 46F].-(a) An order made by the Court under rules 46B, 46C or 46F against the garnishee shall be executable as if it were decree of the Court in favour of the decree-holder.

(b) When money or negotiable instrument or property is received in Court as a result of an order under rule 46B, 46C or 46F above, the money shall not be paid and further steps in execution in respect of the negotiable instrument or property shall not be taken till the time for filing an appeal against the said order is over and whether an appeal is filed, till further orders of the Appellate Court.

46H. *[Discharge of Garnishees liability].-Any payment or delivery made by a garnishee in compliance with a garnishee notice or order made against him under rule 46B, 46C or 46F of this Order or any money or property realised in execution of an order under these rules shall be a valid discharge of the garnishees liability to the judgment-debtor and to any other person or persons ordered to appear under rule 46E or 46F of this Order for the amount paid or levied or property delivered or property realised in execution, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46-I. *[Garnishee proceeding against a firm].-Where a debt due by a firm to the judgment-debtor has been attached it may be proceeded against under rules 46A to 46H of this order in the same manner as in the case of an ordinary garnishee, and provisions of Order XXX of this Code shall, so far as applicable, apply to such proceedings although one or more partners of such firm may be resident outside the jurisdiction of the Court:

Provided that any person having the control or management of the partnership business or any partner of the firm who is within the jurisdiction of the Court is served with garnishee notice. An appearance by any partner pursuant to such notice shall be sufficient appearance by the firm.

46J. *[Costs].-The costs of any application made under rule 46A of this order and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court.

46K. *[Appeal against order made under rules 46B, 46C, 46F and 46G].-Any order made under rule 46B, 46C, 46F or 46G of this Order shall be appealable as a decree."

[Vide Maharashtra Government Gazette, Ft. IV, ka., p. 413, dated 15th September, 1983 (w.e.f. 1-10-1983) and *Maharashtra Government Gazette, Ft. IV, ka, p. 100, dated 20th April, 1989 (w.e.f. 20-4-1989).

47. Attachment of share in movables :- .

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

48. Attachment of salary or allowances of servant of the Government or railway company or local authority :- .

(1) Where the property to be attached is the salary or allowances of a 1[servant of the Government] or of a servant of a railway company or local authority 2[or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Courts jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as 3[the appropriate Government may by notification in the Official Gazette] appoint 4[in this

behalf,-

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Courts.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

5[(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of the rule.]

6[Explanation.-In this rule, "appropriate Government" means,-

(i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(ii) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.]

HIGH COURT AMENDMENTS

Andhra Pradesh.- Same as in Madras.

Madras.-In Order XXI, in rule 48, in sub-rule (1), in clause (a), at the end, insert the words "such amount or instalment being calculated to the nearest anna by fractions of an anna or six pies and over being considered as one anna and omitting amounts less than six pies".

[Vide ROC No. 1310 of 1926.]

1. Subs. by Act 5 of 1943, sec. 3, for "public officer".

2. Ins. by Act. No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).
3. Subs. by Act 25 of 1942, sec. 3 and Sch. II, for certain words.
4. Subs. by Act 26 of 1939, sec. 2, for certain words.
5. Subs. by Act 104 of 1976, sec. 72, for sub-rule (3) (w.e.f. 1-2-1977).
6. Subs. by Act No. 104 of 1976 for Explanation (w.e.f. 1-2-1977).

48A. Attachment of salary or allowances of private employees :- .

(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Courts jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer v/hile the judgment-debtors is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.]

1. Ins. by Act. No. 104 of 1976, sec. 72, (w.e.f. 1-2-1977).

49. Attachment of partnership property. :- .

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

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

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

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor

and on his partners or such of them as are within 1[India].

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

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such application shall be similarly served.

1. Subs. by Act 2 of 1951, sec. 3, for "the States."

50. Execution of decree against firm. :- .

(1) Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of 1[section 30 of the Indian Partnership Act, 1932 (9 of 1932)].

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

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

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

2[(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provision of rule 10 of Order XXX.]

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 50, in sub-rule (2), after the words "passed the decree", insert the words "or to which the decree is transferred for execution".

[Vide Notification No. 43/vii a-29, dated 1st June, 1957.]

Orrisa.-Same as in Patna. " , -.

Patna.-In Order XXI, in rule 50, in sub-rule (2), after the words "passed the decree", insert the words "or to the Court to which it is suit for execution".

1. Subs, by Act No. 104 of 1976, for "section 247 of the Indian Contract Act, 1872 (9 of 1872)" (w.e.f. 1-2-1977).

2. Ins. by Act. No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

Payment under decree

51. Attachment of negotiable instruments :- .

Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

HIGH COURT AMENDMENTS

Allahabad.- In Order XXI, for rule 51, substitute the following rule, namely.-

"51. Where any property has been attached in execution of a decree and the Court for any reason passes an order dismissing the execution application the attachment shall, in the absence of any order passed by the Court, be deemed to subsist for a period of fifteen days after the dismissal of the application for execution and no fresh attachment of the same property shall be necessary if a fresh application is made, the attachment shall cease:

Provided that in the case of movable property the attachment shall not be continue after an order dismissing the execution application has been passed unless the decree-holder has given his consent in writing and therein deposit with the Court on his behalf a sum of money sufficient to meet the expenses of the attachment during the extended period." (w.e.f. 1-7-1957)

52. Attachment of property in custody of Court or public officer :- .

Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XXI, in rule 52, same as in Madras without the word "Explanation". (w.e.f. 30-3-1967)

Madras.-In Order XXI, in rule 52, renumber the existing proviso as proviso (i) and insert the following proviso, namely:-

"(ii) Provided further that, where the Court attachment is determined to be prior receives or realizes such property, the receipt or realization shall be deemed to be on behalf of all the Courts in which there have been attachments of such property in execution of money decrees prior to the receipt of such assets.

Explanation.-Priority of attachment in the case of attachment of property in the custody of

Court shall be determined on the principles as in the case of attachment of property not in the custody of Court."

[Vide P Dis No 445 of 1935.]

53. Attachment of decrees :- .

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,-

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until-

(i) the Court which passed the decree sought to be executed cancels the notice, or

1[(ii) (a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree.]

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another of decree the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1) the attachment shall be made by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order 2[with knowledge thereof or] after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

HIGH COURT AMENDMENTS

Allahabad.-(a) In Order XXI, in rule 53, in sub-rule (1), in clause (b) and in sub-rule (4), after the words "to such other Court", insert the words "and to any other Court to which the decree

has been transferred for execution."

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.]

Andhra Pradesh.- Same as in Madras.

Bombay.-In Order XXI, in rule 53, in sub-rule (1), in clause (b) and in sub-rule (4), after the words "such other Court", insert the words "and to any other Court to which the decree has been transferred for execution", (w.e.f. 1-10-1983)

Calcutta.- (a) In Order XXI, in rule 53, sub-rule (1), in clause (b), after the words "to such other Court", insert the words "and to any Court to which it has been transferred for execution" and after the words "requesting such other Court", insert the words "or Courts".

(b) In sub-rule (4), after the words "by sending to such other Court", insert the words "and to any Court to which it has been transferred for execution".

[Vide Notification No- 3516-G, dated 3rd February, 1953.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-Same as in Madras, (w.e.f. 30-3-1967) : ! i . \ ..

Kerala.-Same as in Madras. -

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madhya Pradesh.- (a) In Order XXI, in rule 53, in sub-rule (1), in clause (b) and in sub-rule (4), after the words "to such other-Court", insert the words "and to any other Court to which the decree has been transferred for execution", (w.e.f. 16-9-1960)

Madras.-In Order XXI, in rule 53, in rule (1), after clause (b), insert the following clause, namely:-

"(c) If decree sought to be attached has been sent for execution to another Court, the Court which passed the decree shall send a copy of the said notice to the former Court, and thereupon the provisions of clause (b) shall apply in the same manner as if the former Court had passed the decree and the said notice had been sent to it by the Court which issued it."

[Vide GOMs. No. 2084-Home, dated 2nd September, 1936-HCP Dis No. 691, dated 13th October, 1936.]

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 53, in sub-rule (1), for clause (b), substitute the following clause, namely:-

"(b) If the decree sought to be attached was passed by another Court, then by the issue to such other Court (or to the Court to which the decree may have been transferred for execution) of a notice by the Court before which the application has been made requesting such other Court (or the Court to which the decree may have been transferred for execution as the case may be) to stay the execution of the decree sought to be attached unless and until-

(i) the Court which has issued the notice shall cancel the same, or

(ii) the holder of the decree sought to be executed, or his judgment-debtor, with the consent of the said decree-holder expressed in writing or the permission of the attaching Court, applies to such other Court (or to the Court to which the decree may have been transferred for execution) to execute the attached decree."

Punjab.-In Order XXI, in rule 53, in sub-rule (1), in clause (b), after the words "such other Court", insert the words "and to the Court to which it has been transferred for execution".

[Vide Notification No. 125-Gaz-XI-Y-14, dated 7th April, 1932 and Notification No. 225-R-XI-Y-14, dated 5th August, 1937.]

1. Subs, by Act. No. 104 of 1976, sec. 72, for sub-clause (ii) (w.e.f. 1- 2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

54. Attachment of immovable property :- .

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

1[(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government in the office of the Collector of the district in which the land is situate 1[and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

HIGH COURT AMENDMENTS

Allahabad.- (a) In Order XXI, in rule 54, in sub-rule (2), at the end, for the full stop, substitute a common and insert the following words, namely:-

"and, where the property, whether paying revenue to Government or otherwise, is situate within Cantonment limits, in the office of the Local Cantonment Board and of the Military Estates Officer concerned."

[Vide Notification No. 5691/35(a)-3(9), dated 27th September, 1941.]

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) The attachment shall be deemed to have been made against transferee without consideration from the judgment-debtor, from the date of the order of attachment; and as against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub-rule (2) whichever is earlier." (w.e.f. 5-3-1983)

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, for rule 54, substitute the following rule, namely:-

"54. Attachment of immovable property.- (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, such order shall take effect, where there is no consideration for such transfer or charge, from the

date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) Copies of the order shall also be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records or village panchayat records as may be required in the particular case.

(3) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the District in which the land is situate, and also, where the property is situate within Cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned, and where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village. (w.e.f. 1-10-1983). See also Goa Gazette, Extra. Sec. 1, No. 28, p. 385 (w.e.f. 1-4-1987).

Calcutta.-In Order XXI,-

(a) in rule 54, in sub-rule (2), at the end, insert the following words:-

"and also, where the property is situated within cantonment limits, in the office of the local Cantonment Board and the Military Estates Officer concerned".

[Vide Notification No. 6149-G, dated 26th July, 1941.]

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) Such order shall take effect, where there is no consideration for such transfer or charge, from the date of the order, and where there is consideration for such transfer, or charge for the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged, or from the date when the order is proclaimed under sub-rule (2) whichever is earlier."

[Vide Notification No. 3516-G, dated 3rd February, 1933.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Gujarat.- (1) In Order XXI, in rule 54, in sub-rule (1), at the end, insert the following words, namely:-

"Such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged."

(2) In sub-rule (2), at the end, substitute comma for the full stop and insert the following words:-

"and also, where the property is situate within Cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned." (w.e.f. 17-8-1961)

Himachal Pradesh.-Same as in Punjab.

Karnataka,-In Order XXI, in rule 54, in sub-rule (2), at the end, delete the full stop and insert the following words:-

"and where the property is situated within the limits of a Municipality or other local authority also in the principal office of the said Municipality or the local authority." (w.e.f. 30-3-1967)

Kerala.-In Order XXI, in rule 54,-

(i) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the property and thereupon, a conspicuous part of the Court-house and also in the village office or, in case there is no such office, in the Taluk office of the place in which the land is situate and, where the property is situated within the limits of a Municipality or Panchayat, in the office of the Municipality or Panchayat within the limits of which the property is situate."

(ii) after sub-rule (2), insert the following sub-rule, namely:-

"(3) The attachment shall be deemed to have taken as against transferees without consideration from the judgment-debtor from the date of the order of attachment and as against all other persons from the date on which they respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub-rule (2) whichever is the earlier." (w.e.f. 9-6-1959)

Madhya Pradesh.- (a) In Order XXI, in rule 54,-

(a) in sub-rule (2), at the end, delete the full stop and insert the words "and also where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property and against all other transferees from the judgment-debtor from the date on which such order is made."

Madras.- (a) In Order XXI, rule 54-

(a) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode. A copy of the order shall be affixed on a conspicuous part of the property and on a conspicuous part of the Court-house. Where the property is land paying revenue to the Government, a copy of the order shall be similarly affixed in the office of the Collector of the district where the land is situated. Where the property is situated within Cantonment limits, the order shall be similarly affixed in the office of the Local Cantonment Board and the Military Estates Officer concerned, and where the property is situated within the limits of a Municipality, in the office of the Municipality within the limits of which the property is situated."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) The order of attachment shall be deemed to have been made as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under sub-rule (2), whichever is earlier."

[Vide Notification No. 3409, dated 29th June, 1949.]

Orissa.-Same as in Patna.

Patna.-Same as in Madhya Pradesh (a).

[Vide Notification No. 21-R, dated 28th January, 1941.]

Punjab.-In Order XXI, in rule 54,- (a) in sub-rule (2), at the end, insert the following words, namely:-

"where the property is land situated in a Cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Officer in whose area that Cantonment is situated."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) the order shall take effect, as against persons claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier."

[Vide Notification No. 125-Gaz XI-Y-14, dated 7th April, 1932; Notification No. 109-R1 XI-Y-14, dated 1st April, 1939 and Notification No. 273-R-XI-Y-14, dated 30th July, 1941.]

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

55. Removal of attachment after satisfaction of decree :- .

Where-

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

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

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

HIGH COURT AMENDMENT

Allahabad.-In Order XXI, for rule 55, substitute the following rule, namely:-

"55. (1) Notice shall be sent to the sale officer executing a decree of all applications for reteable distribution of assets made under section 73 (1) in respect of the property of the same judgment-debtor by persons other than the holder of the decree for the execution of which the original order was passed.

(2) Where-

(a) the amount decreed [which shall include the amount of any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)], with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)] is otherwise made through the Court or certified to the Court, or

(c) the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1)] is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the

withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of proclamation shall be affixed in the manner prescribed by the last preceding rule."

[Vide Notification No. 1477/35(a)-3(3), dated 1st June, 1918.]

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

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

57. Determination of attachment :- .

(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.]

1. Subs. by Act 104 of 1976, sec. 72, for rule 57 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Bombay.-In Order XXI, for rule 57, substitute the following rule, namely:-

"57. Determination of attachment.-Where any property has been attached in execution of a decree and the Court for any reason passed an order dismissing an execution application, the Court shall direct whether the attachment shall continue or cease. If the Court omits to make an order and if the order dismissing the execution application is appealable the attachment shall continue till expiry of the period prescribed for filing an appeal or where appeal has been filed, till such further period as the appellate Court may direct." (w.e.f. 1-10-1983)

1[Adjudication of claims and objections

1. Subs. by Act. No. 104 of 1976, sec. 72, for "Investigation of claims and objections" (w.e.f. 1-2-1977).

58. Adjudication of claims to, or objections to attachment of, property :- .

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached)

arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute;

but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.

1. Subs. by Act 104 of 1976, sec. 72, for section 58 fo 63 (w.e.f. 1-2-1977).

59. Stay of sale :- .

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.]

60. Rule 60 :-

61. Rule 61 :-

62. Rule 62 :-

63. Rule 63 :-

[Rule 60 to 63-Omitted by Act No. 104 of 1976.]

HIGH COURT AMENDMENTS

Calcutta.-In Order XXI, after rule 63, insert the following rule, namely:-

"63A. When an attachment of movable property ceases, the Court may order the restoration of the attachment property to the person in whose possession it was before the attachment."
(w.e.f. 3-11-1933)

Gauhati.-Same as in Calcutta,

Patna.-In Order XXI, after rule 63, insert the following heading and rules, namely:-

"Garnishee Orders

63A. Where a debt {other than a debt secured by a mortgagor a debt recoverable only in Revenue Court or a debt the amount of which exceeds the pecuniary jurisdiction of the Court) has been attached under rule 46 and the debtor prohibited under clause (i) of sub-rule (1) of rule 46 (hereinafter called the garnishee) does not pay the amount of the debt into Court in accordance with rule 46, sub-rule (3), the Court, on the application of the decree-holder, may order a notice to issue calling upon the garnishee to appear before the Court and show cause why he should not pay into Court the debt due from him to the judgment-debtor. A copy of such notice shall, unless otherwise ordered by the Court, be served on the judgment-debtor.

63B. (1) If the garnishee does not pay into Court the amount of the debt due from him to judgment-debtor, and if he does not appear in answer to the notice issued under rule 63A, or does not dispute his liability to pay such debt to the judgment-debtor, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue against the garnishee as though such order were a decree against him.

(2) If the garnishee appears in answer to the notice issued under rule 63A, and disputes his liability to pay the debt attached, the Court, instead of making an order as aforesaid, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit and **** upon the determination of such issue shall pass such order upon the notice as shall be just.

63C. Whenever in any proceedings under the foregoing rules it is alleged by the garnishee that the debt attached belongs to some third person, or that any third person has a lien or charge upon or interest in it, the Court may order such third person to appear and state the nature and particulars of his claim, if any, upon such debt, and prove the same, if necessary.

63D. After hearing such third person and any other person who may subsequently to be ordered to appear, or in the case of such third or other person not appearing as ordered, the Court may pass such order as is provided in the foregoing rules, or make such other order as the Court shall think fit, upon such terms in all cases with respect to the lien charge or interest, if any, of such third or other person as shall seem just and reasonable.

63E. Payment made by, or levied by execution upon the garnishee in accordance with any order made under these rules shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear under these rules, for the amount paid or levied although such order or the judgment may be set aside or reversed.

63F. The costs of any application for the attachment of a debt under the foregoing rules and of any proceedings arising from or incidental to such application shall be in the discretion of the Court. Costs awarded to the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order and in priority to the amount of his decree.

63G. Out of the amount recovered under the garnishee order the Court shall deduct a sum equal to the court-fee payable under the Indian Court-Fees Act on a plaint in a suit for recovery of the money and credit the same to the Government.

63H. (1) Where the liability of any garnishee has been tried and determined under these rules the order shall have the same force and be subject to the same condition as to appeals or otherwise as if were a decree.

(2) Orders not covered by clause (1) shall be appealable as orders made in execution."

Sale generally

64. Power to order property attached to be sold and proceeds to be paid to person entitled :- .

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

HIGH COURT AMENDMENTS

Madras--In Order XXI, in rule 64, after the words "executing a decree may", insert the words "after notice to the decree-holder and judgment-debtor", (w.e.f. 10-4-1963)

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 64,-

(a) for the words "attached by it", substitute the words "in respect of which it has made an order of attachment".

(b) between the words "and" and "liable", insert the words "which is" (w.e.f. 7-1-1936).

65. Sales by whom conducted and how made :- .

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madhya Pradesh.

Kerala.-Same as in Madhya Pradesh.

Madhya Pradesh.-In Order XXI, in rule 65, at the end, insert the following words:-

"Such officer or person shall be competent to declare the highest bidder as purchaser at the sale, provided that, where the sale is made in, or within the precincts of the Court-house, no such declaration shall be made without the leave of the Court." (w.e.f. 16-9-1960)

66. Proclamation of sales by public auction :- .

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such

Court.

(2) Such proclamation shall be draw up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-

(a) the property to be sold 1[or, where a part of the property would be sufficient to satisfy the decree, such part];

(b) the revenue assessed upon the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

1[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgement-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate if any, given, by either or both of the parties.]

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any documents in his possession or power relating thereto.

HIGH COURT AMENDMENTS

Andhra Pradesh and Kerala.-In Order XXI, in rule 66,-

(i) Same as in of Madras.

(ii) reletter clause (e) as clause (f) and insert to following clause, namely;-

"(e) the value of the property as stated (i) by the decree-holder and {ii} by the judgment-debtor;" (w.e.f. 13-10-1936)

(iii) in sub-rule (1), for the words "made", substitute "drawn up." (w.e.f. 12-11-1952)

Calcutta and Gauhati.-In Order XXI, in rule 66, in sub-rule (2), after clause (e), insert the following proviso, namely:-

"Provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property but the proclamation shall include the estimate if any given by either or both the parties."

Delhi and Himachal Pradesh.-In Order XXI, in rule 66, after sub-rule (2),-

(i) insert the following sub-rule, namely:-

"(3) Where the property to be sold is movable property which has been made over to a custodian under sub-clause (a) or (c) of clause (1) of rule 43 of this Order, the Court shall also issue a process by way of notice to the custodian directing him to produce the property at the place of sale, at a time to be specified therein with a warning that if he fails to comply with the directions, he shall be liable to action under section 145 of the Code of Civil Procedure."

(ii) renumber sub-rules (3) and (4) as sub-rules (4) and (5) respectively.

Karnataka.-

In Order XXI, in rule 66, in sub-rule (2),-

(i) re-number clause (e) as clause (f) and insert the following clause, namely:-

"(e) The value of the property as stated by the decree-holder and the value of the property as stated by the judgment-debtor;"

(ii) in clause (d), omit the word "and", (w.e.f. 30-3-1967)

Madhya Pradesh.-In Order XXI, in rule 66, in sub-rule (2), at the end, insert the words "including the decere-holders estimate of the approximate market price." (w.e.f. 16-9-1960)

Madras.-In Order XXI, in rule 66,-

(i) in sub-rule (1), for the word "made", substitute the words "drawn up";

(ii) for sub-rule (2), substitute in the following sub-rule, namely:-

"(2) The term of such proclamation shall be settled in Court after notice to the decree-holder and judgment-debtor except in cases where notices have already been served under Order XXI, rule 64 and such proclamation shall state the time and place of sale and specify as accurately possible-

(a) the property to be sold,

(b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or part of an estate paying revenue to the Government,

(c) any incumbrance to which the property is liable,

(d) the amount for the recovery of which the sale is ordered,

(e) the value of the property as stated (i) by the D.H. and (ii) by the J.D.,

(f) every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property." (w.e.f. 5-9-1968)

Patna.-In Order XXI, in rule 66, in sub-rule (2),-

(i) omit the words "shall be drawn up after notice to the decree-holder and the judgment-debtor and";

(ii) after clause (e), insert the following proviso, namely:-

"Provided that no estimate of the value of the property other than those, if any, made by the decree-holder and judgment-debtor respectively together with a statement that the Court does vouch for the accuracy of either shall be inserted in sate proclamation."

Punjab, Haryana And Chandigarh.-In Order XXI, in rule 66,-

(i) in sub-rule (2), after clause (e), insert the following proviso, namely:-

"Provided that it shall not be necessary for the Court itself to give its own estimate -of the value of the property; but proclamation shall include the estimate, if any, given by either or both of the parties."

(ii) after sub-rule (2), insert the following sub-rule, namely:-

"(3) Where the property to be sold is movable property which has been made over to a custodian under sub-clauses (a) or (c) of clause (1) of rule 43 of this Order, the Court shall also issue a process by way of notice to the custodian, directing him to produce the property at the place of sale, at a time to be specified therein with a warning that if he fails to comply with the directions, he shall be liable to action under section 145 of the C.P. Code."

(iii) renumber sub-rules (3) and (4) as sub-rules (4) and (5) respectively.

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

67. Mode of making proclamation :- .

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka-In Order XXI, in rule 67, after sub-rule (3), insert the following sub-rule, namely:-

"(4) Unless the Court so directs it shall not be necessary to send a copy of the proclamation to the judgment-debtor."

Kerala.-Same as in Madras, (w.e.f. 9-6-1959)

Madras.-In Order XXI, in rule 67,-

(a) (i) for the Marginal heading, substitute the following marginal heading, namely:-
"Mode of publishing the proclamation of sale";

(iii) in sub-rule (3), for the words "to make a separate proclamation for each lot", substitute the words "to publish the proclamation of same separately for each lot".

(b) after sub-rule (3), insert the following sub-rule, namely:-

"(4) Unless the Court directs it shall not be necessary to send a copy of the proclamation to the judgment-debtor."

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 67, in sub-rule (1), at the end, omit the full stop and add the following words, namely:-

"and may, if the Court so directs, on the application of the decree-holder, be proclaimed and published simultaneously with the order of attachment."

68. Time of sale :- .

Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least 1[fifteen days] in the case of immovable property, and of at least 2[seven days] in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

1. Subs. by Act. No. 104 of 1976, Sec 72 for "thirty days" (w.e.f. 1-2-1977).

2. Subs. by Act. No. 104 of 1976, Sec. 72 for "fifteen days" (w.e.f. 1-2-1977).

69. Adjournment or stoppage of sale :- .

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

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

(2) Where a sale is adjourned under sub-rule (1) or a longer period than 1[thirty] days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 69, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Where a sale has been once adjourned under sub-rule (1), a fresh proclamation under rule 67 shall be made, under the judgment- debtor consents to wave it:

Provided that where the adjournment is for a period not longer than [thirty] days from the date originally fixed for sale, no fresh proclamation shall be necessary:

Provided also that the Court may dispense with the consent of any judgment-debtor who has failed to attend in answer to a notice issued under rule 66."

Andhra Pradesh.-In Order XXI, in rule 67, in sub-rule (2), for the words "a fresh proclamation under rule 67 shall be made", substitute the words "there shall be a fresh publication of the proclamation in the manner prescribed by rule 67".

Bombay.-In Order XXI, in rule 67, in sub-rule (1), after the words "adjourn the sale", insert the words "to specified day and hour".

Karnataka.-Same as in Andhra Pradesh only adding the words "of sale" after "proclamation", (w.e.f. 30-3-1967)

Kerala.-In Order XXI, in rule 67, in sub-rule (2), insert the following proviso, namely:-

"Provided that no such fresh proclamation shall be necessary in cases where the sale has been adjourned on account of the absence of Presiding Judge or on account of the day fixed for sale being declared a holiday." (w.e.f. 10-3-1964)

Madras.-In Order XXI, in rule 67, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, there shall be fresh publication of the proclamation in the manner prescribed by rule 67, unless the judgment-debtor consents to waive it, or the Court otherwise orders." (w.e.f. 5-9-1968)

Orissa.-Same as in Patna.

Patna.-In Order XXI, in rule 67, in sub-rule (2), insert the following proviso, namely:-

"Provided that the Court may dispense with the consent of any judgment-debtor who has not appeared in the proceedings."

1. Subs, by Act. No. 104 of 1976, Sec. 72 for "seven" (w.e.f. 1-2-1977).

70. Saving of certain sales :- .

Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 14 (w.e.f. 1-1-1957).

71. Defaulting purchaser answerable for loss on re-sale :- .

Any deficiency of price which may happen on a re-sale by reason of the purchasers default, and all expenses attending such re-sale, shall be certified to the Court by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

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

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

(2) Where decree-holder purchases, amount of decree may be taken as payment-Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 72,-

- (a) omit sub-rules (1) and (3);
 - (b) re-number sub-rule (2) as sub-rule (1);
 - (c) in sub-rule (1) as so renumbered, for the words "with such permission", substitute the words "the property sold".
- [Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.]

Patna.-In Order XXI, in rule 72,- (a) for sub-rule (1), substitute the following sub-rule, namely:-

"(1) No holder of a decree in execution of which property is sold shall be , precluded from bidding for or purchasing the property unless on express order to that effect is made by the Court."

(b) in sub-rule (2), for the words "with such permission", substitute the words "the property".

(c) for sub-rule (3), substitute the following sub-rule, namely:-

"(3) Where notwithstanding an order made under sub-rule (1) a decree-holder purchases the property by himself or through another person the Court shall, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the cost of such application and order and any deficiency of price which may happen on the re-sale and all expenses attending it shall be in the discretion of the Court."

72A. Mortgagee not to bid at sale without the leave of the Court :- .

(1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be-

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.]

1. Ins. by Act. No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

73. Restriction on bidding or purchase by officers. :- .

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

Sale of movable property

74. Sale of agricultural produce :- .

(1) Where the property to be sold is agricultural produce, the sale shall be held,-

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

(b) if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,-

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till next day or, if a market is held at the place of sale the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. Special provisions relating to growing crops. :- .

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 75, in sub-rule (2), after the words "being stored", insert the words, "or, where it appears to the Court that the crop [shall] be sold to greater advantage in an unripe state".

Calcutta.-In Order XXI, in rule 75, in sub-rule (2),-

(a) after the words "Where the crop from its nature does not admit of being stored", insert the words "or can be sold to greater advantage in an unripe state (e.g. as green wheat)",

(b) between the words "tending" and "cutting" for the word "and" substitute the word "or".

[Vide Notification No. 3615-G, dated 3rd February, 1933.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXI, for rule 75, substitute the following rule, namely:-

"75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, unless the Court decides to proceed under the provisions of sub-rule (2) of this rule, the day of sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is stored.

(2) Where the crop from its nature does not admit of being stored or can be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered or in such unripe state, and the purchaser shall be entitled to enter on the land and do all that is necessary for the purpose of tending and cutting or gathering the said crop." (30-3-1967)

Kerala.-Same as in Madras

[Vide Notification No. 81-3312/58, dated 7th April, 1959.]

Madhya Pradesh.-In Order XXI, in rule 75, in sub-rule (2), after the words "being stored", insert the words "or, where it appears to the Court that the crop can be sold to greater advantage in an unripe state", (w.e.f. 16-9-1960) Madras.-In Order XXI, in rule 75,-

(a) in sub-rule (1), after the words "yet been stored", insert the words "unless the Court decides to proceed under the provisions of sub-rule (2) hereunder",

(b) in sub-rule (2) after the words "being stored", insert the words "or can be sold to greater advantage in an unripe state" and after the words "and gathered", insert the words "or in such unripe state", (w.e.f. 9-6-1959}

Patna.-In Order XXI, for rule 75, substitute the following rule, namely:-

"75. Where the property to be sold is a growing crop which can be sold to greater advantage in an unripe or unreaaped state, it may be sold unreaaped, and the purchaser shall be entitled to enter on the land to do all that is necessary for the purpose of tending and reaping it. In all other cases the day of sale shall be so fixed as to admit of the crop ripening and reaped before the sale."

[Vide Notification No. 1-R, dated 7th January, 1936.]

Punjab.-In Order XXI, in rule 75, in sub-rule (2), after the word "stored", insert the words "or can be sold to greater advantage in an unripe state".

[Vide Notification No. 2212-G, dated 12th May, 1909 and Notification No. 123-R/XI-Y-14, dated 28th April, 1938.]

76. Negotiable instruments and shares in corporations :- .

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

77. Sale by public auction :- .

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

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

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

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

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

79. Delivery of movable property, debts and shares :- .

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

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

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

80. Transfer of negotiable instruments and shares. :- .

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

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

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

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

81. Vesting order in case of other property. :- .

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

Sale of immovable property

82. What Courts may order sales. :- .

Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

HIGH COURT AMENDMENT

Kerala.-In Order XXI, in rule 82, for the words "of Small Causes", substitute the words "exercising small cause jurisdiction". (w.e.f. 9-6- 1959).

83. Postponement of sale to enable judgment-debtor to raise amount of decree. :- .

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

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:

Provided also that not mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

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

84. Deposit by purchaser and re-sale on default. :- .

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

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

HIGH COURT AMENDMENT

Allahabad.-In Order XXI, in rule 84, in sub-rule (2), at the end, insert the following words, namely:-

"The court shall not dispense with the requirements of this rule in a case in which there is an application for rateable distribution of assets."

[Vide Notification No. 16699-H, dated 17th January, 1953.]

85. Time for payment in full of purchase-money. :- .

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

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 85,-

(i) after the words "purchase-money payable", insert the words "together with the amount required for general stamp paper for certificate under rule 94".

(ii) for the proviso, substitute the following provisos and Explanation, namely:-

"Provided that, in Respect of the purchase money, the purchaser shall have the advantage of any set-joff to which he may be entitled under rule 72:

Provided further that, if as a result of some bona fide mistake or miscalculation the amount deposited fails short of the full amount of the purchase-money, the Court may in its discretion allow the shortfall to be made up after fifteen days of the sale, and if the full amount of the purchase-money is deposited within such time as the Court may allow, the Court may condone the delay, if it considers it just and proper to do so.

Explanation.-When an amount is tendered in Court on any day after 1 p.m. but not accepted by the Court and is paid into Court on the next working day between 11 a.m. and 1 p.m., the payment shall be deemed to have been made on the day on which the tender is made." (w.e.f. 1-10-1983)

Gujarat.-In Order XXI, after rule 85, insert the following rule, namely:-

"85A. Set-off where execution has been transferred to Collector.-In cases where execution has been transferred to the Collector, for the purposes of rules 84 and 85, the purchaser shall be deemed to be entitled to a set-off under rule 72 if he produces a certificate to that effect from the Court executing the decree." (w.e.f. 17-8-1961)

Kerala.-In Order XXI, in rule 85,- "

(i) after the words "purchase-money payable", insert the words "together with the amount required for the general stamp paper for the certificate under rule 94".

(ii) in the proviso, for the words "in calculating the amount to be so paid into Court", substitute the words "in respect of the purchase- money", (w.e.f. 1-1-1966)

Madhya Pradesh.-In Order XXI, in rule 85, insert the following Explanation, namely:-

"Explanation.-When an amount is tendered on any day after 1 p.m. but paid into Court on the next working day between 11 a.m. and 1 p.m., the payment shall be deemed to have been made on the day on which the tender is made."

[Vide Notification No. 3409, dated 29th June, 1943.]

Madras.-In Order XXI, for rule 85, substitute the following rule, namely:-

"85. Time for payment in full of purchase-money and of stamp certificate of sale.-The full amount of purchase money payable and the general stamp for the certificate under rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property:

Provided that in calculating the amount of purchase-money to be so deposited the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72."

[Vide P. Dis. No. 677, dated 25th November, 1944.]

86. Procedure in default of payment :- .

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

87. Notification on re-sale :- .

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 87, for the words "of the purchase-money", substitute the words "of the amount mentioned in rule 85".

[Vide Maharashtra Gazette, Ft. IV-C, p. 418, dated 15th September, 1983 (w.e.f. 1-10-1983).

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXI, in rule 87, for the words "payment of the purchase-money" substitute the words "the payment of the amounts mentioned in rule 85".

[Vide GOMs No. 2922-Home, dated 28th October, 1936-HCP Dis No. 690 of 1936.]

88. Bid of co-sharer to have preference :- .

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

89. Application to set aside sale on deposit :- .

(1) Where immovable property has been sold in execution of a decree, 1[any person claiming

an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his deposition in Court,-

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or prosecute an application under this rule.

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

1. Subs, by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XXI, in rule 89, in sub-rule (1), insert the following proviso, namely:-
"Provided that if the full amount required to be deposited in Court under this rule is not deposited at the time of making the application through some bona fide mistake or miscalculation and the short-fall is made up within one week from the date of the discovery of the mistake or calculation, the Court may condone the delay, if it considers it just and proper to do so." (w.e.f. 1-11-1966)

Karnataka.-In Order XXI, in rule 89, in sub-rule (1),-

(i) in clause (b), for the words "such proclamation of sale, have been received by the decree-holder", substitute the words "that proclamation of sale, have been paid or deposited towards satisfaction of the decree". (ii) insert the proviso as in Madras.

Kerala.-In Order XXI, in rule 89, in sub-rule (1),-

(i) in clause (b), for the words "date of such proclamation", substitute the words "date of the proclamation";

(ii) insert the following provisos, namely:-

"Provided that, when several items of properties are sold separately, the sale of one or more of such items may be set aside on depositing in Court the amount of the purchase-money for the items the sale of which is sought to be set aside and a sum equal to five per cent, of that amount, and the balance, if any, of the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered still remains unrealised:

Provided further that where the immovable property sold is liable to discharge a portion of the decree debt, the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay." (w.e.f. 9-6-1959)

Madras.-In Order XXI, in rule 89, in sub-rule (1),-

(i) in clause (b) for the words "date of such proclamation", substitute the words "date of that proclamation",

(ii) insert the following proviso, namely:-

"Provided that where the immovable property sold is liable to discharge a portion of the decree debt, the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay"

[Vide GOMs 2084 Home, dated 2nd September, 1936-HCP Dis No. 691, dated 13th October, 1936].

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

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

(2) No sale shall be set aside on the ground of irregularity or fraud in publishir or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon an ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.-There mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

1. Subs, by Act No. 104 of 1976, sec. 72 for rule 90 (w.e.f. 1-2-1977).

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

The purchaser at any such sale in execution of decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

HIGH COURT AMENDMENT

Gujarat-In Order XXI, after rule 91, insert the following rule, namely:-

"91A. Deposits how to be made., where execution is transferred to Collector.-Where the execution of a decree has been transferred to the Collector and the sale has been conducted by the Collector or by an officer subordinate to the Collector, an application under rule 89, 90 or 91, and in the case of an application under rule 89, the deposit required by that rule if made to the Collector or the officer to whom the decree is referred for execution in accordance with any rule framed by the State Government under section 70 of the Code, shall be deemed to have been made to or in the Court within the meaning of rules 89, 90 and 91." (w.e.f. 17-8-1961)

92. Sale when to become absolute or be set aside :- .

(1) When no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

1[Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.]

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within 2[sixty days] from the date of sale, 3[or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale]:

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

4[Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

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

5[(4) Where a third party challenges the judgment-debtors title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court directs, be revived at the stage at which the sale was ordered.]

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, in rule 92, in sub-rule (1), after the words "the Court shall make", insert the words "subject to the provisions of rule 58 (2)".

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.]

Andhra Pradesh.-Same as in Madras. Bombay.-In Order XXI, in rule 92,-

(i) in sub-rule (1), insert the following proviso, namely:-

"Provided that before confirming the sale the Court shall satisfy itself that the amount paid under rule 85 for the purchase of general stamp paper for the certificate under rule 94 is sufficient for the purpose in accordance with the rate in force at the time of confirmation and may, notwithstanding anything contained in rule 86, give the purchaser such times as it thinks fit for making good any deficiency." (w.e.f. 1-10- 1983) (ii) in sub-rule (2), insert words as in Madras by only substituting the words "has become deficient" for the words "has been diminished".

[Vide Notification No. BI-3312-58, dated 7th April, 1959.]

Kerala.-In Order XXI, in rule 92, in sub-rule (2),--

(i) for the words "thirty days", substitute the words "sixty days", (w.e.f. 9-2-1988)

[Ed.-This amendment relates to sub-rule (2) prior to its amendment made by the Central Act 22 of 2002, sec. 14 (w.e.f. 1-7-2002).]

(ii) after the words "from sale", insert the words "and in case where the amount deposited has become deficient owing to any cause not within the control of the depositor such deficiency has been made good within such time as may be fixed by the Court".

Madhya Pradesh.-In Order XXI, in rule 92, in sub-rule (1), after the words "the Court shall make", insert the words "subject to the provisions of rule 58 (2)".

[Vide Notification No. 3409, dated 29th June, 1943,]

Madras.-In Order XXI, in rule 92, in sub-rule (2), after the words "within thirty days from the date of sale" insert the following words:-

"and in case where the amount deposited has been diminished owing to any cause not within the control of the depositor such deficiency has been made good within such time as may be fixed by the Court."

[Ed.-This amendment relates to sub-rule (2) prior to its amendments made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977) and Central Act 22 of 2002, sec. 14 (w.e.f. 1-7-2002).]

Patna.-Same as in Allahabad.

1. Added by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

2. Substituted for thirty days by Act No. 22 of 2002, section 14 (w.e.f. 1-7-2002).

3. Subs, by Act No. 104 of 1976, sec. 72 for "the Court shall make an order setting aside the sale" (w.e.f. 1-2-1977).

4. Inserted by Act No. 22 of 2002, section 14 (w.e.f. 1-7-2002).

5. Ins by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

93. Return of purchase-money in certain cases. :- .

Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase- money, with or without interest as the Court may direct, against any person to whom it has been paid.

94. Certificate to purchaser :- . . .

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI,-

(i) renumber rule 94 as sub-rule (1) thereof;

(ii) after sub-rule (1) as so renumbered, insert following sub-rule, namely:-

"(2) Where immovable property is transferred otherwise than by sale, a document of transfer shall be granted by the Court specifying the property, the name of the person to whom it is transferred and the terms on which the transfer is made. Such document shall bear the date the day on which the transfer was ordered." (w.e.f. 13-2-1960)

Bombay.-In Order XXI, in rule 94, between the words "sold" and "and", insert a comma and the words "the amount of the purchase- money", (w.e.f. 1-10-1983)

Madhya Pradesh.-Same as in Bombay, (w.e.f. 16-9-1960)

Orissa.-Same as in Patna.

Patna.-In Order XXI, for rule 94, substitute the following rule, namely:-

"94. Certificate to purchaser.-Where a sale of immovable property has become absolute the auction-purchaser shall file the sale certificate stamp within fifteen days from the date of confirmation of the sale, and the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be purchaser. Such certificate shall bear the date the day on which the sale becomes absolute. If the necessary stamp for sale certificate is not filed within the prescribed period the sale may, if the Court thinks fit, be set aside."

95. Delivery of property in occupancy of judgment-debtor :- .

Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order to delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

HIGH COURT AMENDMENT

Madras.-In Order XXI,-

(i) renumber rule 95 as sub-rule (1) thereof;

(ii) after sub-rule (1) as to renumbered, insert the following sub-rule, namely:-

"(2) Where delivery of possession of a house is to be given and it is found to be locked orders of Court shall be taken for breaking open the lock and for delivery of possession of the same to the purchaser.

If it is found at the time of delivery, that there are movables, in the house to which the purchaser has no claim and the judgment-debtor is absent or, if present, does not immediately remove the same, the officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value in the presence of respectable persons on the spot, have the same attested by them and leave the movables in the custody of the purchaser after taking a bond from him for keeping the articles in custody pending orders of Court for disposal of the same.

The officer shall then make a report to the Court and forward therewith the attested inventory taken by him.

The Court shall thereupon issue a notice to the judgment-debtor requiring him to take delivery of the said movables within thirty days from the date of the notice, and in default will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the judgment-debtor:

Provided that, if movable articles referred to above are perishable, the officer shall sell them in public auction immediately and bring the proceeds into Court. The notice to the judgment-debtor shall in such case call upon him to receive the amount from Court within three months." (w.e.f. 17-8-1966)

96. Delivery of property in occupancy of tenant :- .

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the

same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

HIGH COURT AMENDMENT

Allahabad.-In Order XXI, after rule 96, insert the following rule namely:-

"96A. (1) The Court executing a decree may of its own motion or on application and on such terms as may appear to it just and reasonable in the circumstances of the case as are acceptable to the transferee, order that any property of the judgment-debtor attached by it, be transferred otherwise by sale in favour of the decree-holder or any other person not a party to the decree, for the purpose of satisfying the decree or portion thereof.

(2) The provisions of rules 64 to 103 of this order shall apply mutatis mutandis to a transfer other than sale made under this rule except that the Court may in its discretion dispense with the necessity of such transfer being made after issuing a proclamation or of the transfer being conducted by an officer of the Court by public auction or after issuing a proclamation." (w.e.f. 13-2-1960)

Resistance to delivery of possession to decree- holder or purchaser

97. Resistance or obstruction to possession of immovable property. :- .

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

1[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

1. Subs. by Act No. 104 of 1976, sec. 72 for sub-rule (2) (w.e.f. 1-2-1977).

98. Orders after adjudication. :- .

(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

HIGH COURT AMENDMENT

Bombay.-In Order XXI, in-rule 98, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the Civil prison for a term which may extend to thirty days. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder or the purchaser, as the case may be for the delay and expenses caused to him in obtaining possession. Any order made under this rule shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree." [Vide Maharashtra Government Gazette, Pt. IV, ka, p. 418, dated 15th September, 1983 (w.e.f. 1-10-1983).]

1. Subs., by Act No. 104 of 1976, sec. 72 for rules 98 to 103 (w.e.f. 1-2-1977).

99. Dispossession by decree-holder or purchaser :- .

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

1. Subs. by Act 104 of 1976, sec. 72 for rules 98 to 103 (w.e.f. 1-2-1977)

100. Order to be passed upon application complaining of dispossession :- .

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

HIGH COURT AMENDMENT

Bombay.-In Order XXI, in rule 100, insert the following proviso, namely:-

"Where it is determined that the application is made by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above." (w.e.f. 1-10-1983)

101. Questions to be determined :- .

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court

shall notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

HIGH COURT AMENDMENT

Bombay.-In Order XXI, in rule 101, insert the following proviso, namely:-

"Provided that when the Court is not competent to decide such question due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court." (w.e.f. 1-10-1983)

102. Rules not applicable to transferee pendent life :- .

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation-In this rule, "transfer" includes a transfer by operation of law.

HIGH COURT AMENDMENT

Bombay.-In Order XXI, omit rule 102.

103. Orders to be treated as decrees :- .

Where any application has been adjudicated upon under rule 98 or rule 100 the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.]

104. Order under rule 101 or rule 103 to be subject to the result of pending suit :- .

Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

105. Hearing of application :- .

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as

it thinks fit.

Explanation.-An application referred to in sub-rule (1) includes a claim or objection made under rule 58.]

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

106. Setting aside order passed ex parte, etc. :- .

(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed exparte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex pane order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.]

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXI, after rule 106, insert the following rules, namely:-

"106A. When the certificate prescribed by section 41 is received by the Court which sent the decree for execution, it shall cause the necessary details as to the result of execution to be entered in its register of civil suits before the papers are transmitted to the record room.

106B. Every attachment of movable property under rule 43, of the Negotiable Instruments under rule 51 and of immovable property under rule 54, shall be made through a Civil Court Amin, or bailiff, unless special reasons render it necessary that any other agency should be employed; in which case those reasons shall be stated in the handwriting of the presiding Judge himself in the order for attachment.

106C. When the property which it is sought to bring to sale is immovable property within the definition of the same contained in law for the time being in force relating to the registration of documents, the decree-holder shall file with his application for an order for sale a certificate from the Sub-Registrar within whose sub-district such property is situated, showing that the Sub-Registrar has searched his books Nos. I and II and their indices for twelve years preceding the mortgage or attachment as the case may be and stating the encumbrances, if any, which he has found on the property.

107. When an application is made for the sale of land or of any interest in land, the Court shall, before ordering sale thereof, call upon the parties to state whether such land is or is not ancestral land within the Notification No. 1887/1-238-10, dated 7th October, 1911, of Local Government, and shall fix a date for determining the said question.

On the day so fixed, or on any date to which the enquiry may have been adjourned, the Court may take such evidence, by affidavit or otherwise, as it may deem necessary, and may also call for a report from the Collector of the district as to whether such land or any portion thereof is ancestral land.

After considering the evidence and the report, if any, the Court shall determine whether such land, or any, and what part of it, is ancestral land.

The result of the enquiry shall be noted in an order made for the purpose by the presiding Judge in his own handwriting.

108. When the property which it is sought to bring to sale is revenue-paying or revenue-free land or any interest in such land, and the decree is not sent to the Collector for execution under section 68, the Court, before ordering sale, shall also call upon the Collector in whose district such property is situate to report whether the property is subject to any (and, if so, to what) outstanding claims on the part of Government.

109. The certificate of the Sub-Registrar and the report of the Collector shall be open to the inspection of the parties of their pleaders, free of charge, between the time of the receipt by the Court and the declaration of the result of the enquiry. No fees are payable in respect of the report by Collector.

110. The result of the enquiry under rule 66 shall be noted in an order made for the purpose by the presiding Judge in his own handwriting. The Court may, in its discretion, adjourn the enquiry, provided that the reasons for the adjournment are stated in writing, and that no more adjournments are made than are necessary for the purposes of the enquiry.

111. If after proclamation of the intended sale has been made any matter is brought to the notice of the Court which it considers material for purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale.

112. The costs of the proceedings under rules 66, 106 and 108 shall be paid in the first instance by the decree-holder; but they shall be charged as part of the costs of the execution, unless the Court, for reasons to be specified in writing, shall consider that they shall either wholly or in part be omitted therefrom.

113. Whenever any Civil Court has sold, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, it shall, as soon as the sale has been confirmed, forward to the commanding officer of such cantonment or station for his information and for record in the Brigade or other proper office, a written notice that such sale has taken place; and such notice shall contain full particulars of the property sold and the name and address of the purchaser.

114. Whenever guns or other arms in respect of which licences have to be taken by purchasers under the Arms Act, 1959 are sold by public auction in execution of decree by order of a Civil Court, the Court directing the State shall give due notice to the Magistrate of the district 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 Arms Act.

115. When an application is made for the attachment of live-stock or other movable property, the decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for fifteen days. If within three clear days before the expiry of any such period of fifteen days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

116. Live-stock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some land-holder or other respectable person willing to undertake the

responsibility of its custody and to produce it when required by the Court.

117. If the custody of live-stock cannot be provided for in the manner described in the last preceding rule, the animals attached shall be removed to the nearest pound established under the Cattle Trespass Act, 1871 (1 of 1871), and committed to the custody of the pound- keeper, who shall enter in a register-

(a) the number and description of the animals;

(b) the day and hour on and at which they were committed to his custody;

(c) the name of the attaching officer or his subordinate by whom they were committed to his custody; and shall give such attaching officer or subordinate a copy of the entry.

118. For every animal committed to the custody of the pound-keeper as aforesaid, a charge shall be levied as rent for the use of the pound for each fifteen or part of fifteen days during which such custody continues; according to the scale prescribed under section 12 of Act No. I of 1871.

And the sums so levied shall be credited to the Municipal Board or the Zilla Parishad or the Notified Area, as the case may be, under whose jurisdiction the pound is.

119. The pound-keeper shall take charge of, feed and water, animals attached and committed as aforesaid until they are withdrawn from his custody as hereinafter provided and he shall be entitled to be paid for their maintenance at such rates as may be, from time to time, prescribed under proper authority. Such rates shall, for animals specified in the section mentioned in the last preceding rule, not exceed the rates for the time being fixed under section 5 of the same Act. In any case, for special reasons to be recorded in writing, the Court may require payment to be made for maintenance at higher rates than those prescribed.

120. The charges herein authorized for the maintenance of live-stock shall be paid to the pound-keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody, and thereafter for such further period as the Court may direct, at the commencement of such period. Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound-keeper shall be refunded by him to the attaching officer.

121. Animals attached and committed as aforesaid shall not be released from custody by the pound-keeper except on the written order of the Court, or of the attaching officer, or of the officer appointed to conduct the sale; the person receiving the animals, on their being so released, shall sign a receipt for them in the register mentioned in rule 117.

122. For the safe custody of movable property other than live-stock while under attachment, the attaching officer shall, subject to approval by the Court, make such arrangements as may be most convenient and economical.

123. With the permission of the Court the attaching officer may place one or more person in special charge of such property.

124. The fee for the services of each such person shall be payable in the manner prescribed in rule 115. It shall not be less than twenty-five naya paise, and shall ordinarily not be more than thirty-seven naya paise per diem. The Court may, at its discretion, allow a higher fee; but if it does so, it shall state in writing its reasons for allowing an exceptional rate.

125. When the services of such person are no longer required the attaching officer shall give him a certificate on a counterfoil form of the number of days he has served and of the amount

due to him; and on the presentation of such certificate to the Court which ordered the attachment, the amount shall be paid to him in the presence of the Presiding Judge:

Provided that, where the amount does not exceed Rs. 5, it may be paid to the Sahna by money order on requisition by the Amin, and the presentation of the certificate may be dispensed with.

126. When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be.

127. Fees paid into Court under the foregoing rules shall be entered in the Register of Petty Receipts and Repayments.

128. When any sum levied under rule 118 is remitted as the Treasury, it shall be accompanied by an order in triplicate (in the form given as Form No. 9 of the Municipal Account Code), of which one part will be forwarded by the Treasury Officials to the Zilla Parishad or Municipal Board, as the case may be. A note that the same has been paid into the Treasury as rent for the use of the pound, will be recorded on the extract from the pass book.

129. The cost of preparing attached property for sale, or of conveying it to the place where it is to be kept or sold, shall be payable by the decree-holder to the attaching officer. In the event of the decree-holder failing to provide the necessary funds, the attaching officer shall report his default to the Court, and the Court may thereupon issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

130. Nothing in these rules shall be deemed to prevent the Court from issuing and serving on the judgment-debtor simultaneously the notice required by Order XXI, rules 22, 66 and 107.

131. The Court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a Revenue Court), or any movable property not in the possession of the judgment-debtor, which has been attached under rule 46 of this Order issue a notice to any person (hereinafter called the garnishee) liable to pay such debt or to deliver or account for such movable property, calling upon him to appear before the Court and show cause why he should not pay or deliver into Court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of execution. (As amended on 29-3-1949).

132. If the garnishee does not forthwith or within such time as the Court may allow, pay or deliver into Court the amount due from or the property deliverable by him to the judgment-debtor, or so much as may be sufficient to satisfy the decree and the cost of execution, and does not dispute his liability to pay such debt or deliver such movable property, or if he does not appear in answer to the notice then the Court may order the garnishee to comply with the terms of such notice and on such order execution may issue as though such order were a decree against him.

133. If the garnishee disputes his liability the Court, instead of making such order, may order that any issue of question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order as shall be just. (As amended on 29-3-1949).

134. Whenever in any proceedings under these rules it is alleged, or appears to the Court to be probable that the debt or property attached belongs to some third person, or that any third person has a lien or charge upon, or an interest in it, the Court may order such third person to

appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary. (As amended on 29-3- 1949).

135. After hearing such third person, and any other person who may subsequently be ordered to appear, or in the use of such third or other person not appearing when ordered, the Court may pass such order as is hereinbefore provided or make such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as to such Court shall seem just and reasonable.

136. Payment or delivery made by the garnishee whether in execution of an order under these rules or otherwise shall be a valid discharge to him as against the judgment-debtor or any other person ordered to appear as aforesaid, for the amount paid, delivered or realised although such order of the judgment may be set aside or reversed.

137. Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached under these rules, although one or more members of such firm may be resident out of the jurisdiction: * Provided that any person having the control or management of the partnership.*? business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

138. The costs of any application under these rules and of the proceedings arising therefrom or incidental thereto, or any order made thereon, shall be in the discretion of the Court.

139. (1) Where the liability of any garnishee has been tried and determined under these rules the order shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(2) Orders not covered by clause (1) shall be appealable as orders made in execution.

Illustration.-An application for a garnishee order is dismissed either on the ground that the debt is secured by a charge or that there is no prima facie evidence of debt due. This order is appealable as an order in execution. 140. All the rules in this Court relating to service upon either plaintiffs or defendants at the address filed or subsequently altered under Order VII or Order VIII shall apply to all proceedings taken under Order XXI or section 47.

The following form shall be used under the provisions of rule 131 of Order XXI: Suit No.....of.....

.....Plaintiff,

Versus

..... ..Defendant

Whereas it is alleged that a debt of Rs..... is due from you to the judgment-debtor.

Or that you are liable to deliver to the above named judgment-debtor the property set forth in the Schedule hereto attached; Take notice that you are hereby required on or before the.....day of.....19..../20.... to pay into this Court the said sum of Rs.....or..... to deliver account to the Amin of this Court for the moveable property detailed in the attached schedule or otherwise to appear in person or by advocate, vakil or authorised agent in this Court at 10.30 in the forenoon of the day aforesaid and show cause to the contrary in default whereon an order for the payment of the said sum, or for the delivery of the said property may be passed against you. Dated this.....day of..... of.....19.....:/20.....

Munsiff/Sub-Judge.....

at....."

Andhra Pradesh.-In Order XXI, insert rule 106 which is same as in Madras with the addition of the following words at the end:-

"For this purpose, the Court may make an order including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal."

[Vide Notification No. P Dis 229/56, dated 2nd April, 1959].

Madras.-In Order XXI, after rule 105, insert the following rule, namely:-

"106. Where and in so far as a decree or order is varied or reversed and the case does not fall within the scope of section 47 or section 144, the Court of first instance shall, on the application of any party affected by the decree or order, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order on such part thereof as has been varied or reversed." (w.e.f. 19-5-1954)

[Ed.-This amendment relates to rule 106 prior to its amendment made by the Central Act 104 of 1976, sec. 72 (w.e.f. 1-2-1977).]

Calcutta.-After Order XXI, insert the following Order, namely:-

"ORDER XXIA"

1. Every person applying to a Civil Court to attach movable property shall, in addition to the process-fee, deposit such reasonable sum as the Court may direct if it thinks necessary, for the cost of its removal to the Court-house, for its custody, and, if such property is live-stock, for its maintenance according to the rates prescribed in rule 2 of this Order. If the deposit when ordered, be not made, the attachment shall not issue. The Court may, from time to time, order the deposit of such further fees as may be necessary. In default of due payment the property shall be released from attachment.

[See Rule 150, Civil Rules and Orders, (1959) Calcutta and Order XXIA, rule 16.]

2. The following daily rates shall be chargeable for the custody and maintenance of live-stock under attachment:-

Goat and pig

Annas 2 to annas 4.

Sheep

Annas 2 to annas 3.

Cow and bullock

Annas 6 to annas 10.

Calf

Annas 3 to annas 6.

Buffalo

Annas 8 to annas 12.

Horse

Annas 8 to annas 12.

Ass

Annas 3 to annas 5.

Poultry

Annas 2 to annas 3 pies 6.

Explanation.-Although the rates indicated above are regarded as reasonable, the Courts shall consider individual circumstances and the local conditions and permit deposit at reduced rates where the actual expenses are likely to fall short of the minima or maxima. If any specimen of special value in any of the above classes is seized a special rate may be fixed by the Court. If

any animal not specified is attached, the Court may fix the cost as a special case.

3. When the property attached consists of agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, Order XXI, he may, unless the Court has otherwise directed, leave it in the village or place where it has been attached-

1[(a) in the charge of the decree-holder or his agent, or of the judgment-debtor, or of some other person, provided that the decree-holder or his agent or the judgment-debtor or other person, enters into bond in Form No. ISA of

Appendix E to this Schedule, with one or more sureties, to produce the attached property when called for and to be liable for any loss which the owner of the property attached may suffer due to wilful negligence of the bounden, or]

(b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of fifteen days paid in advance.

1. Rule 3(a) subs, by Notification No. 4440-G, dated 29th May, 1941.

4. If attached property (other than live-stock) is not sold, under the proviso to rule 43, Order 21, or retained in the village or place where it is attached, it shall be brought to the Court-house at the decree-holders expense and delivered to the proper officer of the Court. In the event of the decree-holder failing to make his own arrangement for the removal of the property with safety, or paying the cost thereof in advance to the attaching officer, then, unless such payment has previously been made into Court, the attachment shall at once be deemed to be withdrawn and the property shall be made over to the person in whose possession it was before attachment.

5. When live-stock is attached it shall not, without the special order of the Court, be brought to the Court or its compound or vicinity, but shall be left at the village or place where it was attached in the manner and on the conditions set forth in rule 3 of this Order:

Provided that live-stock shall not be left in the charge of any person under clause (a) of the said rule unless he enters into a bond for the proper care and maintenance thereof as well as for its production when called for and that it shall not be left in charge of an officer of the Court under clause {b) of the said rule unless in addition to the requirements of the said clause provision be made for its care and maintenance.

6. When for any reason the attaching officer shall find it impossible to obtain compliance with the requirements of the preceding rule so as to entitle him to leave the attached live-stock in the village or place where it was attached and no order has been made by the Court for its removal to the Court, the attaching office shall not proceed with the attachment and no attachment shall be deemed to have been effected.

7. Whenever it shall appear to the Court that live-stock under attachment are not being properly tended or maintained the Court shall make such orders as are necessary for their care and maintenance and may if necessary direct the attachment to cease, and the leave-stock to be returned to the person in whose possession they were when attached. The Court may order the decree-holder to pay any expenses so incurred in providing for the care and maintenance of the live-stock, and may direct that any sum so paid be refunded to the decree-holder by any their party to the proceedings.

8. If under a special order of the Court live-stock is to be conveyed to the Court, the decree-holder shall make his own arrangement for such removal, and if he fails to do so the attachment shall be withdrawn and the property made over to the person in whose possession

it was before attachment.

9. Nothing in these rules shall prevent the judgment-debtor or any person claiming to be interested in attached live-stock from making such arrangements for feeding, watering, and tending the same as may not be inconsistent with its safe custody, or contrary to an order of the Court.

10. The Court may direct that any sums which have been legitimately expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the sale-proceeds of the attached property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings.

11. In the event of custodian of attached property failing, after due notice, to produce such property at the place named to the officer deputed for the purpose, or to restore it to its owner if so ordered or failing in the case of live-stock to maintain and take proper care thereof, he shall be liable to be proceeded against for the enforcement of his bond in the execution proceedings.

12. When property other than live-stock is brought to the Court, it shall immediately be made over to the Nazir, who shall keep it on his sole responsibility in such place as may be approved by the Court. If the property cannot from its nature or bulk be conveniently stored, or kept on the Court premises or in the personal custody of the Nazir, he may, subject to the approval of the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical. If any premises are to be hired and persons are to be engaged for watching the property, the Court shall fix the charges for the premises and the remuneration to be allowed to the persons (not being officers of the Court) in whose custody the property is kept. All such costs shall be paid into Court by the decree-holder in advance for such period as (he Court may from time to time direct.

13. When attached live-stock is brought to Court under special order as aforesaid it shall be immediately made over to the Nazir, who shall be responsible for its due preservation and safe custody until he delivers it up under the orders of the Court.

14. If there be a pound maintained by Government or local authority in or near the place where the Court is held, the Nazir shall, subject to the approval of the Court, be at liberty to place in it such live-stock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive from the Nazir the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

15. If there be no pound available, or, if in the opinion of the Court, it be inconvenient to lodge the attached live-stock in the pound, the Nazir may keep them in his own premises, or he may entrust them to any person selected by himself and approved by the Court.

16. All costs for the keeping and maintenance of the live-stock shall be paid into Court by the decree-holder in advance for not less than fifteen days at a time as often as the Court may from time to time direct. In the event of failure to pay the costs within the time fixed by the Court, the attachment shall be withdrawn and the live-stock shall be at the disposal of the person in whose possession it was at the time of attachment.

17. So much of any sum deposited or paid into Court under these rules as may not be expended shall be refunded to the depositor."

[Vide Notification No. 25585-G, dated 3rd November, 1933.]

Gauhati.-Same as in Calcutta.

ORDER 22 :- DEATH, MARRIAGE AND INSOLVENCY OR PARTIES :-

1. No abatement by partys death if right to sue survives :- .

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

HIGH COURT AMENDMENT

Allahabad.-In Order XXII, in rule 1, at the end, insert the words "or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit".

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives :- .

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

HIGH COURT AMENDMENT

Punjab and Haryana--In Order XXII, after rule 2, insert the following rules, namely:-

"2A. Every advocate appearing in the case who becomes aware of the death of a party to the litigation (where he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is dominus litis.

2B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is dominus litis." [Vide Punjab Government Gazette, Pt. III (L.S.), p. 304, dated 11th April, 1975 and Haryana Government Gazette, Pt. III (L.S.), p. 190, dated 25th March, 1975.]

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff :- .

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

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

4. Procedure in case of death of one of several defendants or of sole defendant :- .

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

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

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

1[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

1. Ins. by Act No. 104 of 1976, sec. 73 (w.e.f. 1-2-1977).

4A. Procedure where there is no legal representative :- .

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.]

1. Ins. by Act No. 104 of 1976, sec. 72 (w.e.f. 1-2-1977).

5. Determination of question as to legal representative. :- .

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

1[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

6. No abatement by reason of death after hearing :- .

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

7. Suit not abated by marriage of female party :- .

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

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

8. When plaintiffs insolvency bars suit :- .

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

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

9. Effect of abatement or dismissal :- .

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

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

(3) The provisions of section 5 of the 1[Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).

2[Explanation-Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order]

1. See now the Limitation Act, 1963 (36 of 1963), Ss. 4 and 5.

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

10. Procedure in case of assignment before final order in suit :- .

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

10A. Duty of pleader to communicate to Court death of a party. :- .

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

1. Ins. by Act No. 104 of 1976, sec. 73 (w.e.f. 1-2-1977).

11. Application of Order to appeals. :- .

In the application of this Order to appeals, so far as may be, the word "plaintiff shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Calcutta.-In Order XXII, in rule 11, insert the following proviso, namely:-

"Provided always that where an Appellate Court has made an order dispensing with service of notice of appeal upon legal representatives of any person deceased under Order XLI, rule 14(3), the appeal shall not be deemed to abate as against such party and the decree made on appeal shall be binding on the estate or the interest of such party."

[Vide Notification No. 10428-G, dated 25th July, 1928.]

Gauhati.-Same as in Calcutta.

Kerala.-In Order XXII, after rule 11, insert the following rule, namely:-

"11A. Entry on the record of the name of the representative of a deceased appellant or respondent in a matter pending before the High Court.-The entry on the record on the name of the representative of a deceased appellant or respondent in a matter pending before the High Court in its appellate jurisdiction, except in case, under appeal to the Supreme Court, may be performed by the Registrar, provided that contested applications and applications presented out of time shall be posted before a judge for disposal." (w.e.f. 9-6-1959).

Madras.-In Order XXII, after rule 11, insert the following rule, namely:-

"11A. The entry on the record of the name of the representative of a deceased appellant or respondent in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the Supreme Court, shall be deemed to be a quasi judicial act within the meaning of section 128 (2) (i) of the Code of Civil Procedure and may be performed by the Registrar provided that contested applications and application presented out of time shall be posted before a Judge for disposal."

12. Application of Order to proceedings. :- .

Nothing in rules 3, 4 and 8 shall apply to proceedings in executive of a decree or order.

HIGH COURT AMENDMENTS

Allahabad.-In Order XXII, in rule 12 at the end, insert the words "or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit".

[Vide Notification No. 58435 (a)-(2), dated 7th February, 1931.]

Orissa.-In Order XXII, in rule 12, at the end, insert the words "or to proceedings in the original Court taking after the passing of the preliminary decree where having regard to the nature of the suit, a final decree is required to be passed".

[Vide Notification No. 24-X-7-52, dated 30th March, 1954.]

ORDER 23 :- WITHDRAWAL AND ADJUSTMENT OF SUITS :-

1. Withdrawal of suit or abandonment of part of claim :- .

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the

subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. (4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject- matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]

1. Subs, by Act No. 104 of 1976 for rule 1 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Karnataka.-In Order XXIII, in rule 1, after sub-rule (4), insert the following sub-rule, namely:-

"(5) Where the plaintiff in a suit instituted or conducted under the provisions of rule 8 of Order 1 of this Code or all plaintiffs therein if there are more plaintiffs than one, apply for the permission to withdraw the suit, notice of such application shall be given in the manner prescribed by sub-rule (3) of Order 1 of this Code for issue of notice of institution of the suit, and the cost of such notice shall be borne by the plaintiff or the plaintiffs, as the case may be. If upon such application being made a defendant in the same suit having the same interest as that of the plaintiffs applies for permission to be transposed a§ plaintiff to conduct the suit further, he shall be permitted to do so and the plaintiffs application dismissed." (w.e.f. 30-3-1967)

Orissa.-In Order XXII, in rule 1, in sub-rule (1), after the words "institution of a suit", insert the words "but not after the passing of the preliminary decree in the suit", (7-5-1954)

1A. When transposition of defendants as plaintiffs may be permitted :- .

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

1. Ins. by Act No. 104 of 1976, s. 74 (w.e.f. 1-2-1977).

2. Limitation law not affected by first suit :- .

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. Compromise of suit :- .

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in

part by any lawful agreement or compromise 1 [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith 2[so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

1[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

2[Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;]

1. Ins. by Act 104 of 1976, sec. 74 (w.e.f. 1-2-1977).

2. Subs. by Act 104 of 1976, sec. 74. for "so far it relates to the suit" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXIII, in rule 3,-

(i) between the words or compromise and or where, insert the words, in writing duly signed by the parties and between the words subject-matter of the suit and the words the Court, insert the words and obtained an instrument in writing duly signed by the plaintiff, (ii) at the end of the rule, insert the following proviso and Explanation, namely:-

"Provided that the provisions of this rule shall not apply to or in any way affect the provisions of Order XXXIV, rules 3, 5 and 8.

Explanation.-The expressions, agreement and compromise, include a joint statement of the parties concerned or their counsel recorded by the Court, and the expression instrument includes a statement of the plaintiff or his counsel recorded by the Court."

[Vide Notification No. 155/Alld-87, dated 31st August, 1974.]

[Ed.-This amendment relates to rule 3 prior to its amendment made by Central Act 104 of 1976, sec. 74 (w.e.f. 1-2-1977).]

Karnataka.-In Order XXIII,-

(i) re-number rule 3 as sub-rule (1) thereof

(ii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-:

"(2) Where any such agreement or compromise as is referred to in sub-rule (1) is placed before the Court by a party suing or defending in a representative capacity in a suit instituted, conducted or defended under the provisions of rule 8 of Order I of this Code, the Court shall not proceed with the consideration of the same or to pass a decree in accordance therewith without first notice of the application for recording such agreement or compromise in the manner prescribed in sub-rule (1) of rule 8 of Order 1 of this Code for giving notice of the institution of such suit. The expenses of giving such notice shall be borne by such party or parties as the Court may direct." (w.e.f. 30-3-1967)

Madras.-In the Order XXIII, in rule 3, in the proviso, for the words "Provided that", the

following shall be substituted, namely:-

"Provided that the subject-matter of the agreement, compromise or satisfaction, in so far as it differs from the subject-matter of the suit, is within the territorial and pecuniary jurisdiction of the Court concerned: Provided further that."

[Vide R.O.C. No. 3382/78-F1 and S.R.O. No. G-3/81 (w.e.f. 23-1-1981).]

Kerala.-In Order XXIII/ after rule 3, insert the following rule, namely:-

"3A. Settlement of oath.--If the parties agree to have the suit or any part of it decided by an oath taken by one of them in Court or elsewhere and tender a written agreement signed by both of them setting forth the terms of the oath and the place where it is taken, the Court may accept such agreement. After the oath has been taken in the manner proposed, the Court shall decide the case in terms of the agreement. After the agreement has been accepted by the Court, it shall not be competent to any of the parties to withdrawn therefrom without the leave of the Court. If any party withdraws or refuses to take the oath without lawful excuse, the Court may decide the case against him or pass such order as it deems proper." (w.e.f. 9-6-1959)

3A. Bar to suit :- .

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

1. Ins. by Act 104 of 1976, sec. 74 (w.e.f. 1-2-1977).

3B. No agreement or compromise to be entered in a representative suit without leave of Court :- .

(1) no agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.-In this rule, "representative suit" means,-

(a) a suit under section 91 or section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]

4. Proceeding in execution of decrees not affected :- .

Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER 24 :- PAYMENT INTO COURT :-

1. Deposit by defendant of amount in satisfaction of claim :- .

The defendant in any suit to recover a debt or damage may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of deposit :- .

Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. Interest on deposit not allowed to plaintiff after notice :- .

No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. Procedure where plaintiff accepts deposit as satisfaction in part :- .

(1) Where the plaintiff accepts such amount as satisfaction in part only of his claim he may prosecute suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) Procedure where he accepts it as satisfaction in full-Where the plaintiff accepts such amount as satisfaction in full of his claim he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court, B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstance mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his cost of suit. As conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER 25 :- SECURITY FOR COSTS :-

1. When security for costs may be required from plaintiff :- .

(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiff are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property with India other than the property in suit.

(2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1).]

1. Subs. by Act 66 of 1956, sec. 14 for rule 1 (w.e.f. 1-1-1957).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXV, for rule 1, substitute the following rule, namely:-

"1. When security for costs may be required from plaintiff.-(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff for reason to be recorded to give within the time fixed by it, security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing outside the State and that such plaintiffs does not possess or that one of such plaintiffs possesses any sufficient immovable property within the State other than the property in suit or that the plaintiff is being financed by another person.

(2) Whoever leaves that State under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing outside the State within the meaning of the proviso to sub-rule (1)." (w.e.f. 5-2-1983)

Madhya Pradesh.-In Order XXV, in rule (1), in proviso, at the end, insert the words "or that any plaintiff is being financed by a person not a party to the suit", (w.e.f. 16-9-1960)

2. Effect of failure to furnish security :- .

(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

HIGH COURT AMENDMENTS

Bombay.-In Order XXV, after rule 2, insert the following rule, namely:-

"3. Power to implead and demand security from third person financing litigation.-fl) Where any plaintiff has for the purpose of being financed in the suit transferred or agreed to transfer any share or interest in the property in the suit to a person who is not already a party to the suit, the Court may order such person to be made a plaintiff to the suit if he consents, and may either of its own motion or on the application of any defendant order such person, within a time to be fixed by it to give security for the payment of all costs incurred and likely to be incurred by any defendant. In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in the property in suit is concerned, or declaring that he shall be debarred from claiming any right to or interest in the property in suit.

(2) If such person declines to be made a plaintiff, the Court may implead him as a defendant and may order him, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any other defendant. In the event of such security not being furnished within the time fixed, the Court may make an order declaring that he shall be debarred from claiming any right to or interest in the property in suit.

(3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub-rules (2) and (3) of rule 2 shall apply mutatis mutandis to such application." (w.e.f. 1-10-1983)

Gujarat.-Same as in Bombay,

Karnataka.-In Order XXV, in rule 2, after sub-rule (3) insert the following sub-rule, namely:-

"(4) The provisions of section 5 of the Limitation Act, 1963, shall apply to applications under this rule." (w.e.f. 30-3-1967)

Madhya Pradesh.-In Order XXV, for rule 3, substitute the following rule, namely:-

"3. Power to implead and demand security from a third person financing litigation.- (1) Where any plaintiff has, for the purpose of being financed in the suit, transferred or agreed to transfer any share or interest in the property in suit, to a person who is not already a party to the suit, the Court may order such person to be made a plaintiff to the suit, if he consents and may either of its own motion or on the application of any defendant order such person, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant. In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in the property in suit is concerned or declaring that he shall be debarred from claiming any right to, or interest in the property in suit.

(2) If such person declines to be made a plaintiff the Court may implead him as a defendant and may order him, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any other defendant. In the event of such security not being furnished within the time fixed the Court may make an order declaring that he shall be debarred from claiming any right to, or interest in, the property in suit.

(3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub-rules (2) and (3) of rule 2 shall apply mutatis mutandis to such application." (w.e.f. 16-9-1960)

ORDER 26 :- COMMISSIONS :-

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness :- .

Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

1[Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation-The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.]

1. Ins, by Act No. 104 of 1976, sec. 75 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Allahabad.-In Order XXVI, for rule 1, substitute the following rule, namely:-

"1. Commission to examine witness.-Any Court may, in any suit, if for the reasons to be recorded in writing, it thinks it necessary to do so in the interest of justice or expedition, issue a Commission for the examination of any person on interrogatories or otherwise."

[Vide Notification No, 504/XI11-B-31, dated 22nd November, 1980.]

2. Order for commission :- .

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within Courts jurisdiction :- .

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

HIGH COURT AMENDMENT

Allahabad.-In Order XXVI, for rule 3, substitute the following rule, namely:-

"3. Commission to whom issued.-Such commission may be issued to any Court not being a High Court within the local limits of whose jurisdiction such person resides or to any pleader or other person whom the Court thinks fit to execute it and the Court shall direct whether the commission shall be returned to itself or to any subordinate Court." (w.e.f. 22-11-1980)

4. Persons for whose examination commission may issue :- .

(1) Any Court may in any suit issue a commission 1[for the examination on interrogatories or otherwise of-]

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) 2[any person in the service of the Government] who cannot in the opinion of the Court, attend without detriment to the public service:

3[Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.]

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission may this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

1. Subs, by Act No. 104 of 1976, sec. 75, for "for the examination of (w.e.f. 1-2-1977).

2. Subs. by A.O. 1937, for "any civil or military officer of the Government."

3. Ins. by Act No. 104 of 1976, sec. 75 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad,-In Order XXVI, omit rule4. (w.e.f. 18-9-1980)

Madhya Pradesh.-In Order XXVI, in rule 4, in sub-rule (1), after clause (c), insert the following clause, namely:-

"(d) any person who by reason of anything connected with the war cannot conveniently be spared."

[Vide Notification No. 3409, dated 26th June, 1943.]

Rajasthan.-In Order XXVI, after rule 4, insert the following rule, namely:-

"4A. Commission for examination of any person resident with Courts local limits.- (I) Notwithstanding anything contained in these rules, any Court may, in the interests of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise of any person resident within the local limits of its jurisdiction and the evidence so recorded shall be read in evidence.

(2) The provisions of sub-rule (1) shall apply to proceedings in execution of a decree or order."

[Vide Rajasthan Gazette, Extra, Ft, IV (Ga), Sec. 2, dated 1st December, 1973.]

4A. Commission for examination of any person resident within the local BE limits of the jurisdiction of the Court :- .

Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.]

1. Ins. by Act No. 46 of 1999 section 29 (w.e.f.. 1-7-2002)

5. Commission or request to examine witness not within India :- .

Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to Commission :- .

Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witnesses :- .

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the returned thereto and the evidence taken under it shall [subject to the provisions of rule 8] from part of the record of the suit.

1. Subs, by Act No. 104 of 1976, sec. 75, for "subject to the provisions of the next following rule)" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Allahabad.-In Order XXVI, in rule 7, omit the words "subject to the provision of rule 8" and at the end, insert the words "shall be read as evidence in the suit", (w.e.f. 22-11-1980)

8. When depositions may be read in evidence :- .

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless-

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

HIGH COURT AMENDMENT

Allahabad,-In Order XXVI, omit rule 8. (w.e.f. 22-11-1980)
Commissions for local investigations

9. Commissions to make local investigations :- .

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

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

HIGH COURT AMENDMENTS

Calcutta.-In Order XXVI, in rule 9, omit the proviso.

[Vide Notification No. 11223-G, dated 7th April, 1933.]

Gauhati.-Same as in Calcutta.

10. Procedure of Commissioner :- .

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

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

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

1[Commissions for scientific investigation, performance of ministerial act and sale of movable property

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

10A. Commission for scientific investigation :- .

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

10B. Commission for performance of a ministerial act :- .

(1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

10C. Commission for the sale of movable property :- .

(1) Where in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such -person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.]

Commissions to examine accounts

11. Commission to examine or adjust accounts :- .

In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

12. Court to give Commissioner necessary instructions :- .

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

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

Commissions to make partitions

13. Commission to make partition of immovable property :- .

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner :- .

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commission (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

HIGH COURT AMENDMENTS

Orissa and Patna.-In Order XXVI, in rule 14, for sub-rules (2) and (3), substitute the following sub-rules, namely:-

"(2) The Commissioner shall then prepare and sign a report or the commissioner (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if necessary) by metes and bounds. The Commissioner or Commissioners shall append to the report or where there is more than one to each report a schedule showing the plots and areas allotted to each party and also unless otherwise directed by the Court, a map showing in different colours the plots or portions of plots allotted to each party. In the event of a plot being sub-divided the area of each sub-plot shall be given in the schedule and also measurements showing how the plot is to be divided. Such report or reports with the schedule and map, if any, shall be annexed to the commission and transmitted to the Court and the Court after hearing any objections which the parties may make to the report or reports shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied and when drawing up the final decree shall incorporate in its decree the schedule and the map, if any, mentioned in sub-rule (2) above, as confirmed or varied by the Court. The whole report or reports of the Commissioner or Commissioners shall not ordinarily be entered in the decree. Where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit." (w.e.f. 4-3-1932)

General provisions

15. Expenses of commission to be paid into Court :- .

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

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-Same as in Madras with substitution of the words "any of the Courts mentioned in clause (c) of section 78 of this Code" for the words "foreign Courts under the provisions of section 78".

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/5S, dated 7th April, 1959.]

Madras.-In Order XXVI,-

(i) renumber rule 15 as sub-rule (1) thereof;

(ii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

"(2) Before executing and returning any commission issued by foreign Courts under the provisions of section 78 the Court or the Commissioner required to execute the commission may levy such fees as the High Court may from time to time prescribe in this behalf in addition to the fees prescribed for the issue of summons to witnesses and for expenses of such witnesses under rule 2 of Order XVI."

Orissa.-In Order XXVI, in rule 15, at the end, insert the words "any after the issue of such omission may order such further sums to be paid into Court from time to time by either party as the Court may consider necessary".

[Vide Notification No. 24-X-7-52, dated 30th March, 1954.]

16. Powers of Commissioners :- .

Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

16A. Questions objected to before the Commissioner :- .

(1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.]

1. Ins. by Act No. 104 of 1976, sec. 75 (w.e.f. 1-2-1977).

17. Attendance and examination of witnesses before Commissioner :- .

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of 1[India], and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

2[Provided that when the Commissioner is not a Judge of a Civil Court he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.]

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits on whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

1. Subs. by Act 2 of 1951, sec. 3, for "the States".

2. Ins. by Act No. 104 of 1976, sec. 75, (w.e.f. 1-2-1977).

18. Parties to appear before Commissioner :- .

(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

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

HIGH COURT AMENDMENTS

Allahabad.-In Order XXVI, in rule 18, in sub-rule (1), after the words "agents or pleaders", substitute a comma for the full stop and insert the words "and shall direct the party applying for the examination of the witness or in the discretion any other party to the suit, to supply the Commissioner with a copy of the pleadings and issues."

[Vide Notification No. 4084/35 (a)-3(7), dated 24th July, 1926.]

Orissa.-Same as in Allahabad, (w.e.f. 29-12-1961)

18A. Application of Order to execution proceedings- :- .

The provisions of this Order shall apply so far as may be, to proceedings in execution of a decree or order.

1. Ins. by Act No. 104 of 1976, sec. 75 (w.e.f. 1-2-1977).

18B. Court to fix a time for return of commission :- .

The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.]

Commissions issued at the instance of foreign Tribunals

19. Cases in which High Court may issue commission to examine witness :- .

(1) If a High Court is satisfied-

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Courts appellate jurisdiction,

it may, subject to the provisions of the rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)-

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

20. Application for issue of commission :- .

The High Court may issue a commission under rule 19-

(a) upon application by a party to the proceeding before the foreign Court, or

(b) upon an application by a law officer of the State Government acting under instructions from the State Government.

21. To whom commission may be issued :- .

A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court to any person whom the Court thinks fit to execute the commission.

HIGH COURT AMENDMENT

Kerala.-In Order XXVI, for rule 21, substitute the following rule, namely:-

"21. To whom Commission may be issued.-A commission under rule 19 may be issued to any

Court within the local limits of whose jurisdiction the witness resides, or to any person whom the Court thinks fit to execute the commission." (w.e.f. 9-6-1959).

22. Issue, execution and return of commissions, and transmission of evidence to foreign Court :- .

The provisions of rules 6, 15 1[Sub-rule (1) of rule 16A, 17, 18 and 18B] of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the foreign court.]

1. Subs, by Act No. 104 of 1976, for "16, 17 and 18" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XXVI, after rule 22, insert the following rules, namely:-

"23. (1} The Court may in any suit issue a commission to such person or persons as it thinks fit to translate accounts and documents which are not in the language of the Court.

(2) Before issuing such a commission the Court may order such sum, if any, as it thinks reasonable for the expenses of the commission to be paid into Court by the party at whose instance or for whose benefit the commission has been issued within such time as may be fixed by the Court.

(3) The report of the Commissioner shall be evidence in the suit and shall form part of the record.

(4) Where however a translation as required by rule 12 of Order XII of this Code has already been filed into Court, no further commission under this rule need be issued.

(5) A translation submitted by the Commissioner or Commissioners under this rule shall be verified in the manner prescribed in rule 12 of Order XIII of this Code.

24. The provisions of this order shall apply so far as may be, to proceedings in execution of decree or order. Verified in the manner prescribed in rule 12 of Order XIII of this Code." (w.e.f. 30-3-1967)

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/5S, dated 9th June, 1959.]

Madras.-In Order XXVI,-

(a) after rule 22, insert the following rule, namely:-

"23. Application of order to execution proceedings.-The provisions of this Order and of Order XXVIA shall apply, so far as may be, to proceedings in execution of a decree or Order." (w.e.f. 9-6-1923)

(b) after Order XXVI, insert the following Order, namely:-

ORDER XXVI A

1. The Court may in any suit issue a commission to such person as it thinks fit to translate accounts and other documents which are not in the language of the Court.

2. The report of the Commissioner shall be evidence in the suit and shall form part of the record.

3. Before issuing any-commission under this Order, the Court may order such sum

(if any) as it thinks reasonable for the expense of the commission to be, within a time to be fixed, paid in the Court by the party at whose instance or for whose benefit the commission is issued."

Orissa.-In Order XXVI -

(a) after rule 22, insert the following rules, namely:

"23. (i) The Court may in any suit issue a commission to such persons as it thinks fit to translate accounts or other documents which are not in Court language or to inspect documents for purposes to be specified in the order appointing such Commissioner.

(ii) The report of the Commissioner shall be evidence in the suit and shall form part of the record.

(iii) Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expense of the commission to be, within a time to be fixed, paid in the Court by the party at whose instance or for whose benefit the commission is issued."

ORDER 27 :- SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY :-

1. Suits by or against Government :- .

In any suit by or against the Government the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

STATE AMENDMENTS

Uttar Pradesh.-In the marginal heading of the Order, after the words "official capacity", insert the words "or Statutory Authorities, etc." [U.P. Act 57 of 1976].

2. Persons authorised to act for Government :- .

Persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, act and applications under this Code may be made or done on behalf of the Government.

3. Plaints in suits by or against Government :- .

In suits by or 1[against the Government] instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert 1[the appropriate name as provided in section 79.2[* * *]]

1. Subs. A.O. 1937, for "against the Secretary of State for India in Council".

2. Certain words omitted by the A.O. 1948.

4. Agent for Government to receive process :- .

The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.]

1. Subs. by the A.O. 1937, for rule 4.

5. Fixing of day for appearance on behalf of Government :- .

The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government and may extend the time at its discretion [but the time so extended shall not exceed two months in the aggregate.]

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XXVII, in rule 5, after the words "instructions to the Government pleader", insert the words "or recognised agents of the Government".

Kerala.-Same as in Madras.

Madras.-In Order XXVII, in rule 5, for the words "a reasonable time", substitute the words "not less than three months time from the date of summons".

5A. Government to be joined as a party in a suit against a public officer :- .

Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

1. Ins. by Act No. 104 of 1976, sec. 76 (w.e.f. 1-2-1977).

5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement :- .

(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the

proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.

6. Attendance of person able to answer questions relating to suit against Government :- .

The Court may also in any case in which the Government pleader is not accompanied by any person on the part of the Government who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

7. Extension of time to enable public officer to make reference to Government :- .

(1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. Procedure in suits against public officer :- .

(1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

8A. No security to be required from Government or a public officer in certain cases :- .

No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Madras.-In Order XXVII, re-number rule 8A as rule 9.

8B. Definitions of "Government" and "Government pleader" :- .

In this Order unless otherwise expressly, provided "Government" and "Government pleader" mean respectively-

(a) in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;

1[* * *]

(c) in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.

1. Clause (b) omitted by the A.O. 1948.

STATE AMENDMENT

Uttar Pradesh.-In Order XXVII, after rule 9, insert the following rule, namely:-

"10- Suits by or-against statutory authority.-(1) Any authority or corporation, constituted by or under any law, may, from time to time, appoint a Standing Counsel, to be called Corporation pleader of that authority in any district and give information of such appointment to the District Judge *[and to Registrar of the High Court at Allahabad or a Lucknow Bench, as the case may be].

(2) The Corporation pleader so appointed shall be the agent in that district of the appointing authority or Corporation for purposes of receiving processes against it, but shall not act or plead without filing a vakalatnama or memorandum of appearance."

[Vide Uttar Pradesh Act 57 of 1976, sec. 11 (w.e.f. 1-1-1977) and * Notification dated 10th February, 1981 (w.e.f. 3-10-1981).]

HIGH COURT AMENDMENTS

Allahabad.-In Order XXVII, after rule 8B, insert the following rule, namely:-

"9. In every case in which the District Government Counsel appears for the Government as a party on its own account, or for the Government as undertaking under the provisions of rule 8(1), the defence of a suit against an officer of the Government, he shall, in lieu of a vakalatnama, file a memorandum on unstamped paper signed by him and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form:-

TITLE OF THE SUIT, ETC.

1. AB. District Government Counsel appears on behalf of the Government of India (or the Government of Uttar Pradesh, or as the case may be) respondent (or etc.). in the suit:-

or, on behalf of the Government [which under order 27, rule 8(1) of Act No. V of 1908, has undertaken the defence of the suit], respondent (or, etc.), in the suit."

{Vide Notification No. 1953/35 (a), dated 22nd May, 1915.]

Andhra Pradesh.-Same as in Madras.

Madras.-In Order XXVII, renumber rules 8A and 8B as rules 9 and 10 respectively, (w.e.f. 2-3-1942)

Orissa.-In Order XXVI, insert the following rule, namely:-

"9. In every case in which the Government pleader appears for the Government as a party on its own accounts or for the Government as undertaking under the provision of rule 8(1), the defence of a suit against an officer of a Government, he shall in lieu of a vakalatnama, file a memorandum of unstamped paper signed by him and stating on whose behalf he appears."
(w.e.f. 14-10-1960)

ORDER 27A :- SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF 2[THE CONSTITUTION] 3[OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT] :-

1. Order XXVIIA (containing rules 1, 2, 3, and 4) Ins. by act 23 of 1942, sec.2.
2. Subs. by the A.O. 1950, for "the Government of India Act, 1935, or any Order-in-Council made thereunder".
3. Ins. By Act 104 of 1976, sec. 77 (w.e.f. 1-2-1977).

1. Notice to the Attorney General or the Advocate-General :- .

In any suit in which it appears to the Court that any such question as is referred to in clause (1) of Article 132, read with Article 147 of the Constitution is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for India if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

1A. Procedure in suits involving validity of any statutory instrument :- .

In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice-

(a) to the Government pleader, if the question concerns the Government, or

(b) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.]

1. Ins. by Act No. 104 of 1976, sec.77, (w.e.f. 1-2-1977).

2. Court may add Government as party :- .

The Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question as is referred to in clause (1) of Article 132 read with Article 147, of the Constitution, if the Attorney General for India or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

2A. Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument :- .

The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.]

1. Ins. by Act No. 104 of 1976, sec. 77, (w.e.f. 1-2-1977).

3. Costs :- .

Where, under rule 2 or rule 2A the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate- General or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.]

1. Subs. by Act No. 104 of 1976, sec. 77 for rule 3 (w.e.f. 1-2-1977).

4. Application or Order to appeals :- .

In application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.

1[Explanation-In this Order, "statutory instrument" means a rule, notification, bye-law order, scheme or form made as specified under any enactment.]

1. Ins. by Act No. 104 of 1976, sec. 77, (w.e.f. 1-2-1977).

ORDER 28 :- SUITS BY OR AGAINST MILITARY OR NAVAL MEN 1[OR AIRMEN :-

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

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them :- .

(1) Where any officer, soldier, sailor or airman, actual serving under the Government in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman, is serving in military, naval or air force staff employment the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not

obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation-In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or depot which the officer, soldier sailor or airman belongs.

2. Person so authorized may act personally or appoint pleader :- .

Any person authorized by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

3. Service on person so authorized, or on his pleader, to be service :- .

Process served upon any person authorized by an officer soldier, sailor or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER 29 :- SUITS BY OR AGAINST CORPORATIONS :-

1. Subscription and verification of pleading :- .

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Kerala.-In Order XXIX, after rule 1, insert rule 1A which is same as in Madras with the addition of the following as marginal note:-

"Time to be fixed in the summons for appearance in suits against local authority".

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXIX, after rule 1, insert the following rule, namely:-

"1A. In suits against a local authority the Court in fixing the day for the defendant to appear and answer shall allow not less than two months time between the date of summons and the date for appearance."

2. Service on corporation :- .

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

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

STATE AMENDMENT

Uttar Pradesh.-In Order XXIX, in rule 2, after clause (a), insert the following clause, namely;-

"(aa) on its corporation pleader in the district where the Court issuing summons is located, if one has been appointed and the appointment has been notified to the District Judge under rule 10 of order XXVII, or".

[Vide Uttar Pradesh Act 57 of 1976, sec. 12 fw.e.f. 1-1-1977].]

HIGH COURT AMENDMENT

Karnataka.-In Order XXIX, after rule 2, insert the following rule, namely;-

"2A. Where the suit is against a local authority the Court in fixing the day for such authority to answer the plaint shall allow a reasonable time for the necessary communication with any department of the Government and for the issue of the necessary instruction to the pleader of the authority, and may extend the time at its discretion."

[Vide R.O.C. 2526 of 1959, dated 9th February, 1967.]

3. Power to require personal attendance of officer of corporation. :- .

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXIX SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Kerala.-In Order XXIX, after rule 1, insert rule 1A which is same as in Madras with the addition of the following as marginal note:-

"Time to be fixed in the summons for appearance in suits against local authority".

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXIX, after rule 1, insert the following rule, namely:-

"1A. In suits against a local authority the Court in fixing the day for the defendant to appear and answer shall allow not less than two months time between the date of summons and the date for appearance."

2. Service on corporation

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

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

STATE AMENDMENT

Uttar Pradesh.-In Order XXIX, in rule 2, after clause (a), insert the following clause, namely;-

"(aa) on its corporation pleader in the district where the Court issuing summons is located, if one has been appointed and the appointment has been notified to the District Judge under rule 10 of order XXVII, or".

[Vide Uttar Pradesh Act 57 of 1976, sec. 12 fw.e.f. 1-1-1977}.]

HIGH COURT AMENDMENT

Karnataka.-In Order XXIX, after rule 2, insert the following rule, namely;-

"2A. Where the suit is against a local authority the Court in fixing the day for such authority to answer the plaint shall allow a reasonable time for the necessary communication with any department of the Government and for the issue of the necessary instruction to the pleader of the authority, and may extend the time at its discretion."

[Vide R.O.C. 2526 of 1959, dated 9th February, 1967.]

3. Power to require personal attendance of officer of corporation.

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER 30 :- SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN :-

1. Suing of partners in name of firm :- .

(1) Any two or more persons claiming or being liable as partners and carrying on business, in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

HIGH COURT AMENDMENTS

Delhi.-Same as in Punjab.

Haryana.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Punjab.-In Order XXX, in rule 1, at the end, insert the following "Explanation ", namely:-

"Explanation.-This rule applied to a joint Hindu family trading partnership."

[Vide Notification No. 2212-G, dated 12th May, 1909.]

2. Disclosure of partners names :- .

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

1[Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.]

1. Subs, by Act No. 104 of 1976 for the proviso (w.e.f. 1-2-1977).

3. Service :- .

Where persons are sued as partners in the name of their firm, the summons shall be served either-

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business, there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

4. Rights of suit on death of partner :- .

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

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

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

(b) to enforce any claim against the survivor or survivors.

5. Notice in what capacity served :- .

Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6. Appearance of partners. :- .

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

HIGH COURT AMENDMENT

Orissa.- In Order XXX, in rule 6, at the end, insert the following words, namely:-

"But the decree shall, however, contain the names of all such partners." (w.e.f. 7-5-1954)

7. No appearance except by partners. :- .

Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

8. Appearance under protest :- .

(1) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(2) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(3) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.]

1. Subs, by Act No. 104 of 1976 for rule 8 (w.e.f. 1-2-1977).

9. Suits between co-partners :- .

This Order shall apply to suits between a firm and one or more of the partners therein and to

suits between firms having one or more partners, in common; but not execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Suit against person carrying on business in name other than his own :- .

Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.]

1. Subs, by Act No. 104 of 1976 for rule 10 (w.e.f. 1-2-1977).

ORDER 31 :- SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS :-

1. Representation of beneficiaries in suits concerning property vested in trustees, etc. :- .

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee; executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Joinder of trustee, executors and administrators :- .

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testators will, and trustees, executors and administrators outside India need not be made parties.

3. Husband of married executrix not to join :- .

Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER 32 :- SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND :-

1. Minor to sue by next friend :- .

Every suit by a minor shall be instituted in his name by a person who in such shall be called the next friend of the minor.

1[Explanation-In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875) where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other

matter.]

1. Ins. by Act 104 of 1976, sec. 79 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Delhi.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Punjab.-In Order XXXII, in rule 1, at the end, insert the following words, namely:-

"Such person may be ordered to pay any costs in the suit as if he were the plaintiff."

[Vide Notification No. 2212-G, dated 12th May, 1909.]

2. Where suit is instituted without next friend, plaint to be taken off the file- :- .

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2A. Security to be furnished by next friend when so ordered :- .

(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for the reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

1. Ins. by Act 104 of 1976, sec. 79 (w.e.f. 1-2-1977).

3. Guardian for the suit to be appointed by Court for minor defendant- :- .

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice to any 1*** to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian,

2[upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is 2[no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

3[(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.

1. The words "to the minor and" omitted by Act No. 104 of 1976.

2. Subs. by Act No. 104 of 1976 for certain words (w.e.f. 1- 2-1977).

3. Ins. by Act No. 104 of 1976, (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXXII, in rule 3,-

(a) in sub-rule (3), at the end, delete the full stop and insert the following words, namely:-

"and shall also contain the names and addresses of all probable guardians including any guardian of the minor appointed or declared by an authority competent in that behalf, or the father or the other natural guardian of the minor, or where there is no father or other natural guardian the person in whose care the minor is."

(b) for sub-rule (4), substitute the following sub-rule, namely:-

"(4) The Court shall cause notice of such application to be served upon the minor as also upon all the probable guardians named in the application and such other persons as it may deem fit calling upon them to file objections, if any, to the appointment, etc. the proposed or any other probable guardian of the minor. In case any person himself desires to be appointed guardian of the minor instead of the proposed guardian, he shall furnish an affidavit verifying the fact he has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

The Court shall after hearing the objections, if any, and considering the respective claims of all persons desirous of being appointed guardian including the proposed guardian, such person as guardian appoint of the minor as it may deem fit."

(c) in sub-rule (4) insert the following proviso, namely:-

"Provided that if the minor is under twelve years of age no such notice shall be issued to him."

[Vide Notification No. 43 VIId-29, dated 1st June, 1957.]

Andhra Pradesh.-Same as in Madras.

Delhi.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXXII, for rule 3, substitute the following rule, namely:-

"3. (1) Same as sub-rule (1) of Madras with substitution of the words "or in the case of a guardian for the suit a plaintiff" by the words "in the suit or in the case of a guardian a plaintiff in the suit".

(2) Same as sub-rule (2) of Madras with insertion of the words "in writing" after "for reasons to be recorded".

(3) Same as sub-rule (3) of Madras with addition at the end of: "A person appointed as guardian under this sub-rule shall, unless his appointment is terminated by retirement or removal by the order of Court on application made for the purpose or by his death, continue throughout all proceedings in the suit or arising out of the suit including proceedings in any appeal or in revision and any proceedings in execution of a decree and the service of any processes in any such proceeding on the said guardian if duly made shall be deemed to be good service for the purpose of such proceedings. r

(4) Same as sub-rule (4) of Madras with the following modifications:-

(i) Before the words "set forth" insert "whether necessary";

(ii) Omit the words within brackets and the last sentence.

(5) Same as sub-rule (5) of Madras.

(6) Same as sub-rule (6) of Madras with substitution of the word "party" for the words "plaintiff petitions".

(7) No order shall be made on any application under sub-rule (4) above except upon notice to the minor and also to any guardian of the minor appointed or declared by an authority competent in that behalf, or where there is no such guardian upon notice to the father or natural guardian of the minor or where there is no father or natural guardian upon notice to the person in whose actual care the minor is and after hearing any objection which may be urged on behalf of any person so served with notice. The notice required by this sub-rule shall be served at least seven clear days before the day named in the notice for hearing of the application.

(8) Where none of the persons mentioned in the last preceding sub-rule is willing to act as guardian, the Court shall direct notice to other person or persons proposed for appointment as guardian either simultaneously to some or all of them or successively as it may consider convenient or desirable in the circumstances of the case. The Court shall appoint such person as it thinks proper from among those who have signified their consent and intimate the fact of such appointment to the person appointed by registered post unless he is present at the time of appointment either in person or by pleader.

(9) No person shall be appointed guardian for the suit without his consent and except in cases where an applicant himself prays for his appointment as guardian notices issued shall clearly require the party served to signify his consent or refusal to act as guardian.

(10) Same as sub-rule (10) of Madras with insertion of the words "or pleader" after the words "by that officer".

(11) Same as sub-rule (11) of Madras."

Kerala.-In Order XXXII, in rule 3,-

(i) substitute sub-rule (2) which is the same as sub-rule (4) of Madras.

(ii) in sub-rule (3), at the end, insert the following, namely:-

"The affidavit shall further state the name of the person or persons on whom notice has to be served under the provisions of sub-rule (4)."

(iii) in sub-rule (4), insert the following proviso, namely:-

"Provided that if the minor is under 15 years of age no such notice shall be issued to him."
(w.e.f. 9-6-1959)

Madhya Pradesh.-In Order XXXII, for rule 3, substitute the following rule, namely:-

"3. Guardian for the suit to be appointed by Court for minor defendant:-(1) Where the defendant is a minor, the Court, not being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit of such minor.

(2) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree." (w.e.f. 16-9-1960)

Madras.-In Order XXXII, for rules 3 and 4, substitute the following rules, namely:-

"3. Qualifications to be a next friend or guardian.-(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of that person is not adverse to that of the minor and that he is not in the case of a next friend, defendant, or in the case of a guardian for the suit, a plaintiff. , .

(2) Appointed or declared guardians to be preferred and to be superseded only for reasons recorded.-Where a minor has a guardian appointed or declared by competent authority no person other than the guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minors welfare that another person be permitted to act or be appointed, as the case may be.

(3) Guardians to be appointed by Court.-Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for the minor.

(3A) A person appointed under sub-rule (3) to be guardian for the suit for a minor shall unless his appointment is terminated by retirement, removal or death continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceeding in execution of a decree.

(4) Appointment to be on application and where necessary after notice to proposed guardian.-An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. The application, where it is by the plaintiff, shall set forth, in the order of their suitability, a list of persons {with their full addresses for service of notice in Form No. 11A set forth in Appendix H. hereto) who are

competent and qualified to act as guardian for the suit for the minor defendant. The Court may, for reasons to be recorded in any particular case, exempt the applicant from furnishing the list referred to above.

(5) Contents of affidavit in support of the application for appointment of guardian.- The application referred to in the above sub-rule whether made by the plaintiff or on behalf of the minor defendant shall be supported by an affidavit verifying the fact that the proposed guardian has not or that no one of the proposed guardians has any interest in the matters in controversy in the suit adverse to that of the minor and that the proposed guardian or guardians are fit persons to be so appointed.

The affidavit shall further state according to the circumstances of each case (a) particulars of any existing guardian appointed or declared by competent authority, (b) the name and address of the person, if any, who is the de facto guardian of the minor, (c) the names and addresses of persons, if any, who in the event of either the natural or the de facto guardian or the guardian appointed or declared by competent authority, not being permitted to act, are by reason of relationship or interest or otherwise, suitable persons to act as guardians for the minor for the suit.

(6) Application for appointment of guardian to be separate from application for bringing on record the legal representatives of a deceased party.-An application for the appointment of a guardian for the suit of a minor shall not be combined with an application for bringing on record the legal representatives of a deceased plaintiff or defendant. The applications shall be by separate petitions.

(7) Notice of application to be given to persons interested in the minor defendant other than the proposed guardian.-No order shall be made on any application under sub-rule (4) above except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or where there is no guardian, upon notice to the father or other natural guardian of the minor, or where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

The notice required by this sub-rule shall be served six clear days before the day named in the notice for the hearing of the application and may be in Form No. 11 set forth in Appendix H hereto.

(8) Special provision to shorten delay in getting a guardian appointed.-Where the application is by the plaintiff, he shall, along with his application and affidavit referred to in sub-rules (4) and (5) above, produce the necessary forms in duplicate filled in to the extent that is possible at that stage, for the issue simultaneous of notices to two at least of the proposed guardians for the suit to be selected by the Court from the list referred to in sub-rule (4) above together with a duly stamped voucher indicating that the fees prescribed for service have been paid.

If one or more of the proposed guardians signify his or their consent to act, the Court shall appoint one of them and intimate the fact of such appointment to the person appointed by registered post. If no one of the persons served signifies his consent to act, the Court shall proceed to serve simultaneously another selected two, if so many there be, of the persons named in the list referred to in sub-rule (4) above but no fresh application under sub-rule (4) shall be deemed necessary. The applicant shall within three days of intimation of unwillingness by the first set of proposed guardians, pay the prescribed fee for service and produce the necessary forms duly filled in.

(9) No person shall be appointed guardian without his consent.-No person shall without his consent, be appointed guardian for the suit. Whenever an application is made proposing the name of a person as guardian for the suit a notice in Form No. 11 A set forth in Appendix H

hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents.

(10) Court guardian.-When to be appointed-How he is to be placed in funds.- Where the Court finds no person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader of the Court to be the guardian and may direct that the costs to be incurred by that officer in the performance of the duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of the costs as justice and the circumstances of the case may require.

(11) Funds for a guardian other than Court guardian to defend.-When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance monies to the guardian for purpose of his defence and all monies so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardians, as and when directed, shall file in Court an account of the monies so received by him."

Punjab.-In Order XXXII, in rule 3, for sub-rules (3) and (4), substitute the following sub-rules, namely:-

"(3) The plaintiff shall file with his plaint a list of relatives of the minor and other persons, with their address, who prima facie are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub -rule (2) above.

(4) The Court may at any time after institution of the suit call upon the plaintiff to furnish such a list, and in default of compliance, may reject the plaint.

(5) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that each person proposed is a fit person to be so appointed.

(6) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule:

Provided that the Court may, if it sees fit, issue notice to the minor also."

[Vide Notification No. 95-G, dated 25th February, 1925 and Notification No. 566-G, dated 24th November, 1927.]

3A. Decree against minor to be set aside unless prejudice has been caused to his interests :- .

(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reasons of such adverse interest of the next friend of guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

1. Ins. by Act No. 104 of 1976, (w.e.f. 1-2-1977).

4. Who may act as next friend or be appointed guardian for the suit :- .

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minors welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent 1[in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, for Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested 1[or out of the property of the minor], and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

1. Ins. by Act No. 104 of 1976, (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-(a) In Order XXXII, for rule 4, substitute the following rule, namely:-

"4. (1) Where a minor has a guardian appointed or declared by competent authority no person other than such guardian shall act as next friend, except by leave of the Court.

(2) Subject to the provisions of sub-rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor, or he is a defendant, or the Court for other reasons to be recorded considers him unfit to act.

Every next friend shall, except as otherwise provided by clause (5) of this rule, be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor.

(4) The Court may, in its discretion, for reasons to be recorded, award costs of the suit, or compensation under section 35A or section 95 against the next friend personally as if he were a plaintiff,

(5) Costs or compensation awarded under clause (4) shall not be recoverable by the guardian from the estate of the minor, unless the decree expressly directs that they shall be so recoverable."

[Vide Notification No. 4080/35 (a)-3(7), dated 24th July, 1926.]

(b) after rule 4, insert the following rule, namely:-

"4A.(1) Where a minor has a guardian appointed by competent authority no person other than such guardian shall be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minors welfare that another person be appointed.

(2) Where there is no such guardian or where the Court considers that such guardian should not be appointed it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or where there is no such guardian the person in whose care the minor is, or any other suitable person who has notified the Court of his willingness to act or failing any such person, an officer of the Court.

Explanation.-An officer of the Court shall for the purposes of this sub-rule include a legal practitioner on the roll of the Court."

Andhra Pradesh.-Same as in Madras.

Calcutta.-In Order XXXII, in rule 4, in sub-rule (4), for the words "Where there is no other person fit and willing to act as guardian for the suit", substitute the words "Except as otherwise provided in this Order".

[Vide Notification No. 8381-G, dated 13th June, 1927.]

Delhi.-Same as in Punjab.

Gauhati.-Same as in Calcutta.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-In Order XXXII, omit rule 4. (w.e.f. 30-3-1967}

Kerala.-In Order XXXII, in rule 4,-

(i) in sub-rule (3), at the end, insert the following words, namely:-

"Whenever an application is made proposing the name of a person as a guardian for the result a notice in Form No. 11A set forth in Appendix H hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents" (ii) in sub-rule (4), insert the following Explanation, namely:-

"Explanation.-An officer of the Court shall for the purpose of this sub-rule include a pleader of the Court."

(iii) after sub-rule (4), insert the following sub-rule, namely:-

"(5) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant, and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance moneys to the guardian for the purpose of his defence and all moneys so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the moneys so received by him."

[Vide Notification No. 81-3312/58, dated 7th April, 1959.] "

Madhya Pradesh.-In Order XXXII,-

(a) for rule 4, substitute the following rule, namely:-

"4. Who may act as next friend or guardian for the suit.- (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or as his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minors welfare that another person be permitted to act in either capacity."

(b) after rule 4, insert the following rule, namely:-

"4A. Procedure for appointment of guardian for the suit.- {1} No person except the guardian appointed or declared by competent authority, shall, without his consent, be appointed guardian for the suit.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Unless the Court is otherwise satisfied of the fact that the proposed guardian has no interest adverse to that of the minor in the matters in controversy in the suit and that he is a fit person to be so appointed, it shall require such application to be supported by an affidavit verifying the fact.

(4) No order shall be made on any application for the appointment as guardian for the suit of any person, other than a guardian of the minor appointed or declared by competent authority, except upon notice to the proposed guardian for the suit and to any guardian of the minor appointed or declared by competent authority, or, where there is no such guardian, the person in whose care the minor is, and after hearing, any objection that may be urged on a day to be specified in the notice. The Court may, in any case, if it thinks fit, issue notice to the minor also.

(5) Where, on or before the specified day, such guardian fails to appear and express his consent to act as guardian for the suit, or, where he is considered unfit, or disqualified under sub-rule (3), the Court may, in the absence of any other person fit and willing to act, appoint any of its ministerial officer, or a legal practitioner, to be guardian for the suit. If a legal practitioner is appointed guardian for the suit, the Court shall pass an order stating whether he is to conduct the case himself or engage another legal practitioner for the purpose.

(6) In any case in which there is a minor defendant, the Court may direct that a sufficient sum shall be deposited in Court by the plaintiff from which sum the expenses of the minor defendant in the suit including the expenses of a legal practitioner appointed guardian for the suit shall be paid. The costs so incurred by the plaintiff shall be adjusted in accordance with the final order passed in the suit in respect of costs."

[Vide Notification No. 3409, dated 29th June, 1943.]

Madras.-In Order XXXII, omit rule 4.

Orissa.-Same as in Patna.

Patna.-In Order XXXII, in rule 4, in sub-rule (4), for the words "Where there is no other person fit and willing to act as guardian for the suit", substitute the following words, namely:-

"Where the person whom the Court after hearing objections, if any, under sub-rule (4) of rule 3, proposes to appoint as guardian for the suit, fails, within, the time fixed in a notice to him to express his consent to be so appointed".

Punjab.-In Order XXXII, in rule 4,~~

(a) after sub-rule (2), insert the following sub-rule, namely:-

"(2A) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may, subject to the proviso to sub-rule (1), appoint as his guardian for the suit a relative of the minor.

If no person be available who is a relative of the minor the Court shall appoint one of the other defendants, if any and failing such other defendant, shall ordinarily proceed under sub-rule (4) of this rule to appoint one of its officers or a pleader."

(b) [* * *]

(c) in sub-rule (4), after the words "any of its officers" insert the words "or a pleader" and for the words "such officer", substitute the words "such persons".

[Vide Notification No. 566-G, dated 24th November, 1927 as amended by Notification No. 209-R-XI-Y-3, dated 22nd July, 1936) and Notification No. 281-R-XI-Y-3, dated 19th September, 1936.

5. Representation of minor by next friend or guardian for the suit :- .

(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor :- .

(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either-

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application:

1[Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable

property under a decree or order, where such next friend or guardian-

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

1. Ins. by Act No. 104 of 1976, sec. 79 (w.e.f. 1-2-1977).

7. Agreement or compromise by next friend or guardian for the suit :- .

(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

1[(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend of the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-In Order XXXII, in rule 7, in sub-rule (2), at the end, insert the following proviso, namely:-

"Provided also that the Court may in its discretion dispense with such security and impose such other condition as it thinks fit, in case where it is satisfied that any money is needed for the maintenance, medical care or education of the minor and the guardian or next friend is unable to furnish security."

[Vide Notification No. ROC 2756/56, B1, dated 5th December, 1959.]

Karnataka.-In Order XXXII, in rule 7, renumber sub-rule (2) as sub-rule (3) and insert the following sub-rule, namely:-

"(2) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other similar action on behalf of a minor or order person under disability, the affidavit in support of the application shall set out the manner in which the proposed compromise, agreement or other action is likely to affect the interests of the minor or other person under disability and the reason why such compromise, agreement or other action is expected to be for the benefit of the minor or other person under disability; where in such a case the minor or other person under disability is represented by counsel or pleader, the said counsel or pleader shall also file into Court along with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability.

If the Court grants leave under sub-rule (1) of this rule, the decree or order of the Court shall expressly recite the grant of the leave sought from the Court in respect of the compromise, agreement or other action as aforesaid after consideration of the affidavit and the certificate mentioned above and shall also set out either in the body of the decree itself or in a schedule annexed thereto the terms of the compromise or agreement or the particulars of the other action." (w.e.f. 30-3-1967)

Kerala.-In Order XXXII, in rule 7, insert sub-rule (1A) as in Madras.
[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXXII, in rule 7, insert the following sub-rule, namely:-

"(1A) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file in court with the application a certificate to the effect that the agreement or compromise or action proposed is, in his opinion, for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter to which a minor or other person under disability is a party shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No. 24 in Appendix D to this Schedule."

[Vide Dis No 1647 of 1910.]

8. Retirement of next friend :- .

(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

9. Removal of next friend :- .

(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minors interest will be properly protected by him, or where he does not do his duty, or during the pendency of the suit, ceases to reside within India or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove that next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. Stay of proceedings on removal, etc., of next friend :- .

(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. Retirement, removal or death of guardian for the suit :- .

(1) Where the guardian for the suit desire to retire or does not do his duty, or where there sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

HIGH COURT AMENDMENT

Allahabad.-In Order XXXII, in rule 11,-

(i) in sub-rule (1), at the end, omit the words "and may make such order as to costs as it thinks fit"; (ii) in sub-rule (1), insert the following proviso, namely:-

"Provided that where the guardian desires to retire without reasonable cause the Court shall, while permitting him to retire, direct that he shall pay the cost to be incurred in the appointment of a fresh guardian."

[Vide Notification No. 43/VII-d 29, dated 1st June, 1957.]

12. Course to be followed by minor plaintiff or applicant on attaining majority :- .

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:

"A.B., late a minor, by C.D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. Where minor co-plaintiff attaining, majority desires to repudiate suit :- .

(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary

party shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings therefore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. Unreasonable or improper suit :- .

(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XXXII, after rule 14, insert the following rule, namely:-

"14A. When a minor defendant attains majority either he or the guardian appointed for him in the suit or the plaintiff may apply to the Court to declare the said defendant a major and to discharge the guardian and notice thereof shall be given to such among them as are not applicants. When the Court by order declares said defendant as major it shall by the same order discharge the guardian and thereafter the suit shall be proceeded with against the said defendant as a major." (w.e.f. 30-3-1967)

Kerala.-In Order XXXII, after rule 14, insert rule 14A which is same as in Madras with the following modifications:-

(i) add the following as marginal note:-

"Appointment or discharge of a next friend or guardian for the son of a minor to be performed by Registrar",

(ii) omit the following words:-

"shall be deemed to be a quasi-judicial act within the meaning of section 128 (2) (i) of the Code of Civil Procedure and".

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XXXII, after rule 14, insert the following rule, namely:-

"14A. The appointment or discharge of a next friend or guardian for the suit of a minor in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the [Supreme Court], shall be deemed to be a quasi-judicial act within the meaning of section 128 (2) (i) of the Code of Civil Procedure and may be performed by the Registrar,

provided that contested applications and applications presented out of time shall be posted before a Judge for disposal."

[Vide Dis No. 1601 of 1914.]

15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind :- .

Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, or protecting their interest when suing or being sued.]

1. Subs. by Act 104 of 1976 for rule 15 (w.e.f. 1-2-1977)

16. Savings :- .

(1) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(2) Nothing contained in this Order shall construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by against lunatics or other persons of unsound mind.]

1. Subs. by Act 104 of 1976 for rule 16 (w.e.f. 1-2-1977)

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

[Vide Notification No. ROC No. 6842/51-B 1, dated 9th August, 1957.]

Madras.-In Order XXXII, after rule 16, insert the following rule, namely:-

"17. In suits relating to the person or property of a minor or other person under the superintendence of the Court of Wards the Court in fixing the day for the defendant to appear and answer shall allow not less than two months "time between the date of summons and the date for appearance."

[Vide Dis No. 644 of 1941].

ORDER 32A :- SUITS RELATING TO MATTERS CONCERNING THE FAMILY :-

1. Order XXXIIA Ins. by Sec. 80 by Act No. 104 of 1976 (w.e.f. 1-2-1977).

1. Application of the Order :- .

(1) The provision of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the

provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:-

(a) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

2. Proceedings to be held in camera :- .

In every suit or proceeding to which this Order applies, the proceeding may be held in camera if the Court so desires and shall be so held if either party so desires.

3. Duty of Court to make efforts for settlement :- .

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

4. Assistance of welfare expert :- .

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 or this Order.

5. Duty to inquire into facts :- .

In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far as reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

6. "Family"-meaning of :- .

For the purposes of this Order, each of the following shall be treated as constituting a family, namely:-

(a) (i) a man and his wife living together,

(ii) any child or children, being issue or theirs; or of such man or such wife,

(iii) any child or children being maintained by such man or wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.]

ORDER 33 :- SUITS BY INDIGENT PERSONS :-

1. Suits may be instituted by in by indigent person. :- .

Subject to the following provisions, any suit may be instituted by 1[an indigent person]

2[Explanation I-A person is an indigent person,-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II-Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the

applicant is an indigent person.

Explanation II-Where the plaintiff sued in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.]

1. Subs, by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

2. Subs, by Act No. 104 of 1976 for the former Explanation (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Bombay.-In Order XXXIII, in rule 1, for Explanation I, substitute the following Explanation, namely:-

"Explanation 1.-A person shall be deemed to be an indigent person if he is not possessed to means exceeding rupees one thousand in value or where he is possessed of means exceeding one thousand rupees in value, the same are not sufficient to enable him to pay fees prescribed by law for the plaint. For the purposes of this Explanation the means which a person is possessed of shall be deemed not to include property exempt from attachment in execution of a decree and the subject-matter of the suit." (w.e.f. 1-10-1983)

Kerala.-In Order XXXIII, in rule 1,-

(i) for Explanations, substitute the following Explanations, namely:-

Explanation 1.-A person is a pauper when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit,

Explanation 11,-Where the plaintiff sues in a representative capacity the question of pauperism shall be determined with reference to the means possessed by him in such capacity," (w.e.f. 9-6-1959)

[Ed.-This amendment relates to rule 1 prior to its amendment made by the Central Act 104 of 1976, sec. 81 (w.e.f. 1-2-1977).]

1A. Inquiry into the means of an indigent person :- .

Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.]

1. Ins. by Act No. 104 of 1976, sec. 81 (w.e.f. 1-2-1977).

2. Contents of application :- .

Every application for permission to sue as 1[an indigent person] shall contain the particulars required in regard to plaints in suits: a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

1. Subs, by Act No. 104 of 1976, sec. 81, for "pauper" (w.e.f. 1-2-1977).

3. Presentation of application :- .

Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person:

1[Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXXIII, in rule 3, after the words "unless he is exempted from appearing in Court", insert the words "or detained in prison".

[Vide Notification No. 2457/35 (a)-1, dated 8th May, 1937.]

Andhra Pradesh.-Same as in Madras.

Karnataka.-Same as in Madras, (w.e.f. 30-3-1967)

Kerala.-In Order XXXIII, in rule 3, insert the following Explanation namely:-

"Explanation,-Where there are more applications than one presentation by one shall be deemed to be sufficient compliance with the provisions of the rule." (w.e.f. 9-6-1959)

Madras.-In Order XXXIII, in rule 3, at the end, insert the following words, namely:-

"The High Court may by general or special order exempt any person or class of persons from the obligation to present in person an application for permission to sue as a pauper."

4. Examination of applicant :- .

(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(2) If presented agent, Court may order applicant to be examined by commission-Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. Rejection of application :- .

The Court shall reject an application for permission to sue as 1[an indigent person]-

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not 1[an indigent person], or

(c) where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as 1[an indigent person]:

2[Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person,] or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,2 [or]

2[(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.]

1. Subs. by Act No. 104 of 1976, sec. 81, for "pauper" (w.e.f. 1-2-1977).

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XXXIII, in rule 5,-

(a) in clause (a), between the figure "3" and the word ", or" insert the words "and the applicant on being required by the Court to make any amendment within a time to be fixed by the Court, fails to do so".

(b) at the end of the rule, insert the following Explanation, namely:-

"Explanation.-An application shall not be rejected under clause (d) merely on the ground that the proposed suit appears to be barred by any law." (w.e.f. 15-4-1933)

Andhra Pradesh.-In Order XXXIII, in rule 5, for clause (d), substitute the following clause, namely:-

"(d) where the allegations in the application show that suit is barred by law or do not show a cause of action, or".

Karnataka.-In Order XXXIII, in rule 5, in clause (a), between the figure "3" and the word ", or" add the words "and the applicant when required by the Court to rectify the defect within a time to be fixed by the Court fails to do so, or", (w.e.f. 30-3-1967}

Kerala.-In Order XXXIII, in rule 5, after clause {d}, insert the following clause, namely:-

"(d1) Where the suit appears to be barred by any law, or", (w.e.f. 9-6-1959)

Madras.-In Order XXXIII, in rule 5, for clause (d), substitute the following clauses, namely:-

"(d) where the allegations do not show a cause of action, or

(d1) where the suit appears to be barred by any law, or" (w.e.f. 22-10-1940)

6. Notice of day for receiving evidence of applicants indigency :- .

Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the application may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

HIGH COURT AMENDMENTS

Andhra Pradesh.-In Order XXXIII, for rule 6, substitute the following rule, namely:- "6. Where the Court sees no reason to reject the application on the grounds stated in clauses (a) and {d} of rule 5, it shall fix a day (of which at least ten days clear notice shall be given to the opposite party and the Government Pleader) for receiving evidence from the parties including the Government Pleader with regard to the matters specified in clauses (b), (c) and (e) of rule (5)." (w.e.f. 4-3-1975)

Karnataka, Kerala and Madras:-In Order XXXIII, for rule 6, substitute the following rule, namely:-

"6. Notice of day for inquiring into the applicants right to sue as pauper.-Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall nevertheless fix a day of which at least ten days clear notice shall be given to the opposite party and to the G.P. for receiving such evidence as the applicant may adduce to prove that the application is not subject to any of the prohibitions in rule 5 and for hearing any evidence which may be adduced to the contrary." (w.e.f. 9-6-1959).

7. Procedure at hearing :- .

(1) On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a full record of their evidence.

1[(1A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court 2[under rule 6 or under this rule], the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as 3[an indigent person].

1. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

2. Subs. by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

3. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka,-Same as in Madras, (w.e.f. 30-3-1967)

Kerala.-In Order XXXIII, in rule 7, in sub-rule (3), at the end, substitute a comma for the full stop and insert the words "or direct that the application be filed as a plaint on the applicant paying the requisite Court-fee within thirty days or such reasonable time as the Court may fix." (w.e.f. 9-6-1959)

Madras.-In Order XXXIII, in rule 7, after sub-rule (3), insert the following as sub-rule, namely:-

"(4) Where the application is for leave to sue in a representative capacity under Explanation (iii) to rule 1, or under sections 91, 92 or under Order 1, rule 8 the Court may, if it thinks fit for reasons to be recorded in writing, direct that the plaintiff shall give security for the payment of Court-fee."

8. Procedure if application admitted :- .

Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee 1[or fees payable for service of process] in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

9. Withdrawal of permission to sue as an indigent person :- .

The Court may, on the application of the defendant, or of the Government pleader, of which seven days clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn-

(a) if he is guilty of vexatious or improper conduct in the course of the suit;
(b) if it appears that his means are such that he ought not to continue to sue as 1[an indigent person]; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

1. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Orissa.-In Order XXVIII, in rule 9,-

(i) in clause (c), at the end, insert the word "or";

(ii) after clause (c), insert the following clause, namely:-

"(d) if he has entered into an arrangement with any other person to finance the litigation."

9A. Court to assign a pleader to an unrepresented indigent person :- .

(1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders to be assigned under sub-rule (1);

(b) the facilities to be provided to such pleaders by the Court;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).]

1. Ins. by Act No. 104 of 1976, sec. 81 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Bombay.-In exercise of the powers conferred by sub-rule (2) of rule 9A of Order XXXIII, of the Code of Civil Procedure, 1908, the High Court of Judicature at Bombay with the previous approval of the Government of Maharashtra, makes the following rules for assignment of a pleader to an unrepresented indigent:-

1. Short title and commencement.-These rules may be called Assignment of a Pleader to an Unrepresented Indigent Person (Maharashtra) Rules, 1980.

2. Definitions.-In these rules, unless the context otherwise requires;

(a) High Court means the High Court of Judicature at Bombay;

(b) Pleader assigned means a Pleader assigned under these rules to represent an indigent person;

(c) Panel means list of Pleaders prepared and maintained under these rules;

(d) Constituting Authority means the authority empowered under these rules to constituting the panel.

3. The authority referred to in column No. 1 below shall continue panel of pleaders willing to appear for an unrepresented indigent person in civil proceedings in Courts referred to in column No. 2 against them:

Name of Constituting Authority

Name of the Court for which panel to be constituted

1

Prothonotary and Senior Master High Court, Original Side, Bombay.
High Court, Original Side, Bombay.

2

Registrar, High Court, Appellate Side, Bombay.
High Court, Appellate Side, Bombay.

3

Special Officer, Nagpur.
High Court Bench at Nagpur.

4

District Judge.
Courts at District Headquarters.

5

Principal Judge, Bombay City Civil Court.
Bombay City, Civil Court.

6

Chief Judge, Small Causes Court senior most Judge at the Station.
Small Causes Court, Bombay for Courts outside District Headquarters.

Provided that the panel constituted by the senior most Judge outside the District Headquarters shall be subject to the previous approval of the District Judge.

4. The Constituting Authority shall prepare the panel in consultation with the President of the Bar Association, and if there be no Bar Association, in consultation with the pleaders practising in the Court for which panel is constituted.

5. Eligibility.-A pleader with a standing of not less than three years at the Bar shall be eligible for being taken on the panel.

6. Removal.-The Constituting Authority may strike off the name of a pleader from the panel when the pleader ceases to practice due to any reason or when he intimates his unwillingness in writing under rule 15 or when the Constituting Authority finds that the pleader after accepting a engagement neglects or refuses to discharge his duties. Before striking off a name for neglect or refusing to discharge duties properly, the Constituting Authority shall give an opportunity to the pleader to be heard.

7. Revision of Panel.-The Constituting Authority may add to the panel names of pleaders after following the procedure referred to in rule 4 as and when it deems necessary to do so.

8. When a pleader is to be assigned to an unrepresented indigent person such assignment shall be made from out of the panel by the Court concerned.

9. The pleader assigned shall not refuse assistance to the indigent person unless the Court is satisfied that he has good reasons for so refusing.

10. The Court may for sufficient reasons permit the pleader assigned, to withdraw from the proceeding and assign another to represent the indigent person. On such permission for withdrawal being granted, the pleader original assigned, shall hand over the papers relating to the proceeding to the pleader assigned subsequently.

11. The Court or Constituting Authority at any time if deemed proper may call for a report from the pleader assigned, regarding the progress of the suit or proceedings entrusted to him.

12. The pleader assigned shall take care that no notice is served, summons issued or petition presented without good cause in prosecution of the indigent persons cause.

13. Whilst a person sues or defends as an indigent person, the pleader assigned shall not take or agree to take or seek to obtain from him or any other person any fee, pro/it or reward for the conduct of his useness in the Court:

Provided that notwithstanding anything herein contained, the Court of a Judge shall have power to award costs against the adverse party or out of the property recovered in the suit and to direct payment thereof to the pleader assigned.

14. The pleader assigned the case under these rules shall be paid the fees in various Courts at the rates mentioned below:

(a)

In all legal proceedings in the High Court at Bombay and Nagpur and in City Civil Court in Bombay.

Rs. 50 per day subject to maximum of Rs. 150 in any one case.

(b)

In all proceedings in Courts at District Headquarters and in Small Causes Courts in BombayPuna and Nagpur.

Rs. 25 per day subject to a maximum of Rs. 100 in any one case.

(c)

In all proceedings in Courts in Taluka.

Rs. 15 per day subject to a maximum of Rs. 50 in any one case.

The expenditure on this account shall be met from budget grants sanctioned under budget head 214-Administration of Justice Legal Advisers and Counsel-M (i) and M (ii).

15. Intimation of unwillingness to continue on panel.-The pleader taken on the panel may if he so desire intimate in writing his unwillingness to continue to be on the panel and on receipt of such intimation, his name shall be deleted from the panel provided that Constituting Authority may request the pleader assigned to continue to represent the indigent person in the matters assigned. (By order of the Honble the Chief Justice and Judges)

[Vide Mah. Gazette Pt. IV-Ka, dated 18-9-1980.]

Calcutta.-In exercise of the powers conferred by article 227 (2) (b) of the Constitution of India and by sub-rule (2) of rule 9A of Order XXXIII of the Code of Civil Procedure the High Court of Calcutta, with the approval of the Government of West Bengal has framed the following rules which are published for general information:

Rules under Order XXXIII, rule 9A (2) of the Code of Civil Procedure:

1. (a) For the purpose of selection of pleaders to be assigned under sub-rule (1) of rule 9A of Order XXXIII of the Code the District Judge in consultation with the senior most judicial officers of the outlying stations shall prepare and maintain a panel of pleaders for (a) the district headquarters, and (b) the outlying stations.

The District Judge in his discretion may also consult the President of the Civil Bar Association.

(b) The panel to be proposed under sub-rule (1) shall be in two parts. The first part of the panel shall contain the names of suitable advocates who offer themselves to appear for the undefended indigent persons without charging any fee and part two thereof shall have the names of such advocates as are willing to appear for such persons at State expense.

(c) An advocate who has been in practice for not less than five years in the Civil Courts and whose name has been entered on the rolls of Bar Counsel of West Bengal shall be eligible for being brought on the panel of pleaders.

(d) The District Judge shall revise the panel every two years in consultation with the senior most judicial officers of the outlying stations.

(e) The District Judge shall circulate the panel to all the Civil Courts in the District.

(f) No assignment shall be made to any pleader whose name does not appear in the panel.

2. In any case where it is decided to assign a pleader under Order XXXIII of the Code, every Court trying a cause (hereinafter called "the Court") shall endeavour in the first instance to select a suitable advocate from that part of the panel which comprises the name of advocates willing to appear for undefended indigent persons without charging any fee. In case where it is not possible to assign a pleader, free of charges, the Court may assign a pleader at State expense.

3. The Court shall have power to terminate the assignment of a panel pleader for sufficient

reasons to be recorded in writing and to make fresh assignment of another panel pleader in his place:

Provided that a pleader engaged by the Court shall retire from the trial if and when the indigent person engages lawyer at his own expense.

4.(1) A common register of the panel pleaders to be assigned for undefended indigent persons at State expense shall be maintained at each station showing: (a) name of the pleader; (b) date of assignment; (c) Court by which assigned; (d) No. of the case; (e) No. of days of work; (f) fees paid.

(2) A statement containing the particulars to be entered in the register shall be sent to the District Judge by each Court after conclusion of every trial in which a panel pleader is assigned at State expense.

(3) Every Court at a station shall, before selecting a panel pleader call for and consult the common register in order to ensure an even distribution of assignments amongst such panel pleaders.

5. The ordinary fees payable to a panel pleader assigned at State expense shall not be less than Rs. 50 and not more than Rs. 300 for the entire case at the discretion of the Presiding Officer of the Court.

6. Any vacancy in the panel due to death, incapacity, resignation or any other cause may be filled up by the District Judge in the manner provided in rule 1.

7. All panel pleaders engaged at State expense shall maintain in duplicate a monthly Register of Work in the form prescribed in the Schedule in loose sheets, one sheet being used for each separate case in which the pleader appears and the

initial of the Presiding Officer shall be taken daily in the appropriate column. After the disposal of each case in which he appears he shall obtain the signature of the Presiding Officer to the certificate of correctness on the sheet showing the work done in his Court. The duplicate of such sheet shall be preserved in the office of the District Judge for two years from the date of sanction of the bill.

8. As early possible after the delivery of the judgment of the cases the panel pleader shall submit to the Presiding Officer a bill in the prescribed form for the work done supported by the sheet of the Register of Work containing the certificate of the Presiding Officer.

9. The bill shall be checked with the Register of Work by the Chief Ministerial Officer, who shall certify its correctness, endorse the relevant sheet as checked; with his initial and obtain the signature of the Presiding Officer. The bill and Register of Work shall then be submitted to the District Judge for passing and after satisfying ,r himself as to the correctness thereof, he shall pass the bill for payment.

10. The District Judge shall be Controlling Officer for payment and audit of all fees payable to panel pleaders engaged at State expense in the Civil Courts in his District.

SCHEDULE

FORM I

(Rule 7)

Register of Work

Date

No. and nature of case

Actual daily duration of hearing
Full or half day
Serial No. of consecutive days of hearing
Initial of Presiding Officer
(1)
(2)
(3)
(4)
(5)
(6)

Total number of days:
Certified correct
Signature of Presiding Officer
Date:

FORM II
(Rule 8)

Bill. of fee due to..... in....No.....of the Court of.....

Date
Register of Works No.
Full or half day
Amount of fee charged
Remarks
(1)
(2)
(3)
(4)
(5)

TotalRupees.....Paise.....only

Verified with the Register
of Work as correct
Signature of Chief Ministerial
Passed for Rupees..... (in words and figures)
Officer with date
Signature of Presiding Officer with date
District Judge

(Appellate Side : 15425, dated 22nd November, 1979)

Haryana.-The following rules have been framed for regulating the appointment of pleaders to represent indigent persons in civil suits:-

LEGAL AID TO INDIGENT PERSONS (PUNJAB, HARYANA AND
CHANDIGARH ADMINISTRATION) RULES, 1981

PART I

1. Short title and commencement-(1) The rules may be called the Legal Aid to the Indigent Persons {Punjab, Haryana and Chandigarh Administration) Rules, 1981

(2) These rules shall come into force from the date of their publication in the Official Gazette.

2. Definitions.-In these rules, unless the context otherwise requires,-

(a) High Court means the High Court of Punjab and Haryana at Chandigarh;

(b) Pleader includes any person whose name is entered on the rolls of the Bar Council of Punjab and Haryana maintained under the Advocates Act, 1961 and the rules framed thereunder;

(c) List means the list of advocates prepared and maintained by District Judge separately for cash sub-division of the District under these rules, willing to appear for the undefined indigent persons in civil suits at State expense or free of charge.

(d) Code means the Code of Civil Procedure, 1908, as amended from time to time.

PART II

3. Assignment of advocates for indigent persons.-(1) Where a person who is permitted by a Court to sue as an indigent person under sub- rule (3) of Rule 7 of Order XXXIII of the Code, is not presented by a pleader, the Presiding Officer of the Court shall, if the circumstances of the case so required, assign a pleader to him from the list.

(2) In any case where it is decided to assign a pleader under sub-rule (1), the Court shall endeavour in the first instance to select a suitable advocate from that part of the list which comprises the names of advocates, if any, willing to appear for undefended indigent persons without charging any fee.

PART III

4. Preparation of list.-(1) The District Judge shall prepare and maintain a list of 5 to 15 suitable advocates willing to appear for the undefended indigent persons at the state expense or without charging any fee separately for each sub-division of the district in relation to which he exercises jurisdiction, after consultation with the senior most Judicial Officer for the time being posted at the headquarters of each such sub-division and the president of the Bar Association of that place.

(2) The list to be prepared and maintained under sub-rule (1) shall be in two parts. The first part of the list shall contain the names of suitable advocates, who offer themselves to appear for the undefended indigent persons without charging any fee and part two thereof shall have the names of such advocates as are willing to appear for such persons at State expense and are selected for the purpose.

(3) An advocate with a standing of not less than five years at the Bar shall be eligible for being brought on the list under sub-rule (1). The District Judge shall so far as may be, persuade competent senior lawyers to enlist themselves for representing indigent persons without charging any fee.

(4) The District Judge shall revise the list in the month of December in each year.

(5) The District Judge, shall in the month of January in each year, communicate the names of the advocates on the list maintained for each sub-division of his District (s) to the High Court in the following form:- "j-

- (1) Name of the advocate
- (2) Date of birth
- (3) Qualification: University degrees Distinctions earned in Law (if any)
- (4) Date of enrolment at the Bar.
- (5) Place of practice.
- (6) Length of actual practice.
- (7) General reputation and standing at the Bar.
- (8) The Registrar shall cause the names on the list for each district to be entered separately in a Register.
- (9) The District Judge or the High Court may strike off the name of any advocate from the list without assigning any reason.

PART IV

5. Facilities to advocates selected from the list.-

- (1) Where an advocate is assigned to represent, indigent persons at State expense or otherwise, the Court shall allow a period of at least seven days to the advocate to prepare the brief and shall adjourn the hearing of the case for that purpose.
- (2) The Court shall allow, free of cost, inspection of the records of the case by the advocate so assigned.

PART V

6. Scale of fees.- (1) The ordinary fee payable to an advocate assigned to represent an indigent person at State expense, shall not be less than Rs. 50 and not more than Rs. 300 for the entire case, at the discretion of the presiding officer of the Court.

(2) In special cases the District Judge may add any reasonable amount not exceeding Rs. 100 to the ordinary fee allowed by sub-rule (1) with the prior approval of the High Court.

(3) No fee shall be payable for the day on which the case is adjourned without any proceeding being taken by the Court, except at the first hearing of the case: Providing that if an advocate assigned to represent an indigent person is required to retire at any time after the engagement of an advocate by the indigent person at his own expense, he shall be entitled to get a fee of Rs. 50 as compensation.

7. Maintenance of Diary by Advocates engaged at State expense.- An advocate engaged to represent an indigent person in any Court subordinate to the High Court at State expense shall, at the conclusion of each day of hearing in the case, prepare and submit for counter signatures by the Presiding Officer of the Court a diary containing following details fully set out:-

Date

The name and title of the case

Name of the party represented
Duration of hearing
Work done
Signature of the Presiding Officer
Remarks

8. Payment of fees.-(1) The District Judge shall be the controlling Officer for the payment and audit of all fees due to advocates engaged to represent indigent persons in Courts subordinate to the High Court.

(2) The advocates listed shall submit their bills to the District Judge within one month of the disposal of the case by the Court.

[Vide Notification No, 70/p3/CA./5/1908-R9A/Order/XXXIII, dated 7th May, 1981, published in Haryana Gazette, L.S. pp. 509-511, dated 19th May, 1981.]

Himachal Pradesh.-The following rules have been made for regulating the appointment of, Pleaders to represent indigent persons in civil suits, namely:-

LEGAL AID TO INDIGENT PERSONS (HIMACHAL PRADESH HIGH COURT) RULES, 1979.

PART I

1. Short title and commencement.-(1) These rules may be called the Legal Aid to the Indigent Persons (Himachal Pradesh High Court) Rules, 1979.

(2) These rules shall come into force with immediate effect.

2. Definitions.-In these rules, unless the context otherwise requires.-

(a) "High Court" means the High Court of Himachal Pradesh at Simla;

(b) "Pleader" includes any person whose name is entered on the rolls of the Bar Council of Himachal Pradesh maintained under the Advocates Act, 1961, and the Rules framed thereunder;

(c) "List" means the list of advocates prepared and maintained by the District Judge separately for each Sub-Division of the District under these rules, willing to appear for the undefended indigent persons in civil suits at State expense or free of charges;

(d) "Code" means the Code of Civil Procedure, 1908, as amended from time to time.

PART II

3. Assignment of advocate for indigent persons.-

(1) Where a person who is permitted by a Court to sue or a person who desires to plead a set off or counter claim in a suit filed against him as an indigent person under sub-rule (3) of Rule 7 and Rule 17, respectively, of Order XXXIII of the Code, is not represented by a pleader the Presiding Officer of the Court shall if the circumstances of the case so required, assign a pleader to him from the list

(2) In any case where it is decided to assign a pleader under sub-rule (1), the Court shall

endeavour in the first instance to select a suitable advocate from the first part of the list mentioned in sub-rule (4) of Part III, failing which the persons from the Part II of the list will be appointed.

PART III

4. Preparation of list.-

(1) The District Judge shall prepare and maintain a list of 3 to 10 suitable advocates willing to appear for the undefended indigent persons at the State expense or without charging any fee separately for each Sub-Division of the District in relation to which he exercises jurisdiction, after consultation with the senior most judicial officer for the time being posted at the headquarters of each such sub-division and the President of the Bar Association of that place.

(2) The list to be prepared and maintained under sub-rule (1) shall be in two parts. The first part of the list shall contain the names of suitable advocates who offer themselves to appear for the undefended indigent person (s) without charging any fee and part two thereof shall have the names of such advocates as are willing to appear for such persons at State expense and are selected for the purpose.

(3) An advocate with a standing of not less than three years at Bar shall be eligible for being brought on the list under sub-rule (1). The District Judge shall, so far as may be, persuade competent senior lawyers to enlist themselves for representing indigent persons without charging any fee.

(4) The District Judge shall revise the list in the month of December in each year.

(5) The District Judge shall in the month of January in each year, communicate the names of the advocates on the list maintained for each Sub-Division of his District(s) to the High Court in the following form:-

(1) Name of the Advocate.

(2) Date of birth.

(3) Qualification: University Degrees: Distinctions earned in law (if any)

(4) Date of enrolment at the Bar.

(5) Length of actual practice.

(6) The Registrar shall cause the names on the list for each district to be entered separately in a Register.

(7) The District Judge or the High Court may strike off the name of any advocate from the list without assigning any reason..

PART IV

5. Facilities to advocates selected from the list.- (1) Where an advocate is assigned to represent an indigent person at State expense or otherwise, the Court shall allow a period of at least seven days to the advocates to prepare the brief and shall adjourn the hearing of the case for that purpose.

(2) The Court shall allow free of costs inspection of the records of the case by the advocate so assigned,

(3) The Court, where the deposition of witness is recorded by a stenographer during trial shall, supply copies of such depositions to the advocate so appointed free of cost.

PART V

6. Scale of fees.-The ordinary fee payable to an advocate assigned to represent an indigent person at State expense, shall not be less than Rs. 50 and not more than Rs. 300 for the entire case, at the discretion of the Presiding Officer of the Court.

(2) In special cases, the District Judge may add any reasonable amount to the ordinary fee allowed by sub-rule (1) with the prior concurrence of the High Court.

(3) If an advocate assigned to represent an indigent person is required to retire at any time after the engagement of an advocate by the indigent person at his own expense, he shall be entitled to get the minimum of the amount of fee fixed under sub-rule (1) above as compensation, or such other amount as the Presiding Officer in his discretion may allow subject to maximum fixed in sub-rule (1).

7. Maintenance of diary by advocates engaged at State expense.-An advocate engaged to represent an indigent person in any court subordinate to the High Court at State expense shall, at the conclusion of each day of hearing in the case, prepare and submit for counter-signatures by the Presiding Officer of the Court a diary containing following details fully set out:--

Date

The name and title of the case

Name of the party

Duration of hearing

Work done

Signature of the Presiding Officer

8. Payment of fees.- (1) The District Judge shall be the controlling officer for the payment and audit of all fees due to advocates engaged to represent indigent persons in courts subordinate to the High Court.

The fee shall be debitable to the major Head "214-Administration of Justice Civil and Session Courts payment of Professional and Special Services."

(2) The advocates shall submit their bills to the District Judge within one month of the disposal of the case by the Court or such other extended time the District Judge may allow.

PART VI

9. Recovery of fee.- (1) Where an indigent person succeeds in the suit or counter-claim filed by him and is awarded costs, the Court shall direct that the pleaders fee paid to advocate under Rule 3 of the sub-rule (1) of Part II shall be included in the memo of costs appended to the decree-sheet and that amount shall be ordered to be recovered from the said person and the said amount shall be the first charge on the subject-matter of the decree.

(2) The amount of fee recovered shall be deposited in the government account under the proper head of Receipts.

(3) The District Judge shall submit to the High Court quarterly statement regarding the amount so recovered under Rule 9 (1) with particulars of the case.

[vide Notification No. HHC Admn. 22(6)/78, dated 6th November, 1979, Published in Himachal Pradesh Gazette, Pt. III, dated 15th December, 1979.]

10. Costs where 1[indigent person] succeeds :- .

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as 1[an indigent person]; such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

1. Subs. by Act No. 104 of 1976, sec. 81 for "pauper" (w.e.f. 1-2-1977).

11. Procedure where 1[indigent person] fails :- .

Where the plaintiff fails in the suit or the permission granted to him to sue as an 1[indigent person] has been withdrawn, or where the suit is withdrawn or dismissed,- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service 2[or to present copies of the plaint or concise statement], or (b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as 2[an indigent person].

1. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976, sec. 81 (w.e.f. 1- 2-1977).

HIGH COURT AMENDMENTS

Andhra Pradesh.-In Order XXXIII, for rule 11,- (i) substitute as in Madras by renumbering it as sub-rule (1) thereof; (ii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:- "(2) Where the suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, but no provision is made for the payment of Court-fee, the Court may direct either of or both the parties to pay the Court-fee or any proportionate part thereof as it thinks fit." (w.e.f. 14-9-1961).

Karnataka.-In Order XXXIII, for rule 11, substitute the following rule, namely:- "11. (1) Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or the suit is dismissed because the summons for the defendant to appear and answer has not been served upon him in consequence of the plaintiff's failure to pay the requisite charges for service or the suit is so dismissed because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff or any person added as a co-plaintiff to the suit to pay the Court-fee and in case of abandonment of part of the claim the proportionate court-fee which would have been payable by the plaintiff if he had not been permitted to sue as pauper.

(2) In cases where the plaintiff is dispaupered the Court may, instead of proceeding under sub-rule (1) order the plaintiff to pay the requisite court-fee within a time to be fixed by it and in default dismiss the suit and make and order for the payment of court-fee as in sub- rule (1).

(3) Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a minor plaintiff on a cause of action which accrued during the minority of such plaintiff the Court may order the next friend to personally pay the court-fee." {w.e.f.

30-3-1967)

Kerala.-Same as in Madras.

[Vide Notification No. BI-3312/58, dated 7th April, 1959].

Madras.-In Order XXXIII, for rule 11, substitute the following rule, namely:

11. Procedure where pauper fails.-

Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or where the suit is dismissed-

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the Court-fees or postal charge (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the Court-fee and in the case of abandonment of part of the claim the proportionate Court-fee, which would have been payable by the plaintiff if he had not been permitted to sue as a pauper. In case where the plaintiff is dispaupered the Court may, instead of proceeding under the previous paragraph order the plaintiff to pay the requisite Court-fee within a time to be fixed by it and to default dismiss the suit and make an order for the payment of Court-fee as in the previous paragraph.

Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a minor plaintiff on a cause of action which accrued during the minority of such plaintiff, the Court may order the next friend to personally pay the Court-fee."

11A. Procedure where indigent persons suit abates :- .

Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as 1[an indigent person] shall be recoverable by the State Government from the estate of the deceased plaintiff.

1. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

12. State Government may apply for payment of court-fees. :- .

The State Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or rule 11A.

HIGH COURT AMENDMENTS

Kerala.-Same as in Madras, {w.e.f. 9-6-1959)

Madras.-In Order XXXIII,- (a) renumber rule 12 as sub-rule (1) thereof; and (b) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:- "(2) Notice to State Government before payment.-No order for payment out of money standing to the credit of any suit instituted in forma pauperism shall be made on the application of any party except after notice duly to the Government Pleader on behalf of the Government" (w.e.f. 10-8-1955)

13. State Government to be deemed a party :- .

All matters arising between the State Government and any party to the suit under rule 10, rule 11 rule 11A or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XXXIII, after rule 13, insert the following rule, namely:- "13A. If any money is outstanding to the credit of a suit or appeal or other proceeding instituted, preferred or taken in forma pauperism no order for payment out of such money shall be made on application of any party except after due notice to the State Government", (w.e.f. 15-2-1956)

14. Recovery of amount of court-fees. :- .

Where an order is made under rule 10, rule 11 or rule 11 A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

1. Subs. by Act 24 of 1942, sec. 2 for rule 14.

15. Refusal to allow applicant to sue as indigent person to bar subsequent application of like nature :- .

An order refusing to allow the applicant to sue as 1[an indigent person] shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right;

2[Provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,] the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as 3[an indigent person.]

1. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

2. Subs. by Act No. 104 of 1976 for certain words (w.e.f. 1-2- 1977).

3. Subs. by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Rajasthan.-In Order XXXIII,- (a) renumber rule 15 as sub-rule (1) thereof; and (b) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:- "(2) Nothing in sub-rule (1) shall prevent the Court while rejecting an application under rule 5 or refusing an application under rule 7 from granting time to the applicant to pay the requisite Court-fee within a time to be fixed by the Court; and upon such payment the suit shall be deemed to have been instituted on the date on which the application was presented."
(w.e.f. 14-8-1954)

15A. Grant of time for payment of court-fee. :- .

Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in 2[****] rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Omitted by Act No.19 of 1988.

16. Costs :- .

The costs of an application for permission to sue as 1[an indigent person] and of an inquiry into indigency shall be costs in the suit.

1. Subs, by Act No. 104 of 1976 for "pauper" (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XXXIII, after rule 16, insert the following rules, namely:-

17. In every case, where a person is suing as a pauper, the counsel appearing for him shall file along with his vakalatnama a certificate stating the fee, if any, he has actually received and/or as stipulated to receive from the pauper or on his behalf in the suit and if, upon such a certificate the Court is satisfied that his means are such that he ought not to continue to sue as a pauper or that he is being financed by a third party, it shall be open to the Court to dispauper such a person.

18. Where the pauper is unable to engage a counsel, the Court may assign an advocate or pleader to assist him.

19. It shall be the duty of the Advocate or Pleader who may be assigned by the Court to assist a pauper to see that notices are served, summonses issued or petitions presented only on good and sufficient grounds and he shall also report to the Court every six months the progress of the suit.

20. After a person has been granted leave to sue as a pauper, no person shall take, except in pursuance of an agreement as certified to Court under rule 17 or agree to take or seek to obtain from him, any fee, profit or reward for the conduct of his business in the Court: Provided that, notwithstanding anything herein contained, the Court shall 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 Advocate or Pleader representing the pauper.

21. The word suit in these rules includes appeal."

[Vide Notification No. ROC No. 1186/56-B1, dated 9th April, 1958.]

17. Defence by an indigent person :- .

Any defendant, who desire to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply

to him as if he were a plaintiff and his written statement were a plaint.

1. Ins. by Act No. 104 of 1976, sec. 81 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Bombay.-In Order XXXIII, for rule 17, substitute the following rule, namely:-

"17. Defence by an indigent person.-Any defendant, who desire to plead a set off or counter-claim, may be allowed to set up such claim as an indigent person and the rules contained in this order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint, and if he is required to issue a third party notice, the third party notice shall also be deemed to be a plaint for the purpose of this rule." (w.e.f. 1-10-1983)

18. Power of Government to provide for free legal services to indigent persons :- . .

(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which, such services may be rendered.]

1. Ins. by Act 104 of 1976, sec. 81 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Bombay.-In Order XXXIII, after rule 18, insert the following rule, namely:- "19. An indigent not to compromise suit without leave of Court. -No cause, suit or matter commenced or carried on by an indigent plaintiff or defendant shall be compromised on any account whatsoever leave first had and obtained from the Judge in Chambers or the Court." (w.e.f. 1-10-1983)

ORDER 34 :- SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY :-

1. Parties to suits for foreclosure sale and redemption. :- .

Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation-A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgage need not be joined in a suit to redeem a subsequent mortgage.

2. Preliminary decree in foreclosure suit :- .

(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree-

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for-

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date, and

(c) directing-

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights, of any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10 as the case may be, of Appendix D with such variations as the circumstances of the case may require.]

1. Subs. by Act 21 of 1929, sec. 4, for rule 2.

HIGH COURT AMENDMENTS

Orissa.-Same as in Patna.

Patna.-In Order XXXIV, in rule 2, sub-rule (2), after the words "The Court may", insert the words "of its own motion or":

[Vide Notification No. 1-R, dated 7th January, 1936.]

3. Final decree in foreclosure suit :- .

(1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary-

(b) ordering him to re-transfer at the cost or the defendant the mortgaged property as directed in the said decree, and also, if necessary-

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in his behalf, pass a final decree declaring that the defendant and all persons claiming through or under him or debarred from all right to redeem the mortgaged property and also, if necessary ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.]

1. Subs. by Act 21 of 1929, sec. 4, for rule 3.

4. Preliminary decree in suit for sale :- .

(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Power to decree sale in foreclosure suit-In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in all mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the

adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as circumstances of the case may require.]

HIGH COURT AMENDMENTS

Allahabad.- In Order XXXIV, in rule 4, in sub-rule (2), after the words "The Court may", insert the words "of its own motion, or".

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.].

Calcutta.- In Order XXXIV, in rule 4, renumber sub-rules (3) and (4) as sub-rules (4) and (5) respectively and insert the following sub-rule, namely.-

"(3) The Court may in its discretion direct in the decree for sale that if the proceeds of the sale are not sufficient to pay the mortgage debt, the mortgagor shall pay the balance personally."

1. Subs. by Act 21 of 1929, sec. 4, for rule 4.

5. Final decree in suit for sale :- .

(1) Where, on or before the day fixed or at a time before the confirmation of a sale made in pursuance of a final decree pass under sub-rule (3) of this rule, the defendant makes payment into Court of amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass final or, if such decree has passed, order-

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and if necessary-

(b) ordering him to transfer the mortgaged property as directed in the said decree and, also, if necessary-

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent, of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.]

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Kerala.-Same as in Madras, (w.e.f. 9-6-1959)

Madras.-In Order XXXIV, in rule 5, in sub-rule (3), after the words "plaintiff in this behalf", insert the words "and after notice to all parties".

[Vide ROC No. 4955-B-1 of 1930.]

1. Subs. by Act 21 of 1929, sec. 4, for rule 6.

6. Recovery of balance due on mortgage in suit for sale. :- .

Where the net proceeds of any sale held under 1[rule 5] are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

1. Subs, by Act No. 104 of 1976 for "the last preceding rule" (w.e.f. 1-2-1977).

7. Preliminary decree in redemption suit. :- .

(1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree-

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for-

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to the date, in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so at that date; and

(c) directing-

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses and provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges expenses and interest, the defendant shall be entitled to apply for a final decree-

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional

sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgage property be, sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure of sale, as the case may be, extend due in respect of subsequent costs, charges, expenses and interest.

1. Subs. by Act 21 of 1929, sec. 4, for rule 7.

8. Final decree in redemption suit :- .

(1) Where, final decree debaring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made under by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order-

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree, and, if necessary,-

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree, and also, if necessary,-

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (1), deposits in the Court for payment to the purchaser a sum equal to five per cent, of the amount of the purchase-money paid into by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent, thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,-

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

8A. Recovery of balance due on mortgage in suit for redemption :- .

Where the net proceeds of any sale held under 1[rule 8] are found insufficient to pay the amount due to the defendant, the Court,2[on application by him in execution], may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.]

1. Subs. by Act No. 104 of 1976 for "the last proceeding rule" (w.e.f. 1-2-1977).
2. Subs. by Act No. 104 of 1976 for "on application by him" (w.e.f. 1-2-1977).
3. Ins. by Act 21 of 1929, sec. 5.

9. Decree where nothing is found due or where mortgagee has been overpaid :- .

Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff and amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

10. Costs of mortgagee subsequent to decree :- .

In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment:

1[Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).
2. Subs. by Act 21 of 1929, sec. 6, for rule 10.

10A. Power of Court to direct mortgagee to pay mesne profits :- .

Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Bombay.-In Order XXXIV, for rule 10A, substitute the following rule, namely:-

"10A. Costs of mortgaged subsequent to decree.-In mortgage suit where under the mortgage the possession of the mortgaged property is with the mortgagee, the mortgagor may tender or deposit, before or at the time of the institution of the suit, or during the pendency of the same, the sum due on the mortgage. The tender by the mortgagor must be in writing. Notice of any such deposit shall be given by the Court to mortgagee. If the sum so tendered or deposited is in the opinion, of the Court, substantially sufficient to satisfy the mortgage, the Court shall direct the mortgagee to pay to the mortgagor, mesne profits as may be determined from the date of such tender or notice of deposit till the actual delivery of possession by the mortgagee to the mortgagor."

[Vide Notification No. P.O. 102/77, dated 31st December, 1987.]

11. Payment of interest :- .

In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:-

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage-

(i) on the principal amount found or declared due on the mortgage,-at the rate payable on the principal, or, where such rate at the Court deems reasonable, and

(ii) [Sub-clause (ii) Omitted by Act 66 of 1956, sec. 14 (w.e.f. 1-1-1957)].

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgagee-security up to the date of the preliminary decree and added to the mortgage-money,-at the rate agreed between the parties, or, failing such rate, at such rate not exceeding six per cent, per annum as the Court deems reasonable; and

(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at the such rate as the Court deems reasonable.]

1. Subs. by Act 21 of 1929, sec. 6, for rule 11.

12. Sale of property subject to prior mortgage :- .

Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

13. Application of proceeds :- .

(1) Such proceeds shall be brought into Court and applied as follows:-

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage is consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

14. Suit for sale necessary for bringing mortgaged property to sale. :- .

(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in 1 Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 (4 of 1882), has not been extended.

HIGH COURT AMENDMENTS

Bombay.-In Order XXXIV, after rule 14, insert the following rule, namely:-

"14A. Special provisions regarding a composite decree combining in itself a preliminary as well as a final decree.- (1) Notwithstanding anything hereinbefore contained, where the sale of any mortgaged property is decreed under any composite decree which combines in itself a preliminary as well as a final decree as per compromise between the parties or as required or permissible under any special law or under an order, award or adjudication which is deemed to be a decree of a Civil Court, or which is required to be executed as a decree or as if it is a decree of a Civil Court, and the judgment-debtor (mortgagor), before the day fixed in that behalf or at any time before the confirmation of the sale made in pursuance of such decree, order, award or adjudication, makes payment into Court of all amounts due from him to the decree-holder (mortgagee) on the date under the said decree, order, award or adjudication including all subsequent costs, charges, expenses and interest, and also deposits in Court for payment the purchaser a sum equal to five per cent, of the amount of the purchase money paid into Court by the purchaser, the Court shall, on application made by the judgment-debtor (mortgagor) in this behalf, set aside the sale and mark the decree, order, award or adjudication as satisfied, and pass in order-

(a) ordering the decree-holder (mortgagee) to deliver up to the judgment-debtor (mortgagor) or his nominee, all documents in the possession or power relating to the mortgaged property and if necessary.

(b) ordering him to retransfer to mortgaged property to the judgment-debtor (mortgagor) or his nominee at his cost free from the mortgage and from all incumbrances created by the decree-holder (mortgagee), or any person claiming under him, or where the decree-holder (mortgagee) claims by derived title, by those under whom he claims, and also if necessary.

(c) ordering him to put the judgment-debtor (mortgagor) or his nominee in possession of the property.

(2) Where such deposit has been made, purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him together with a sum equal to five per cent, thereof.

(3) The Court may, upon good cause shown and upon terms to be fixed by the Court, from time to time at any time before the sale is confirmed extend the time fixed for the payment of the amount due under the decree, under, award of adjudication, including all subsequent costs, charges, expenses and interest." (w.e.f. 1-10-1983)

Kerala.-In Order XXXIV, in rule 14, omit sub-rule (2).

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

15. Mortgages by the deposit of title deeds and charges :- .

1[(1)] All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882 (4 of 1882);

2[(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.]

1. Renumbered as sub-rule (1) of rule 15 by Act No. 104 of 1976, sec. 82 w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. Subs. by Act 21 of 1929, sec. 7, for rule 15.

HIGH COURT AMENDMENTS

Allahabad.-In Order XXXIV.-

(a) renumber rule 15 as sub-rule (1) thereof, and

(b) after sub-rule (1), as so renumbered, insert the following sub-rule, namely:-

"(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that very decree." (w.e.f. 17-1-1953)

Kerala.-For Order XXXIV, substitute the following Order, namely:-

"ORDER. XXXIV SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

1. Parties to suits for foreclosure, sale and redemption.-Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.-A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

2. Decree in foreclosure suit.-(1) In a suit for foreclosure, if the plaintiff succeeds, the Court

shall pass a decree-

(a) declaring the amount due to the plaintiff on date of such decree for-

(i) principal and interest on the mortgage;

(ii) the costs of the suit, if any, awarded to him; and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security, together with interest thereon; and

(b) directing-

(i) that, if the defendant pays into Court the amount so declared due with future interest and subsequent costs as are mentioned in Rule 7 on a day within six months from the date of the decree to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such persons as he appoints, all documents f, in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at the cost of the defendant free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him or, where the plaintiff claims by derived title by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; but

(ii) that, if such payment is not made on or before the day fixed by the Court, the defendant and-all persons claiming through or under him shall be debarred from all rights to redeem the property; and also if necessary the defendant shall put the plaintiff in possession of the property.

(2) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or surrogated to the right of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be; of Appendix D with such variations as the circumstances of the case may require.

(3) On the expiry of the date fixed for payment of the amount declared due to the mortgagee, all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

3. Decree in suit for sale.~(i) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a) and (b) (i) of rule 2 (1) and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after deducting therefrom the expenses of the sale) be applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance,/if any be paid to the defendant or other persons entitled to receive the same; and that, in case the proceeds of such sale be insufficient to pay the amount due to the plaintiff, the balance, if legally recoverable from the defendant otherwise than out of the property sold be paid by the defendant personally.

(ii) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is an anomalous mortgage, the Court may, at the instance of the plaintiff or of any other person interested either in the mortgage money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(iii) Where in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from or subrogated to the rights of, any such mortgagees

are joined as parties the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D, with such variations as the circumstances of the case may require.

2. Decree in foreclosure suit.-(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a decree-

(a) declaring the amount due to the plaintiff on date of such decree for-

(i) principal and interest on the mortgage;

(ii) the costs of the suit, if any, awarded to him; and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security, together with interest thereon; and

(b) directing-

(i) that, if the defendant pays into Court the amount so declared due with future interest and subsequent costs as are mentioned in Rule 7 on a day within six months from the date of the decree to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such persons as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at the cost of the defendant free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him or, where the plaintiff claims by derived title by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; but

(ii) that, if such payment is not made on or before the day fixed by the Court, the defendant and all persons claiming through or under him shall be debarred from all rights to redeem the property; and also if necessary the defendant shall put the plaintiff in possession of the property.

(2) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or surrogated to the right of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be; of Appendix D with such variations as the circumstances of the case may require.

(3) On the expiry of the date fixed for payment of the amount declared due to the mortgagee, all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

3. Decree in suit for sale.-(i) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a) and (b) (i) of rule 2 (1) and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after deducting therefrom the expenses of the sale) be applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance, any be paid to the defendant or other persons entitled to receive the same; and that, in case the proceeds of such sale be insufficient to pay the amount due to the plaintiff, the balance, if legally recoverable from the defendant otherwise than out of the property sold be paid by the defendant personally.

(ii) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is an anomalous mortgage, the Court may, at the instance of the plaintiff or of any other person interested

either in the mortgage money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(iii) Where in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from or subrogated to the rights of, any such mortgagees are joined as parties the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D, with such variations as the circumstances of the case may require.

4. Decree in suit for redemption.-In a suit for redemption, if the plaintiff succeeds, the Court shall pass decree-

(a) declaring the amount due to the defendant at the date of such decree for-

(i) principal and interest on the mortgage;

(ii) the costs of the suit, if any, awarded to him; and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security, together with interest thereon; and

(b) directing-

(i) that, if the plaintiff pays into Court the amount so declared due with subsequent interest and costs as are mentioned in Rule 7, on a day within six months of the decree to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall if so required, re-transfer the property to the plaintiff at his cost, free from the mortgage and from all encumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property; and

(ii) that, if such payment is not made on or before the date so fixed, the plaintiff shall in the case of a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, be debarred from all rights to redeem the property and also, if necessary, put the defendant in possession of the mortgaged property; and that if desired by the defendant in the suit itself, in the case of any mortgage other than an usufructuary mortgage, a mortgage by conditional sale or such an anomalous mortgage as aforesaid the mortgaged property or a sufficient portion thereof be sold and the proceeds of the sale (after deducting therefrom the expenses of the sale) be applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same and that, in case the net proceeds of such sale be insufficient to pay the amount due to the defendant, the balance be paid by the plaintiff personally if the balance is legally recoverable from the plaintiff otherwise than out of the property sold.

5. Date of payment.-The Court may, upon good cause shown and upon such terms, if any, as it thinks fit, postpone the date fixed for payment under this Order from time to time.

6. Decree where nothing is found due or where mortgage has been overpaid.- Notwithstanding anything herein before contained, if it appears in a redemption suit that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged

property.

7. Costs of mortgagee subsequent to decree.-In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage money such costs of the suit and other costs, charges and expenses, as have been properly incurred by him since the decree for foreclosure, sale or redemption up to the time of actual payment.

8. Sale of property subject to prior mortgage,-Where any property the sale of which is directed under this Order is subject to a prior mortgage the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

9. Application of proceeds.-

(i) Such proceeds shall be brought into Court and applied as follows:-

First, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

Secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and costs, properly incurred in connection therewith;

Thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

Fourthly, in payment of the principal money due on account of the mortgage; and

Lastly, the residue, if any, shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(ii) Nothing in this rule or in Rule 8 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

10. Suit for sale necessary for bringing mortgaged property to sale.-Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II rule 2.

11. Mortgages by the deposit of title-deeds and charges.-All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58 and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882."

[Vide Kerala Gazette, Pt. III, No. 46, dated 20th November, 1990.]

ORDER 35 :- INTERPLEADER :-

1. Plaintiff in interpleader-suit :- .

In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaintiffs, state-

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

2. Payment of thing claimed into Court :- .

Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Procedure where defendant is suing plaintiff :- .

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

4. Procedure at first hearing :- .

(1) At the first hearing the Court may-

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct-

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff, and shall proceed to try the suit in the ordinary manner.

5. Agents and tenants may not institute interpleader suits :- .

Nothing in the Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

6. Charge for plaintiffs costs :- .

Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER 36 :- SPECIAL CASE :-

1. Power to state case for Courts opinion :- .

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,-

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where value of subject-matter must be stated :- .

Where the agreement is for the delivery of any property; or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

3. Agreement to be filed and registered as suit :- .

(1) The agreement if framed in accordance with the rules hereinbefore contained, may be filed 1[with an application] in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) 2[The application] when so filed, shall be numbered and registered as a suit between one

or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom 3[the application was presented.]

1. Ins. by Act No. of 104 of 1976 (w.e.f. 1-2-1977).

2. Subs, by Act No. 104 of 1976 for "The agreement" (w.e.f. 1-2-1977).

3. Subs, by Act No. 104 of 1976 "it was presented" (w.e.f. 1-2-1977).

4. Parties to be subject to Courts jurisdiction :- .

Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. Hearing and disposal of case :- .

(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit-

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

(b) that they have a bona fide interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow:

6. No appeal from a decree passed under rule 5 :- .

No appeal shall lie from a decree passed under rule 5.]

1. Ins. by Act No. of 104 of 1976 (w.e.f. 1-2-1977).

ORDER 37 :- SUMMARY PROCEDURE :-

1. The Words "On Negotiable Instruments" omitted by Act 104 of 1976, sec. 84 (w.e.f. 1 -2-1977). :- .

1[1. Courts and classes of suits to which the Order is to apply

(1) This Order shall apply to the following Court, namely:-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts;

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange, hundies and promissory notes;

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

(i) on a written contract, or

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

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.]

1. Subs. by Act No. 104 of 1976 for rule 1 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Bombay.-(1) In Order XXXVII, in rule 1, for sub-rule (1), substitute the following sub-rule, namely:-

"1. This order shall apply to the following Courts, namely:-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) such other Courts as may be specifically empowered in this behalf by the High Court from time to time by a Notification in the Official Gazette: Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories or suits as it deems proper and may also from time to time, as the circumstances of the use may require, by subsequent notification in the Official Gazette, further restrict, enlarge, or vary, the categories of suits to be brought under the operation of this Order as it deems proper." (w.e.f. 1-10-1983)

Kerala.-Omit Order XXXVII. (w.e.f. 9-6-1959)

2. Institution of summary suits :- .

(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,-

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint;

(c) the following inscription, immediately below the number of the suit in the title of the suit,

namely:-

"(Under Order XXXVII of the Code of Civil Procedure, 1907)."

(2) the summons of the suit shall be in Form No. 4 in Appendix B or in such other form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

1. Subs. by Act No. 104 of 1976 for rule 2 (w.e.f. 1-2-1977).

3. Procedure for the appearance of defendant :- .

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise order, all summonses, notices and other judicial processes required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by pre-said letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made

and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security with the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, execute the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]

1. Subs, by Act No. 104 of 1976 for rule 3 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Delhi.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Punjab.-In Order XXXVII, in rule 3, for sub-rule (3), substitute (he following sub-rule, namely:-

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

4. Power to set aside decree :- .

After decree for the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

5. Power to order bill, etc., to be deposited with officer of Court :- .

In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. Recovery of cost of noting non-acceptance of dishonoured bill or note- :- .

The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Procedure in suits :- .

Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

HIGH COURT AMENDMENT

Karnataka.-After Order XXXVII, insert the following Order, namely:-

"ORDER XXXVIIIA
INTERLOCUTORY APPLICATIONS
Applications

1. An interlocutory application means an application to the Court in any suit, appeal or proceeding already instituted in such Court other than an application for execution of a decree or order or for review of judgment or for leave to appeal.
2. Except where otherwise prescribed by rules or otherwise provided by any law for the time being in force, an interlocutory application shall state only the order prayed for and shall not contain any statement of facts or argumentative matter. Every application in contravention of this rule shall be returned for amendment or rejected.
3. Every interlocutory application shall be supported by an affidavit. Where, however, the facts on which the application is based appear from the records in Court or relate to any act or conduct of the applicants pleader himself, the Court may permit memorandum of facts signed by the applicants pleader to be filed instead of an affidavit.
4. Any fact required to be proved upon an interlocutory proceeding shall, unless otherwise prescribed by rule or ordered by Court, be proved by affidavit, but the Judge may in any case direct evidence to be given orally, and thereupon the evidence shall be recorded and exhibits marked in the same manner as in a suit." (w.e.f. 30-3-1967)

ORDER 38 :- ARREST AND ATTACHMENT BEFORE JUDGMENT :-

Arrest before judgment

1. Where defendant may be called upon to furnish security for appearance- :- .

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,-

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him-

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court his property or any part thereof, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security, for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiffs claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until

the further order of the Court.

2. Security :- .

(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. Procedure on application by surety to be discharged :- .

(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Procedure where defendant fails to furnish security or find fresh security :- .

Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

HIGH COURT AMENDMENT

Kerala.-In Order XXXVIII,-

(a) re-number rule 4 as sub-rule (1) thereof; and

(b) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

"(2) The provisions of Order XXI, rule 39 as to allowances payable for the subsistence of judgment-debtor shall apply to all defendants arrested under this Order."

[Vide Notification No. BI-3312/58, dated 9th June, 1959.]

Attachment before judgment

5. Where defendant may be called upon to furnish security for production of property :- .

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

1[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.]

1. Ins. by Act No. 104 of 1976, sec. 85 (w.e.f. 1-2-1977).

6. Attachment where cause not shown or security not furnished :- .

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

HIGH COURT AMENDMENT

Bombay.-In Order XXXVIII, in rule 6, in sub-rule (2), after the words "the required security", insert the words "or gives an undertaking to the Court to do or not to do a thing", (w.e.f. 1-10-1983)

7. Mode of making attachment :- .

Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Adjudication of claim to property attached before judgment :- .

Where any claim is preferred to property attached before judgment, such claim shall be

adjudicated upon in the manner hereinbefore provided for the adjudicated of claims to property attached in execution of a decree for the payment of money.]

1. Subs. by Act No. 104 of 1976 for rule 8 (w.e.f. 1-2-1977).

9. Removal of attachment when security furnished or suit dismissed :- .

Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale :- .

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Property attached before judgment not to be re-attached in execution of decree :- .

Where property is under attachment by virtue of the provisions of this order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

11A. Provisions applicable to attachment :- .

(1) The provisions of this Code applicable to an attachment made in execution of a decree shall so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Madras.-In Order XXXIX, after Rule 11A, insert the following rule, namely:-

"11B. Order of attachment to be communicated to the registering officer.-Any order of attachment passed under rule 5 or 6 of this order and any order raising the attachment passed under rule 9 of this order shall be communicated to the registering officer within the local limits of whose jurisdictions the whole or any part of the immovable property completed in such order, is situate."

[Vide Tamil Nadu Government Gazette, Pt. III, Sec. 2, dated 15th July, 1987.]

12. Agricultural produce not attachable before judgment :- .

Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of

any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

13. Small Cause Court not to attach immovable property :- .

Nothing in this Order shall be deemed to empower any Court of Small Causes to make order for the attachment of immovable property.]

1. Ins. by Act 1 of 1926, sec. 4.

HIGH COURT AMENDMENT

Kerala.-In Order XXXVIII, in rule 13, for the words "Court of Small Causes", substitute the words "Court exercising Small Cause jurisdiction".

[Vide Notification No, BI-3312/58, dated 9th June, 1959.]

ORDER 39 :- TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS :-

Temporary injunctions

1. Cases in which temporary injunction may be granted :- .

1Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to 2[defrauding] his creditors,

3[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 3[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

4[* * *]

1. Amendment of Order XXXIX Rule I made by Act No. 46 of 1999, section 30 has been repealed by Act No. 22 of 2002, section 16 (w.e.f. 1-7-2002).

2. Subs, by Act No. 104 of 1976, for "defraud" (w.e.f. 1-2-1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

4. Sub-rule (2) ins. by Act 46 of 1999, sec. 30 and section 30 of the Act 46 of 1999, by which it was so inserted, has been omitted by Act 22 of 2002, sec. 16 (w.e.f. 1-7-2002).

HIGH COURT AMENDMENTS

Andhra Pradesh.-For Order XXXIX, for rule 1, substitute the following rule, namely:-

"1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors; or

(c) that the defendant threatens to dispossess the plaintiff, or otherwise cause injury or loss to the plaintiff,

the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting damaging alienation sale, removal or disposition of the property, or dispossessing or otherwise causing injury or loss as the Court thinks fit, until the disposal of the suit or until further orders." (w.e.f. 26-7-1956).

Calcutta.-In Order XXXIX,-

(a) renumber rule 1 as sub-rule (1) thereof; and

(b) after sub-rule (1) as so renumbered, insert the following sub-rules, namely:-

"(2) In case of disobedience, or of breach of the terms of such temporary injunction or order, the Court granting the injunction or making such order may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil person for a term not exceeding six months, unless in the meantime the Court directs his release. (3) The property attached under sub-rule (2) may, when the Court considers it fit so to direct, be sold and, out of the proceeds, the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto." (w.e.f. 3-2-1933)

Gauhati.-Same as in Calcutta.

Kerala.-Order XXXIX,-

(a) renumber rule 1 as sub-rule (1) thereof;

(b) in sub-rule (1) as so renumbered, in clause (a), after the words "wrongfully sold", insert the words "or delivered";

(c) after sub-rule (1) as so renumbered, inset the following sub-rule, namely:-

"(2) In case of disobedience of any order passed under sub-rule (1) the Court granting injunction may proceed against the person guilty of such disobedience under sub-rules (3) and (4) of rule 2 of this Order." (w.e.f. 9-6-1959)

Orissa.-Same as in Pama.

Patna.-In Order XXXIX, in rule 1, at the end, insert the following provisos, namely:- "Provided that no such temporary injunction shall be granted if it would contravene the provisions of section 56 of the Specific Relief Act (Act 1 of 1877): Provided further that an injunction to restrain a sale, or confirmation of a sale, or to restrain delivery of possession, shall not be granted except in a case where the applicant cannot lawfully prefer, and could not lawfully have preferred, a claim to the property or objection to the sale, or to the attachment preceding it, before the Court executing the decree."

2. Injunction to restrain repetition or continuance of breach :- .

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

1[* * *]

1. Sub-rules (3) and (4) omitted by Act No. 104 of 1976, sec. 86 (w.e.f, 1-2-1977).

STATE AMENDMENTS

Madhya Pradesh.-In Order 39, rule 2, in sub-rule (2), insert the following proviso:-

"Provided that no such injunction shall be granted-

(a) where no perpetual injunction could be granted in view of the provisions of section 38

(b) to stay, the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removable or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or Corporation owned or controlled by the State Government; or

(c) to stay, any disciplinary proceeding, pending or intended or, the effect of any adverse entry against any, person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government; or

(d) to restrain any election; or

(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished; and any order for injunction granted in contraven- tion of these provisions shall be void." [M.P. Act 29 of 1984].

Uttar Pradesh.-In rule 2, sub-rule (2), insert the following proviso:- "Provided that no such injunction shall be granted-

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (47 of 1963), or

(b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee including any employee of the Government, or

(c) to stay any disciplinary proceeding pending or intended, or, the effect of any adverse entry, against any employee of the Government, or

(d) to affect the internal management or affairs of any educational institution including a University, or a Society, or

(e) to restrain any election, or

(f) to restrain, any auction intended to be made or, the effect of any auction made, by the Government unless adequate security is furnished, or

(g) to stay the proceedings of the recovery of any dues recoverable as land revenue unless adequate security is furnished, or

(h) in any matter where a reference can be made to the Chancellor of a University under any enactment for the time being in force;

and any order for injunction granted in contravention of these provisions shall be void".

[U.P. Act 57 of 1976 amended by Notification dated 3.10.1981].

2A. Consequence of disobedience or breach of injunction :- .

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Patna.-In Order XXXIX, in rule 2A, in sub-rule (1), after the words and figure "rule 2" and before the words "or breach of", insert the words and figures "or section 151".

[Vide Notification No. 243/R, dated 3rd August, 1979.]

3. Before granting injunction, Court to direct notice to opposite party :- .

The Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

1[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the

order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XXXIX, after rule 3, insert the following rules, namely:-

"3 A. In any case where a temporary injunction is granted, the Court may, at the time of the order, or at any time during the pendency of the injunction, call upon the applicant to furnish security for the amount of damages that the Court may determine as payable by the party obtaining the injunction to the other party as compensation for any injury or loss that may be sustained by the letter by reason of the injunction.

3B. The Court shall, on application made after the disposal of the suit, determine the amount payable under rule 3A and make an order awarding it to the applicant."

3A. Court to dispose of application for injunction within thirty days. :- .

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

HIGH COURT AMENDMENT

Allahabad.-In Order XXXIX, omit rule 3A.

[Vide Notification No. 103/IV-L-360, dated 3rd February, 1981 (w.e.f. 3-10-1981).]

4. Order for injunction may be discharged, varied or set aside :- .

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

1[Provided that if in an application for temporary injunction or in any affidavit support such application a part has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused under hardship to that party.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

STATE AMENDMENTS

Madhya Pradesh.-In Rule 4:-

(i) after the words "by the Court", inserted the words "for reasons to be recorded, either on its own motion or"; and

(ii) at the end, add the following proviso:-

"Provided also that if at any stage of the suit it appears to the Court that the party in whose favour the order of injunction exists is delaying the proceedings or is otherwise abusing the process of Court, it shall set aside the order of injunction." [M.P. Act 29 of 1984].

Uttar Pradesh.-Same as that of Madhya Pradesh except for the word "delaying" substitute "dilating" in the proviso. [U.P. Act 57 of 1976].

5. Injunction to corporation binding on its officer :- .

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory orders

6. Power to order interim sale :- .

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject-matter of such suit or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. Detention, preservation, inspection, etc., of subject-matter of suit. :- .

(1) the Court may, on the application of any party to a suit, and on such terms as it thinks fit,-

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or, as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to person authorized to enter under this rule.

HIGH COURT AMENDMENT

Punjab, Haryana and Chandigarh.-In Order XXXIX, in rule 7, in sub-rule (1), for clause (a), substitute the following clause, namely:-

"(a) make an order for detention, preservation or inspection of any relevant documents or other evidence or of any property which is the subject-matter of such suit or as to which any question may arise therein." (w.e.f. 11-4-1975)

8. Application for such orders to be after notice :- .

(1) An application by the plaintiff for an order under rule 6 or rule may be made¹[****] at any time after institution of the suit.

(2) An application by the defendant for a like order may be made ²[***] at any time after appearance.

³[(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.]

1. The words "after notice to the defendant" omitted by Act No. 104 of 1976 (w.e.f. 1977).

2. The words "after notice to the plaintiff omitted by Act No. 104 of 1976 (w.e.f. 1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977)..

9. When party may be put in immediate possession of land the subject-matter of suit :- .

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Deposit of money, etc. in Court :- .

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

HIGH COURT AMENDMENT

Bombay.-In Order XXXIX, after rule 10, insert the following rule, namely:-

"11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court.- (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any defaults in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the defaults or contravention or breach is committed by the defendant or the opponent.

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court:

Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed." (w.e.f. 1-10-1983)

ORDER 40 :- APPOINTMENT OF RECEIVERS :-

1. Appointment of receivers :- .

(1) Where it appears to the Court to be just and convenient, the Court may by order-

(a) appointment a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

HIGH COURT AMENDMENTS

Allahabad.-In Order XL, in rule (1), in sub-rule (2), after the words "any person", insert a comma and the words "not being a party to the suit,".

[Vide Notification No. 2875/35(a)-5(2), dated 10th July, 1943].

Karnataka.-Same as in Allahabad.

2. Remuneration :- .

The Court may by general or special order fix the amount to be paid as remuneration for the

services of the receiver.

3. Duties :- .

Every receiver so appointed shall-

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-Same as in Madras with the following modifications:-

(i) in clause (a), for the words "in the movable property", substitute the words "in such form and".

(ii) in clause (b), for the words "at such periods and in such forms as", substitute the words "at such time and in such form as the Court may direct or", (w.e.f. 30-3-1967)

Kerala.-Same as in Madras with the modification that in clause (a), for the word "movable"; substitute the word "immovable".

[Vide Notification No. BI-3312/58, dated 9th June, 1959.]

Madras.-In Order XL, in rule 3, for clauses (a) and {b), substitute the following clauses, namely:-

"(a) unless the Court otherwise orders, furnish security in the movable property for such amount as the Court thinks fit duly to account for what he shall receive in respect of the property of which he is appointed a receiver.

(b) submit his accounts at such periods and in such forms as may be prescribed."

[Vide P Dis. No. 577 of 1944.]

4. Enforcement of receivers duties :- .

Where a receiver-

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from his or any loss occasioned by

him, and shall pay the balance (if any) to the receiver.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XL, for rule 4, substitute the following rule, namely:-

"4. Enforcement of receivers duties.-(i) If a receiver fails to submit his account at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time not beyond three years from the date of his discharge by the Court, make an inquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such inquiry. Notice of the inquiry shall be given by registered post prepaid for acknowledgment to the surety, if any, for the Receiver, but the cost of his appearance shall be borne by the surety himself, unless the Court otherwise directs

Provided that the Court may, where the account is disputed by the parties and is of a complicated nature, or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the Receiver, refer the parties to a suit. In all such cases, the Court shall state in writing the reasons for the reference.

(3) If the Receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) of this rule, within the period fixed in the order, the Court may direct such amount to be recovered either on the security (if any) furnished by him under Rule 3, or by attachment and sale of his property, or, if the property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him, and shall pay the balance (if any) of the sale proceeds to the Receiver." (w.e.f 1-10-1983)

Karnataka.-Same as in Madras with the following modification:-

In sub-rule (1), for the words "in the form ordered", substitute the words "in the manner ordered", (w.e.f. 30-3-1967)

Kerala.-Same as in Madras with the addition of the following marginal note to the rule:-

"Enforcement of receivers duties"

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XL, for rule 4, substitute the following rule 4, namely:-

"4. (1) If a receiver fails to submit his accounts at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and

the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver, but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs:

Provided that the Court may, where the amount is disputed by the parties and is of a complicated nature or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the receiver, refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.

(3) If the receiver fails to pay, any amount which he has been ordered to pay under sub-rule (2) of this rule within the period fixed in the order, the Court may direct such amount to be recovered either from the security (if any) furnished by him under rule 3, or by attachment and sale of his property, or, if his property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance (if any) of the sale proceeds to the receiver."

[Vide P Dis. No. 60 of 1933.]

5. When Collector may be appointed receiver :- .

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector appoint him to be receiver of such property.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XL, after rule 5, insert the following rule, namely:-

"6. Where the property belongs to a co-operative society, registered under an appropriate statute or to a member of any such co-operative society, and the Court considers that the interests of those concerned will be promoted by the management thereof by an officer of the Co- operative Department, the Court may with the consent of such officer, appoint him to be receiver of such property." (w.e.f. 8-1-1987)

Madras.-In Order XL, after rule 5, insert the following rule, namely:-

"6. Where the property belongs to a co-operative society registered under the Madras Co-operative Societies Act or to member of such co- operative society, and the Court considers that the interest of those concerned will be promoted by the management of an officer of the Co -operative Department, the Court may, with the consent of the officer, appoint him to be receiver of such property."

Andhra Pradesh.-In Order XL, after Yule 6, insert the following rule, namely:-

"7. Where a receiver had been appointed by a Court under rule 1 of this Order, no such receiver may be sued by any person whether he is party to the said suit or not, except with the leave of the Court appointing the receiver or successor Court on an application made in this behalf and the notice of which is served upon the receiver and all other persons who may, in the opinion of the Court be interested in the subject-matter of the suit"

Bombay.-After Order XL, insert the following Order, namely:-

"ORDER XLA
CAVEAT RULES

"1. Every Caveat under section 148A shall be signed by the Caveator or his Advocate and shall be in the form prescribed.

2. Every Caveat shall be presented by the party in person or by his Advocate to the Court or to the Officer authorised to receiver the Caveat. Where the Caveator is represented by an Advocate his Vakalatnama shall accompany the Caveat. When an Advocate instructed by a party to act or appear in a manner has not been able to secure a Vakalatnama in the prescribed form duly signed by the client, he may file written statement signed by him stating that he has instructions from or on behalf of his client to act or appear in the matter and also undertaking to file within a week a Vakalatnama in the prescribed form duly signed by the party.

3. The Caveat presented under rule 2 shall be registered in a Caveat Register in ; Form given below. Before an application for any relief is made to the Court in any proceedings, it shall bear an endorsement from the office of the Court whether a Caveat has or has not been filed.

4. (1) A copy of the Caveat shall be served along with the notice required to be served under section 148A (2).

(2) On receipt of the notice of the Caveat, the applicant or his Advocate, shall intimate to the Caveator or his Advocate, the expenses for furnishing the copies and request him to collect the copies on payment of the said expenses. The, said expenses-should be at the rate of 25 paise per folio of 100 words inclusive of cost of paper.

5. Every application for any relief in a proceeding should be supported by a statement on oath of the applicant stating that no notice under section 148A (2) is received by him or if received whether the applicant has furnished the copies of the application together with the copies of the paper or documents which have been filed or may be filed in support of the application to the Caveator as required by section 148A (4).

6. A notice under section 142A (3) may be served on the Caveator or his Advocate personally or by post Under Certificate of Posting. The notice sent Under Certificate of Posting at the address furnished by the Caveator shall be deemed to be sufficient service on him.

7. Where it appears to the Court, that the object of granting ad interim relief on the application would be defeated by delay, it may record reasons for such opinion and grant ad Interim relief of the application of the applicant till further orders after giving the Caveator an opportunity of being heard.

FORM OF CAVEAT

In _____ the _____ Court
of.....At.....
Suit/Petition/Appeal No.....19...../20
In the matter of :

Caveat under section 148A of the Code of Civil Procedure
.....Caveator.

Pay that no orders be passed without due notice under section 148A of the Code of Civil Procedure to the Caveator above named in any application for(State in short reliefs to be prayed for) in Suit Petition/Appeal No.....of 19...../20.....of this Court (or in Suit/Petition/Appeal likely to be filed in this Court) wherein..... is/may be Plaintiff/Petitioner/Appellant and.....is/may be the Defendant/Respondent.

The Caveators address for service is.....

The Caveator undertakes to the Court to give notice by Registered Post A.D. to.....the Plaintiff/Petitioner/Appellant above mentioned, at the following address.....

Caveator.....

REGISTER OF CAVEAT

(O. XL-A, rule 3

In the Court of the..... of at Register of Caveat in the year, 19..../20....

Srl No.

Dt. of Caveat

Name of Caveator and his address for service

Nature of proceeding anticipated by caveat or and its number if same is filed

Name of plaintiff Applicant in the proceeding in column No. 4

Name of defendant Respondent the proceeding in column No. 4

Date and number of proceeding filed as anticipated by Caveator

Date of notice served on Caveator

ORDER 41 :- APPEALS FROM ORIGINAL DECREES :-

1. Form of appeal. What to accompany memorandum :- .

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the 1[judgment]:

2[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court dispense with the filing of more than one copy of the judgment.]

(2) Contents of memorandum-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2[(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

1. Subs. by Act No. 46 of 1999 section 31 for certain words (w.e.f. 1-7-2002).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 1,-

(1) in sub-rule (1), after the proviso, insert the following Explanation, namely:-

"Explanation.-The copy of the decree referred to in sub-rule (1) of rule 1 above shall include a deemed decree as provided in Order XX in clause (b) in sub-rule (2) of rule 6-A."

[Vide Notification. No. 345-VIId-134, dated 8th August, 1994 (w.e.f. 22-10-1994).]

(2) in sub-rule (2), insert the following proviso, namely;-

"Provided that the Court may, for sufficient reasons, accept a memorandum of appeal without a copy of the decree appealed from if the counsel for the appellant certifies that the copy has been applied for and has not yet been issued, subject to the copy being filed subsequently within the time granted by the Court." (w.e.f. 13-12-1969)

(3) Omit sub-rule (3),

[Vide Notification. No. 552/VIIId-184 dated 30th October, 1993 published in Uttar Pradesh Gazette. Pt 2, pp. 1-2, dated 1st January, 1994.]

Andhra Pradesh.-In Order XLI, for rule 1, substitute the following rule, namely:-

"(1) Every appeal shall be preferred in the form of memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by such number of copies of judgment as may be required by the Rules or Notifications issued by the High Court and (unless the Appellate Court dispenses with the filing of the decree or judgment or both for the time being) the decree drawn pursuant to the said judgment," (w.e.f. 2-8-1988)

Bombay.-In Order XLI, for rule 1, substitute the following rule, namely:-

"1. Form of appeal, what to accompany memorandum.- (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from-and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:

Provided that where two or more suits have been tried together and a common judgment has been delivered, therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate court may dispense with the filing of more than one copy of the judgment.

*[Explanation.-The copy of the decree-referred to in sub-rule (1) of rule 1 above shall include a deemed decree as provided in Order XX in clause (b) in sub-rule (2) of rule 6A],

(2) Contents of memorandum.-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit:

Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause.

(4) The appellant shall file along with the memorandum of appeal as many copies thereof on plain paper as there are respondents for being served on the respondents along with the notice of appeal:

Provided that the Court in its discretion may permit the appellant to file the necessary number of copies of the memorandum of appeal after the appeal is admitted, within such time as the Court may grant in this behalf." (w.e.f. 1-10-1983) and *(w.e.f. 9-12-1987)

Delhi.-Same as in Punjab, (w.e.f. 31-10-1966)

Haryana.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab, (w.e.f. 25-1-1971)

Karnataka.-(i) In Order XLI, in rule 1, in sub-rule (1), at the end, insert the proviso as in Madras, item (iii);

(ii) in sub-rule (2) at the end, insert the following, namely:-

"The memorandum shall also contain a statement of the amount or value of the subject-matter in dispute in the Court of first instance and in the appeal and a statement of the amount of Court-fee paid or payable on the appeal together with the provisions of law under which it is calculated".

[Vide Notification No. ROC 2296/59, dated 5th November, 1959.] ..

(iii) insert the following sub-rule, namely:-

(3) "When an appeal is presented after the period of limitation prescribed therefore it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period, and the Court shall not proceed to deal with the appeal in any way (otherwise than by dismissing it either under rule 11 of this Order or on the ground that it is not satisfied as to the sufficiency of the reason for the delay) until notice has been given to the respondent and his objections, if any, are heard."

Kerala.-Same as in Madras items (ii), (iii) and (v) with the following modifications:-

(i) in item (ii), insert the following marginal note:-

"Copy of Judgment to be printed for appeal";

(ii) in item (iii), insert the following marginal note:-

"Power to admit appeal subject to production of copy of decree or order under special or local Act."

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XLI, in rule 1,-

(i) in sub-rule (1), before, the word "copy", insert the word "certified", (w.e.f,

25-12-1963) (ii) to sub-rule (1), insert the following words, namely:-

"The copy of the judgment shall be printed copy in every case in which the High Court has prescribed that the judgment shall be printed when a copy is applied for, for the purpose of appeal."

[Vide GO No. 933, Home (Judl), dated 3rd May, 1917.]

(iii) in sub-rule {!}, insert the following proviso, namely:-

"Provided that, in appeals from decrees or order under any special or local Act to which the

provisions or Parts II and III of the Limitation Act IX of 1908, do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal, the Appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court."

[Vide Dis. No, 2135 of 1918.]

(iv) in sub-rule (1), insert the following further proviso and Explanation, namely:

-

"Provided further that when the decree appealed from is a final decree in partition suit with schedules attached thereto, the Appellate Court may dispense with the production of the copy of the decree, if the appellant filed a certified copy of the judgment appealed against and produces also a certificate from the Lower Court as to the value of the subject-matter of the proposed appeal."

[Vide P Dis. No. 97 of 1963, dated 20th March, 1963.]

"Explanation.-The words Appellate Court in sub-rule (1) be deemed to include the Registrar of the High Court, where the appeal is preferred to the High Court." (w.e.f. 25-12-1963) (v) in sub-rule (2), at the end, insert the following words, namely:-

"The memorandum shall also contain a statement of the valuation of The appeal for the purposes of the Court-fees Act."

[Vide Dis. No. 2057 of 1917.]

Orissa.-Same as in Patna.

Patna,-(i) In Order XLI, in rule 1, in sub-rule (1), insert the following proviso, namely:-

"Provided that when the decree appealed from is a final decree in a partition suit and embodies the allotment papers, the Appellate Court may accept a copy of the decree containing only a portion of the allotment papers, provided further that the Appellate Court may, subsequently, on the application of the respondent require a copy of the remaining or any further portion of the allotment papers to be filed by the appellant."

(ii) insert the following as second proviso, namely:-

"Provided further that, in appeals from decrees or orders under any special or local Act to which the provisions of Parts II and III of the Limitation Act, 1908, do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal, the Appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court" (w.e.f. 5-4-1961).

Punjab.-In Order XLI, in rule (1), in sub-rule (1), after the proviso, insert the following further proviso, namely:-

"Provided further that the Court may permit the appeal to be filed with true copies duly authenticated by an advocate as correct."

Rajasthan.-In Order XLI, in rule 1, insert the following proviso, namely:-

"Provided that when the decree appealed from is a final decree in a partition suit, the Appellate Court may dispense with the production of the copy of the decree if the appellant filed a certified copy of the judgment appealed against."

2. Grounds which may be taken in appeal :- .

The appellant shall not except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandum :- .

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

HIGH COURT AMENDMENT

Allahabad.-In Order XLI, in rule 3, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Where the memorandum of appeal is not drawn up in the manner in hereinbefore prescribed, or accompanied by the copies mentioned in rule 1(1), it may be rejected, or where the memorandum of appeal is not drawn up in the manner prescribed, it may be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amendment then and there."

[Vide Notification No. 2058/35{a), dated 17th June, 1916.]

3A. Application for condonation of delay :- .

(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all :- . .

Where there are more plaintiff or more defendants than one in a suit, and the decree appealed

from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution

5. Stay by Appellate Court :- .

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

1[Explanation-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree-Where an application is made for Stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) 2[Subject to the provisions of sub-rule (3)], the Court may make an ex pane order for stay of execution pending the hearing of the application.

3[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Subs. by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

3. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 5, for sub-rule (5), substitute the following sub-rule, namely:-

"(5) Notwithstanding anything contained in the foregoing sub-rules where the appeal is against

a decree for payment of money, the Appellate Court shall not make an order staying the execution of the decree, unless the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Appellate Court may think fit."

[Vide Notification. No. 552/VII-d-134 dated 3rd October 1993, published in Uttar Pradesh Gazette Pt. II, pp. 1-2, dated 1st January, 1994.]

Andhra Pradesh.-Same as in Madras.

Calcutta.-In Order XLI, in rule 5, in sub-rule (2), for the words "but the Appellate Court may for sufficient cause order stay of execution of such decree", substitute the words "but the Appellate Court may subject to sub-rule (3) of rule 6 of this Order, for sufficient cause order stay of execution of such decree".

[Vide Notification No. 6874-G, dated 5th October, 1948.]

Karnataka.-In Order XLI, in rule 5, in sub-rule (1), at the end, insert the following words, namely:-

"and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the said preliminary decree or the execution of any such final decree if already made or when made or stay all or any of the further proceedings to be taken pursuant to such preliminary decree.

Nothing herein contained shall affect or limit the inherent power of the Court to stay other proceedings either before it or any Court subordinate to it in appropriate cases."

[Vide Notification No. ROC 2296/59, dated 5th November, 1959.]

Kerala.- (a) Same as in Madras.

(b) in sub-rule (3), insert the following proviso, namely:-

"Provided that in the case of decree charging immovable properties the Appellate Court may in its discretion dispense with such security in whole or in part."

[Vide Notification No. BI-312/58, dated 9th June, 1959.]

Madras.-In Order XLI, in rule 5,-

(a) in sub-rule {!}, after the words "but the Appellate Court may for sufficient cause order stay of execution of such decree", insert the words "on such terms and conditions as the court may deem fit".

(b) in sub-rule (1), at the end, delete full stop and insert the following words, namely:- "and may, when the appeal is against a preliminary decree stay the making of a final decree in pursuance of the preliminary decree or the execution of any such final decree, if already made."

[Vide P Dis. No. 164 of 1932.]

6. Security in case of order for execution of decree appealed from :- .

(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require

security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

HIGH COURT AMENDMENT

Calcutta.-In Order XLI, in rule 6, after sub-rule (2), insert the following sub-rule, namely:-

"(3) Where no such application has been presented to the Court which made the order as application for stay of the sale shall not be entertained by the appellate Court." (w.e.f. 5-10-1948)

7. [No security to be required from the Government or a public officer in certain cases. Rep. by the A.O. 1937.] :- .

8. Exercise of powers in appeal from order made in execution of decree :- .

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

9. Registry of memorandum of appeal :- .

(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.]

1. Subs. by Act No. 46 of 1999.section 31 (w.e.f. 1-7-2002).

10. Appellate Court may require appellant to furnish security for costs :- .

(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India-Provided that the Court shall demand such security in all cases in which the appellant is residing out of India, and is not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

HIGH COURT AMENDMENT

Allahabad.-In Order XLI, in rule 10, in sub-rule (1), in the proviso, for the word "India" occurring for the second time substitute the words "the State".
[Vide Notification No. 43/vii-d-29, dated 1st June, 1957.]

11. Power to dismiss appeal without sending notice to Lower Court :- .

1[(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal.]

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

2[(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.]

1. Subs. by Act No. 46 of 1999, section 31 (w.e.f. 1-7-2002).

2. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

11A. Time within which hearing under rule 11 should be concluded :- .

Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

12. Day for hearing appeal :- .

(1) Unless the Appellate Court dismisses the . appeal under rule 11, it should fix a day for hearing the appeal.

1[(2) Such day shall be fixed with reference to the current business of the Court.]

1. Subs. by Act No. 46 of 1999, section 31 (w.e.f. 1-7-2002).

13. Omitted :- .

1. Omitted by Act No. 46 of 1999, section 31 (w.e.f. 1-7-2002).

14. Publication and service of notice of day for hearing appeal :- .

(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served-Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

1(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 14, in sub-rule (1), for the words "or on his pleader in Appellate Court", substitute the following words, namely:-
"or on his pleader competent to service the notice on his behalf".

[Vide Notification No. 714-IVH-36A, dated 21st March, 1981.]

Andhra Pradesh.-In Order XLI, rule 14, in sub-rule (1), insert the following proviso, namely:-

"Provided that the Appellate Court may dispense with service of notice on respondents who have remained absent, against whom the suit has proceeded ex parte in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court."

Calcutta.-In Order XLI, in rule 14, after sub-rule. (2), insert the following sub-rule, namely:-

"(3) It shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on its own motion, or ex parte, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of or at any proceeding subsequent to the decree of that Court or on the legal representatives of any such respondent: Provided that-

(a) The Court may require notice of the appeal to be published in any newspaper or newspapers as it may direct.

(b) No such order shall percolate any such respondent or legal representative from appearing to contest the appeal."

Delhi.-Same as in Punjab.

Guahati.-Same as in Calcutta.

Haryana.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Kerala.-In Order XLI, after rule 14, insert the following rule, namely:-

"14A. Substitution of letter for notice.- (i) The Court may, notwithstanding anything hereinbefore contained, substitute for notice a letter signed by the Judge or such officer as he may appoint in this behalf, where the respondent is the Presiding Officer of a House of Parliament or of a State Legislature or the Chairman of a Committee thereof or, in the opinion of the Court of a rank entitling him to such mark of consideration."

Karnataka.-Same as in Andhra Pradesh.

Madras.-In Order XLI, in rule 14, in sub-rule (1), insert the following proviso, namely:-

"Provided that the Appellate Court may dispense with service of notice on respondent who have remained absent, against whom the suit has proceeded ex parte in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court."

[Vide Notification No. 221 of 1976, published in Tamil Nadu Gazette, Pt. III, Sec. 2, dated 17th November, 1976.]

Orissa.-In Order XLI, in rule 14, after sub-rule (2), insert the following sub-rule, namely:-

"(2A) Where the passing of an ex parte interlocutory order has, in the opinion of the Court, the effect of causing delay in any proceeding pending in a subordinate Court, notice shall issue simultaneously both to the respondent and to his pleader in the said proceeding in the subordinate Court, fixing a short date for return of the service. If the pleader has been served with the notice but the notice to the respondent is returned unnerved and no appearance is made on his behalf the Appellate Court may in its discretion declare the service on the pleader to be sufficient service on the respondent and shall intimate the same to the respondent by registered post at the cost of the appellant." (w.e.f. 14-5-4984)

Punjab.-In Order XIL, in rule 14,-

(i) in sub-rule (2), insert the following proviso, namely:-

"Provided that the notice shall be served on the Advocate of the party who appeared in the subordinate Court where the matter is still pending."

[Vide Notification. No. G.S.R. 39 C.A. 5/1908/S. 12257 (w.e.f. 11-4-1975).]

(ii) after sub-rule (2), insert the following sub-rule, namely:-

"(3) it shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on the application of any party or on its own motion, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of, or at any proceedings subsequent to the decree of that Court, or on the legal representatives of any such respondent: Provided that-

(a) that Court may require notice of the appeal to be published in any newspapers or in such other manner as it may direct;

(b) no such order shall preclude any such respondent or legal representative from appearing to contest the appeal."

(iii) after sub-rule (3), insert the following sub-rules, namely:-

"(4) Where the respondent or any respondents has migrated to Pakistan and he cannot be served in the ordinary way, if the appeal has arisen out of a suit to obtain relief respecting, or compensation for wrong to immovable property, the notice shall be served on the Custodian of Evacuee Property, Punjab or Delhi, as the case may be. In all other cases, the notice shall be served on such Custodian and a copy of the notice shall be sent, by registered post, to the Secretary-General to the Pakistan Government.

(5) The provisions of sub-rule (4) shall mutatis mutandis apply to appellants, who have migrated to Pakistan and who cannot be served in the ordinary way." (iv) after sub-rule (5) insert the following sub-rule, namely:-

"(6) Every notice of appeal to a respondent other than a respondent stated to be pro forma shall be accompanied by a copy of the memorandum of appeal or, if so permitted, by a concise statement."

Kerala.-In Order XII, after rule 14, insert the following rule, namely:-

"14A. Substitution of letter for notice.-(1) The Court may, notwithstanding anything herein before contained, substitute for notice a letter signed by the Judge or such officer as he may appoint in this behalf, where the respondent is the Presiding Officer of a House of Parliament or of a State Legislature or the Chairman of a Committee thereof or, in the opinion of the Court, of a rank entitling him to such mark of consideration.

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

(3) A letter so substituted may be sent to the respondent by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the respondent has an agent empowered to accept service, the letter may be delivered or sent to such agent." (w.e.f. 16-7-1963).

Orissa.-Same as in Patna.

Patna.-In Order XLI, after rule 14, insert the following rule, namely:-

"14A. The Appellate Court may, in its discretion, dispense with the service of notice herein before required on a respondent, or on the legal representatives of a deceased respondent, in a case where such respondent did not appear, either at any stage of the proceedings in the Court whose decree is appealed from or in any proceedings subsequent to the decree of that Court and no relief is claimed against such opposite party or respondent or his legal representative either in the original case or appeal."

115. Contents of Notice. :- .

1. Rep. by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) sec. 31 (w.e.f. 1-7-2002).]

HIGH COURT AMENDMENTS

Bombay.-In Order XLI, after rule 15, insert the following rule, namely:-

"15A. Dismissal for want of prosecution.-Where after the admission of an appeal the rules or the special directions of the Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where after due notice intimating the steps to be taken the appellant fails to take such steps within the time prescribed by the rules or allowed by the Court, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit."

Madhya Pradesh.-In Order XLI, after rule 15, insert the following rule, namely:-

"15A- Failure to take necessary steps after admission of an appeal in the High Court.- Where on the admission of an appeal in the High Court, the Rules of the High Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where, after due service of a notice intimating the steps to be taken and the date before which they must be taken, the appellant fails to take such steps within the prescribed time, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order, as it thinks fit." (w.e.f. 16-9-1960).

Procedure on hearing

16. Right to begin :- .

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

HIGH COURT AMENDMENT

Allahabad.-In Order XLI, in rule 16, in sub-rule (1), for the words "On the day fixed, or on any other day to which the hearing may be adjourned", substitute the words "When the appeal is called on for hearing".

[Vide Notification No. 14186/VII-d-147, dated 22nd December, 1951.]

17. Dismissal of appeal for appellants default :- .

(1) Where on the day fixed, or on any other day which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

1[Explanatipn-Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.]

(2) Hearing appeal ex parte-Where the appellant appears and the respondent does not appear the appeal shall be heard exparte,

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

HIGH COURT AMENDMENT

Allahabad.-In Order XLI, in rule 17, in sub-rule (1), omit the words "on the day fixed, or on any other day to which the hearing may be adjourned" .

[Vide Notification No. 14186/VII-d-147, dated 22nd December, 1951.]

118. Dismissal of appeal where notice served in consequence of appellants failure to deposit cost. :- .

1. Omitted by The Code of civil procedure (Amendment) Act, 1999 (Act No. 46 of 1999), section 31 (w.e.f. 1-7-2002).

HIGH COURT AMENDMENT

Bombay.-In Order XLI, after rule 18, insert the following rule, namely:-

"18A. Dismissal for want of prosecution.-Where after the admission of an appeal the rules or the special directions of the Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where after due notice intimating the steps to be taken the appellant fails to take such steps within the time prescribed by the rule or allowed by the Court, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit." (w.e.f. 1-10-1983)

19. Re-admission of appeal dismissed for default :- .

Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 1[***], the appellant may apply to the Appellate Court for the re- admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

1. Words "or rule 18" omitted by Act No. 46 of 1999, section 31 (w.e.f. 1-7-2002).

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XLI, for rule 19, substitute the following rule, namely:-

"19. Re-admission of appeal dismissed for default.-Where an appeal is dismissed under rule 11, sub-rule (2), or rule ISA or rule 17 or rule 18, the appellant may apply to the Appellate Court for re admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or in taking the necessary steps in the prosecution of the appeal or from depositing the sum so required the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit." (w.e.f. 1 -10-1983)

Delhi.-Same as in Madras.

Gujarat.-Same as in Madras.

Himachal Pradesh.-Same as in Madras. MA

Karnataka.-Same as in Madras.

Kerala.-Same as in Madras.

Madras.-In Order XLI,-

(a) renumber rule 19, as sub-rule (1) thereof, and

(b) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:-

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

Madhya Pradesh.-After the words and figures "sub-rule (2)", insert the words and figures "or rule ISA", (w.e.f. 16-9-1960)

Punjab-Same as that of Madras.

20. Power to adjourn hearing and direct persons appearing interested to be made respondents :- .

1[(1)] Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

2[(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.]

1. Rule 20 re-numbered as sub-ruled) thereof by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 976 (w.e.f. 1-2-977).

21. Re-hearing on application of respondent against whom ex parte decree made :- .

Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellant Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madhya

Pradesh. Gujarat.-Same as in Madhya Pradesh. (w.e.f. 17-8-1961)

Karnataka.-Same as in Madhya Pradesh. (w.e.f. 5-11-1959)

Kerala.-Same as in Madhya Pradesh. {w.e.f. 9-4-1959)

Madhya Pradesh.-In Order XLI,-

(a) re-number rule 21 as sub-rule (1) thereof; and

(b) after sub-rule (1), as so renumbered, insert the following sub-rule, namely:-

"(2) The provision of section 5 of the Indian Limitation Act, IX of 1908 (now section 5 of Limitation Act, 1963) shall apply to applications under sub-rule (1)." (w.e.f. 16-9-1960)

Madras.-Same as in Madhya Pradesh.

22. Upon hearing respondent may object to decree as if he had preferred a separate appeal :-

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree 1[but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto-Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

2[(3) Omitted]

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions-relating to appeal by indigent persons shall, so far as they can be made applicable apply to an objection under this rule.

1. Subs. by Act No. 104 of 1976 for certain words (w.e.f. 1-2-1977).

2. Omitted by Act No. 46 of 1999, section 31 (w.e.f. 1-7-2002).

HIGH COURT AMENDMENT

Allahabad.-In Order XLI, in rule 22, in sub-rule (1), after the word "hearing" and before the word "the" insert the words "or appearance".

[Vide Notification No. 348/VII-d.168, dated 8th August, 1999 (w.e.f. 22-10-1994).]

23. Remand of case by Appellate Court :- .

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit,

by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 23,-

(a) after the words "and the decree is reversed in appeal", insert the words "or where the Appellate Court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, it".

(b) omit the words "the Appellate Court" occurring thereafter and omit also the words "if it thinks fit", occurring after the word "may", (w.e.f. 1-6-1957)

Andhra Pradesh.-Same as in Madras.

Karnataka.-In Order XLI, for rule 23, substitute the following rule, namely:-

"23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court in reversing or .setting aside the decree under appeal considers it necessary in the interests of Justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and whether any further evidence shall or shall not be taken after remand, and shall send a copy of its judgment or order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; the evidence, if any, recorded during the original trial shall subject to all just exceptions, be evidence during the trial after remand." (w.e.f. 5-11-1959)

Kerala.-Same as in Madras, (w.e.f. 9-6-1959)

Madras.-In Order XLI, in rule 23,-

(a) after the words "the decree is reversed in appeal", insert the words "or where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case"; and

(b) omit the words "if it thinks fit," occurring after the words "the Appellate Court may".

Rajasthan.-In Order XLI, for rule 23, substitute the following rule, namely:-

"23. Remand of case by Appellate Court.-Where the Court from whose decree an appeal is preferred has disposed of the suit on a preliminary point and the decree is reversed in appeal, or where the Appellate Court while reversing or setting aside the decree under appeal, considers it necessary in the interests of justice to remand the case, it may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with direction to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand." (w.e.f. 11-3-1965)

23A. Remand in other cases :- .

Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

24. Where evidence on record sufficient, Appellate Court may determine case finally :- .

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from :- .

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor 1[within such time as may be fixed by the Appellate Court or extended by it from time to time.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

26. Finding and evidence to be put on record. Objections to finding :- .

(1) Such evidence and findings shall form part of the record in the suit; and either party may within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal-After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

26A. Order of remand to mention date of next hearing :- .

Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.]

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

27. Production of additional evidence in Appellate Court :- .

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

1. Ins. by Act No. 104 of 1976 (w.e.f 1-2-1977).

28. Mode of taking additional evidence :- .

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded :- .

Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

Judgment in appeal

30. Judgment when and where pronounced :- .

1[(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

2[(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.]

1. Rule 30 re-numbered as sub-rule (1) of that rule by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

31. Contents, date and signature of judgment :- .

The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and -

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 31, at the end, substitute a colon for the full stop and insert the following proviso, namely:-

"Provided that where the Presiding Judge pronounces his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement."

[Vide Notification No. 8799, dated 13th January, 1939]

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XLI, in rule 31, at the end, substitute a colon for the full stop and insert the following proviso, namely:-

"Provided that where the judgment is pronounced by dictation to a shorthand writer in open Court the transcript of the judgment so pronounced shall, after making such corrections therein as may be necessary, be signed by the Judge or the Judges concerned and shall bear the date of its pronouncement." (w.e.f. 1-10-1983}

Gujarat.-Same as in Allahabad.

Karnataka.-In Order XLI, in rule 31, insert the following proviso, namely:-

"Provided that where the Presiding Judge is specially empowered by the High Court to pronounce his judgments by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall after such revision as may be deemed necessary be signed by the Judge."

[Vide Notification No. ROC 2296/59, dated 5th November, 1959].

Kerala.-In Order XLI,-

(a) renumber rule 31 as sub-rule (1) thereof, and

(b) after sub-rule (1) as so remembered, insert the following sub-rules, namely:-

"(2) In cases where a judgment is not written by the Judge in his own hand, but dictated and

taken down verbatim by another person, each page of the judgment shall be initialled by him.

(3) Where the judgment is pronounced by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madras.-In Order XLI, for rule 31, substitute the following rule, namely:-

"31. The judgment of the Appellate Court shall be in writing and shall state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring therein:

Provided that, where the presiding Judge is specially empowered by the High Court, to pronounce his judgment by dictation to a shorthand -writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."

Orissa.-Same as in Allahabad, (w.e.f. 21-9-1960}

Patna.-Same as in Allahabad inserting after the words "signed by the Judge" the words "or by Judges concurring therein". Rajasthan.-In Order XLI,-

(a) renumber rule 31 as sub-rule (1) thereof; and ,:

(b) after sub-rule (1) as so renumbered, insert the following sub-rules, namely:-

"{2} Where the judgment is pronounced by dictation to a shorthand-writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement.

(3) In cases where a judgment is not written by the Judge in his own hand, but dictated and taken down verbatim by another person, each page of the judgment shall be initialled by him." (w.e.f. 11-3-1965)

32. What judgment may direct :- .

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. Power of Court of Appeal :- .

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection 1[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

2[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals, and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 9 of 1922, s. 4, which under s. 1(2) thereof, may be brought into force in any State by the State Government, on a specified date. The Act has been brought into force in Bombay, Bengal U.P., Punjab, Bihar, C.P. Assam, Orissa and Tamil Nadu.

34. Dissent to be recorded :- .

Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal

35. Date and contents of decree :- .

(1) The decree of the Appellate Court shall bear date the day of which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree-Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

HIGH- COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Bombay.-In Order XLI, in rule 35, in sub-rule (2), after the word "respondent/", insert the words "their registered addresses", (w.e.f. 1-10- 1983}

Delhi.-Same as in Punjab.

Haryana.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Kerala.-In Order XLI, in rule 35,-

(a) in sub-rule (2), at the end, omit the full stop and insert the words "in appeal as also in the decree appealed from."

(b) in sub-rule (4), insert the following proviso, namely:-

"Provided that the provisions of the sub-rule shall not apply to decrees passed by the High Court."

[Vide Notification No. BI-3312/58, dated 9th June, 1959.]

Madras.-In Order XLI, in rule 35, in sub-rule (2), after the word "respondent," insert the words "their addresses for service,"

[Vide ROC No. 3299 B-I, dated 29th January, 1930.]

Punjab.-In Order XLI, in rule 35, insert the following further proviso, namely:-

"Provided also in the case of the High Court that the Registrar, or such other officer as may be in charge of the Judicial Department from time to time, shall sign the decree on behalf of the Judge or Judges who passed it; but that such Registrar, or such officer, shall not sign such decree on behalf of a dissenting Judge."

[Vide Notification No. 20-R-XI-Y-I, dated 29th January, 1937.]

36. Copies of judgment and decree to be furnished to parties :- .

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

37. Certified copy of decree to be sent to Court whose decree appealed from :- .

A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLI, in rule 37,-

(a) omit the words "and shall be filed with the original proceedings in the suit";

(b) insert the following para, namely:-

"Where the Appellate Court is the High Court the copies aforesaid shall be filed with the original proceedings in the Court."

(c) after rule 37, insert the following rule, namely:-

"38. (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition,

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such address.

(3) Rule 21, 22, 23, and 24 or Order VII shall apply, so far as may be, to appellate proceedings."

Bombay.-In Order XLI, after the rule 37, insert the following rule, namely:-

"38. Registered address to hold good during appellate proceedings.-(1) The registered address filed under Order VI, Rule 14-A shall hold good during all appellate proceedings arising out of the original suit for petition, subject to any alteration under sub-rule (3) hereof.

(2) Every memorandum of appeal shall state the registered address given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses.

(3) Sub-rules (2) and (4) (i) and (ii) of Rule 14-A of Order VI shall apply, so far as may be, to appellate proceedings." (w.e.f. 1-10-1983)

Delhi.-Same as in Punjab.

Gujarat.-In Order XLI, after rule 37, insert the following rule, namely:-

"38. Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses." (w.e.f. 17-8-1961).

Orissa.-Same as in Patna.

Patna.-In Order XLI, after rule 37, insert the following rule, namely:-

"38. (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 22 or Order VIII, rule 12, shall hold good for all notices of appeals and all appellate proceedings of the original suit or petition.

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court for such addresses.

(3) Rule 21 and 22 of Order VII, shall apply, so far as may be, to appellate proceedings."

Punjab and Haryana.-In Order XLI, after rule 37, insert the following rule, namely:-

"38. (1) An address for service filed under Order VII, rule 19 or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

(2) The notice of appeal and other processes connected with proceedings therein, shall issue to the addresses mentioned in clause {!}, above, and service effected at such addresses shall be as effective as if it had been made personally on the appellant or respondent, as the case may be.

(3) Rules 21, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to appellate proceedings." (w.e.f. 24-11-1927}

Allahabad.-After Order XLI insert the following Order XL1A, namely:-

"ORDER XLIA

APPEALS FROM ORIGINAL DECREES IN THE HIGH COURT

1. Extent.--The rules contained in this Order shall apply to appeals in the High Court notwithstanding anything to the contrary contained in Order XLI or any other Order and the rules contained in Order XLI shall be deemed to have been modified or repealed in their application to such appeals to the extent of their inconsistency or repugnancy or as indicated herein.
2. Service of notice on pleader.-If a party appears by a pleader all notices to him shall be served upon such pleader, unless the Court directs otherwise.
3. Hearing appear under rule 11 of Order XLI on date of presentation.-Where a memorandum of appeal is admitted on presentation the Court may, if it deems fit, proceed to hear the appeal under rule 11 or Order XLI on the date at which it is presented.
4. Day for appearance of respondent.-Unless the appeal is dismissed under rule 11 of Order XLI a day shall be fixed for the appearance of the respondent and notice thereof shall be given to him. The notice shall call upon him to enter appearance on or before the day so fixed and answer the appeal and inform him (hat the appeal shall be heard on such day thereafter as may be subsequently notified.
5. Mode of entering appearance.-The respondent shall enter appearance by filing a memorandum of appearance in such form as may be prescribed by the Court.
6. Notice of day for hearing appeal.-Notice of the day fixed for the hearing of the appeal shall be given by making an entry thereof in the days cause list of the Court for that day and no other notice to the parties shall be necessary.
7. Application of rules 14 and 15 of Order XLI.-Rules 14 and 15 of Order XLI shall not apply in so far as they may be inconsistent with the rules of the Court regarding the nature, service or publication of notices.
8. Amendment of rules 16,17 and 18 of Order XLI.-The following amendments shall be deemed to have been made in Order XLI, namely : -[The Amendments to the rules have been incorporated in the rules themselves (see ante)].
9. Dismissal of appeal for default.-Where default is made is compliance with any rules of the Court which provide for the dismissal of an appeal for such default, the Court may dismiss the appeal.
10. Upon hearing, respondent may object to decree as if he had preferred separate appeal.- Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection within one month from the day fixed for his appearance in the notice served upon him in accordance with rule 4 or within such further time as the Court may deem fit to allow.
11. Application of rule 31 of Order XLI.-Rule 31 of Order XLI shall not apply when the Court dismisses an appeal under rule 11 of that Order."

[Vide Notification No. 14186/VII-d-147, dated 22nd December, 1951.]

Andhra Pradesh.-After Order XLI, insert Order XLIA, rules 1 to 14 which are same as in Madras except rule 11 which is as follows:-

"11. Cost of application and of adjournment.-When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar of the Court shall be Rs. 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs. 30. At the request of any party the Registrar shall cause the order to be drawn up and the costs to be inserted therein."

Karnataka.-After Order XLI, insert the following Order, namely:-

"ORDER XLIA

APPEALS TO THE HIGH COURT FROM ORIGINAL DECREES OF SUBORDINATE COURTS

1. Rules contained in Order XLI shall apply to appeals in the High Court of Mysore with the modifications contained in this Order.

2. Where the memorandum of appeal is presented through an Advocate the memorandum shall state his address for service within the City of Bangalore and such address shall be the address for service of the appellant for all notices and processes issued in or in connection with the appeal or any Interlocutory Application in the appeal.

3. When any notice issued in an appeal preferred to the High Court fixes a date on which or a period within which the parties served with the notice shall enter appearance in the appeal such notice shall be deemed to be a notice fixing a day for hearing the appeal within the meaning of rule 12 of Order XLI.

4. The Court may direct that service of a notice of appeal or other notice of process shall be made by sending the same in a post registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court or in the High Court. A notice sent in accordance with this rule shall be deemed to be served on the day on which it would in ordinary course of post be delivered to him if the postal cover is not returned within a period of 15 days. When the cover is actually delivered to the party the postal acknowledgment purporting to contain the signature of the party may be deemed to be proof of sufficient service of the notice on the party on the day on which it is actually delivered to him. If the postal cover is returned unserved, any endorsement purporting to have been made thereon by delivery peon or other employee or officer of the postal department shall be prima facie evidence of the statements made therein.

5. If any party or his Advocate to whom a memorandum of cross-objections has been tendered has refused or neglected for three days from the date of such tender to give the acknowledgement mentioned in rule 22 (3) of Order XLI the respondent preferring such memorandum of cross-objections may file into Court an affidavit stating the facts and the Registrar may dispense with service of the copies of the memorandum.

6. (1) Rule 31 of Order XLI shall not apply to the High Court. If judgment is given orally, a shorthand note thereof shall be taken by a shorthand writer appointed for the purpose and a transcript made by him shall be signed or initialled by the Judge or Judges concurring therein after making such corrections as may be considered necessary.

(2) Sub-rule (4) of Rule 35 of Order XLI shall not apply to the High Court. Decrees of the High Court shall be signed by the Registrar, Deputy Registrar or Assistant Registrar, as indicated by the Chief Justice.

7. (1) If an appellant or petitioner fails to show due diligence in making all deposits or payments or in taking all necessary steps as required by the Rules of the High Court in the matter of the preparation of the paper book of any appeal or petition, the Registrar may in his discretion, and shall, if the maximum period of extension of the time permissible under sub-rule (9) of rule 1, Chapter IV has expired, post the appeal or petition before the appropriate

Bench for orders. The Bench may either grant further time for rectifying the default or omission, or if it thinks fit dismiss the appeal or petition.

(2) Any appeal or petition dismissed under sub-rule (1) may be re-admitted by Court if an application for readmission is made accompanied by a certificate signed by the Registrar certifying that the default or omission for which the order of dismissal was passed has been rectified".

[Vide Notification No. ROC 2296/59, dated 5th November, 1959.]

Kerala.-After Order XLI, insert the following Orders namely:-

"ORDER XLIA

APPEAL TO THE HIGH COURT FROM ORIGINAL DECREES OF SUBORDINATE COURTS

1. Modification in first appeals to High Court.-The rules contained in Order XLI shall apply to appeals in the High Court of Kerala with modifications contained in this order.

2. Notice fee, etc. to accompany appeal memo.-(1) The memorandum of appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy, the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court of the sum prescribed by rules of Court.

(2) Time for respondents appearance.-Notwithstanding anything contained in Rule 22 of Order XLI the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross-objections, if any, shall unless otherwise ordered, be thirty days from the service of notice upon him.

3. Appearance to be filed by respondent.-(1) If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance.

(2) Penalty for default.-If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record.

(3) Petition for enlargement of time and procedure thereon.-Provided that a respondent may apply by petition for further time; and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicants default and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.

4. (1) Address for service.-(1) The memorandum of appeal and the memorandum of appearance shall state an address for service within the town of Ernakulam at which service of any notice, order or process may be made on the party filing such memorandum.

(2) When party appears in person or by pleader.-If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred:

Provided that if such party subsequently appears by a pleader, he shall state in the vakalat an address for service within the town of Ernakulam and shall give notice thereof to each party who has appeared.

(3) Service at pleaders address.-If a party appears by a pleader, his address for service shall be that of his pleader, and all notice to the party shall be served on his pleader at that

address.

5. Service by registered post.-The Court may direct that the service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the addressee for service of the party to be served, which has been filed by him in the lower Court:

Provided that, after a party has given notice of an address for service in accordance with Rule 4, service of any notice or process shall be made at such address.

6. Notice to respondents appearing separately.-If there are several respondents and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately.

7. Procedure where record not translated and printed before hearing.- (1) If, upon a case being called on for hearing, by the Court, it appears that the record has not been translated or printed in accordance with the rules of Court, the Court may dismiss the appeal or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit.

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.

(3) When an appeal is dismissed under sub-rule (1), the appellant may apply to the Court for re-admission of the appeal; and when the Court is satisfied that there was sufficient cause for the default, it shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit. (w.e.f. 20-1-1970).

8. Costs of application and of adjournment.-When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar or the Court shall be Rs. 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs. 30. At the request of any party the Registrar shall cause the order to be drawn up and the said to be inserted therein.

Memorandum of Objections

9. (1) Copies of memorandum of objections when to be filed.-If the acknowledgment mentioned in Rule 22 (3) of Order XLI is not filed, the respondent shall together with the memorandum of objections file so many copies thereof as there are parties affected thereby.

(2) Prescribed fees for service.-The prescribed fees for service shall be presented together with the memorandum to the Registrar." (w.e.f. 9-6-1959)

Madras.-After Order XLI, insert the following Orders, namely:-

"ORDER XLIA

APPEALS TO THE HIGH COURT FROM ORIGINAL DECREES OF SUBORDINATE COURTS

1. The rules contained in Order XLI shall apply to appeals in the High Court of Judicature at Madras with the modification contained in this Order.

2. (1) The memorandum of appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy, the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the Rules of Court.

(2) Notwithstanding anything contained in rule 22 of Order XLI the period prescribed for entry

of appearance by the respondent and filing by him of Memorandum of Cross-Objections, if any, unless otherwise ordered, by thirty days from the service of notice upon him.

3. (1) If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance.

(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record:

Provided that a respondent may apply by petition for further time, and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicants default, and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.

4. (1) The memorandum of appeal and the memorandum of appearance shall state an address for service within the City of Madras at which service of any notice, order or process may be made on the party filling such memorandum.

(2) If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred:

Provided that if such party subsequently appears by a pleader he shall state in the Vakalatnama an address for service within the City of Madras, and shall give notice thereof to each party who has appeared.

(3) If a party appears by a pleader, his address for service shall be that of his pleader, and all notices to the party shall be served on his pleader at that address.

5. The Court may direct that service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgement and addressed to the addressee for service of the party to be served which has been filed by him in the lower Court:

Provided that, after a party has given notice of an address for service in accordance with rule 4, service of any notice or process shall be made at such address.

6. All notices and processes, other than a notice of appeal, shall be sufficiently served if left by a party or his pleader, or by a person employed by the pleader, or by an officer of the Court, between the hours of 11 a.m. and 5 p.m. at the address for service of the party to be served.

7. Notices which may be served by a party or his pleader under rule 6, or which are sent from the officer of the Registrar, may, unless the Court otherwise directs, be sent by registered post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof and posting thereof and posting thereof shall be a sufficient service.

8. If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately.

9. A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice board after the case has been registered.

10. (1) If upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of Court, the Court may hear the

appeal or dismiss it, or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit.

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.

11. When costs are awarded, the costs of a party appearing upon any application before the Registrar shall be Rs. 25. At the request of any party the registrar shall cause the order to be drawn up and the said costs to be inserted therein. (Amended on 14-11-1963)

Memorandum of Objections

12. (1) If the acknowledgment mentioned in rule 22(3) of Order XLI is not filed, the respondent shall together with the memorandum of objections file so many copies thereof as there are parties affected thereby.

(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar.

13. If any party or the pleader of any party to whom a memorandum of objections has been tendered has refused or neglected for three days from the date of tender to give the acknowledgement mentioned in rule 22(3) of Order XLI, the respondent may file an affidavit stating the facts and the Registrar may dispense with service of the copies mentioned in rule 12 (1).

14. Rule 31 of Order XLI shall not apply to the High Court. If judgment is given orally a shorthand note thereof shall be taken by an officer of the Court and a transcript made by him shall be signed or initialled by the Judge or by the Judges concurring therein after making such corrections as may be considered necessary.

ORDER XLIB. LETTERS PATENT APPEALS

1. The rules of Order XLIA shall apply, so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court:

Provided that it shall not be necessary to file copies of the judgment and decree appealed from.

2. Notice of the appeal shall be given in manner prescribed by Order XLIA, rule or if the party to be served has appeared in person in manner prescribed by rule 5 of the said Order,"

[Vide GO No. 2128-Home (Judi), dated 18th October, 1917.]

ORDER 42 :- APPEALS FROM APPELLATE DECREES :-

1. Procedure :- .

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLII, for rule 1, substitute the following rule, namely:-

"1. The rules of Order XLI and Order XLIA shall apply, so far as may be, to appeals from Appellate decrees, subject to the following proviso:

Every memorandum of appeal from an appellate decree shall be accompanied by a copy of the

decree appealed from unless the Court sees fit to dispense with either or all of them-

(1) a copy of the judgment on which the said decree is found, --^

(2) a copy of the judgment of the Court of the first instance, and

(3) a copy of the finding of the Civil the Revenue Court, as the case may be, where an issue was remitted to such Court for decision."

[Vide Notification No. 14186/VII-d-147, dated 22nd December, 1951.]

Calcutta.-In Order XLII, for rule 1, substitute the following rule, namely:-

"1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees:

Provided that every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and also (unless the Court sees fit to dispense within any or all of them), by copies of the judgment on which the said decree is founded and of the judgment and decree of the Court of first instance."

[Vide Notification No. 1750-G, dated 15th February, 1938.]

Gauhati.-Same as in Calcutta.

Kerala.-In Order XLII, in rule 1,-

(a) after the words "Order XLI", insert the words "as modified by Order XLIA".

[Vide Notification No. 1-32897/68, dated 5th January, 1970.]

(b) after rule 1, insert the following rule, namely:-

"2. Memo to be typed or printed. What to accompany memorandum.- (1) The memorandum of appeal shall be printed or type written and shall be accompanied by a certified copy of the decree and judgment of the Appellate Court and (unless the Court dispenses therewith) a certified copy of the decree and judgment of the Court of first instance.

(2) Copies of documents to be construed.-If any ground of appeal is based upon the construction of a document, a true copy of such document shall be presented with the memorandum of appeal." (w.e.f. 9-6-1959)

Punjab.-In Order XLII, after rule 1, insert the following rule, namely:-

"2. In addition to the copies specified in Order XLI, rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the Appellate Court dispenses therewith."

[Vide Notification No. 4685-G, dated 17th October, 1919 and Notification No. 138-G, dated 19th March, 1926.]

Rajasthan.-In Order XLII, for rule 1, substitute the following rule, namely:-

"1. Procedure.-The rule of Order XLI shall apply, so far as may be, to appeals from appellate decree, subject to the following proviso;

Every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and unless the Court sees fit to dispense with either or all them-

- (1) a copy of the judgment on which the said decree is founded,
- (2) a copy of the judgment of the Court of the first instance, and
- (3) a copy of the finding of the Civil or Revenue Court, as the case may be, where as issue was remitted to such Court for decision."

2. Power of Court to direct that the appeal be heard on the question formulated by it :- .

At the time of making an order under rule 11 or Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100 and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. Application of rule 14 of Order XLI :- .

Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.]

HIGH COURT AMENDMENTS

Andhra Pradesh.-Same as in Madras.

Delhi.-Same as in Punjab.

Haryana.-Same as in Punjab.

Himachal Pradesh.-Same as in Punjab.

Karnataka.-For Order XLII, substitute the following Order, namely:-

"ORDER XLII

APPEALS FROM APPELLATE DECREES

1. The Rules contained in Order XLI and Order XLIA shall apply, so far as may be, to appeals to the High Court of Mysore from appellate decrees with the modifications contained in this Order.
2. The memorandum of appeal shall be accompanied by one certified copy each of the decree and judgment of the Court of the first instance and one certified copy each of the decree and judgment of the Appellate Court.
3. If any ground of appeal is based upon the constriction of a document a copy of such document shall be presented with the memorandum of appeal, and if such document is not in the language of the Court a translation thereof or of a material portion thereof certified to be a true translation by the appellants Advocate shall be presented."

Madras.-For Order XLII, substitute the following Order, namely:-

"ORDER XLII

APPEALS FROM APPELLATE DECREES

1. The rules of Order XLI and Order XLIA shall apply, so far as may be, to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this Order.

2. (1) The memorandum of appeal shall be printed or typewritten and shall be accompanied by the following papers;

(2) One certified copy of the decrees of the Court of first instance and of the Appellate Court and four printed copies of each of the judgments of the said Courts, one copy of each judgment being a certified copy;

(3) If any ground of appeal is based upon the construction of a document, a printed or typewritten copy of such document shall be presented with the memorandum of appeal:

Provided that if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader to be a correct translation shall be presented.

3.1f the appellant fails to comply with this rule, the appeal may be dismissed." (w.e.f. 18-10-1917).

Punjab.-In Order XLII, after rule 1, insert the following, namely:-

"2. In addition to the copies specified in Order XLI, rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the Appellate Court dispenses therewith", (w.e.f. 9-6-1959)

Kerala.-After Order XLII, insert the following Order, namely:-

"ORDER XLIIA

APPEALS FROM DECREES AND ORDERS OF SINGLE JUDGE TO DIVISION BENCH OF THE HIGH COURT

Procedure.-The Rules of Orders XLI and XLIA shall apply, so far as may be, to appeals from decrees and orders of a Single Judge to a Division Bench." (w.e.f. 9-6-1959).

ORDER 43 :- APPEALS FROM ORDERS :-

1. Appeals from orders :- .

An appeal shall lie from the following orders under the provisions of section 104, namely:-

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court 1[except where the procedure specified in rule 10A of Order VII has been followed];

2* * * *

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex pane

2* * * * *

(f) an order under rule 21 of Order XI;

2* * * * *

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

1[(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.]

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

3* * * * *

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

4[(na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent persons:]

3* * * * *

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV; (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII; (r) an order under rule 1, rule 2 4[rule 2A], rule 4 or rule 10 of Order XXXIX; (s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order rule 23 [or rule 23A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

5* * * *

(w) an order under rule 4 of Order XLVII granting an application for review.

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Clauses (b), (e), (g) and (h) omitted by Act No. 104 of 1976 (w.e.f. 1-2-1977).

3. Clauses (m) (o) (v) omitted by Act No. 104 of 1976 (w.e.f. 1-2-1977).

4. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

5. Clauses (m) (o) (v) omitted by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENTS

Allahabad.-In Order XLIII, in rule 1, omit clauses (g), (i) and (o).

[Vide Notification No. 43/VII-d-29, dated 1st June, 1957.]

Andhra Pradesh-In Order XLIII, in rule 1,-

(i) after clause (i) insert the following clause, namely:-

"(ii) an order under rule 106 of Order XXI;"

[Vide Notification No. P Dis. 229/56, dated 2nd April, 1956.]

(ii) in clause (r), after the words and figure "rule 2", insert the words and figures "rule 3A, rule 3B". (w.e.f. 12-7-1962)

Bombay.-In Order XLIII, in rule 1,-

(i) in clause (r), for the words and figures "or rule 10", substitute the words and figures v "rule 10 and rule 11"; (w.e.f. 1-11-1966)

(ii) omit clause (w).

[Vide Notification No. 1646, dated 9th March, 1926.]

Calcutta.-In Order XLIII, in rule 1, after clause (i), insert the following clause, namely:-

"(i) (a) An order under rule 57 of Order XXI, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue."

[Vide Notification No. 3516-G, dated 3rd February, 1933.]

Gauhati.-Same as in Calcutta.

Gujarat-Same as in Bombay (ii).

Kerala.-In Order XLIII, in rule 1, same as in Madras (b). (9-6-1959)

Madras.-In Order XLIII, in rule 1,-

(a) after clause (i) insert the following clause, namely:-

"(ii) an order under rule 106 of Order XXI." (w.e.f. 19-5-1954)

(b) in clause (s), at the end, insert the words "except an order under the proviso to sub-rule (2) of rule 4."

[Vide P Dis. No. 60 of 1933.]

Patna.-In Order XLIII, in rule 1, after clause (i), insert the following clause, namely:-

"(ii) an Order in garnishee proceedings other than an order referred to in rule 63 H (1) of Order XXI." (w.e.f. 7-1-1936)

1A. Right to challenge non-appealable orders in appeal against decree :- . -

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Procedure :- .

The rules of Order XLI shall apply, so far as may be, to appeals from orders.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLIII, in rule 2, after the words and figures "Order XL1", insert the words and figures "and Order XLIA".

[Vide Notification No. 14186/VII-d-147, dated 22nd December, 1951.]

Andhra Pradesh.-Same as in Madras.;

Karnataka.-In Order XLIII, for rule 2, substitute the following rules, namely:-

"2. The rules contained in Orders XLI and XLIA shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any subordinate Court from which an appeal to the High Court is allowed under the provisions of any law:

Provided that in the case of appeals against interlocutory orders made prior to decree or final order, the Court which passed the order appealed from need not send the records of the case unless an order has been made by the High Court for stay of further proceedings in that Court but send only such records as may be called by the High Court.

3. Rules contained in Order XLII shall apply, so far as may be, to appeals from appellate Orders."

[Vide Notification No. ROC 2296/59, dated 5th November, 1959.]

Kerala.-In Order XLIII, for rule 2, substitute the following rule, namely:-

"2. The rules of Order XLI, Order XLIA and Order XLII, rule 2(2) shall apply, so far as may be, to appeals from the Orders specified in rule I and other orders of any Civil Court from which an appeal to the High Court is allowed under any provision of law:

Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court." (w.e.f. 9-6-1959)

Madras.-In Order XLIII, for rule 2,-

(a) substitute the following rule, namely:-

"2. The rules of Order XLI and of Order XLIA shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any Civil Court from which an appeal to the High Court is allowed under any provision of law:

Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court."

(b) after rule 2, insert the following rule, namely:-

"3. Appeals from Appellate Orders.-(1) The provisions of Order XLII shall apply, so far as may be, to appeals from appellate orders.

(2) A memorandum of appeal from an appellate order shall be accompanied by a certified copy of the judgment and of the order of the Court of first instance, and by a certified copy of the judgment and of the order of the Appellate Court.

(3) If any ground of appeal is based upon the construction of a document, a printed a typewritten copy of such document shall be presented with the memorandum of appeal:

Provided that, if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader to be a correct translation shall be presented."

[Vide P Dis. No. 788 of 1932.]

Punjab, Haryana and Chandigarh.-In Order XLIII, for rule 2, substitute the following rule, namely:-

"2. The rules of Order 41 shall apply, so far as may be, to appeals from order:

Provided that in case of appeals against interlocutory orders, the Court which passed the order appealed from shall not sent the records of the case unless summoned by the Appellate Court." (w.e.f. 28-1-1993)

ORDER 44 :- APPEALS BY INDIGENT PERSONS :-

1. Subs. by Act No. 104 of 1976 for "PAUPER APPEALS" (w.e.f. 1-2-1977)

1. Who may appeal 1[as an indigent person] :- .

(1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an 2[indigent person], subject, in all matters, including the presentation of such application, to the provisions relating to suits by3[indigent , persons], in so far as those provisions are applicable.

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5* * * * *

1. Subs. by Act No. 104 of 1976 "as pauper" (w.e.f. 1-2-1977)

2. Subs.by Act No. 104 of 1976 "pauper" (w.e.f. 1-2-1977)

3. Subs.by Act No. 104 of 1976 "paupers" (w.e.f. 1-2-1977)

4. Proviso omitted by Act 66 of 1956, sec. 14 (w.e.f. 1-1-1957)

5. Sub-rule (2) Omitted by Act No. 104 of 1976, (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Andhra Pradesh--In Order XLIV, in rule 1, in sub-rule (1), insert the following proviso, namely:-

"Provided that in case where the appeal is presented to the High Court, the application for permission to appeal as pauper may be presented by the applicant in person or by his or her authorised agent or by an Advocate." (w.e.f. 30-4-1970)

2. Grant of time for payment of court-fee :- .

Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court- fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee has been paid in the first instance.

1. Subs. by Act No. 104 of 1976, sec. 90, for rule 2 (w.e.f. 1-2-1977)

3. Inquiry as to whether applicant is an indigent person :- .

(1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of the Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.]

HIGH COURT AMENDMENT

Allahabad.-In Order XIV, for rule 3, substitute the following rule, namely:-

"3. Inquiry as to whether applicant is an indigent person.- The inquiry into the question whether or not the applicant referred to in rule 1, is an indigent person shall be made by the Appellate Court or under the orders of the Appellate Court by an officer of that Court unless the Appellate Court consider it necessary, in the circumstances of the case, that the inquiry should be held by the Court from whose decision the appeal is preferred;

Provided that if such applicant was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from, but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be made in the

manner stated above." (w.e.f. 25-4-1987)

ORDER 45 :- APPEALS TO THE SUPREME COURT :-

1. "Decree" defined :- .

In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

2. Application to Court whose decree complained of :- .

1[(1)] Whoever desires to appeal the Supreme Court shall apply by petition to the Court whose decree is complained of.

2[(2) Every petition under sub-rule (1) shall be heard as expeditiously>as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (1).]

1. Rule 2 renumbered as sub-rule (1) of that rule by Act No. 104 of 1976 (w.e.f. 1-2-1977).

2. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

STATE AMENDMENT

Uttar Pradesh.-In its application to the State of Uttar Pradesh, in rule 2 after sub-rule (2) the following sub-rule be inserted, namely:-

"(3) Notwithstanding anything contained in sub-rule (1), whoever desires to appeal to the Supreme Court, may apply orally to the Court whose decree is to be complained of, immediately before or after the pronouncement of the judgment by the Court, for a certificate contemplated in sub-rule (1) of rule 3, and the Court may either grant or refuse the certificate, or direct the applicant to file petition as required by sub-rule (1):

Provided that if an oral application is entertained and rejected, no written petition under sub-rule (1) shall lie." [U.P. Act 57 of 1976].

HIGH COURT AMENDMENTS

Andhra Pradesh.-In Order XLV, for rule 2, substitute the following rules, namely:-

"2. Application of Court whose decree or judgment complained of.-Whoever desires to appeal to the Supreme Court under clause (1) of Article 133 of the Constitution shall apply for a certificate by petition to the Court whose decree or judgment is complained of:

Provided that an application may be made orally for the purpose, immediately after the judgment had been delivered:

Provided further where the certificate has been refused on an oral application no subsequent petition for the certificate shall He."

[Vide Andhra Pradesh Gazette, Pt. II, (R.S.), p. 132, dated 10th February, 1977.]

Bombay.-In Order XLV, in rule 2, after sub-rule (2), insert the following sub-rule, namely:-

"3. Application to Court whose decree is complained of.-(1) Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.

(2) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment by the Court, and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1):

Provided, however, that if an oral application for leave under sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie." (w.e.f. 1-10-1983)

Madras.-In Order XLV, in rule 2, for sub-rule (!}, substitute the following sub-rule, namely:-

"(1) whoever desires to appeal to the Supreme Court, any, make an oral application to the Court whose decree is complained or, immediately after the pronouncement of the judgment and in such a case, it shall be heard and disposed of immediately, or may apply by petitions to the Court, whose decree is complained of."

[Vide Tamil Nadu Government Gazette, Pt. III, Sec. 2, p. 136, dated 16th November, 1988.]

Patna.-In Order XLV, for rule 2, substitute the following rule, namely:-

"2. Application to Court whose judgment, decree or final order is complained of.-(1) Whoever desires to appeal to the Supreme Court may apply by petition to the Court whose judgment, decree or final order is complained of.

(2) Notwithstanding anything contained in sub-rule (!) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the judgment or final order by the Court and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1):

Provided that if an oral application for leave under the sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie."

[Vide Bihar Gazette, Pt. III, p. 3, dated 11th January, 1978.]

3. Certificate as to value or fitness :- .

1[(1) Every petition shall state the grounds of appeal and pray for a certificate-

(i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of the Court the said question needs to be decided by th Supreme Court.]

(2) Upon receipt of such petition, the Court shall direct notice to be served on th opposite party to show cause why the said certificate should not be granted.

1. Subs. by Act No. 49 of 1973 for sub-rule (1).

HIGH COURT AMENDMENTS

Allahabad.-In Order XLV, in rule 3, in sub-rule (2), at the end, omit full stop and insert the words "unless it thinks fit to refuse the certificate."

[Vide Notification No. 1/VII-d-158, dated, 4th January, 1960.]

Andhra Pradesh.-In Order XLV, for rule 3, substitute the following rule, namely:-

"3. Contents of the petition.-Every such petition shall state the grounds of appeal and pray for a certificate to appeal to the Supreme Court under clause (1) of article 13 of the Constitution."

[Vide Andhra Pradesh Gazette, Pt. II, (R.S.), p. 132, dated 10th February, 1977.]

Bombay.-In Order XLV, in rule 3, in sub-rule (2), at the end, omit the full stop and insert the words "unless it thinks fit to refuse the certificate."

[Vide Notification No. P 1614/45, dated 26th June, 1951.]

Gujarat.-Same as in Bombay.

Kerala.-In Order XLV, in rule 3,-~

(i) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Upon receipt of such petition, the Court, after fixing a day for hearing the applicant or his pleader and hearing him, if he appears, may dismiss the petition."

(ii) after sub-rule (2), insert sub-rule (3) as in Madhya Pradesh (b).

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madhya Pradesh.-In Order XLV, in rule 3,-

(a) for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Upon receipt of such petition, the Court, after sending for the record, and after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, may dismiss the petition."

(b) after sub-rule (2), insert the following sub-rule, namely:-

"(3) Unless the Court dismisses the petition under sub-rule (2), it shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted." (w.e.f. 16-9-1960)

Madras.-In Order XLV, in rule 3, in sub-rule (2), insert the following proviso, namely:-

"Provided that where leave to appeal is sought from a decree dismissing a proceeding in limine, notice shall not be necessary unless the Court otherwise directs." (w.e.f. 19-6-1969)

Orissa.-In Order XLV, in rule 3, for sub-rule (2), substitute the following sub-rules, namely:-

"(2) Upon receipt of such petition, the Court may, after giving the applicant or his pleader an opportunity of being heard dismiss the petition summarily.

(3) Unless the Court dismisses the petition under sub-rule (2) it shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted:

Provided that where a party has appealed through a pleader in the High Court, service of notice on such pleader either in the manner provided in this Code or by sending a copy of such notice by registered post shall be deemed to be sufficient notice to the party." (w.e.f. 14 -5-1984)

4. Consolidation of suits :- .

Rep. by the Code of Civil Procedure (Amendment Act, 1973 (49 of 1973) s. 4 (w.e.f. 29-11-1973).

5. Remission of dispute to Court of first instance :- .
Rep. by s. 4, ibid, (w.e.f. 29-11-1973).}

6. Effect of refusal of certificate :- .
Where such certificate is refused, the petition shall be dismissed.

7. Security and deposit required on grant of certificate :- .

(1) Where the certificate is granted, the applicant shall, within ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow; from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date,-

(a) furnish security in cash or in Government securities for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing indexing printing, and transmitting to the Supreme Court a correct copy of the whole record of the suit, except-

(1) formal documents directed to be excluded by any Rule of the Supreme Court in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded:

Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLV, in rule 7,-

(a) in sub-rule (1), in clause (a), between the words "the respondent" and the word ", and" insert the words "except when the Government is the applicant"

(b) in sub-rule (1), in the first proviso, for the words "at the time of granting the certificate", substitute the words "at any time before expiry of the period for furnishing security".

[Vide Notification No. 3713-454(7), dated 20th June, 1936 and Notification No. 676/35(a)-1,

dated 4th February, 1939.]

Andhra Pradesh.-In Order XLV, omit rule 7. (w.e.f. 4-8-1975)

Bombay.-In Order XLV, after rule 7 insert the following rule, namely:-

"7A. Security not to be demanded from Union or State Government or Government servant defended by Government.-No such security as is mentioned in clause (a) of sub-rule (1) of rule 7 above shall be required from the Union of India or [a State Government or where] Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to [have been] done by him in his official capacity." (w.e.f. 1-10-1983)

Gujarat.-In Order XLV, after rule 7, insert the following rule, namely:-

"7A- No such security as is mentioned in clause (a) of sub-rule (1) of rule 7, shall be required from the Union of India, or, where the State Government has undertaken the defence of the suit from any public officer sued in respect of an act alleged to be done by him in his official capacity." (w.e.f. 17-8-1961)

Kerala.-In Order XLV, in rule 7, after sub-rule (1) insert the following sub-rule, namely:-

"(2) No such security as is mentioned in rule 7(1) clause (a) shall be required from the Government or, where State Government has undertaken the defence of the suit, from any public officer and in respect of an Act purporting to be done by him in his official capacity."

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

Madhya Pradesh.-In Order XLV, insert rule 7A as in Gujarat.

[Vide Notification No. 3409, dated 29th June, 1943.]

8. Admission of appeal and procedure thereon :- .

Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall-

(a) declare the appeal admitted,

(b) give notice thereof to the respondent,

(c) transmit to the Supreme Court under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore and paying the reasonable expenses incurred in preparing them.

HIGH COURT AMENDMENTS

Andhra Pradesh.-In Order XLV, for rule 8, substitute the following rule, namely:-

"8. On receipt from the Supreme Court of the copy of the petition of appeal, the Registrar of the Court shall-

(i) cause notice of the lodgment of the petition of appeal to be served on the respondent personally or in such manner as provided for service of its own processes or as the Court may prescribe or order;

(ii) unless otherwise ordered by the Supreme Court, transmit to the Supreme Court at the

expense of the appellant the original record of the case; and

(iii) as soon as notice as aforementioned is served, to send a certificate as to the date or dates on which the said notice was served." (w.e.f. 4-8-1975)

Madras.-In Order XLV, in rule 8,-

(i) for clause (b), substitute the following clause, namely:-

"(b) give notice to such of the respondents as have entered appearance at the hearing, of the appeal in the High Court and such of the respondents who have entered appearance in pursuance of nonce issued under rule 3(2) supra,";

(ii) in clause (c), at the end, insert the words "give notice of such transmission to the respondents specified in rule 8(b) above, and", (w.e.f. 28-1-1959)

9. Revocation of acceptance of security :- .

At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XLV, omit rule 9. (w.e.f. 4-8-1975)

9A. Power to dispense with notices in case of deceased parties :- .

Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

HIGH COURT AMENDMENT

Kerala.-In Order XLV, in rule 9A, in the proviso after the words "sub-rule", for the figure "(2) " substitute the figure "(3)".

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

10. Power to order further security or payment :- .

Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the Supreme Court such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and

sufficient security, or to make, within except as aforesaid.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XLV, omit rule 10. (w.e.f. 4-8-1975)

11. Effect of failure to comply with order :- .

Where the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of the Supreme Court and in the meantime execution of the decree appealed from shall not be stayed.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XLV, omit rule 11. (w.e.f. 4-8-1975)

12. Refund of balance deposit :- .

When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance (if any) of the amount which he had deposited under rule 7.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XLV, omit rule 12. (w.e.f. 4-8-1975)

13. Powers of Court pending appeal :- .

(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the court,-

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. Increase of security found inadequate :- .

(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,-

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree, appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

HIGH COURT AMENDMENT

Andhra Pradesh.-In Order XLV, omit rule 14. (w.e.f. 4-8-1975)

15. Procedure to enforce orders of the Supreme Court :- .

(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Courts, was preferred.

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

1[* * *]

(4) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

1. Sub-Rule (3) omitted, by A.O. 1950. HIGH COURT AMENDMENTS

Allahabad.-In Order XLV, in rule 15, for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Whoever desires to obtain,-

(a) execution of any order of any Supreme Court; or,

(b) where an appeal has been dismissed by the Supreme Court for want of prosecution, an order of the Court from which the appeal to [the Supreme Court] was preferred terminating proceedings and determining the costs, shall apply to the said Court by a petition, accompanied by a certificate copy of the decree passed or order made by the Supreme Court of which execution is desired or to which the effect is to be given and a memorandum of all costs

incurred in India that are claimed in pursuance thereof."

[Vide Notification No. 1591/35(a), dated 7th April, 1928.]

Andhra Pradesh.-In Order XLV, in rule 15,-

(i) for sub-rule (1), substitute the following sub-rule, namely:-

"(1) Whoever desires to obtain execution of any appellate decree or order of the Supreme Court shall apply by petition accompanied by a certified copy of the said decree or order, to the Court of first instance.

Explanation.-The Court of first instance in this rule shall mean the Court in which the suit or proceedings was first instituted and where such Court has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit."

(ii) omit sub-rule (2);

(iii) Renumber sub-rule (4) as sub-rule (2).

[Vide Notification No. ROC No. 6842/51-B-I, dated 9th August, 1957.]

Bombay.-In Order XLV, for rule 15, substitute the following rule, namely:-

"15. Procedure to enforce order of the Supreme Court.- (1) (a) Any decree passed or order made by the Supreme Court in exercise of the appellate jurisdiction including any order as to the costs of, and incidental to, any proceedings in that Court shall be enforceable in accordance with the provisions of law for the time being in force relating to the enforcement of the decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred.

(b) The costs incurred in the High Court as incidental to the Supreme Court Appeal including the costs in the application for leave to appeal to the Supreme Court shall be recoverable where awarded, by execution of the order of the High Court in the same manner in which the decree or order of the High Court from which the appeal to the Supreme Court was preferred or sought to be preferred would have been executed.

(2) Unless the Supreme Court otherwise directs no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing of the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court but such order shall have the same force and effect as it had been made before the death took place." (w.e.f. 1-10- 1983)

Karnataka.-In Order XLV, in rule 15, omit sub-rules (1) and (2). (w.e.f. 30-3-1967)

Madras.-Same as in Andhra Pradesh. (w.e.f. 28-5-1958)

16. Appeal from order relating to execution :- .

The orders made by the Court which executes the decree or order of the Supreme Court, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLV, after rule 16, insert the following rule, namely:-

"17. The provisions of sub-rules (1) and (2) of rule 15 and the provisions of rule 16 shall apply mutatis mutandis, to the execution of decrees or orders for costs passed by the Supreme Court in appeals from the High Court"

[Vide Notification No. 3922/VII-d 107, dated 14th August, 1948,]

Andhra Pradesh.-Same as in Madras.

Kerala.-In Order XLV, after rule 16, insert the following rule, namely:-

"16A. Appeals to Federal Court.-The provisions of sub-rules (1) and (2) of rule 15 and the provisions of rule 16 shall apply, mutatis mutandis, to the execution of decrees or orders for costs passed by the Federal Court in appeals from the High Court."

Madhya Pradesh.-In Order XLV, insert rule 17 which is same as in Allahabad with insertion of the words "in accordance with the declaration or order made" after the words "orders for costs passed".

[Vide Notification No. 3409, dated 20th June, 1943.]

Madras.-(1) In Order XLV, after rule 16, insert the following rule, namely:-

"16A. The provisions of sub-rules (1) and (2) of rule 15 and the provisions of rule 16 shall apply mutatis mutandis to the execution of decrees or orders for costs passed in the Federal Court in appeals from the High Court."

[Vide ROC. No. 280 of 1945.]

(2) After Order XLV, insert the following Order, namely:-

"ORDER XLVA APPEALS TO THE SUPREME COURT

1. Decree defined.-In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

2. Application to Court whose decree is complained of.-Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.

3. Certificate as to value or fitness.-(1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to the Supreme Court.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted:

Provided that where leave to appeal is sought from a decree dismissing a proceeding in limine notice shall not be necessary unless the Court otherwise directs.

4. Consolidation of suits.-For the purpose of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

5. Remission of dispute to Court of first instance.-In the event of any dispute arising between the parties as to the amount or value of the subject-matter or the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the Supreme Court, the Court to which a petition for a certificate is made under rule 2, may, if it thinks fit, refer such dispute for report to the Court of first instance, which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

6. Effect of refusal of certificate.-Where a certificate is refused, the petition shall be dismissed.

7. Powers of Court pending appeal.-(1) Notwithstanding the grant of leave to appeal to the Supreme Court, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit on special cause shown by any party interested in the suit, or otherwise appearing to the Court.

(a) impound any movable property in dispute or any party thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of the decree appealed from or of any decree or order which the Supreme Court may make on appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of appeal, as it thinks fit by the appointment of a receiver or otherwise, till the petition for leave to appeal is disposed of or till the appeal is filed in the Supreme Court.

8. Procedure to enforce orders of the Supreme Court.-(1) whoever desires to obtain execution of any appellate decree or order of the Supreme Court shall apply by petition accompanied by a certified copy of the said decree or order to the Court of first instance.

Explanation.-The Court of first instance in this rule shall mean the Court in which the suit or proceeding was first instituted and where such Court has ceased to exist or to have jurisdiction to execute it, the Court, which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try the suit.

(2) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground, that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

9. Appeal from order relating to execution.-The orders made by Court which executes the decree or order of the Supreme Court relating to such execution, shall be appealable in the same manner as the orders of such Court relating to the execution of its own decree." (w.e.f. 21- 4-1971 and 21-8-1974)

17. [Appeals to Federal Court].

HIGH COURT AMENDMENT

Punjab and Haryana.-For Order XLV, substitute the following Order, namely:-

"ORDER XLV
APPEALS TO THE SUPREME COURT

1. "Decree defined.- In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

2. Application to Court whose decree complained of.- Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.

3. Certificate as to the fitness.- (1) Every petition shall state the grounds of appeal and pray for a certificate-

(i) that the case involves a substantial question of law of general importance, and (ii) that in the opinion of the Court the said question needs to be decided by the Supreme Court.

(2) Upon receipt of such petition, the Court shall, unless it dismisses the petition at the preliminary hearing, direct notice to be served on the opposite-party to show, cause why the said certificate should not be granted. . .

4. [Omitted]

5. [Omitted]

6. Effect of refusal of certificate.- Where such certificate is refused, the petition shall be dismissed.

7. Deposit required on grant of certificate.- (1) Where the certificate is granted the applicant shall within ninety days of the order of the Supreme Court under rule 14 (1) of the Supreme Court Rules for the time being in force or such further period not exceeding sixty days as the Court may, upon cause shown, allow from the date of the Supreme Court Order under rule 14 {!}, whichever is later :

(a) deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the Supreme Court three copies of the whole record of the suit except-

(1) formal documents directed to be excluded by any rule of the Supreme Court in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts or portions of accounts which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included;

(4) such other documents as the High Court may direct to be excluded.

8. Power to order further payment.- Where at any time after the admission of an appeal but before the transmission of the copy of the record to the Supreme Court further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid, the Court may order the appellant to make, within a time to

be specified by the Court, the required payment.

9. Effect to failure to comply with order.- Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of the Supreme Court, and in the meantime execution of the decree appealed from shall not be stayed.

9A. Power to dispense with notice in case of deceased.- Nothing in this rules requiring any notice to be served on or given to an opposite- party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite- party or deceased respondent in a case, where such opposite-party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notice under sub-rule (2) of rule 3 shall be given by affixing the same on some conspicuous place in the Court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspaper as the Court may direct.

10. Refund of balance deposit.- When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance, if any, or the amount which he has deposited under rule 7.

11. Power of Court pending appeal.- (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks, fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,-

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appeal from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

12. Procedure to enforce orders of the Supreme Court.- (1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred.

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct, and shall upon the application of either party give directions as may be required for the execution of the same, and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of the original decrees.

(3) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite-party or deceased respondent in a case, where such opposite-party or respondent did not appear either at hearing in the Court whose decree was complained of or at any proceeding subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

13. Appeal from order relating to execution.-The orders made by the Court which executes the decree or order of the Supreme Court, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees,"

[Vide G.S.R. CA/5/1908/S/122/73, dated 21st December, 1973, published in the Punjab Government Gazette, L.S. dated 4th January, 1974.]

ORDER 46 :- REFERENCE :-

1. Reference of question to High Court :- .

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. Court may pass decree contingent upon decision of High Court :- .

The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. Judgment of High Court to be transmitted and case disposed of accordingly :- .

The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Costs of reference to High Court :- .

The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

4A. Reference to High Court under proviso to section 113 :- .

The provisions of rules 2, 3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.

1. Ins. by Act 24 of 1951, sec. 2.

5. Power to alter, etc., decree of Court making reference :- .

Where a case is referred to the High Court under rule 1 or under the proviso to section 113, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6. Power to refer to High Court questions as to jurisdiction in small causes :- .

(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reason for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

HIGH COURT AMENDMENTS

Kerala.-In Order XLVI, in rule 6, in sub-rule (1), for the words "Court of Small Causes", substitute the words "Court exercising Small Cause Jurisdiction".

[Vide Notification No. BI-3312/58, dated 7th April 1959.]

7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes :- .

(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLVI, after rule 7, insert the following rule, namely:-

"8. Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order."

[Vide Notification No. 1465/35(a)-5(4), dated 1st June, 1918.]

Bombay.-In Order XLVI, after rule 7, insert the following rule, namely:-

"8. Applicability of rule 38 of Order XLI.- Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this order." (w.e.f. 1-11 -1966)

Gujarat.-Same as in Allahabad.

Kerala.-In Order XLVI, omit rule 7.

ORDER 47 :- REVIEW :-

1. Application for review of judgment :- .

(1) Any person considering himself aggrieved-

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

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

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

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

1[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

1. Ins. by Act No. 104 of 1976 (w.e.f. 1-2-1977).

HIGH COURT AMENDMENT

Kerala.-In Order XLVII, in rule 1, in sub-rule (1), in clause (c), for the words "Court of Small Causes", substitute the words "Court exercising Small Cause Jurisdiction", (w.e.f. 9-6-1959)

(ii) The discovery of new evidence on a question of fact, though is a good ground for the review of the decree of the first appellate Court, is no ground for review of the decree of the second appellate Court; *Hori Lal v. Sharwan Kumar*, AIR 1993 Del 85: 1993 (1) Cur CC 121.

2. [To whom applications for review may be made.] :- .

Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 14.

3. Form of applications for review :- .

The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.

4. Application where rejected :- .

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted-Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in Court consisting of two or more Judges :- .

Where the Judge or Judges, or any one of the judges, who passed the decree or made the order a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

HIGH COURT AMENDMENTS

Bombay.-In Order XLVII, for rule 5, substitute the following rule, namely:-

"5. Application for review in Court consisting of two or more Judges.-Where the Judge or Judges, or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue to be attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of two months next after application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same:

Provided that if in the case of a decree or order passed by a Division Bench of two or more Judges of the High Court sitting at any place in the State of Maharashtra, all the said Judges are not available for sitting together at one place when the review application is ready for hearing, the application may be heard by a Division Bench of two or more Judges, at least one of whom, if available, should be the Judge who had passed the decree or order a review of which is applied for."

[Vide Maharashtra Government Gazette, Pt. 4, ka, p. 429, dated 15th September, 1983 (w.e.f. 1-10-1983).]

Gujarat.-Same as in Bombay substituting the word "Gujarat" for the word "Maharashtra" in the proviso.

6. Application where rejected :- .

(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application :- .

1[(1) An order of the Court rejecting the application shall not be appealable;

but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

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

1 Subs. by Act No. 104 of 1976 for sub- rule (1) w.e.f. 1-2-1977)..

8. Registry of application granted, and order for re-hearing :- .

When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain applications :- .

No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLVII, after rule 9, insert the following rule, namely:-

"10. Rule 38 of Order XLJ shall apply, so far as may be, to proceedings under this order."

[Vide Notification No. 146S/35fa)-5(4), dated 1st June, 1918.]

Bombay.- (1) In Order XLVII, after rule 10, insert the following rule, namely:-

"10. Applicability of rule 38 of Order XLI.-Rule 38 of Order XLI shall apply, so far as may be, to

proceedings under this Order." (w.e.f. 1-10 -29S3)

(2) After Order XLVII, insert the following Order, namely:-

"ORDER XLVIIIA

1. Applicability of rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of this Code."

Gujarat.-Same as in Allahabad.

ORDER 48 :- MISCELLANEOUS :-

1. Process to be served at expense of party issuing :- .

(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) Costs of service-The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

HIGH COURT AMENDMENTS

Allahabad.-In Order XLVIII, in rule I, in sub-rule (1), before the words "Every process issued" prefix the words "Except as provided in Order IV, rule 1(2)".

[Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.]

Bombay.-In Order XLVIII, in rule 1, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) Cost of service.-The Court-fee chargeable for service of the process of the Court shall, except as provided for in sub-rule (2) of rule 1 of Order IV, be paid when the process is applied for, or within such time as may be fixed by the Court." (w.e.f. 1-10-1983)

Calcutta.-In Order, XLVIII, in rule 1, for sub-rule (2), substitute the following sub-rule, namely:-

"(2) The Court-fee chargeable for such service shall be paid when the process is applied for, or within such time, if any, as the Court may, when ordering its issue fix for the purpose."

[Vide Notification No. 1154-G, dated 17th January, 1934.]

Gauhati.-Same as in Calcutta.^

Gujarat.-Same as in Bombay .substituting the words "other than the summons to the defendants, shall" for the words "shall, except as provided for in sub-rule (2) of rule 1 of Order IV".

Madhya Pradesh.-In Order XLIIIL in rule 1, in sub-rule (2), for the words "The Court-fee", substitute the words "Except as provided in Order IV rule 1(2) the Court-fee".

[Vide Notification No. 3409, dated 29th June, 1943.]

2. Orders and notices how served :- .

All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. Use of forms in appendices. :- .

The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purpose therein mentioned.

HIGH COURT AMENDMENTS

Calcutta.-In Order XLVIII, in rule 3, after the word "appendices", insert the words "or such other forms as may be prescribed by the High Court of Judicature at Fort William in Bengal".

[Vide Notification No. 7987-G, dated 18th April, 1935.]

Gauhati.- Same as in Calcutta.

Punjab and Haryana.-In Order XLVIII, after rule 3, insert the following rule, namely:-

"4. The provisions of rules 11 (2), 17, 18,19 and 21 of Order XLI of the Code of Civil Procedure, 1908, shall apply mutatis mutandis to civil revision petitions."

[Vide G.S.R. 107, C.A. 5/8/S, 122/70, dated 16th October, 1970.]

ORDER 49 :- CHARTERED HIGH COURTS :-

1. Who may serve processes of High Court :- .

Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

HIGH COURT AMENDMENT

Kerala.-Omit Order XLIX. (w.e.f. 9-6-1959)

[Vide Notification No. BI-3312/58, dated 7th April, 1959.]

2. Saving in respect of Chartered High Courts :- .

Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the the taking of evidence or the recording of judgments and orders by a Chartered High Court.

3. Application of rules :- .

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

- (1) rule 10 and rule 11, clauses (b) and (c), of Order VII;
 - (2) rule 3 of order X;
 - (3) rule 2 of Order XVI;
 - (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
 - (5) rules 1 to 8 of Order XX; and
 - (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);
- and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

HIGH COURT AMENDMENTS

Bombay.-In Order XLIX,-

(i) for rule 3, substitute the following rule, namely:-

"3. Application of Rules.-The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

- (1) rule 19A of Order V;
- (2) rule 10, clauses (b) and (c) of rule 11 and rule 14A of Order VI, ,
- (3) rule 4A of Order VI;
- (4) rule 3 of Order X;
- (5) rule 2 of Order XVI;
- (6) rules 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 (so far as relate to the manner of taking evidence) of Order XVIII;
- (7) rules 1 to 8 (both inclusive) of Order XX;
- (8) rule 72A of Order XXI;
- (9) rule 7 of Order XXXIII (so far as relates to the making of a memorandum); and
- (10) rule 38 of Order XLI;

and rules 31 and 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction." (w.e.f. 1-11-1966)

(ii) after rule 3, insert the following rule, namely:-

"4. Where on a memorandum of appeal presented* [to the High Court] within the time prescribed for the same, the whole or any part of the fee prescribed by the law for the time being in force relating to Court-fees has not been paid, the Registrar may in his discretion allow the appellant to pay the whole or part, as the case may be, of such Court-fees [after the

presentation of the memorandum of appeal, and may admit the appeal to the Register, even though the Court-fee or part of it may have been paid ""[after the time prescribed for presentation of the appeal]." (w.e.f. 1-10-1983) and *(w.e.f. 1-4-1987)

Calcutta.-In Order XLIX, in rule 3,-

(i) for the word and figures "rule 35", substitute the words and figures "rules 12, 14, 15 and 35".

[Vide Notification No. 6874-G, dated 5th October, 1948.]

(ii) after rule 3, insert the following rule, namely:-

"4. A Judge of the High Court may pronounce the written judgment or opinion of any other Judge of the said Court signed by him when such Judge continues to be a Judge of such Court but is prevented by absence or any other reason from pronouncing that judgment or opinion in open Court."

[Vide Notification No. 7376-G, dated 8th August, 1940.]

Gauhati.-In Order XLIX, after rule 3, insert rule 4 as in Calcutta (ii).

Gujarat.-In Order XLIX,-

(1) for rule 3, substitute the following rule, namely:-

"3. Application of Rules.-The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:-

(1) rule 21A or Order V; (1a) rule 10, clauses (b) and (c) of rule 11 and rules 19 to 26 (both inclusive) of Order VII; (1b) rules 11 and 12 of Order VIII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rule 1 to 8 of Order XX;

(5a) rule 72A of Order XXI;

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum); and

(7) rule 38 of Order XLI;

and rule 31 and 35 of Order XLI shall not apply to such High Court in the exercise of its appellate jurisdiction."

(ii) after rule 3, insert the following rule, namely:-

"4. Where on a memorandum of appeal presented within the time prescribed for the same, the whole or any part of the fee prescribed by the law for time being in force relating to Court-fees has not been paid, the Registrar may in his discretion allow the appellant to pay the whole or part, as the case may be, of such Court-fees and may admit the appeal to the Register, even though the subsequent payment of Court-fee may have been made after the time prescribed for presentation of the appeal."

ORDER 50 :- PROVINCIAL SMALL CAUSE COURTS :-

1. Provincial Small Cause Courts :- .

The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under the Berar Small Cause Courts Law, 1905 or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act or Law or to Courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction that is to say-

(a) so much of this Schedule as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders:-

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, rules 5 to 12 (evidence);

Orders XLI to XLV (appeals);

Order XLVII, rules 2, 3,5,6,7 (review);

ORDER 51 :- STATE AMENDMENT :-

Allahabad.-In Order L, in rule 1, in clause (b), after the words "Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment", insert the words "and rule 5".

[Vide President Act 19 of 1973 as re-enacted by Uttar Pradesh Act 30 of 1974.]

HIGH COURT AMENDMENT

Kerala.-In Order L,-

(i) for the heading, substitute the following heading, namely:-

"SUITS TRIABLE AS SMALL CAUSES",

(ii) in rule 1, for the first paragraph, substitute the following paragraph, namely:-

"The provisions contained here in after specified shall not extend to Civil Courts exercising small cause jurisdiction."

(iii) in rule 1, in clause (b), omit the word and figures "Order XLI."

1. Presidency Small Cause Courts :- .

Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), this Schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

HIGH COURT AMENDMENTS

Gujarat.-In Order LI, in rule 1, for the words "in the towns of Calcutta, Madras and Bombay", substitute the words "in the cities of Ahmedabad, Bombay, Calcutta and Madras", (w.e.f. 19-3-1962)

Kerala.-Omit Order LI. (w.e.f. 9-6-1959)

Allahabad.-After Order LI, insert the following Order, namely:-

"ORDER LII

1. Rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of the Code."

[Vide Notification No. 1465/35(a)-5(4), dated 1st June, 1918.]

Gujarat.-Same as in Allahabad.

Madras.-After Order LI, insert the following Order, namely:-

"ORDER LII

LOGGING OF CAVEAT

1. Any person, claiming a right to appear before the Court on the hearing of an application which is expected to be made or has been made in a suit, appeal, revision or any proceeding instituted or about to be instituted in a Court to which the Code applies, may lodge a Caveat in the Court. The Caveat shall be in the form prescribed in Appendix DI. The Caveat shall be accompanied by-

(a) as many copies of the notice of Caveat as will be required to be served on the applicant or applicants;

(b) the Court-fees prescribed for the Caveat; and

(c) the fees prescribed for service of such notice of Caveat.

2. Every Court shall maintain a Register called the Register of Caveats containing the following particulars, namely:-

(1) Serial Number.

- (2) Date of presentation of Caveat.
- (3) Date upto which the Caveat will remain in force.
- (4) Name and address of Caveator.
- (5) Address for service of the Caveator within the jurisdiction of the Courtj
- (6) Name and address of the Pleader, if any, for the Caveator.
- (7) The number of the proceeding, if any, on the file of the Court in which the Caveat is tiled.
- (8) The number of the proceeding in the Lower Court against which further proceedings are taken or contemplated to be taken in the Appellate or Revisional Court (This will not apply to the Court of first instance).
- (9) Name and address of the applicant or petitioner or the expected applicant or petitioner.
- (10) Date of service on the applicant or petitioner or expected applicant or petitioner by the Caveator.
- (11) Signature of the Caveator or his Pleader, if any.

3. As soon as a person lodges a Caveat as provided in rule 1 above, an entry shall be made in the Register of Caveats in the presence of the Caveator himself or his pleader, who shall sign the register aforesaid.

4. When a person makes an application for any interlocutory orders in a suit, appeal, revision or any other proceeding, he shall look into the Register of Caveats and make an endorsement in the application as to whether or not a Caveat has been entered with respect to his application as verified from the Register of Caveats.

5. As soon as the Caveator lodges a Caveat, he shall forthwith serve notice of the Caveat by registered post acknowledgement due on the person by whom the application has been made or is expected to be made, and file proof of such service.

6. Where after a Caveat has been lodged, any application is filed in a suit, appeal, revision or any other proceeding, the Court shall serve a notice of the application on the Pleader for the Caveator, if any, or on the Caveator in the manner provided for service on defendant, respondent or opposite party, of summons to appear. All provisions applicable to such summons shall apply to the service of such notice:

Provided that at the time when an application comes up for hearing, the Caveator or his Pleader takes notice, it shall not be necessary for the Court to serve a notice on the Caveator.

7. (a) In respect of the proceedings in the Subordinate Civil Courts in the State and in the appellate Jurisdiction of the High Court of Judicature at Madras Court-fee payable on the Caveat shall be that provided for in the Tamil Nadu Court-fees and Suits Valuation Act, 1955.

(b) In respect of the proceedings on the file of the original side of the High Court, the said fee shall be that provided for in the High Court- fees rules.

8. The fees for service of notice of the Caveat shall be those provided for in the Rules of the High Court, Madras, Original Side, 1956 or in the Rules of the High Court, Madras, Appellate Side, 1965 or in the Rules relating to service and execution of processes made under sub-section (1) of section 80 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, as the case may be.

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of..... 19...../20....., helent the defendant rupees repayable onthe..... day of.....
2. The defendant has not paid the same, except rupees paidon the.....dayof.....19...../20....
[Ifthe plaintiff claims exemption from any law of limitation, say:--]
3. The plaintiff was a minor [or insane] from the dayoftill the dayof.....
4. [Facts showing when the cause ofaction arose and that the Court has jurisdiction.]
5. The value of the subject-matter of the suit for the purpose of jurisdictionis..... rupees and for the purpose of court-fees is.....rupees.
6. The plaintiff claims rupees, with interest at..... per cent, from the..... day of 19.../20.....

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No.2

moneyoverpaid

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of 19/20..... the plaintiff agreed to buy and the defendant agreed tosell bars of silver at annasper tola of fine silver.
2. The plaintiff procured the said bars to be assayed by E.F., who was paid by the defendant for such assay, and E.F. declared each of the bars to contain 1,500 tolas of fine silver, andthe plaintiff accordingly paid the defendant rupees.
3. Each of the said bars contained only 1,200 tolas of fine silver, of which factthe plaintiff was ignorant when he made the payment.
- 4.The defendant has not repaid the sum so overpaid.
[Asin paras. 4and 5of Form No. 1,and relief claimed.]

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No.3

GOODSSOLD AT A FIXED PRICE AND DELIVERED

(Title)

A.B., the above-named plaintiff states as follows:--

- 1.On the.....dayof..... 19...../20.....,E. F.soldand delivered to the defendant[one hundred barrels of flour, or thegoods mentioned in the schedule hereto annexed, orundry goods.]
2. The defendant promised to pay.....rupees for the said goods on delivery [or on the.....dayof.....someday before the plaint was filed].
3. He has not paid the same.
4. E. F. died on theday of.....19...../20.....By his last Will he appointed his brother, the plaintiff his executor.
[Asin paras. 4and 5 ofForm No. 1.]
7. The plaintiff as executor of E. F.claims [relief claimed].

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No.4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., plaintiff sold and delivered to the defendant [Sundry articles of house-furniture], but no express agreement was made as to the price.
 2. The goods were reasonably worth.....rupees.
 3. The defendant has not paid the money.
- [Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.5

GOODS MADE AT DEFENDANTS REQUEST, AND NOT ACCEPTED

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., E. F. agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs] and that E.F. should pay for the goods on delivery.....rupees.
 2. The plaintiff made the goods, and on theday of19...../20....., offered to deliver them to E. F., and has ever since been ready and willing so to do.
 3. E. F. has not accepted the goods or paid for them.
- [Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.6

deficiency upon a re-sale [goods sold at auction]

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and removed by the purchaser within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
 2. The defendant purchased [one crate of crockery] at the auction at the price ofrupees.
 3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after.
 4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.
 5. On theday of19.../20....., the plaintiff re-sold the [crate of crockery], on account of the defendant, by public auction, forrupees.
 6. The expenses attendant upon such re-sale amounted torupees.
 7. The defendant has not paid the deficiency thus arising, amounting torupees.
- [Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.7

services at a reasonable rate

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. Between theday of19.../20.....,and theday of 19...../20....., at.....,plaintiff [executed sundry drawings,designs and diagrams] for the defendant, at his request; but no expressagreement was made as to the sum to be paid for such services.
2. The services were reasonably worthrupees.
3. The defendant has not paid the money.

[Asin paras4 and 5of Form No. 1, and reliefclaimed.]

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No.8

servicesand materials at a reasonable cost

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,atthe plaintiff built a house [knownas No.....,inand furnished the materials therefor, for the defendant, at his request, but noexpress agreement was made as to the amount to be paid or such work andmaterials.
2. The work done and materials supplied were reasonably worthrupees.
3. The defendant has not paid the money.

[Asin paras 4and 5 ofForm No. 1, and reliefclaimed.]

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No.9

useand occupation

(Title)

A.B.,the above-named plaintiff, executor of the will of X.Y., deceased, states as follows:--

1. That the defendant occupied the [house No.Street], by permission of the said X,Y, from theday of19./20.....,until the day of19...../20.....,and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worthrupees.
3. The defendant has not paid the money.

[Asin paras 4and 5of Form No. 1.]

6. The plaintiff as executor of X. Y., claims[relief claimed.]

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No.10

ONAN AWARD

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,the plaintiff and defendant, having a difference between them concerning [ademand of the plaintiff for the price of ten barrels of oil which the defendantrefused to pay], agreed in writing to submit the difference to the arbitrationof E. F. and G.H., and the original document is annexed hereto.
2. On theday of19...../20.....,the arbitrators awarded that the defendant should [pay the plaintiffrupees].
3. The defendant has not paid the money.

[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.11

ONA FOREIGN JUDGMENT

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,atin the State [or Kingdom] of,theCourt of that State [or Kingdom,] in a suit therein pending between theplaintiff and the defendant, duly adjudged that the defendant should pay to theplaintiffrupees, with interest from the said date.
2. The defendant has not paid The money.
[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.12

againstsurety for payment ofrent

(Title)

A.B;the above-named plaintiff, states as follows:--

1. On theday of19/20.....,E. F. hired from the plaintifffor the term of years, the [house No.,..... street],at the annual rent of.....rupees, payable [monthly].
2. The defendant agreed, in consideration of the letting of the premises to E.F. to gurantee the punctual payment of the rent.
3. The rent for the month of19...../20.....,amounting torupees, has notbeen paid.
[If,by the terms of the agreement, notice is required to be given to the surety,add:--]
- 4.On theday of19...../20.....,the plaintiff gave notice to the defendant of the non-payment of the rent, anddemanded payment thereof.
5. The defendant has not paid the same.
[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.13

breachof agreement to purchase land

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of.....19...../20.....,the plaintiff and defendant entered into an agreement, and the original documentis hereto annexed.
[Or,ontheday of19/20.....,the plaintiff and defendant mutually agreed that the plaintiff should sell tothe defendant and that the defendant should purchase from the plaintiff fortybighas of land in the village of.....for.....rupees.]
2. On theday of19...../20.....,the plaintiff, being then the absolute owner of the property [and the same beingfree from all incumbrances, as was made to appear to the defendant], tendered tothe defendant a sufficient instrument of transfer of the same [or,was ready and willing, and is still ready and willing, and offered, totransfer the same to the defendant by a sufficient instrument] on the payment bythe defendant of the sum agreed upon.
3. The defendant has not paid the money.
[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.14

NOTDELIVERING GOODS SOLD

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,the plaintiff and defendant mutually agreed that the defendant should deliver[one hundred barrels of flour] to the plaintiff on theday of19...../20.....,and that the plaintiff should pay thereforrupees on delivery.
2. On the [said] day the plaintiff was ready and willing, and offered, to pay thedefendant the said sum upon delivery of the goods.
3. The defendant has not delivered the goods, and the plaintiff has been deprivedof the profits which would have accrued to him from such delivery.

[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.15

wrongfuldismissal

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,the plaintiff and defendant mutually agreed that the plaintiff should serve thedefendant as [an accountant, or inthe capacity of foreman, or as thecase may be], and that the defendant should employ the plaintiff as suchfor the term of [one year] and pay him for his servicesrupees[monthly].
2. On theday of19...../20.....,the plaintiff entered upon the service of the defendant and has ever since been,and still, is ready and willing to continue in such service during the remainderof the said year whereof the defendant always has had notice.
3. On theday of19...../20.....,the defendant wrongfully discharged the plaintiff, and refused to permit him toserve as aforesaid, or to pay him for his services.

[Asin paras 4and 5 ofForm No. 1, and reliefclaimed.]

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No.16

breachof contract to serve

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On theday of19...../20.....,the plaintiff and defendant mutually agreed that the plaintiff should employ thedefendant at an [annual] salary ofrupees, and that the defendant should serve the plaintiff as [an artist] for theterm of [one year].
2. The plaintiff has always been ready and willing to perform his part of theagreement [and on the day.....of19...../20.....,offered so to do].
3. The defendant (entered upon) the service of the plaintiff on the above-mentionedday, but afterwards, on theday of19...../20.....,he refused to serve the plaintiff as aforesaid.

[Asin paras 4and 5of Form No. 1, and reliefclaimed.]

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No.17

againsta builder for defective workmanship

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [Or state the tenor of the contract.]
- [2. The plaintiff duly performed all the conditions of the agreement on his part.]
3. The defendant [built the house referred to in the agreement in a bad and unworkman like manner].
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.18

ONA BOND FOR THE FIDELITY OF A CLERK

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the plaintiff took E. F. into his employment as a clerk.
2. In consideration thereof, on theday of19...../20....., the defendant agreed with the plaintiff that if E.F., should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidence of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceedingrupees.
[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum ofrupees, subject to the condition that if E.F., should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]
[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]
3. Between theday of19...../20....., and theday of 19...../20....., E. F. received money and other property, amounting to value ofrupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.19

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the defendant, by a registered instrument, let to the plaintiff [the house No.....,Street] for the term ofyears, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.
2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.
3. On theday of19...../20....., during the said term, E. F. who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.
4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expendrupees in moving, and lost the custom of G.H. and I. J., by such removal].
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.20

ONAN AGREEMENT OF INDEMNITY

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the plaintiff and defendant, being partners in trade under the style of A.B. and C. D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.
2. The plaintiff duly performed all the conditions of the agreement on his part.
3. On theday of19...../20....., [a judgment was recovered against the plaintiff and defendant by E. F., in the High Court of Judicature at..... upon a debt due from the firm to E.F., and on the day of.....19...../20.....,] the plaintiff paidrupees [in satisfaction of the same].
4. The defendant has not paid the same to the plaintiff.
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.21

procuring property by fraud

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worthrupees over all his liabilities].
2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of.....rupees.
3. The said representations were false [or state the particulars falsehoods] and were then known by the defendant to be so.
4. The defendant has not paid for the goods, [or if the goods were not delivered.] The plaintiff, in and shipping the goods and procuring their restoration, expendedrupees.
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.22

fraudulently procuring credit to be given to another person

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On theday of19...../20....., the defendant represented to the plaintiff that E.F., was solvent and in good credit, and worthrupees over all his liabilities [or that E.F., then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].
2. The plaintiff was thereby induced to sell to E.F. (rice) of the value ofrupees [on..... months credit].
3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].
4. E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.
[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.23

polluting the water under the plaintiffs land

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in..... and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.
 2. On the day of 19...../20....., the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.
 3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.
- [Asin paras 4 and 5 of Form No. 1, and relief claimed]

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No.24

carrying on a noxious manufacture

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called, situate in
 2. Ever since the day of 19...../20....., the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.
 3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and lives of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.
 4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.
- [Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.25

obstructing a right of way

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is, and at all the time hereinafter mentioned was, possessed of [a house in the village of].
 2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.
 3. On the day of 19...../20....., the defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].
 4. [State special damage, if any.]
- [Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.26

obstructing a Highway

(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.27

diverting a water-course

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff, is and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the, in the village of, district of.....

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19...../20....., the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grindsacks per day.

[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.28

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

(Title)

A.B., the above-named plaintiff, states as follows:--

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19...../20....., the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.29

injuries caused by negligence on a railroad

(Title)

AB., the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., the defendants were common carriers of passengers by railway between..... and

2. On the day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at..... [or near the station ofor.....between the stations of.....and.....], a collision occurred on the said railway caused by the negligence and unskillfulness of the defendants servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman].

[Asin paras 4 and 5 of Form No. 1 and relief claimed.]

[Orthus:--2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriage attached thereto upon and along the defendants railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para. 3.]

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No.30

injuries caused by negligent driving

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is a shoemaker, carrying on business at The defendant is a merchant of....

2. On the day of 19...../20....., the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendants, drawn by two horses under the charge and control of the defendants servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.31

FORMALICIOUS PROSECUTION

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., the defendant obtained a warrant of arrest from [a Magistrate of the said city, or as the case may be] on a charge of and the plaintiff was arrested thereon, and imprisoned for [days, or hours, and gave bail in the sum of rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19...../20....., the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E.F., or in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Asin paras 4 and 5 of Form No. 1, and relief claimed.]

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No.32

MOVABLES WRONGFULLY DETAINED

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods,] the estimated value of which is..... rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.
3. Before the commencement of the suit, to wit, on the day of19...../20....., the plaintiff demanded the same from the defendant, but he refused to deliver them.
[As in paras 4 and 5 of Form No. 1]
6. The plaintiff claims--
(1) delivery of the said goods, or..... rupees, in case delivery cannot be had;
(2)..... rupees compensation for the detention thereof.
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No.33

against a fraudulent purchaser and his transferee with notice

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., the defendant C.D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff [he was solvent, and worth rupees over all his liabilities].
 2. The plaintiff was thereby induced to sell and deliver to C.D. [one hundred boxes of tea], the estimated value of which is rupees.
 3. The said representations were false, and were then known by C.D., to be so [or at the time of making the said representation, C. D. was insolvent, and knew himself to be so].
 4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation].
[As in paras 4 and 5 of Form No. 1.]
7. The plaintiff claims--
(1) delivery of the said goods, or..... rupees, in case delivery cannot be had;
(2)..... rupees compensation for the detention thereof.

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No.34

rescission of a contract on the ground of mistake

(Title)

A.B., the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at contained [ten bighas].
 2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.
 3. On the day of 19...../20....., the plaintiff paid the defendant rupees as part of the purchase-money.
 4. That the said piece of ground contained in fact only [five bighas].
[As in paras 4 and 5 of Form No. 1.]
7. The plaintiff claims--
(1)..... rupees, with interest from the day of 19...../20.....,
(2) that the said agreement be delivered up and cancelled.

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No.35

AN INJUNCTION RESTRAINING WASTE

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is the absolute owner of [describe the property].
 2. The defendant is in possession of the same under a lease from the plaintiff.
 3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.
- [Asin paras 4 and 5 of Form No. 1.]
6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.
- [Pecuniary compensation may also be claimed.]

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No.36

injunction restraining nuisance

(Title)

A.B., the above-named plaintiff, states as follows:--

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the House No Street, Calcutta].
 2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].
 3. On the day of 19...../20....., the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].
 4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]
- [Asin paras 4 and 5 of Form No. 1.]
7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

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No.37

public nuisance

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The defendant has wrongly heaped up earth and stones on a public road known as..... Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.
 - 2 [3 2. The plaintiff has obtained the leave of the Court for the institution of this suit.]
- [Asin paras 4 and 5 of Form No. 1.]
5. The plaintiff claims--
 - (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;
 - (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

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No.38

injunction against the diversion of a water-course

(Title)

AB., the above-named plaintiff, states as follows:--

[Asin Form No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

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No.39

RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION

(Title)

A.B., the above-named plaintiff, states as follows:--

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [or states any facts showing that the property is of a kind that cannot be replaced by money].
2. On the day of 19...../20....., he deposited the same for safe-keeping with the defendant.
3. On the day of 19...../20....., he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.
4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.
5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting]; [Asin paras 4 and 5 of Form No. 1.]
8. The plaintiff claims--
 - (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];
 - (2) that he be compelled to deliver the same to the plaintiff.

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No.40

Interpleader

(Title)

A.B., the above-named plaintiff, states as follows:--

1. Before the date of the claims hereinafter mentioned G.H. deposited with the plaintiff [describe the property] for [safe-keeping].
2. The defendant C. D, claims the same [under an alleged assignment thereof to him from G. H.].
3. The defendant E. F. also claims the same [under an order of G. H. transferring the same to him.]
4. The plaintiff is ignorant of the respective rights of the defendants.
5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.
6. The suit is not brought by collusion with either of the defendants. [Asin paras 4 and 5 of Form No. 1.]
9. The plaintiff claims--
 - (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;
 - (2) that they be required to interplead together concerning their claims to the said property;
 - (3) that some person be authorised to receive the said property pending such litigation;
 - (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

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No.41

administration by creditor on behalf of himself and all other CREDITORS

(Title)

A.B., The above-named plaintiff, states as follows:--

1. E. F., late of, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [here insert nature of debt and security, if any].

2. E. F. died on or about the..... day of By his last will, dated the day of he appointed C.D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be.]
3. The will was proved by C. D. [or letters of administration were granted, etc.].
4. The defendant has possessed himself of his movable [and immovable, or the proceeds of the immovable] property of E.F., and has not paid the plaintiff his debt.
[As in paras 4 and 5 of Form No. 1.]
7. The plaintiff claims that an account may be taken of the movable [and immovable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

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No.42

administration by specific legatee

(Title)

[Alter Form No. 41 thus]

[Omit paragraph 1 and commence paragraph 2] E. F., late of died on or about the day of By his last will, dated the..... day of he appointed C. D. his executor, and bequeathed to the plaintiff [here state the specific legacy.]

For paragraph 4 substitute--

The defendant is in possession of the movable property of E.F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute--

The plaintiff claims that the defendant may be ordered to deliver to him the said..... [here name the subject of the specific bequest], or that, etc.

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No.43

administration by pecuniary legatee

(Title)

[Alter Form No. 41 thus]

[Omit paragraph 1 and substitute for paragraph 2] E. F., late of died on or about the day of By his last will, dated the..... day of he appointed C. D. his executor, and bequeathed to the plaintiff a legacy of rupees. In paragraph 4 substitute "legacy" for "debt",

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Another form

(Title)

E.F., the above-named plaintiff, states as follows:--

1. A. B. of K. in the died on the day of By his last will, dated the day of he appointed the defendant and M.N. [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the day of The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property.

[As in paras 4 and 5 of Form No. 1.]

6. The plaintiff claims--

(1) to have the movable and immovable property of A.B., administered in this Court, and for that purpose to have all proper directions given and account taken;

(2) such further or other relief as the nature of the case may require.

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No.44

execution of trusts

(Title)

A.B., the above-named plaintiff, states as follows:--

1. He is one of the trustees under an instrument of settlement bearing date, on or about the day of made upon the marriage of E.F. and G. H., the father and mother of the defendant [or an instrument of transfer of the estate and effects of E.F. for the benefit of C. D., the defendant, and the other creditors of E.F.].

2. A. B. has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] and the movable and immovable properly transferred by the said instrument.

3. C. D. claims to be entitled to a beneficial interest under the instrument.

[Asin paras 4 and 5 of Form No. 1.]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, or of the part of the said, immovable property, or movable, or the proceeds of the sale of, or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C. D., the defendant, and all other persons who may be interested in such administration, in the presence of C. D. and such other persons so interested as the Court may direct, or that C.D. may show good cause to the contrary.

[N.B.--Where the suit is by a beneficiary, the plaint may be modelled mutatis mutandis on the plaint by a legatee.]

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No.45

foreclosure or sale

(Title)

A.B., the above-named plaintiff, states as follows:--

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:--

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

(e) (property subject to mortgage);

(f) (amount now due);

(g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time.

[Asin paras 4 and 5 of Form No. 1.]

6. The plaintiff claims--

(1) payment, or in default [sale or] foreclosure [land possession];

[Where Order XXXIV, rule 6, applies.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for 4 [an order for the balance].

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No.46

Redemption

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.
2. The following are the particulars of the mortgage:--
 - (a)(date);
 - (b)(names of mortgagor and mortgagee);
 - (c)(sum secured);
 - (d)(rate of interest);
 - (e)(properly subject to mortgage);
 - (f)(If the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).
(If the defendant is mortgagee in possession, add)
3. The defendant has taken possession [or has received the rents] of the mortgaged property.
[Asin paras 4 and 5 of Form No. 1.]
6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof.] 5 [together with mesne profits].

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No.47

specific performance (No.1)

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of rupees.
2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.
3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.
[Asin paras 4 and 5 of Form No. 1.]
6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

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No.48

specific performance (No.2)

(Title)

A.B.,the above-named plaintiff, states as follows:--

1. On the day of 19...../20....., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed. The defendant, was absolutely entitled to the immovable property described in the agreement.
2. On the day of 19...../20....., the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.
3. On the day of 19...../20....., the plaintiff again demanded such transfer. [Or the defendant refused to transfer the same to the plaintiff.]
4. The defendant has not executed any instrument of transfer.
5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant
[Asin paras 4 and 5 of Form No. 1.]
8. The plaintiff claims--
 - (1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];
 - (2) rupees compensation for withholding the same.

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No.49

partnership

(Title)

A.B., the above-named plaintiff, states as follows:--

1. He and C. D., the defendant, have been for years [or months] past carrying on business together under articles of partnership in writing [or under a deed, or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners, [Or the defendant has committed the following breaches of the partnership articles:--

(1)

(2)

(3)]

[As in paras 4 and 5 of Form No. 1.]

5. The plaintiff claims--

(1) dissolution of the partnership;

(2) that accounts be taken;

(3) that a receiver be appointed.

[N.B.--In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.]

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(4) written statements

General defences

Denial

The defendant denies that (set out facts).

The defendant does not admit that (set out facts).

The defendant admits that but says that

The defendant denies that he is a partner in the defendant firm of

Protest

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation

This suit is barred by article or article of the second schedule to the 6 Indian Limitation Act, 1877 (15 of 1877).

Jurisdiction

The Court has no jurisdiction to hear the suit on the ground that (set forth the grounds).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency

The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority

The defendant was a minor at the time of making the alleged contract.

Payment into Court

The defendant as to the whole claim (or as to Rs. part of the money claimed, or as the case may be) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid).

Performance remitted

The performance of the promise alleged was remitted on the (date).

Rescission

The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata

The plaintiff's claim is barred by the decree in suit (give the reference).

Estoppel

The plaintiff is estopped from denying the truth of (insert statement as to which estoppel is claimed) because (here state the facts relied on as creating the estoppel.)

Ground of defence subsequent to institution of suit

Since the institution of the suit, that is to say, on the day of (set out facts).

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No.1

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The Price was not Rs.
- [or]
4. 1.
5. Except as to Rs. same as 2.
6. 3.
7. The defendant [or A. B.,the defendants agent] satisfied the claim by payment before suit to theplaintiff [or to C.D., the plaintiffs agent] on the day of 19/20.....
8. The defendant satisfied the claim by payment after suit to the plaintiff on the..... day of 19...../20.....

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No.2

defencein suits on bonds

1. The bond is not the defendants bond.
2. The defendant made payment to the plaintiff on the day according to thecondition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suitof the principal and interest mentioned in the bond.

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No.3

defencein suits on guarantees

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtorin pursuance of a binding agreement.

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No.4

defencein any suit for debt

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off forgoods sold and delivered by the defendant to the plaintiff.

Particularsare as follows:--

Rs.

1907 January 25th.....150

" February 1st50

Total 200

2. As to the whole [or as to Rs....., part of the money claimed] the defendant made tender before suit of Rs..... and has paid the same into Court.

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No.5

defencein suits for injuries caused by negligent driving

1. The defendant denies that the carriage mentioned in the plaint was thedefendants carriage, and that it was under the charge or control of thedefendants servants. The carriage belonged to of Street, Calcutta,livery stable keepers employed by the defendant to supply him with carriages andhorses; and the person under whose charge and control the said carriage was,was the servant of the said.
2. The defendant does not admit that the said carriage was turned out of MiddletonStreet either negligently, suddenly or without warning, or at a rapid ordangerous pace.
3. The defendant says the plaintiff might and could, by the exercise of reasonablecare and diligence, have seen the said carriage approaching him, and avoided anycollision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

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No.6

defence in all suits for wrongs

1. Denial of the several acts [or matters] complained of.

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No.7

defence in suits for detention of goods

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:--

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta:--

45 maunds at Rs. 2 per maund Rs. 90.

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No.8

defence in suits for infringement or copyright

1. The plaintiff is not the author [assignee, etc.].

2. The book was not registered.

3. The defendant did not infringe.

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No.9

defence in suits for infringement of trade mark

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

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No.10

defence in suits relating to nuisances

1. The plaintiff's rights are not ancient [or deny his other alleged prescriptive rights].

2. The plaintiff's rights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars:--

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the

acts complained of have not produced any damage to the plaintiff [If other grounds are relied on, they must be stated, e.g., limitations to past damage.]

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No.11

defenceto suit for foreclosure

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).
3. The suit is barred by article of the second schedule to the 6 Indian Limitation Act, 1877 (15 of 1877).
4. The following payments have been made, viz.:--
(Insert date)-- Rs. 1,000
(Insert date)-- Rs. 500
5. The plaintiff took possession on the of, and has received the rent sever since.
6. That plaintiff released the debt on the of
7. The defendant transferred all his interest to A.B. by a document date

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No.12

defenceto suit for redemption

1. The plaintiff's right to redeem is barred by article of the second schedule to the 7 Indian Limitation Act, 1877 (15 of 1877).
2. The plaintiff transferred all interest in the property to A.B.
3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to A.B.
4. The defendant never took possession of the mortgaged property, or received the rents thereof.
(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

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No.13

defenceto suit for specific performance

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant (if alleged by plaintiff).
3. The plaintiff has not performed the following conditions--(Conditions).
4. The defendant did not--(alleged acts of part performance).
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter--(State why).
6. The agreement is uncertain in the following respects--(State them).
7. (or) The plaintiff has been guilty of delay.
8. (or) The plaintiff has been guilty of fraud (or misrepresentation).
9. (or) The agreement is unfair.
10. (or) The agreement was entered into by mistake.
11. The following are particulars of (7), (8), (9), (10) (or as the case may be).
12. The agreement was rescinded under Conditions of Sale, No. 11 (or by mutual agreement).
(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the 6 Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

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No.14

defence in administration suit by pecuniary legatee

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs., and the testator had some movable property which the defendant got in, and which produced the net sum of Rs.
2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.
3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19...../20....., and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.
4. The defendant submits that the plaintiff ought to pay the cost of the suit.

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No.15

probate of will in solemn form

1. The said will and codicil of the deceased were not duly executed according to the provisions of the 7 Indian Succession Act, 1865 (10 of 1865) [or of the Hindu Wills Act, 1870 (21 of 1870)].
2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.
3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].
4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [State the nature of the fraud].
5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said will, as the case may be].
6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof. The defendant claims--
 - (1) that the Court will pronounce against the said will and codicil propounded by the plaintiff;
 - (2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

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No.16

particulars [O, VI, r. 5]

(Title of suit.)

Particulars--The following are the particulars of (here state the matters in respect of which particulars have been ordered) delivered pursuant to the order of the of
(Here set out the particulars ordered in paragraphs, if necessary.)

1. Substituted by A.O. 1950, for "The Secretary of State or the Federation of India or the Province of....., as the case may be."
2. Substituted by Act 104 of 1976, section 93, for paragraph 2 (w.e.f. 1-2-1977).
3. Not applicable where suit is instituted by the Advocate-General.
4. Substituted by Act 104 of 1976 section 93, for "a decree for the balance" (w.e.f. 1-2-1977).
5. Added by Act 104 of 1976, section 93 (w.e.f. 1-2-1977).
6. See now the Limitation Act, 1963 (36 of 1963).
7. See now the Indian Succession Act, 1925 (39 of 1925).

APPENDIX B

PROCESS

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APPENDIX B

PROCESS

No. 1

summons for disposal of suit (O. V, r. 1 and r. 5)

(Title)

To

.....[Name, description and place of residence.]

whereas has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed (and able to answer all material questions relating to the suit, or who shall be accompanied by some person, able to answer all such questions, on the day of 19..../20...., at O'clock in the noon, to answer the claim; and as the day fixed, for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, that day of 19...../20.....

Judge.

notice--1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

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No. 2

summons for settlement of issue

(O. V, rr. 1, 5)

(Title)

To

.....[Name, description and place of residence]

Whereas has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19..../20...., at O'clock in the noon, to answer the claim; 1[and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counter-claim, you shall enter such documents in a list to be annexed to the written statement].

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

given under my hand and the seal of the Court, this day of 19/20.....

Judge.

notice--1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

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No. 3

summons to appear in person

(O. V, r. 3)

(Title)

To

..... [Name, description and place of residence]

whereas has instituted a suit against you for you are hereby summoned to appear in this Court in person on the day of 19...../20....., at O'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

given under my hand and the seal of the Court, that day of 19..../20.....
Judge.

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2 [No. 4

summons in a summary suit

(O. XXXVII, r. 2)

(Title)

To

..... [Name, description and place of residence]

whereas has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. and interest, you are hereby summoned to cause an appearance to be entered for you, within ten days from the service hereof, in default whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs, together with such interest, if any, as the Court may order.

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.

given under my hand and the seal of the Court, this day of 19..../20.....
Judge.]

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3 [No.4A

summons for judgment in a summary suit

(O. XXXVII, r. 3)

(Title)

In the Court, at Suit No of 19...../20.....

XYZ.....Plaintiff

Versus

ABCDefendant

Upon reading the affidavit of the plaintiff the Court makes the following order, namely :--

Let all parties concerned attend the Court or Judge, as the case may be, on the day of 19..../20....., at O'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs. and for interest and costs.

Dated the day of 19...../20.....]

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No. 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS,

SHOULD BE ADDED AS CO-PLAINTIFF

(Title)

To

..... [Name, description and place of residence]
whereas has instituted the above suit against for and, whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved.
Take notice that you should on or before the day of 19/20..... signify to this Court whether you consent to be so added.
Given under my hand and the seal of the Court, this day of 19/20.....
Judge.

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No.6

summons to legal representative of a deceased defendant

(O. XXII, r. 4)

(Title)

To

whereas the plaintiffinstituted a suit in this Court on the day of 19...../20....., against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said deceased, and desiring that you be made the defendant in his stead ;
You are hereby summoned to attend in this Court on the day of 19...../20....., at A. M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.
given under my hand and the seal of the Court, this day of19...../20.....
Judge.

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No. 7

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT

(O. V, r. 21)

(Title)

whereas it is stated that fendant/witness in the above suit is at present residing in: It is ordered that a summons returnable on the day of 19...../20....., be forwarded to theCourt of for service on the said..... defendant/witness with a duplicate of this proceeding.
The Court-fee of chargeable in respect to the summons has been realised in this Court in stamps.
Date
Judge.

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No. 8

order for transmission of summons to be served on a prisoner

(O.V, r. 25)

(Title)

To

.....
.....

The Superintendent of the Jail at
under the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.
Judge.

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No. 9

order for transmission of summons to be served on a

public servant or soldier

(O. V, rr. 27, 28)

(Title)

To

.....
.....

Under the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with statement of service endorsed thereon by you.
Judge.

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No. 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT

(O. V, r. 23)

(Title)

Read proceeding from the forwarding for service onin suit No of 19...../20..... of that Court.

Read Serving Officers endorsement stating that the and proof of the above having been duly taken by me on the oath of and it is ordered that the be returned to the with a copy of this proceeding.

Judge.

note.--This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

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No. 11

affidavit OR process-server to accompany return of a summons or notice

(O.V, r. 18)

(Title)

The affidavit of, son of

I make oath/affirm and say as follows :--

(1) I am a process-server of this Court.

(2) On the day of 19..../20....., I received asummons/notice issued by the Court of in Suit No. of 19...../20....., in the said Court, dated the day of 19...../20....., for service on

(3) The said was at the time personally known to me, and I served the said summons/notice on him/her on the day of 19/20...., at about O'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served, signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said not being personally known to me accompanied me to and pointed out to me a person whom he stated to be the said and I served the said summons/notice on him/her on the day of 19...../20....., at about O'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(a)

(b)

(a) Here state whether the person served, signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said and the house in which he ordinarily resides being personally known to me, I went to the said house, in and thereon the day of 19...../20....., at about O'clock in the noon, I did not find the said

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One accompanied me to and there pointed out to me which he said was the house in which ordinarily resides. I did not find the said there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17

(b) Signature of process-server.

or

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/Affirmed by the said before me this day of 19...../20.....

Empowered under section 139 of the

Code of Civil Procedure, 1908, to

administer the oath to deponents.

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No. 12

NOTICE TO DEFENDANT

(O. IX, r. 6)

(Title)

To

..... [Name, description and place of residence]

whereas this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons ;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19..../20....., is now fixed for the hearing of the same; in default of your appearance on the last mentioned the suit will be heard and determined in your absence.

given under my hand and the seal of the Court, this day of19...../20.....

Judge.

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No. 13

summons to witness

(O. XVI, rr. 1, 5)

(Title)

To

..... [Name, description and place of residence]

whereas your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of..... 19...../20....., at O'clock in the forenoon, and to bring with you [or to send to this Court].

A sum of Rs., being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

given under my hand and the seal of the Court, this day of 19/20.....

Judge.

Notice--(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each days attendance beyond the day specified.

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No. 14

proclamation requiring attendance of witness

(O. XVI, r. 10)

(Title)

To

..... [Name, description and place of residence]

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons : This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the day of 19...../20..... at..... O'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

Given Under my hand and the seal of the Court, this day of..... 19...../20.....
Judge.

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No. 15

proclamation requiring attendance of witness

(O. XVI, r. 10)

(Title)

To

..... [Name, description and place of residence]

whereas it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the day of 19...../20....., at O'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

Given under my hand and the seal of the Court, this day of..... 19...../20.....
Judge.

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No. 16

warrant of attachment of property of witness

(O. XVI, r. 10)

(Title)

To

The Bailiff of the Court.

whereas the witness cited by..... has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within.... days.

Given under my hand and the seal of the Court, this day of 19...../20.....
Judge

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No. 17

warrant of arrest of witness

(O. XVI, r. 10)

(Title)

To

The Bailiff of the Court.

whereas has been duly served with a summons but has failed to attend (absconds and keeps out of the way for

the purpose of avoiding service of a summons); You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19...../20.... with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this day of 19...../20.....

Judge.

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No. 18

warrant of committal

(O. XVI, r. 16)

(Title)

To

The Officer in charge of the Jail at

whereas the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (or to produce a document), on the day of 19...../20.....; and whereas the Court has called upon the said to furnish such security, which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

Given under my hand and the seal of the court, this day of 19...../20.....

Judge.

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No. 19

warrant of committal

(O. XVI, r. 18)

(Title)

To

The Officer in charge of the Jail at.....

Whereas, whose attendance is required before this Court in the above-named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of 19...../20....., at..... which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of..... 19...../20..... Given under my hand and the seal of the Court, this day of 19...../20.....

Given under my hand and the seal of the court, this..... day of..... 19...../20.....

Judge.

1. Substituted by Act 104 of 1976, section 94, for certain words (w.e.f. 1-2-1977).

2. Substituted by Act 104 of 1976, section 94, for Form No. 4 (w.e.f. 1-2-1977).

3. Inserted by Act 104 of 1976, section 94 (w.e.f. 1-2-1977).

APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

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APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

No. 1

order for delivery of interrogatories

(O. XI, r. 1)

In the Court of

Civil Suit No..... of..... 19...../20.....

A.B. Plain tiff,
against

C. D. E. F. and G. H. Defendants.

Upon hearing and upon reading the affidavit of filed the day of 19..../20....; It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XI, rule 8, and that the costs of this application be

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No. 2

interrogatories

(O. XI, r. 4)

(Title as in No. 1, supra)

Interrogatories on behalf of the above-named [Plaintiff or defendant C. D.] for the examination of the above-named [defendants E.F. and G.H. or plaintiff].

1. Did not, etc.

2. Has not, etc. etc. etc. etc.

[The defendant E. F. is required to answer the interrogatories numbered].

[The defendant G. H. is required to answer the interrogatories numbered]

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No. 3

answer to interrogatories

(O. XI, r. 9)

(Title as in No. 1, supra)

The answer of the above-named defendant E.F., to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E.F., make oath and say as follows:--

1. Enter answer to interrogatories in paragraphs numbered consecutively.

2. Enter answer to interrogatories in paragraphs numbered consecutively.

3. I object to answer the interrogatories numbered on the ground that [state grounds of objection].

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No. 4

ORDER FOR AFFIDAVIT AS TO DOCUMENTS

(O. XI, r. 12)

(Title as in No. 1 supra)

Upon hearing; It is ordered that the do within days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be

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No. 5

affidavit as to documents

(O. XI, r. 13.)

(Title as in No. 1, supra.)

I, the above-named defendant C. D., make oath and say as follows :--

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.
2. I object to produce the said documents set forth in the second part of the First Schedule hereto [state grounds of objection].
3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.
4. The last-mentioned documents were last in my possession or power on [state when and what has become of them and in whose possession they now are].
5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said First and Second Schedules hereto.

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No. 6

order to produce documents for inspection

(O. XI, r. 14)

(Title as in No. 1, supra)

Upon hearing and upon reading the affidavit of filed the day of 19...../20..... It is ordered that the do, at all reasonable times, on reasonable notice, produce at situate at, the following documents, namely, and that the be at liberty to inspect and persue the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings be stayed and that the cost of this application be

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No. 7

NOTICE TO PRODUCE DOCUMENTS

(O. XI, r. 16)

(Title as in No. 1, supra)

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit, dated the day of..... 19..../20....].

[Describe documents required.]

X. Y., Pleader for the

To Z., Pleader for the

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No. 8

NOTICE TO INSPECT DOCUMENTS

(O. XI, r. 17)

(Title as in No. 1, supra)

Take notice that you can inspect the documents mentioned in your notice of the day of 19..../20..... [except the documents numbered in that notice] at [insert place of inspection] on Thursday next, the instant, between the hours of 12 and 4 O'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the day of 19..../20...., on the ground that [state the ground].

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No. 9

NOTICE TO ADMIT DOCUMENTS

(O. XII, r. 3)

(Title as in No. 1, supra.)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent aton.....between the hours of; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been ; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

[Here describe the documents and specify as to each document whether it is original or a copy.]

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No. 10

NOTICE TO ADMIT FACTS

(O. XII, r. 5)

(Title as in No. 1, supra)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H. pleader [or agent] for plaintiff [or defendant].
To E. F., pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are:--

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

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No. 11

admission of facts pursuant to notice

(O. XII, r. 5)

(Title as in No. 1, supra)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualification or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant or party requiring the admission].

E. F., pleader [or agent] for defendant [or plaintiff]
To G. H., pleader [or agent] for plaintiff [or defendant].

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Facts admitted	Qualifications or limitations, if any, subject to which they are admitted
1. That M. died on the 1st January, 1890. . . .	1.
2. That he died intestate	2.
3. That N. was his lawful son	3. But not that he was his only lawful-son.
4. That O. died	4. But not that he died on the 1st April, 1896.
5. That O. was never married	5.

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No. 12

NOTICE TO PRODUCE GENERAL FORM

(O. XII, r. 8)

(Title as in No. 1, supra)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession of power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly. G. H., pleader [or agent] for plaintiff [or defendant]. To E. F., pleader [or agent] for defendant [or plaintiff].

APPENDIX D
DECREES

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APPENDIX D

DECREES

No. 1

decreein original suit

(O.XX, rr. 6,7)

(Title)

Claim for.....
this under myhand and the seal of the Court, this day of19...../20.....
Judge.

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Costs of Suit

Plaintiff				Defendant			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.....				Stamp for Power.....			
2. Stamp for power.....				Stamp for petition.....			
3. Stamp for exhibits...				Pleaders fee.....			
4. Pleaders fee on Rs..				Subsistence for..... witnesses			
5. Subsistence for..... witnesses				Service of process....			
6. Commissioners fee..				Commissioners fee....			
7. Service for process..							
Total				Total			

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No. 2

simple money decree

(Section 34)

(Title)

Claim for.....
This suit coming on this day for final disposal before.....in the presence of for the plaintiff and of..... for the defendant; It is ordered that the do pay to thethe sum of Rs. with interest thereon at the rate of..... per cent per annum from to the date of realization of the said sum and do also pay Rs. the costs of this suit, with interest thereon at the rate of..... per cent per annum from this date to the date of realization.
given

- 4. Pleaders fee on Rs..
- Subsistence for..... witnesses
- 5. Subsistence for..... witnesses
- Service of process....
- 6. Commissioners fee..
- Commissioners fee....
- 7. Service for process..

Total

Total

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1 [No. 3

preliminary decree for foreclosure

(Order XXXIV, rule 2--Where accounts are directed to be taken.)

(Title)

(1) This suit coming on thisday, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following :--

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff for which without the wilful default of the plaintiff or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the plaintiff upto this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff of account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the..... day of and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modifications as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed--

- (i) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable

under rule 10, togetherwith such subsequent interest as may be payable under rule 11, of Order XXXIVof the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shallbring into Court all documents in his possession or power relating to themortgaged property in the plaint mentioned, and all such documents shall bedelivered over to the defendant, or to such person as he appoints, and theplaintiff shall, if so required, re-convey or re-transfer the said propertyfree from the said mortgage and clear of and from all incumbrances created bythe plaintiff or any person claiming under him or any person under whom heclaims and free from all liability whatsoever arising from the mortgage or thissuit and shall, if so required, deliver up to the defendant quiet and peaceablepossession of the said property.

5. And it is hereby further orderedand decreed that, in default of payment as aforesaid, the plaintiff shall be atl liberty to apply to the Court for a final decree that the defendant shallthenceforth stand absolutely debarred and foreclosed of and from all right toredeem the mortgaged property described in the schedule annexed hereto andshall, if so required, deliver up to the plaintiff quiet and peaceablepossession of the said property; and that the parties shall be at liberty toapply to the Court from time to time as they may have occasion, and on suchapplication or otherwise the Court may give such directions as it thinks fit.]

Schedule

(Descriptionof the mortgaged property)

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1 [No.3A

preliminary decree for foreclosure

(OrderXXXIV, rule 2 .-Wherethe Court declares the amount due.)

(Title)

This suit coming on thisday, etc.; It is herebydeclared that the amount due to the plaintiff on his mortgage mentioned in theplaint calculated up to this day of is the sum ofRs.for principal, the sum of Rs. for interest on the said principal, thesum of Rs. for costs, charges and expenses (other than the costs of thesuit) properly incurred by the plaintiff in respect of the mortgage-security,together with interest thereon, and the sum of Rs. for the costs ofthis suit awarded to the plaintiff, making in all the sumof Rs.

2. And it is hereby ordered anddecreed as follows : -

(i) that the defendant do pay into Court on or before the.....day of..... or any later date up to which time for payment may be extended bythe Court of the said sum of Rs.;

(ii) that, onsuch payment and on payment thereafter before such date as the Court may fix ofsuch amount as the Court may adjudge due in respect of such costs of the suitand such costs, charges and expenses as may be payable under rule 10, togetherwith such subsequent interest as may be payable under rule 11, of Order XXXIVof the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shallbring into Court all documents in his possession or power relating to themortgaged property in the plaint mentioned, and all such documents shall bedelivered over to the defendant, or to such person as he appoints and theplaintiff shall, if so required, re-convey or re-transfer the said propertyfree from the said mortgage and clear of and from all incumbrances created bythe plaintiff or any person claiming under him or any person under whom heclaims and free from all liability whatsoever arising from the mortgage or thissuit and shall, if so required, deliver up to the defendant quiet and peaceablepossession of the said property.

3. And it is hereby furtherordered and decreed that, in default of payment as aforesaid, the plaintiff mayapply to the Court for a final decree that the defendant shall thenceforthstand absolutely debarred and foreclosed of and from all right to redeem themortgaged property described in the Schedule annexed hereto and shall, if sorequired, deliver up to the plaintiff quiet and peaceable possession of thesaid property ; and that the parties shall be at liberty to apply to the Courtfrom time to time as they may have occasion, and on such application orotherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property)

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1 No. 4

finaldecree for foreclosure

(OrderXXXIV, rule 3.)

(Title)

Upon reading the preliminary decree passed in this suit on the..... day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage :

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned : [and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property.]

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

*Words not required to be deleted.

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No. 5

preliminary decree for sale

(Order XXXIV, rule 4 - Where accounts are directed to be taken.)

(Title)

This suit coming on this.....day, etc.; It is hereby ordered and decreed that it be referred to the Commissioner to take the accounts following :--

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff for which without the wilful default of the plaintiff or such person might have been so received ;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum) ;

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient dispatch after making all just allowances on or before the..... day of and that upon such report of the Commissioner being received, it shall be confirmed and counter-signed, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed--

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs..... for the costs of the suit awarded to the plaintiff ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff of any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property ; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold ; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid

to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance ; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of mortgaged property).]

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1 [No. 5A

preliminary decree for sale

(Order XXXIV, rule 4-When the Court declares the amount due.)

(Title)

This suit coming on thisday, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this..... day of is the sum of Rs.for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs.for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows :--

(i) that the defendant do pay into Court on or before the day of..... or any later date up to which time for payment may be extended by the Court, the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property ; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold ; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance ; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

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1 [No. 6

final decree for sale

(Order XXXIV, rule 5)

(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf of any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

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No. 7

preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed

(Order XXXIV, rule 7-Where accounts are directed to be taken)

(Title)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the account following:-

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable) ;

(ii) an account of the income of the mortgaged property received upto this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum) ;

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modifications as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed--

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant ;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudged due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at

liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

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1 [No. 7A

preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed

(Order XXXIV, rule 7.--Where accounts are directed to be taken.)

(Title)

This suit coming on thisday, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:-

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgaged-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before theday of and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, or such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoint, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property ; and on such application being made, the mortgaged property of a sufficient part thereof shall be directed to be sold ; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance ; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may

give such directions as it thinks fit.
Schedule
(Description of the mortgaged property).]

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1 [No. 7B

preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed

(Order XXXIV, rule 7.-Where the Court declares the amount due.)

(Title)

This suit coming on thisday, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:--

- (i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
(Description of the mortgaged property).]

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1 [No. 7C

preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed

(Order XXXIV, rule 7.-Where the Court declares the amount due.)

(Title)

This suit coming on thisday, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of mortgage-security together with interest thereon, and the sum of Rs. for the cost of this suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows: -

- (i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs.;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or

power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other person entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

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1 [No. 7D

final decree for foreclosure in a redemption suit on default of payment by mortgagor

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in aforesaid preliminary decree mentioned 2 [and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharge and extinguished.

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1 [No. 7E

final decree for sale in a redemption suit on default of payment by mortgagor

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other person entitled to receive the same.]

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1 [No. 7F

final decree in a suit for foreclosure, sale or redemption where THE mortgagor pays the amount of the decree

(Order XXXIV, rules 3, 5 and 8)

(Title)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or the same being a person entitled to redeem, has paid into Court all amounts due the mortgagee under the preliminary decree dated the day of; It is hereby ordered and decreed that:--

(i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor [or, as the case may be, who has redeemed the property] or an acknowledgment of the payment of the amount due in his favour ;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of re-conveyance or acknowledgment in the manner aforesaid,-

(i) the said sum of Rs. be paid out of Court to the mortgagee ;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor 2 [or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor [or other person making the payment], the said deed of re-conveyance or the acknowledgment in the office of the Sub-registrar of; and

(iii) 2 [if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor 2 [or such person as aforesaid who has made the payment].

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1 [No. 8

decree against mortgagor personally for balance after the sale of THE mortgaged property

(Order XXXIV, rules 6 and 8A)

(Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs.;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:--

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent per annum from the day of (the date of payment out of Court referred to above) up to the date of realisation of the said sum, and the costs of this application.]

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preliminary decree for foreclosure of sale

[Plaintiff 1st Mortgagee,
Versus
Defendant No. 1 Mortgagor,
Defendant No. 2 2nd Mortgagee.]
(Order XXXIV, rules 2 and 4)
(Title)

The suit coming on thisday, etc; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. in respect of his mortgage if the mortgage-mortgagor thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 [or (if there are several subsequent mortgagees) that these several parties hereto are entitled in the following order to the payment of the sums due to them respectively:--].

3. And it is hereby ordered and decreed as follows :-

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2 ; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree-

(i) 2 [in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required deliver to the plaintiff quiet and peaceable possession of the said property; or

(ii) 2 [in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) 2 [in the case where a sale is ordered under clause 4(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2, and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same ; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed--

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the plaintiff might have done under clause 4 above)--

2 [(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or

2 [(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed 2 [in the case where a sale is ordered under clause 5 above]--

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and

the costs of the suit in connection therewith and inpayment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same ; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the Mortgaged property).]

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1 [No. 10

preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage

[Plaintiff..... 2nd Mortgagee,
versus
Defendant No. 1 Mortgagor,
Defendant No. 2..... 1st Mortgagee.]
(Order XXXIV, rules 2, 4 and 7)
(Title)

The suit coming on thisday, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :-].

3. And it is hereby ordered and decreed as follows:--

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2 ; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment) or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability, whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found, or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, if default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree--

(i) 2 [in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all rights to redeem the mortgaged property described in the Schedule annexed hereto and shall ; if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

(ii) 2 [in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold ; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) 2 [in the case where a sale is ordered under clause 4(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may

be payable under rule 11, or Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 ; and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same ; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,--

(a) that, if the plaintiff pays into Court to the credit to this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (in the same manner as the defendant No. 2 might have done under clause 4 above)--

2 [(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property]; or

2 [(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed (in the case where a sale is ordered under clause 5 above)--

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same ; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
(Description of the mortgage property).]

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1 [No. 11

preliminary decree for sale

Plaintiff. versus.

Defendant No. 1 Mortgagor,
Defendant No. 2 Original Mortgagee.]
(Order XXXIV, rule 4)
(Title)

This suit coming on this day, etc. ; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated upto this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:--

(i) that defendant No. 1 do pay into Court on or before the said day of or on later date up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2, or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property ; and

(iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be

at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (it) of clause 2],

4. And it is hereby further ordered and decreed that, in default of payment by defendant Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession, or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other person entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2, or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be) -- (declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

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No. 12

decree for rectification of instrument

(Title)

it is hereby declared that the dated the day of 19.... does not truly express the intention of the parties to such

And it is decreed that the said..... be rectified by

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No. 13

decree to set aside a transfer in fraud of creditors

(Title)

it is hereby declared that the, dated the day of 19.... and made between and is void as against the plaintiff and all other the creditors, if any, of the defendant

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No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

let the defendant his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

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No. 15

injunction against building Higher than old level

(Title)

let the defendant his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

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No. 16

injunction restraining use of private road

(Title)

let the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

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No. 17

preliminary decree in an administration-suit

(Title)

it is ordered that the following accounts and inquiries be taken and made; that is to say--

In creditors suit--

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees--

2. That an account be taken of the legacies given by the testator's will. In suits by next-of-kin--

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditors suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditors suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of

money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the3 shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E.F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say--

(a) an inquiry what immovable property the deceased was seized of or entitled to at the time of his death ;

(b) an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased or any part thereof ;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G.H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of the sale subject to the approval of the 3 and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the 3 shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the 3 to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the3 do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

15. And, lastly, it is ordered that this suit [or proceedings] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

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No. 18

final decree in an administration-suit by a legatee

(Title)

1. It is ordered that the defendant do, on or before the day of pay into Court the sum of Rs. the balance by the said certificate found to be due from the said defendant on account of the estate of the testator and also the sum of Rs. for interest, at the rate of Rs. per cent per annum, from the day of to the day of amounting together to the sum of Rs.

2. Let the3 of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:

(a) The costs of the plaintiff to Mr his attorney [or pleader] or and the costs of the defendant to Mr his attorney [or pleader].

(b) (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the3, together with subsequent interest on such of the debts as bear interest, be paid ; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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No. 19

preliminary decree in an administration-suit by a legatee, where an executor is held personally liable for the payment of legacies

(Title)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the

.....3 , pay to the plaintiff the amount of what the 3 shall certify to be due for principal and interest.
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

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No. 20

final decree in an administration-suit by next-of-kin

(Title)

1. Let the 3 of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiffs costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. the balance by the said certificate found to be due from the said defendant on account of the personal estate of E.F., the intestate, within one week after the taxation of the said costs by the said 3 , and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. after payment of the plaintiffs and defendants costs as aforesaid, be paid and applied by defendant as follows:--

(a) A.B., and C.D., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the intestate.

(b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E.F., the intestate.

(c) is declared that the proportionate shares of the parties in the partnership are as follows:--

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of, and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:--

1. An account of the credits, property and effects now belonging to the said partnership;

2. An account of the debts and liabilities of the said partnership;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the 3 may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of, and that the 3 do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

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No. 22

final decree in a suit for dissolution of partnership and the taking of partnership accounts

(Title)

it is ordered that the fund now in Court, amounting to the sum of Rs. be applied as follows:--

1. In payment of the debts due by the partnership set forth in the certificate of the 3 amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, (or defendant in part payment of the sum of Rs. certified to be due to him in respect of the partnership accounts.)

4. And that the defendant [or plaintiff] do on or before the day of pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

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No. 23

decree for recovery of land and mesne profit

(Title)

it is hereby decreed as follows :--

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.
 2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of ... per cent per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.
- Or
2. That an inquiry be made as to the account of mesne profits which have accrued due prior to the institution of the suit.
 3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

-
1. Substituted by Act 21 of 1929, section 8 and Schedule, for Forms 3 to 11.
 2. Words not required to be deleted.
 3. Here insert name of proper officer.

**APPENDIX E
EXECUTION**

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APPENDIX E

EXECUTION

No. 1

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE

RECORDED AS CERTIFIED (O. XXI, r. 2.)

(Title)

To
.....
.....

whereas in execution of decree in the above-named suit has applied to this Court that the sum of Rs. recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19..../20...., to show cause why the payment/adjustment aforesaid should not be recorded as certified.
given under my hand and the seat of the Court, this day of 19..../20.... .
Judge.

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No. 2

precept

(Section 46)

(Title)

upon hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the properly specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule

Dated the day of 19..../20.... .

Judge

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No. 3

order sending decree for execution to another court

(O. XXI, r. 6.)

(Title)

whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court alleging that the Judgment-debtor resides or has property within the local limits, of the Jurisdiction of the said court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered :

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19...../20.... .

Judge

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No. 4

certificate of non-satisfaction of decree

(Title)

Certified that no* satisfaction of the decree of this Court in suit No. of 19..../20...., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19...../20.... .

Judge

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No. 5

certificate of the execution of decree transferred to another court

(0.21.1.6.)

(Title)

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uit and the Court by	Names if parties	Date of application for	Number of the execution	Process issued and	Costs of execution	Amount realized	How the case disposed	Remarks
-----------------------------	-------------------------	--------------------------------	--------------------------------	---------------------------	---------------------------	------------------------	------------------------------	----------------

which the decree was passed		excution	case	dates of service thereof			of	
1	2	3	4	5	6	7	8	9

Signature of Muharrir in charge Signature of Judge

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No. 6

APPLICATION FOR EXECUTION OF DECREE (O. XXI, R. 11.)

In the Court of

I..... decree-holder, hereby apply for execution of the decree herein-below set forth :---

No. of Suit	Names of parties	Date of decree	Whether any appeal preferred from decree	Payment or adjustment made, if any	Previous application, if any, with date and result	Amount with interest due upon the decree or other relief granted thereby together with particulars, of any cross decree	Amount of costs, if any, awarded	Against whom to be executed	Mode in which the assistance of the Court is required
1	2	3	4	5	6	7	8	9	10
789 of 1897	A.B.- Plaintiff C.D.- Defendant	October 11,1987	No.	None	Rs. 72-4-0 recorded on application dated the 4th March 1809	Rs. 314-8-2 principal [interest at 6 per cent, per annum, from data of decree till payment.]	As awarded in the decree subsequently incurred Rs. a. p. 47 10 4 8 2 0	Against the defendant C.D	[When attachment and sale of movable property is sought] I, pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendants movable property as

							Total 55 12 4	per annexed list and paid to me. [When attachment and sale of movable property is sought.] I, pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendants movable property as per annexed list and paid to me.
--	--	--	--	--	--	--	---------------	--

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed, decree-holder.

Dated the day of 19..../20.... .

[When attachment and sale of immovable property is sought.]

Description and specification of property

The undivided one-third share of the judgment-debtor in a house situated in the village of value Rs. 40, and bounded as follows :-

East by Gs house; West by Hs house; South by public road; North by private lane and Js house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed decree-holder.

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No. 7

notice to show cause why execution should not issue

1 [(0. XXI, r. 16.)]

(Title)

To

.....
.....

whereas has made application to this Court for execution of decree in Suit No. of 19..../20...., on the allegation that the said decree has been transferred to him by assignment 2 [or without assignment], this is to give you notice that you are to appear before this Court on the day of 19..../20...., to show cause why execution should not be granted.

given under my hand and the seal of the Court, this day of 19..../20.... .

Judge

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No. 8

warrant of attachment of movable property in execution of a decree FOR MONEY

(O. XXI, r. 30)

(Title)

To

The Bailiff of the Court

whereas was ordered by decree of this Court passed on the day of 19..../20...., in Suit No. of 19..../20...., to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the movable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said and unless the said shall pay to you the said sum of Rs. together with Rs. the costs of this attachment, to hold the same until further orders from this Court.

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Decree			
Principal Interest			
Costs			
Costs of execution			
Further interest			
Total			

You are further commanded to return this warrant on or before theday of 19..../20...., with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19...../20....,

Schedule

Judge

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No. 9

warrant for seizure of specific movable property adjudged by decree

(O.XXI, r.31)

(Title)

To

The Bailiff of the Court.

whereas was ordered by decree of this Court passed on the day of 19..../20...., in Suit No. of 19..../20...., to deliver to the plaintiff the movable property (or a share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered;

These are to command you to seize the said movable property (or a share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

given under my hand and the seal of the Court, this day of 19...../20....

Schedule

Judge

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No. 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT

(O. XXI, r.34)

(Title)

To

.....

.....

take notice that on the day of 19/20...., the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the day of 19..../20...., is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of property

given under my hand and the seal of the Court, this day of 19...../20....

Judge

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No. 11

warrant to the bailiff to give possession of land, etc

(O. XXI, r. 35)

(Title)

To

The Bailiff of the Court.

whereas the undermentioned property in the occupancy of has been decreed to the plaintiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

given under my hand and the seal of the Court, this day of 19...../20.... .

Schedule

Judge

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No. 12

notice to show cause why warrant of arrest should not issue

(O.XXI,r.37)

(Title)

To

.....

whereas has made application to this Court for execution of decree in Suit No. of 19.../20..., by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19.../20..., to show cause why you should not be committed to the civil prison in execution of the said decree. given under my hand and the seal of the Court, this day of 19.../20.... .
Judge.

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No. 13

warrant of arrest in execution (O. 21, r. 38)

(Title)

To

The Bailiff of the Court.

WHEREAS Was adjudged by a decree of the Court in suit No. of 19.../20..., dated the day of.....19.../20..., to pay to the decree-holder the sum of Rs..... as noted in the margin, and whereas the said sum of Rs. has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs..... together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

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Decree			
Principal Interest			
Costs			
Execution			
Total			

You are further commanded to return this warrant on or before the day of 19.../20..., with an endorsement certifying the day on which manner in which it has been executed, or the reason why it has not been executed. given under my hand and the seal of the Court, this day of 19.../20....
Judge

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No. 14

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL

(O. XXI, r. 40)

(Title)

To

The Officer in charge of the Jail at.....

WHEREAS who has been brought before this Court this day of.....19.../20..., under a warrant in execution of a decree which was made and pronounced by the said Court on the day of..... 19.../20..., and by which decree it was ordered that the said should pay; And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby 3[***] commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceedingor until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58

of the Code of Civil Procedure, 1908; and the Court does hereby fix 4[***] per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal. GIVEN under my signature and the seal of the Court, this day of..... 19.../20.....
Judge

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No. 15

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE

(Sections 58, 59)

(Title)

To
The Officer in charge of the Jail at.....
UNDER orders passed this day, you are hereby directed to set free judgment-debtor now in your custody.
Dated
Judge

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No. 16

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER. WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF

(O. XXI, r. 46)

(Title)

To
.....
.....
WHEREAS has failed to satisfy a decree passed against on the day of 19.../20..., in Suit No of 19.../20..., in favour of..... for Rs.;
It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from the following property in the possession of the said, that is to say, to which the defendant is entitled, subject to any claim of the said and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.
GIVEN under my hand and the seal of the Court, this day of 19.../20.....
Judge

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No. 16A

AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGMENT-DEBTOR

2[O. XXI, r. 41(2)]

In the Court of.....
.....

A.B.

Decree-holder

Versus

C.D. Judgment-debtor

I of state on Oath/solemn affirmation as follows :--

1. My full name is

(Block capitals)

2. I live at.....

3. I am* married/single/widower (widow)/divorced

4. The following persons are dependant upon me:--

5. My employment, trade or profession is that of

carried on by me at.....

I am a director of the following companies:--

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:--

(a) From my employment, trade or profession Rs.....

(b) From other sources Rs.

7. *(a) I own the house in which I live; its value is Rs.

I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.

(b) I pay as rent the annual sum of Rs.

8. I possess the following:--

(a) Banking accounts;

(b) Stocks and shares;

(c) Life and endowment policies;

(d) House property; Give particulars.

(e) Other property;

(f) Other securities;

9. The following debts are due to me:--

(give particulars)

(a) From of.....

Rs

(b) From of

Rs (etc.)

Sworn before me, etc.]

* Strike off the words which are not applicable.

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No. 17

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS

(O. XXI, r. 46)

(Title)

To

.....

.....

WHEREAS has failed to satisfy a decree passed against on the day of 19.../20..., in Suit No of 19.../20..., in favour of for Rs.; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day 19.../20....

Judge

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No. 18

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION

(O. XXI, r. 46)

(Title)

To

.....
.....

Defendant and to Secretary of Corporation.

WHEREAS has failed to satisfy a decree passed against on the day of 19.../20..., in Suit No. of 19.../20..., in favour of for Rs.; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of..... shares in the aforesaid corporation, namely, or from receiving payment of any dividend thereon; and you, the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 19.../20....

Judge

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No. 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY

(O. XXI, r. 48)

(Title)

To

.....
.....

WHEREAS judgment-debtor in the above-named case, is a (describe office of judgment-debtor) receiving his salary (or allowances) at your hands; and whereas decree-holder in the said case, has applied in this Court for the attachment of the salary (or allowances) or the said to the extent of due to him under the decree; You are hereby required to withhold the said sum of from the salary of the said in monthly instalments of and to remit the said sum (or monthly instalments) to this Court.

GIVEN under my hand and the seal of the Court, this day of 19.../20....

Judge

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No. 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT

(O. XXI, r. 51)

(Title)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the day of 19.../20..., for the attachment of; You are hereby directed to seize the said..... and bring the same into

Court.
GIVEN under my hand and the seal of the Court, this day of 19.../20.....
Judge

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No. 21

ATTACHMENT

**PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE
CUSTODY OF A COURT OF JUSTICE OR 2[PUBLIC OFFICER]**

(O. XXI, r. 52)

(Title)

To
.....
.....

Sir,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (here state how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir

Your most obedient servant.

Judge

Dated theday of..... 19.../20.....

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No. 22

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT

(O. XXI, r. 53)

(Title)

To
.....
.....

The Judge of the Court of.....

Sir,

I have the honour to inform you that the decree obtained in your Court on the day of..... 19.../20..... by in Suit No..... of 19.../20..., in which he was and was has been attached by this Court on the application of the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.

Judge

Dated the day of..... 19.../20...

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No. 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE

(O. XXI, r. 53)

(Title)

To

.....
.....

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19.../20..., in the Court of..... in Suit No. of 19.../20..., in which was and was; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

given under my hand and the seal of the Court, this day of 19.../20.....
Judge

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No. 24

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY

(O. XXI, r. 54)

(Title)

To

..... Defendant

WHEREAS you have failed to satisfy a decree passed against you on the day of 19.../20..., in Suit No.of 19.../20..., in favour of for Rs; It is ordered that you, the said, be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

2(It is also ordered that you should attend the Court on the day of..... 19.../20..., to take notice of the date fixed for settling the terms of the proclamation of sale.)

GIVEN under my hand and the seal of the Court, this day of 19.../20.....

Schedule
Judge

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No. 25

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY

(O. XXI, r. 56)

(Title)

To

.....
.....

WHEREAS the following property has been attached in execution of a decree in Suit No of19.../20..., passed on theday of 19.../20..., in favour of..... for Rs.

It is ordered that the property so attached, consisting of Rs in money and Rs in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said to

GIVEN under my hand and the seal of the Court, this..... day of 19.../20.....

Judge

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No. 26

NOTICE TO ATTACHING CREDITOR

(O. XXI, r. 58)

(Title)

To

.....
.....

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Suit No..... of 19.../20..., this is to give you notice to appear before this Court on the day of 19.../20..., either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this..... day of..... 19.../20....

Judge

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No. 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY

(O. XXI, r. 66)

(Title)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving days previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of 19.../20..., in execution of a decree in favour of in Suit No. of 19.../20..., or so much of the said property as shall realize the sum of Rs being the..... of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of 19.../20..., with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this..... day of..... 19.../20.....

Judge

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No. 28

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION

(O. XXI, r. 66)

(Title)

To

..... Judgment-debtor.

Whereas in the above name suit..... the decree-holder, has applied for the sale of; You are hereby informed that the day of 19.../20..., has been fixed for settling the terms of the proclamation of sale.

given under my hand and the seal of the Court, this day of 19.../20.....

Judge

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No. 29

PROCLAMATION OF SALE

(O. XXI, r. 66)

(Title)

(1) Suit No. of 19.../20..., decided by the of in which was plaintiff andwas defendant.--Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of.....

The sale will be by public .auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at Oclock on the at In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

Conditions of sale

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent, on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court doses on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

given under my hand and the sale of the Court, this day..... of 19.../20....

Judge

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Schedule of Property

number of lot	Description of property to be sold with the name of	The revenue assessed upon the estate or part of the estate, if the property to be	Detail of any encum-	Claims if any, which have been put forward to the	2[The value of the	the value of the property

	each owner where there are more judgment-debtors than one	sold is an interest in an estate or a part of an estate paying revenue to Government	branches to which the property is liable	property and any other known particulars bearing on its nature and value	property as stated by the decree-holder	as stated by the judgment debtor]

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No. 30

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE

(O. XXI, r. 66)

(Title)

To
The Nazir of the Court,
WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19.../20..., has been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.
Dated the day of..... 19.../20...
Schedule
Judge

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No. 31

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON ARE SALE OF PROPERTY BY REASON OF THE PURCHASERS DEFAULT

(O. XXI, r. 71)

(Title)

CERTIFIED that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of, purchaser, there was a deficiency in the price of the said property amounting to Rs and that the expenses attending such re-sale amounted to Rs making a total of Rs..... which sum is recoverable from the defaulter.
Dated the day of..... 19.../20.....
Officer holding the sale

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No. 32

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION

(O. XXI, r. 79)

(Title)

To

.....
.....

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of..... now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said.....

GIVEN under my hand and the seal of the Court, this day of 19.../20...
Judge

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No. 33

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER

(O. XXI, r. 79)

(Title)

To

.....
.....
and to
.....
.....

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of..... being debts due from you to you.....; It is ordered that you..... be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal" of the Court, this..... day of 19.../20...
Judge

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No. 34

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARE SOLDIN EXECUTION

(O. XXI, r. 79)

(Title)

To

.....and..... Secretary of..... Corporation.

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of..... standing in the name of you.....; It is ordered that you..... be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said..... the purchaser aforesaid, or from receiving any dividends thereon; and you..... Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this..... day of..... 19.../20...
Judge

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No. 35

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE OR SELL PROPERTY

(O. XXI, r. 83)

(Title)

WHEREAS in execution of the decree passed in the above suit an order was made on the..... day of 19.... /20..., for the sale of the under-mentioned property of the judgment-debtor..... and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of..... from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid in to this Court and not to the said judgment-debtor.

GIVEN under my hand and the seal of the Court, this..... day of..... 19.../20.... .

Description of property.

Judge

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No. 36

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

(O. XXI, rr. 90 and 92)

(Title)

To

.....

.....

WHEREAS the under-mentioned property was sold on the..... day of..... 19..../20..., in execution of the decree passed in the above-named suit, and whereas..... the decree-holder [or judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the..... day of 19..../20..., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, thisday of 19..../20...

Description of property.

Judge

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No. 37

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

(O. XXI, rr. 91 and 92)

(Title)

To

.....
.....

WHEREAS the purchaser of the under-mentioned property sold on the day of..... 19.../20..., in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that the judgment-debtor, had no saleable interest therein.

Take notice that if you have cause, to show why the said application should not be granted, you should appear with your proofs in this Court on the..... day of 19.../20..., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this..... day of 19.../20.....

Description of property

Judge

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No. 38

CERTIFICATE OF SALE OF LAND

(O. XXI, r. 94)

(Title)

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 19.../20..., of in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this..... day of..... 19..../20.....

Judge

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No. 39

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION

(O. XXI, r. 95)

(Title)

To

The Bailiff of the Court.

WHEREAS has become the certified purchaser of at a sale in execution of decree in Suit No. of..... 19.../20...; You are hereby ordered to put the said the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day of 19..../20...

Judge

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No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE

(O. XXI, r. 97)

(Title)

To

.....
.....

WHEREAS the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the day of 19.../20..., at..... AM., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this day of 19.../20.... .
Judge

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No. 41

WARRANT OF COMMITTAL

(O, XXI, r. 98)

(Title)

To

The Officer in charge of the Jail at

WHEREAS the under-mentioned property has been decreed to the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said..... in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison;

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of..... 19.../20...
Judge

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No. 42

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND

(Section 72)

(Title)

To

..... Collector of.....

SIR,

In answer to your communication No. dated representing that the sale in execution of the decree in this suit of..... land situate within your district is objectionable, I have the honour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

Sir,

Your obedient servant

Judge

1. Substituted by Act 10 of 1914, sec 2 and Schedule I, for "O. 21, r. 22)"

2. Inserted by Act 104 of 1976, section 95 w.e.f. 1-2-1977.

3. The words, "in the name of the King-Emperor of India," omitted by the A.O. 1950.

4. The words "annas" omitted by Act 104 of 1976, section 95 w.e.f. 1-2-1977.

5. Inserted by Act 104 of 1976, section 95 w.e.f. 1-2-1977.

6. Substituted by the A.O. 1937, for "Officer of Government"

APPENDIX F

SUPPLEMENTAL PROCEEDINGS

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APPENDIX F

SUPPLEMENTAL PROCEEDINGS

No. 1

warrant of arrest before judgment

(O. XXXVIII, r. 1)

(Title)

To
The Bailiff of the Court.
whereas, the plaintiff in the above suit, claims the sum of Rs

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Principal Interest			
Costs			
Total			

as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to These are to command you to demand and receive from the said the sum of Rs. as sufficient to satisfy the plaintiffs claim, and unless the said sum of Rs. is forthwith delivered to you by or on behalf of the said to take the said into custody, and to bring him before this Court in order that he may show cause why he should not furnish security to the amount of Rs for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

given under my hand and the seal of the Court, this day of 19.../20.... .
Judge

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No. 2

security for appearance of a defendant arrested before judgment

(O. XXXVIII, r. 2)

(Title)

whereas at the instance of, the plaintiff in the above suit, the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the; Court has ordered, him to furnish such security:

Therefore I, have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court that the said defendant shall appear at any time when called upon, while, the suit is pending and until satisfaction, of any decree that may be passed against him in the said suit ; and in default of such appearance I bind Myself; my heirs and executors, to pay to the said Court at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19...../20.... .

(Signed)
Witnesses:

- 1.
- 2.

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No. 3

summons to defendant to appear on suretys application for discharge

(O. XXXVIII, r.3)

(Title)

To

.....
.....

whereas who became surety on the day of 19...../20..., for your appearance in the above suit, has applied to this Court to be discharged from his obligation: You are hereby summoned to appear in this Court in person on the day of 19/20..., at A.M., when the said application will be heard and determined. given under my hand and the seal of the Court, this day of 19...../20.... .
Judge

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No.4

order for committal

(O. XXXVIII, r.4)

(Title)

To

.....
.....

whereas, plaintiff in, this suit, has made application to the Court that security be taken for the appearance of, the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he had failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him until satisfaction of the decree. given under my hand and the seal of the Court, this day of 19...../20....
Judge

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No. 5

ATTACHMENT BEFORE JUDGMENT WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE

(O. XXXVIII, r. 5)

(Title)

To
The Bailiff of the Court,

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit....., These are to command you to call upon the said defendant on or before, the, day of 19...../20...., either, to furnish security for the sum of rupees to, produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that, may be, passed against him ; or to appear and show cause why he should not furnish security ; and you are further, ordered to attach the said and keep the same under safe and secure custody until the further order of the Court ; and you are further commanded to this warrant on or before the day of 19...../20...., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why if has not been executed. given under my hand and the seal of the Court, thisday of 19...../20.... .
Judge

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No. 6

security for the production of property

(O. XXXVIII, r. 5)

(Title)

whereas at the instance of, the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs.to produce and place at the disposal of the Court the properly specified in the schedule hereunto annexed ;

Therefore I, have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs.or such sum not exceeding the said sum as the said Court may adjudge.
Schedule

Witness my hand atthis day of 19/20.... .

(Signed)

Witnesses.

- 1.
- 2.

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No. 7

attachment before judgment, on proof offailure to furnish security

(O. XXXVIII, r. 6)

(Title)

To

The Bailiff of the Court.

whereas, the plaintiff in this suit, has applied to the Court to call upon the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do; these are to command you to attach the property of the said, and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19/20...., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

given under my hand and the seal of the Court, this. day of. 19...../20.... .

Judge

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No. 8

temporary injunction

(O. XXXIX, r. 1)

(Title)

Upon motion made into this Court by Pleader of [or Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plain filed in this suit on the day of, or the written statement of the said plaintiff filed on the day of,] and upon hearing the evidence of and in support thereof [if after notice and defendant not appearing: add, and also, the evidence of as to service of notice of this motion upon the defendant C, D.]: This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or, petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in a Taluk of and from selling the materials whereof the said house is composed, until the hearing of this suit of until the further order of this Court. Date this. day of19...../20....

Judge

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering pan of the order may run thus :---]

..... to restrain the defendant and from parting without the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the, etc., mentioned in the plaintiffs plaint [or petition) and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases]..... to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called or any part thereof, until the, etc.

[Where part only of a book is to be restrained]

..... to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [or which is contained in page to pageboth inclusive] until etc.

[In Patent cases] to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiffs plaint [or petition, etc., or written statement, etc.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiffs plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of Trade marks] to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiffs plaint [or petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B. until the, etc.

[To restrain a partner from in any way interfering in the business]

..... to restrain the defendant C. D., his agents, and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

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No. 1 [9]

appointment of a receiver

(O. XL, r. 1)

(Title)

To

whereas has been attached in execution of a decree passed in the above suit on the day of 19...../20...., in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order. You are required to render a due and proper account of your receipts and disbursements in respect of the said property on You will be entitled to remuneration at the rate of per cent upon your receipts under the authority of this appointment. given under my hand and the seal of the Court, this day of. 19/20.... .
Judge

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No. 2 [10]

BOND TO BE GIVEN BY RECEIVER

(O. XL, r. 3)

(Title)

Know all men by these presents, that we, and and are jointly and severally bound to of the Court of in Rs to be paid to the-said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19...../20.... .

Whereas a plaintiff has been filed in this Court by against for the purpose of [here insert the object of suit];

And whereas the said has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of in the said plaint named :

Now the condition of this obligation is such, that if the above-bounden shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

Note.--If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

1. The number of the Form, originally misprinted as 6, was corrected by Act 10 of 1914, section 2 and Schedule 1.
2. The number of the Form, originally misprinted as 7, was corrected by Act 10 of 1914, section 2 and Schedule 1.

APPENDIX G

APPEAL, REFERENCE AND REVIEW

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APPENDIX G

APPEAL, REFERENCE AND REVIEW

No. 1

memorandum of appeal (O.XLI, r.I)

(Title)

The..... above-named appeals to the Court at from the decree of in Suit No. of 19..... dated the day of 19....., and sets for the following grounds of objection to-the decree appealed from, namely:--

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No. 2

security bond to be given on order being made to stay execution of decree

(O. XLI, r. 5)

(Title)

To

This security bond on stay of execution of decree executed by witnesseth:--

Thatthe plaintiff in Suit No of 19 having sued the defendant, in this Court and a decree having been passed on the day of19....., in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the..... Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance, To this effect I execute this security bond this day of19...../20....

Schedule

(Signed)

Witnessed by

- 1.
- 2.

Note : Unless appropriately altered, the printed form binds the surety only to an immediate appeal from the decree mentioned in the bond, and does not cover any obligation in respect of any further appeal.

And further, in Form No. 3 of the said Appendix G, for the opening words "This security bond on stay of execution of decree executed by.....witnesseth--".

Substitute the following:--

"This security bond, on order being made for execution of decree, executed by witnesseth--".

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No. 3

security bond to be given during the pendency of appeal

(O. XLI, r. 6)

(Title)

To

This security bond on stay of execution of decree executed by witnesseth :--

That the plaintiff in Suit No of 19, having sued, the defendant, in this Court and a decree having been passed on the day of 19..... in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the. Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19.....

Schedule

(Signed)
Witnessed by
1.
2.

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No. 4

SECURITY FOR COSTS OF APPEAL

(O, XLI, r. 10)

(Title)

To
Tins security bond for costs of appeal executed by. witnesseth :--
This appellant has preferred an appeal from the decree in Suit No. of 19....., against the respondent, and has been called upon to furnish security. Accordingly I; of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant. I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19.

Schedule
(Signed)
Witnessed by
1.
2.

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No. 5

intimation to lower court of admission of appeal

(O. XLI, r. 13)

(Title)

To
You arc hereby directed to take notice that the in the above suit, has preferred an appeal to this Court from the decree passed by you therein on theday of 19....., You are requested to send with all practicable despatch all material papers in the suit. Dated the day of 19.....,
Judge

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No. 6

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL

(O. XLI, r. 14)

(Title)

Appeal from the of the Court of dated theday of 19

To

.....Respondent

take notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

given under my hand and the seal of the Court, this day of 19

Judge

[Note.-If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

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No. 7

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT

(O. XLI, r. 20)

(Title)

To

whereas you were a party in Suit No of 19 in the Court of, and whereas the has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal;

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the bearing thereof till the day of 19.....at a.m. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

given under my hand and the seal of the Court, this day of 19.....

Judge

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No. 8

memorandum of cross objection

(O. XLI, r. 22)

(Title)

whereas the has preferred an appeal to the Court at from the decree of in Suit No. of19.....dated the day of19..... and whereas notice of the day fixed for hearing the appeal was served on the on the day of 19 the files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely:-

.....
.....

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No.9

DECREE IN APPEAL

(O. XLI, r. 35)

(Title)

Appeal No. of 19 from the decree of the Court of dated the day of 19....

Memorandum of Appeal

.....Plaintiff.
.....Defendant.

Theabove-named appeals to the Court at from the decree of..... in the above suit, dated the day of 19....., for the following reasons, namely: -

This appeal coming on for hearing on theday of 19 before in the presence of for the appellant and of for the respondent, it is ohlered-

The costs of this appeal, as detailed below, amounting to Rs. are to be paid by The costs of the original suit are to be paid by

given under my hand and the seal of the Court, this day of19.....

Judge

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Costs of appeal

Appellant	Amount			Respondent	Amount		
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for memorandum of appeal							
2. Do. for power							
3. Service of processes							
4. Pleaders fee on Rs.							
Total				Total			

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No. 10

application to appeal in forma pauperis

(O. XLIV, r. 1)

(Title)

I..... the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof.

Dated the day of 19.....

(Signed)

[Note.-Wbere the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.]

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No. 11

NOTICE OF APPEAL IN FORMA PAUPERIS

(O. XLIV, r. 1)

(Title)

whereas the above-named..... has applied to be allowed to appeal as a pauper from the decree in the above suit dated the..... day of 19..... and whereas the day of 19..... has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.
given under my hand and the seal of the Court, this..... day of 19.....
Judge

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No. 12

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE 1 [SUPREME COURT] SHOULD NOT BE GRANTED

(O. XLV, r. 8.)

(Title)

To
2 [TAKE notice that.....has applied to this Court for a certificate-
(i) that the case involves a substantial question of law of general importance, and
(ii) that in the opinion of this Court the said question needs to be decided by the Supreme Court.]
The..... day of 19...../20..., is fixed for you to show cause why the Court should not grant the certificate asked for.
given under my hand and the seal of the Court, thisday of19.....
Registrar

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No. 13

NOTICE TO, RESPONDENT OF ADMISSION OF APPEAL TO THE [SUPREME COURT]

(O. XV, r. 8.)

(Title)

To
.....
.....
whereas the in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908;.
Take notice that the appeal of said to 263 [the Supreme Court] has been admitted on the day of 19.....

given under my hand and sea of the Court, this.....day of 19.....
Registrar

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No. 14

notice to show cause why a review should not be granted

(O. XVII, r. 4.)

(Title)

To
take notice that..... has applied to this Court for a review of its decree passed on the.
day of 19..... in the above case. The..... day of..... 19.....is fixed
for you to show cause why the Court should not grant a review of its decree in this case.
given under my hand and seal of the Court, this day of 19.
Judge

-
1. Substituted by the A.O. 1950 for "KING IN COUNCIL".
 2. Substituted by Act 49 of 1973, section 4, for the former paragraph.
 3. Substituted by the A.O. 1950 for "His majesty in Council".

APPENDIX H
MISCELLANEOUS

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APPENDIX H

MISCELLANEOUS

No. 1

agreement of parties as to issues to be tried

(Order XIV, rule 6)

(Title)

whereas we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us
and the point at issue between us is whether a claim founded on a bond, dated the day
of..... 19...../20.....,and filed as Exhibit..... in the said suit, is or is not beyond the statute
of limitation (or state the point at issue whatever it may be):
We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such
issue, will pay to the said the sum of Rupees (or such sum as the
Court shall hold to be due thereon), and I, the said, will accept the said sum of Rupees
..... (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid
[or that upon such finding I, the said, will do or abstain from doing, etc.]
.....Plaintiff.
.....Defendant.

vs.

Witnesses:

- 1.
- 2.

Dated theday of19...../20..... .

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No. 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL

(Section 24)

In the Court of the District Judge of
No.....of 19...../20..... .

To

whereas an application, dated the day of..... 19/20...., has been made to this Court by the in Suit No of 19/20...., now pending in the Court of the at in which is plaintiff and is defendant, for the transfer of the suit for trial to the Court of the..... at :-

You are hereby informed that the day of 19/20...., has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

given under my hand and the seal of the Court, this day of 19...../20..... .
Judge

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1 [No.2A

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT

(Order XVI, Rule 1.)

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Name of the party which proposes to call the witness	Name and address of the witness	Remarks]

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No. 3

NOTICE OF PAYMENT INTO COURT

(Or. XXIV, r . 2)

(Title)

take notice that the defendant has paid into Court Rs.and says that sum is sufficient to satisfy the plaintiffs claim in full.

X. Y., Pleader for the defendant.

To Z., Pleader for the plaintiff..

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No. 4

notice to show cause (general form)

(Title)

To

.....

.....

Whereas the above-named has made application to this Court that; You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of..... 19...../20....., at O'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined ex parte. given under my hand and the seal of the Court, this.....day of..... 19...../20..... Judge

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No. 5

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF/DEFENDANT

(Order XIII, rule 1.)

(Title)

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No.	Description of document	Date, if any, which the document bears	Signature of party or pleader
1	2	3	4

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No. 6

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION

(Order XVIII, R. 16.)

(Title)

To

..... Plaintiff (or defendant) whereas in the above suit application has been made to the Court by.....that the examination of.....a witness required by the saidin the said suit may be taken immediately; and it has been shown to the Courts satisfaction that the said witness is about to leave the Courts jurisdiction (or any other good and sufficient cause to be stated); Take notice that the examination of the said witness will be taken by the Court on theday of19...../20..... Dated the, day of..... 19...../20..... Judge

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No. 7

commission to examine absent witness

(O. XXVI, rr. 4, and 18.)

(Title)

To

.....
.....

whereas the evidence of is required by the in the above suit; and whereas; you are requested to take the evidence on interrogatories [or viva voce] of such witness and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. being your fee in the above, is herewith forwarded,

given under my hand and the seal of the Court, this day of..... 19/20.....

Judge

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No. 8

letter of request

(O. XXVI, r. 5.)

(Title)

(Heading: -To the President and Judges of, etc., etc., or as the case may be.)

whereas a suit is now pending in the.....in which A. B. is plaintiff and C.D. is defendant; And in the said suit the plaintiff claims.

(Abstract of claim.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

.....E .F., of.....
.....G. H., of.....and
.....I. J., of.....

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I....., is the..... of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the saidor some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before the some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or viva voce) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note--If the request is directed to a Foreign Court, the words "through2 [the Ministry of External Affairs of the Government of India] for transmission" should be inserted after the words "other witnesses" in the last line of this form.)

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No. 9

commission for a local investigation, or to examine accounts

(O. XXVI, rr. 9, 11.)

(Title)

To
whereas it is deemed requisite, for the purposes of this suit, that a commission for.....should be issued;
You are hereby appointed Commissioner for the purpose of
Process to compel the attendance before you of any witnesses, or for the production of any documents whom or
which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.
A sum of Rs.being your fee in the above, is herewith forwarded.
given under my hand and the seal of the Court, this day of19...../20.....
Judge

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No. 10

COMMISSION TO MAKE A PARTITION

(O. XXVI, r. 13.)

(Title)

To
whereas it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition
or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated
theday of..... 19...../20.....; You are hereby appointed
Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said
property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such
shares to the several parties.
You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing
the value of the shares.
Process to compel the attendance before you of any witnesses or for the production of any documents, whom or
which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.
A sum of Rs.being your fee in the above, is herewith forwarded.
given under my hand and the seal of the Court, this day of 19...../20.....
Judge

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3 [No. 11

NOTICE TO CERTIFICATED, NATURAL, OR, DE FACTO GUARDIAN

(Order XXXII, rule 3.)

(Title)

To
.....(Certified/Natural/de facto Guardian)
whereas an application has been presented on the part of the plaintiff³⁶/ on behalf of the minor defendant* in the

above suit for the appointment of a guardian for the suit for the minor defendant..... you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor , the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of he said suit.

given under my hand and the seal of the Court, this..... day of..... 19...../20.....
Judge

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1 [No. 11A

notice to minor defendant

(Order XXXII, rule 3)

(Title)

To

..... Minor Defendant.

whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of *as guardian for the suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the day of..... 19.....at..... O'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined ex parte.

given under my hand and the seal of the Court, this. day of..... 19...../20.....
Judge]

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No. 12

notice to opposite party of day fixed for hearing evidence of pauperism

(O. XXX, r. 6.)

(Title)

To

.....
.....

whereas.....has applied to this Court for permission to institute a suit against.....in forma pauperis under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the..... day of 19...../20....., has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said. day of. 19...../20.....

given under my hand and the seal of the Court, this day of..... 19...../20.....
Judge

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No. 13

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE

(Section 145)

(Title)

To

.....
.....

Whereas you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit; and whereas a decree was passed on the..... day of 19...../20....., against the said defendant for the payment of.....and whereas application has been made for execution of the said decree against you : Take notice that you are hereby required on or before the..... day of 19...../20....., to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the lime specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application. given under my hand and the seal of the Court, this day of19...../20..... Judge

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No. 14

REGISTER OF CIVIL SUITS

(O. IV, r. 2)

COURT OF THE OFAT.....
Register of Civil Suits in the year 19...../20.....

Plaintiff	Defendant	Claim	Appearance	Judgment	Appeal	Execution	Return of Execution
Date of presentation of plaint	Name	Particulars	Day for parties to appear	Date		Date of application	Minute of other return than Payment or arrest, and date to every return
Number of suit	Description	Amount of value	Plaintiff	For whom	Date of decision of appeal	Date of order	
Name	Place of residence	When the cause of action accrued	Defendant	For what, or amount	Judgment in appeal	Against whom	
Description				Date of decision of appeal		For what and amount, if money	
Place of residence						Amount of costs	

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No. 15

REGISTER OF APPEALS

(O. 41, R. 9)

COURT (OR HIGH COURT) AT.....
Register of Civil Suits in the year 19...../20.....

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		Appellant	Respondent	Decree appealed from	Appearance	Judgment
Date of memorandum	Number of appeal	Name	Name	Of what Court	Day for parties to appear	Date
		Description	Description	Number of Original Suit	Appellant	Confirmed reserved or varied
		Place of residence	Place of residence	Particulars	Respondent	For what or amount
					Amount or value	

1. Inserted by Act 104 of 1976, section 96 (w.e.f. 1-2-1977).
2. Substituted by the A.O. 1950, for "His Majesty's Secretary of State for Foreign Affairs".
- *. Strike off the words which are not applicable.
3. Subs. by Act of 1976, sec 96, for Form 11 (w.e.f. 1-2-1977).

SCHEDULE 2

The Second Schedule
[Arbitration.]

Rep. by the Arbitration Act, 1940 (10 of 1940) s. 49(1) and Third Sch.

SCHEDULE 3

THIRD SCHEDULE
[Execution of Decrees by Collectors.]

Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 15. (w.e.f. 2-12-1956)

SCHEDULE 4

THE FOURTH SCHEDULE
[Enactments amended.]

Rep. by the Repealing and Amending Act, 1952 (48 of 1952), s. 2 and Sch. I. (w.e.f. 2-8-1952)

SCHEDULE 5

THE FIFTH SCHEDULE
[Enactments repealed.]

Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 3 and Sch. II.