RULES AND ORDERS
OF THE
LAHORE HIGH COURT, LAHORE

VOLUME I

INSTRUCTIONS
TO
CIVIL COURTS

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Rules and Orders of the Lahore High Court Lahore

VOLUME I. – Instructions To Civil Courts

CHAPTER 1

Practice in the Trial of Civil Suits

PART A -- GENERAL

#*[1. Court Hours.-- All Civil Courts in the Punjab shall sit on every day that is not a holiday for Civil Courts. The Court hours shall be fixed by the High Court through a notification and shall be subject to such alteration or change as may be made by general or special order keeping in view the demands of any particular area, event or occasion.]

2. Taking up cases after Court hours.-- No new case should be taken up after the closing hour of the Court but the hearing of a case taken up before that hour may, if necessary, be continued for a short time.

3. Holidays.-- The holidays allowed to the Civil Courts are annually prescribed by the High Court, under the provisions of *[section 25 of the Punjab Civil Courts Ordinance 1962 (II of 1962)] and no other holidays can be allowed by any other authority. The list of Civil holidays comprises general holidays and local holidays, the latter being usually limited to seven days in the year for each district.

4. Taking up cases on holidays.-- Civil suits and appeals ought not, as a rule, to be taken up #[...] on a holiday; but any Civil suit or appeal may be legally heard, by consent of the parties, #[...] on a holiday, if the Presiding Officer of the Court thinks it expedient, for any reason, to keep his Court open for the purpose.

5. Attendance of Ministerial establishment.-- The members of the ministerial establishment of the Courts should (subject to any special rules

regarding the Vacation Department) attend their office on all days except on holidays allowed to Civil Courts. An official may, however, be ordered by the Presiding Officer to attend office on a holiday to clear off arrears. An official should not except in most exceptional cases be made to attend on a holiday pertaining to his religion.

6. Preparation of cause lists.-- Cause Lists of cases fixed for each day should be prepared a day before. These lists should be exhibited in the Court room, or the verandah of the Court-house, at least by the afternoon of the day preceding that to which they relate, for the information of parties and their pleaders and the order of causes in the list should not be departed from without cogent reasons, unless the case be settled by compromise or the claim be admitted before the day fixed for trial. A strict adherence to this practice will secure punctual attendance and greatly promote the dispatch of business and the convenience of parties and witnesses. Cases should as far as possible be so arranged in the cause lists that the litigants may not have to wait long for simple cases and petty work such as miscellaneous applications, executions and objections, etc.

7. Form of cause list.-- Cause lists should be in the following form:-

IN THE COURT OF_____

CAUSE LIST FOR_____

CASE					
Day of the week and date	**No.**	**Plaintiff, Appellant or Petitioner**	**Defendant or Respondent**	**Description of the case**	**REMARKS**
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PART B -- RECEPTION OF PLAINTS AND APPLICATIONS

1. Not to be received on holidays.-- Plaints and petitions should be received by the Civil Courts on every day, which is not an authorised holiday, during office hours.

2. Reception by Court not sitting at headquarters of the district.-- Every Court whose place of sitting is at a distance from the headquarters of the district, should receive plaints and petitions direct under such general directions as the District Judge or the *[Civil Judge], if so empowered under *[section 16 of the Punjab Civil Courts Ordinance, 1962 (II of 1962)] may prescribe.

3. Distribution of cases.--(i) Plaints and petitions presented at the head-quarters of a district will be received and distributed by the District Judge who may delegate this power under *[section 16 of the Punjab Civil Courts Ordinance, 1962 (II of 1962)] to any [Civil Judge] and should always do so when it is for the convenience of the litigants. Regard should be had to the provisions of sections 15 and 20 and Order IV, Rule 1, of the Code of Civil Procedure, in framing directions regarding the reception of Civil Suits.

(ii) **Duty of distributing officer.--** The work of distribution of cases should not be left to the Reader or the Clerk of Court. The Judge should attend to it personally, noting in his own hand the name of person presenting the case and the Court to which the case has been assigned for trial. He should also inform the person presenting the plaint or petition of the date on which he is required to attend the Court to which the case is sent and note the fact of his having done so in his order. This will avoid the necessity of a notice being issued to the plaintiff or petitioner by the Court to which the case is sent.

(iii) **List of cases assigned to be exhibited.--** At the end of each day a list of all the cases so distributed should be exhibited in the Court of the distributing officer. Similarly each Court should exhibit at the end of each day a list of the cases assigned to it by the distributing officer.

***[Note:-** In almost all the districts in the Punjab District Judges have delegated their powers of distribution of plaints to the Senior Civil Judges under section 15 of the Punjab Civil Courts Ordinance, 1962,(II of 1962)].

4. Examination, endorsement and distribution.-- Every plaint or petition should, if possible, specify the provision of law under which it is presented and should, at the time of its reception, be at once endorsed with the date of its receipt, and such endorsement should be signed by the receiving officer. The Court-fees should be forthwith examined and cancelled in the manner prescribed in that behalf. The receiving officer should prepare a list of all plaints and applications received each day, and be held responsible that they are duly distributed in accordance with the orders passed thereupon and the general instructions (if any) given by the District Judge or the Senior [*][Civil Judge] in that respect.

[**][The Daily List of plaints etc. shall be arranged and preserved month-wise and year-wise so as to form an annual register to be called "Daily Institution List."]

5. Insufficiently stamped plaints, etc.-- It shall be the duty of the Clerks of Court to District and Sessions Judges, Senior [*][Civil Judges] and Judge of the Court of Small Causes and Readers to all other [*][Civil Judges] to see that appeals, plaints and petitions, etc. received in the Courts, to which they are attached, are properly stamped. When they are in doubt what Court fee is due on any document, it shall be their duty to refer the matter to the Presiding Officer for orders.

These officials are primarily responsible for any loss of revenue caused to Government by insufficiently stamped documents having been received owning to their neglect, but the ultimate responsibility for the loss lies on the Judge of the Court whose duty it is to look into such matters either when the plaints are instituted or when the plaints came up for hearing before him.

Note:- The Clerk of Court to the Senior [*][Civil Judge] is responsible for checking the Court-fee on those plaints only which the Senior [*][Civil-Judge] retains for trial by himself. In other cases the Reader of the Court to which the suit is sent for trial is responsible.

Provided that the personal responsibility of the officers concerned shall only be enforced where obvious mistakes have been made and not in cases in which a genuine doubt was possible regarding the correctness of the Court-fee due.

6. Transfer of cases to equalize work.-- The equal distribution of work amongst the Courts available can always be effected by the transfer of cases when necessary from one Court to another under the authority vested in the District Judge.

When a case is transferred by judicial order, the Court passing the order should fix a date on which the parties should attend the Court to whjich the case is transferred.

7. (a) Petition box.-- The petition box shall be placed in the verandah of the Court house at about one hour before the Court sits, an official being specially made to attend early for this purpose. It shall be opened in the presence of the Judge at about 15 minutes after the Court opens when all petitions shall be presented to and initialled by him. The Judge shall pass proper orders forthwith or inform the petitioner when orders will be ready after the necessary "Kaifiyats" have been put up. The box shall be replaced in the verandah and opened again shortly before the Court rises for luncheon in the presence of the Judge and the same procedure followed. It shall then be replaced once more in the verandah and opened for the last time, 15 minutes before the time fixed for the rising of the Court and the procedure prescribed above followed. After the Judge has arisen the box will be brought back to the Court room and no further petitions will be accepted.

A list of all miscellaneous or execution applications, on which orders cannot be passed forthwith, should be prepared and exhibited outside the courtroom specifying the date fixed for the disposal of each application.

(b) Urgent cases.-- In urgent cases, however, the Judge may exercise his discretion and personally receive documents presented to him direct at any time.

(c) Reception by ministerial establishment prohibited.-- The members of the ministerial establishment are strictly forbidden to receive petitions, plaints or other documents direct from lawyers and their clerks or from litigants except when the Judge is on leave and no other Judicial Officer is in charge of his current duties. District Judges should, however, invariably make arrangements for the reception of plaints and petitions, etc. by another officer of a Court when an officer is temporarily absent, on leave, tour or otherwise. Where there is a single Judicial Officer at a station such as a Moffassal or outlying Courts

and who is on leave, arrangements should be made for the reception of plaints, petitions, documents, etc. by the Tahsildar or the Naib Tahsildar in consultation with the Deputy Commissioner.

(d) Exceptions.-- The above orders do not apply to applications put in by counsel for the inspection of records which may be presented to the Presiding Officer personally, nor do they apply to talbanas and stamped postal envelopes filed by the litigants, which should he received direct by the Ahlmad or the Moharrir and a receipt given for the same whether demanded or not.

8. Who can file petition, etc.-- Plaints and petitions must be filed, except, when otherwise specially provided by any law for the time being in force, by the party in person or by his recognized agent, or by a duly authorized and qualified legal practitioner.

9. Recognised agents.-- Recognized agents are defined in Order III, Rule 2, of the Code of Civil Procedure, 1908. As to the appointment of a pleader, the provisions of Rule 4 of Order III *[of the said Code] and the instructions of the High Court given in Chapter 16, part A of this Volume should be carefully studied.

10. Powers of attorney.-- When parties appear by pleaders, or agents duly authorized in that behalf, their powers-of-attorney should, when practicable, be filed in original with the plaint. Where the power-of-attorney is a general one, a copy should be filed, the original being presented for verification. When so filed the power of attorney will be considered to be in force until revoked, with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or pleader or agent dies, or all proceedings in the suit are ended so far as regards the client.

11. Sending by post.-- The reception of plaints and petitions made under the Code of Civil Procedure, for judicial purposes by post, is irregular. All applications of a judicial nature received by post should be filed and on each application so filed an endorsement should be made to the effect that it was filed as not having been properly presented. This does not apply to applications for copies of judicial proceedings, which are not applications for judicial purposes made under the Code; but are applications dealt with under administrative authority.

PART C -- EXAMINATION OF THE PLAINT

1. Examination.-- On the presentation or receipt of a plaint, the Court should examine it with special reference to the following points, viz.:-

(i) whether the plaint contains the particulars specified in Order VII, Rule 1, and conforms to the other rules of pleadings in Orders VI and VII and rules made by the High Court thereunder;

(ii) whether, there is, prima facie, any non-joinder or mis-joinder of parties, or mis-joinder of causes of action;

(iii) whether any of the parties to the suit are minors and, if so, whether they are properly represented as laid down in Chapter
1-M(d) of this volume;

(iv) whether the plaint is duly signed and verified;

(v) whether the suit is within the jurisdiction of the Court or must be returned for presentation to proper Court (Order VII, Rule 10);

(vi) whether the plaint is liable to be rejected for any of the reasons given in order VII, Rule 11;

(vii) whether the documents attached to the plaint (if any) are accompanied by lists in the prescribed form and are in order;

(viii) whether the plaintiff has filed a proceeding containing his address for service during the litigation as required by Rule 19 of Order VII as framed by the High Court;

[**][(ix) whether the plaint is accompanied by a statement giving the names and addresses of the legal representatives and of the perjson who in the event of death of the plaintiff shall intimate such fact to the Court (Order VII, Rule 26, CPC);

(x) whether the plaint is accompanied by as many copies on plain paper of the plaint as there are defendants plus two extra copies and draft forms of summons and fees for the service thereof {Order VII, Rule 9 (1A), CPC};

(xi) whether the suit is not barred by time, and if, prima facie, it is so barred, whether plaint shows the ground on which exemption is claimed (Order VII, Rule 6); and

(xii) whether the plaint is accompanied by as many registered envelopes (acknowledgment due) as the number of defendants for simultaneous service of the summons through post (Order V, Rule 10-A).]

2. The provisions of the Code with regard to the pleading (which term includes the plaint and written statements of parties) should be carefully studied. The principal rules of pleading may be briefly stated as follows:-

(a) The whole case must be stated in the pleadings, that is to say, all material facts must be stated (Order VI, Rule 2).

(b) Only material facts are to be stated. The evidence by which they are to be proved is not to be stated (Order VI, Rules 2, 10, 11 and 12).

(c) The facts are to be stated concisely.

(d) It is not necessary to allege the performance of any condition precedent; an averment of performance is implied in every pleading but a non-performance of condition precedent, if relied on, must be distinctly stated (Order VI, Rule 6).

(e) It is not necessary to set out the whole or any part of a document unless the precise words thereof are necessary. It is sufficient to state the effect of the document as briefly as possible (Order VI, Rule 9).

(f) It is not necessary to allege a matter of fact which the law presumes. or as to which the burden of proof lies on the other side (Order VI, Rule 13).

(g) When misrepresentation, fraud, undue influence, etc. are pleaded, necessary particulars must always be given (Order VI, Rule 4).

(h) When a suit is prima facie time-barred the ground on which exemption is claimed must be stated (Order VII, Rule 6).

If the plaint is prolix or indefinite or omits to give the necessary particulars or to specify the relief claimed precisely or is defective in any other respect it should be returned to the party or his counsel for such amendment as may be necessary in the actual presence of the Presiding Officer after he has signed the endorsement. The Court has wide powers in this respect (see Order VI, Rules 16 and 17). Where amendment is directed, an order should be recorded by the judge indicating the particulars about the necessary amendment and fixing a date for filing the amended plaint.

3. (a) Non-joinder and mis-joinder of parties and causes of action.-- Attention is drawn to the provisions of law contained in Orders I and II of the Civil Procedure Code relating to non-joinder of parties and mis-joinder of causes of action and parties and as to representative suits:-

(i) **Joinder of parties.--** Order I, rules 1 and 3 provide in what case several plaintiffs or defendants may be joined in one suit.

(ii) **Representative suits.--** Order I, rule 8 provides that when there are numerous persons having the same interest in one suit, one or more of such persons may sue or defend on behalf of all with the permission of the Court .

(iii) **Objection as to non-joinder or mis-joinder.--** Order I, rule 9 lays down that no suit shall be defeated by reason of mis-joinder or non-joinder of parties and Order I , rule 13 and Order II, rule 7 lay down that objections as to non-joinder or mis-joinder of parties or causes of action, etc. should be made at the earliest stage of the case.

(iv) **Joinder of causes of action.--** Order II rules 3 to 5 provide in what cases several causes of action may be joined in one suit.

(v) **Separate trials.--** Order I, rule 2 and Order II, rule 6 provide for power of the Court to order separate trial if the joinder of several plaintiffs or several causes of action is inconvenient.

(vi) **Striking out and adding parties.--** Order I, rule 10 gives power to the Court to strike out unnecessary parties and add necessary parties.

(b) **Necessary parties.--** Suits for inheritance, partition or declaration of right in order to effect partition, contribution, redemption, foreclosure, administration of property, dissolution and winding up of a partnership, and the like, cannot be properly disposed of unless all persons interested in the matter are before the Court. Therefore, in cases of this description, if it appears that any necessary parties have not been joined, the plaintiff should be ordered to join them.

4. Signing and verification.-- The plaint must be signed by the plaintiff, or, if by reason of absence or other good cause the plaintiff is unable to sign it, by his duly authorised agent. It must also be signed by the plaintiff's pleader (if any) and be verified by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case .

The personal attendance of the plaintiff in Court for the purpose of verification is unnecessary. The verification must, however, be signed by the person making it.

5. Jurisdiction.-- The jurisdiction of a Court depends upon the nature and value of the suit. (For detailed instruction see Chapter-II on "Jurisdiction of Courts" and Chapter-III on "Valuation of suits"). If a suit is not within the jurisdiction of the Court, the plaint must be returned in the presence of the Presiding Officer for presentation to proper Court. In such cases the Presiding Officer must record on the plaint his reasons for returning it along with the other particulars mentioned in sub-rule (2) of rule 10 of Order VII.

6. Rejection of plaint.-- If the plaint discloses no cause of action, or is barred by any law on the statements made therein, or if the relief claimed is under-valued or the plaint is not sufficiently stamped and the plaintiff fails to correct the valuation or pay the deficiency in the Court-fee within the time fixed by Court the plaint should be "rejected" under Order VII, Rule 11, reasons being recorded by the Presiding Officer in support of the order.

It should be noted that the correct order in such cases is to 'reject the plaint' and not 'dismiss the suit'. The rejection of a plaint does not preclude the institution of a fresh suit on the same cause of action, provided of course, it is not otherwise barred (e.g., by limitation, etc.) by that time .

7. Comparison of copies of account.-- Copies of any shop book or account produced should be compared with the original by Chief Ministerial Officer of the Court and the shop book or account should then be returned after marking the entries relied upon (Order VII, Rule 17).

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.

8. Address of the parties.-- The proceeding containing address for service is intended to facilitate the service of processes throughout the litigation (including appeals, etc,) and it is, therefore, important to see that it is duly filed at the outset according to this rule. Failure to comply with the rule is liable to be punished with dismissal of the suit but such an order may properly be passed in extreme cases when the failure is intentional and contumacious.

9. Land suits.-- If the plaint relates to agricultural land and the plaintiff is illiterate, it should be scrutinised with special care, according to the following directions:-

(i) The Presiding Officer shall ascertain by careful examination of the plaintiff or his agent, whether the prayer in the plaint corresponds in all particulars with the exact relief which the plaintiff orally describes himself as seeking. If the oral statements of the plaintiff or his agent are at variance with the written description of his claim, the plaint shall, in his or his agent's presence, be returned for amendment, and no amended plaint

should be accepted until the Court is satisfied that it correctly expresses the claim which the plaintiff desires to establish.

(ii) Every such plaint shall be accompanied by a statement in the prescribed form setting forth the particulars relating thereto recorded in the Settlement record and in the last Jamabandi. This statement shall be verified by the signature of the Patwari of the Circle in which the land concerned is situated. Where, by reason of partition, river action or other cause the entries in the Settlement record and in the last Jamabandi do not accord, a brief explanation of the reason should be given in the column of remarks. Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, drawn to scale, showing clearly the specific plot claimed, or in relation to which the decree is to be made, and so much of the fields adjoining it, also drawn to scale, as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the statement and the map shall be certified as correct by the Patwari or other person who prepared it. Where, however, the suit is for the whole of one or more khasra numbers as shown in the Settlement map, or a share in such numbers, and not for a specific portion thereof no map will be required unless it is necessary for other reasons to show the boundaries of such khasra numbers.

10. Suits for recovery of money, mesne profits and accounts.-- If the plaintiff seeks the recovery of money, the plaint should state the precise amount, as far as the case admits. In a suit for mesne profits or unsettled accounts it is sufficient to state the amount approximately.

11. Suits by or against firms.-- Suits by or against firms should be in the form prescribed in Order XXX. An explanation has been added by the High Court to Rule I of Order XXX, making it applicable to joint Hindu trading partnerships (Notification No. 2212-G, dated 12th May 1909).

12. Copies or concise statements of plaints.-- When the plaint is admitted (after such amendment as may be found necessary), the plaintiff should

be required to give as may copies of the plaint on plain paper as there are defendants, for being supplied to them. If the plaint is long, or the number of defendants is large, the Court may permit concise statements of the plaint to be supplied instead. Such copies or concise statements must be examined by the chief ministerial officer and signed, if found correct (Order VII, Rule 9).

13. Parcha Yad Dasht.-- When a plaint or petition is admitted and a date fixed for summoning of the other party or for any other purpose a memorandum (parcha yad dasht) on strong paper in the form given below duly filled in shall be given to the plaintiff or the petitioner or his agent if he is illiterate and not represented by counsel.

FORM OF PARCHA YAD DASHT

IN THE COURT OF THE _____ AT
COURT HOURS FROM _____A.M. TO_____P.M.

Civil (Suit)(Appeal)(Miscelaneous Application) .....No._____ of (year) _____.

Parties	Date of receipt	Date fixed for hearing	Place at which attendance is required	Purpose for which date is fixed	Remarks
-	-	-	-	-	-

A.....By (Officer of Court)

B.....From (Name and description of party presenting)

INSTRUCTIONS

1. A parcha is to be given without demand (1) to the person who presents the plaint, appeal or petition, and (2) when a case is not disposed of at the first hearing to the Defendant or Respondent or, if there be several, to such Defendants or Respondents as the Court may direct.

2. Every entry in any column after the first is to be signed by the officer making it.

3. If the place is the fixed headquarters of the Court, it need not be specified, but in every other instance it must be specified.

14. Parcha Yad Dasht.-- A similar parcha shall be given to the opposite party when he appears if he is illiterate and not represented by counsel.

15. Filling in of the parcha.-- Parcha shall be filled in and signed by the Reader of the Court and given to the parties concerned in the presence of the Presiding Officer as soon as the date of hearing is fixed.

In Small Cause Courts and in the Courts of the District Judges this parcha may be filled in by any other official if the Presiding Officer so directs.

16. Filling in of the parcha.-- The above parcha shall be used throughout the proceedings and properly filled in whenever the case is adjourned. If the parcha is lost a duplicate should be given.

PART D -- SERVICE OF PROCESSES

ISSUE OF SUMMONS TO THE DEFENDANT

1. Summonses for final disposal or settlement of issues.-- In Order V, Rule 5, of the Code of Civil Procedure, it is laid down that 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; and a proviso to the rule adds that in every suit heard by a Court of Small Causes the summons must be for the final disposal of the suit .

2. When summonses for final disposal may issue.-- In determining whether the summons shall be for the settlement of issues only, or for the final disposal of the case, the Court must be guided by the nature of the suit, and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence or will involve much contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examination of the parties or their agents, and such evidence, oral or documentary, as they can bring with them, the summons should be for the final disposal of the case.

3. Adjournment of case in case of summonses for final disposal.- It will, however, be remembered that when the summons is for final disposal, the Court is not bound to dispose of the case on the date fixed for hearing, but can adjourn the case to another date, to enable the parties to produce evidence, when this seems necessary in the interests of justice, and especially when there is reason to believe that one party has been taken by surprise by the pleadings of, or statements made on examination by the other.

4. Suitors should be made to know what summons for final disposal means.-- Care should be taken to make suitors understand, in cases in which the summons is for final disposal, that all their evidence must be produced on the day fixed for disposal.

*[**5.** (1) Not later than seven days after the settlement of issues, the parties shall submit to the Court a list of witnesses whom they propose to call either to give evidence or to produce documents.

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

5-A. Except where it appears to the Court that a summons under Order XVI should be served by the Court in the same manner as summons to a defendant, the Court shall make over for service such summons to the party applying therefor.

5-B. Every summons under Order XVI not being a summons made over to a party for service under rule 7A of that Order, shall be served as nearly as in the manner of service on a defendant and the rules in Order V as to proof of service shall apply thereto. Such summons shall not be issued unless an application is made not later than fourteen days prior to the date of hearing of the case and subject to the deposit of necessary expenses for the summoning of the witnesses.]

6. Signing of summons. Copies of plaint to be attached.-- Summonses should be clearly and legibly written and signed, and the seal of the Court must be affixed. Order V, Rule 1(3) of the Code requires that the summons shall be signed by the Judge or such officer as he appoints. In Courts, provided with a Clerk of Court he may be authorized to sign summonses; in all other Courts Reader may be authorized to sign them. The signature should in all cases be fully and legibly written. A copy or concise statement of the plaint should be attached to each summons.

7. References.-- As regards the general procedure to be followed in effecting service of processes, personal attention to service and proof of service, special procedure in the case of Government Servants, and persons in Military employ, etc., the time to be allowed for service of processes in *[Tribal Areas], foreign countries, Chapter 7, Volume IV, "Processes -- Civil Courts" may be referred to. For service of Processes of Appellate Courts -- See Chapter 14-B, Volume I.

PART E -- WRITTEN STATEMENTS

1. When written statements required.-- It is laid down in Order VIII, Rule 1 of the Code of Civil Procedure, that a defendant may, and if so required by the Court shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Ordinarily it is advisable to require such a written statement and the Court should at the time of issuing the summons call for a written statement from the defendant on the date fixed for his appearance. In most cases, there should be no difficulty in presenting such a written statement on the date fixed, and no adjournment should be given for the purpose except for good cause shown, and in proper cases, costs should be awarded to the opposite side. Laxity in granting adjournments for the purpose of filing written statements should be avoided, and it should be noted that in extreme cases, contumacious refusal to comply with the Court's order is liable to be dealt with under order VIII, Rule 10, Civil Procedure Code.

[**][According to the proviso to Rule 1 of Order VIII, the period to be allowed for filing of the written statement shall not, ordinarily, exceed thirty days.]

2. Documents to accompany written statement.-- Rule 1 of Order VIII (as amended by the High Court) further requires the defendant to produce with the written statement all documents in his possession or power on which he bases his defence or claim to set off, if any. If he relies in support of his case on any other documents, not in his possession or power, he must annex a list thereof to the written statement. With the written statement, the defendant must also file his address for service during the litigation.

3. Replications.-- When the defendant has filed a written statement the Court may call upon the plaintiff to file a written statement in reply. Under Order VIII, Rule 9, the Court, has power to call upon both parties to file written statements at any time and this power should be freely used for elucidating the pleas when necessary, especially in complicated cases. In simple cases, however, examination of the parties, after the defendant has filed his written statement is generally found to be sufficient.

4. Separate written statements.-- In all cases where there are several defendants the Court should, as a rule, take a separate written statement from each defendant, unless the defences of any defendants filing a joint written statement are identical in all respects. There may be different defences based upon a variety of circumstances and these should not be allowed to be mixed up together in a single statement merely because all the defendants deny the plaintiff's claim.

5. Court-fees.-- Written statements called from the parties may be on plain paper, but when the defendant claims in his written statements any sum by way of set off under Order VIII, Rule 6, Civil Procedure Code, the statement must be stamped in the same manner as a plaint in a suit for the recovery of that sum.

6. Contents.-- A "written statement" is included in the definition of "pleading" (vide Order VI, Rule 1) and should conform to the general rules of pleadings given in Order VI as well as the special rules with regard to written statements in Order VIII. All admissions and denials of facts should be specific and precise and not evasive or ambiguous. When allegations of fraud, etc. are set up, the particulars should be fully given. When any legal provision is relied on, not only the provision of law relied upon should be mentioned, but also the facts making it applicable should be stated. For instance, when a plea of res judicata is raised, not only the provision of law (e.g., section 11 of Civil Procedure Code) should be mentioned, but also the particulars of the previous suit which is alleged to bar the suit.

PART F -- SETTLEMENT OF ISSUES

1. Stress on framing correct issues.-- The trial of a suit falls into two broad divisions-- the first part leading up to and including the framing of issues and the second, consisting of the hearing of the evidence produced by the parties on those issues and the decision thereof. Issues are material propositions of facts and law, which are in controversy between the parties and the correct decision of a suit naturally depends on the correct determination of these propositions. The utmost care and attention, is therefore, needed in ascertaining the real matters in dispute between the parties and fixing the issues in precise terms. In most cases the main difficulty of the trial is overcome when the correct issues are framed. A few hours spent by the Court at the outset in studying and elucidating the pleadings, may mean a saving of several days, if not weeks, in the later stages of the trial.

2. Framing of issues by counsel.-- In some Courts, the framing of issues is left to the pleaders for the parties concerned. This practice is illegal and must cease. The Code contemplates that the Presiding Officer of the Court should himself examine the pleadings, get the points in dispute elucidated and frame issues thereon.

3. Elucidation of pleadings for framing issues.-- The main foundation for the issues is supplied by the pleadings of the parties, viz, the plaint and the written statements. But owing to the ignorance of the parties or other reasons, it is frequently found that the facts are stated neither correctly nor clearly in the pleadings. The Code gives ample powers to the Court to elucidate the pleadings by different methods prescribed in Orders X, XI and XII of the Code and in most cases it is essential to do so, before framing the issues.

4. Elucidation of pleadings for framing issues.-- On the date fixed for the settlement of issues, the Court should, therefore, carefully examine the pleadings of the parties and see whether, allegations of fact made by each party are either admitted or denied by the opposite party, as they ought to be. If any allegations of fact are not so admitted or denied in the pleadings of any party, either expressly or by clear implication, the Court should proceed to question the party or his pleader and record categorically his admission or denial of those allegations (Order X, Rule 1).

5. Examination of Parties.-- Order X, Rule 2 of the Code, empower the Court at the first or any subsequent hearing to examine any party appearing in person or present in Court or any person, accompanying him, who is able to answer all material questions relating to the suit. This is a most valuable provision, and if properly used, results frequently in saving a lot of time. To use it properly, the Court should begin by studying the pleas and recording the admissions and denials of the parties under Order X, Rule 1, as stated above. The Court will then be in a position to ascertain what facts need further elucidation by examination of the parties. The parties should then be examined alternatively on all such points and the process of examination continued until all the matters in conflict and especially matters of fact are clearly brought to a focus. When there are more defendants than one, they should be examined separately so as to avoid any confusion between their respective defences.

*[**6. Examination on Oath.--** From Order XIV, Rule 3 of the Code, it will appear that every allegation of fact made by any person other than a pleader should be on oath or solemn affirmation.]

7. Personal attendance of parties.-- When a pleader for a party or his agent is unable to state the facts to the satisfaction of the Court, the Court has the power, to require the personal attendance of the party concerned (Order X, Rule 4). It may also be noted here that the Court can require the personal attendance of the defendant on the date fixed for the framing of issues by an order to that effect in the summons issued to him (Order V, Rule 3).

8. Examination should be detailed.-- In examining the parties or their pleaders, the Court should insist on a detailed and accurate statement of facts. A brief or vague oral plea, e.g., that the suit is barred be limitation, or by the rule of res judicata, should not be received without a full statement of the material facts and the provision of law on which the plea is based. similarly when fraud, collusion, custom, mis-joinder, estoppel, etc., is pleaded, the facts on which the pleas are based should be fully elucidated. Any inclination of a party or his pleader to evade straightforward answers or make objections or pleas, which appear to the Court to be frivolous, can be promptly met, when necessary, by an order for a further written statement on payment of costs. The

party concerned should also be warned that he will be liable to pay the costs of the opposite party, on that part of the case at any rate, if he failed to substantiate his allegations.

9. Personal examination of parties.-- Examination of the parties in person is particularly useful in the case of illiterate litigants. Much hardship to the people will be prevented, if the Presiding Officers examine the parties personally and sift the cases thoroughly at the outset.

10. Amendment of pleadings.-- The examination of the parties frequently discloses that the pleadings in the plaint or written statement are not correctly stated. In such cases, these should be ordered to be amended and the amendment initialled by the party concerned. If any mis-joinder or multifariousness is discovered, the Court should take action to have the defect removed.

11. Forms prescribed for examination of parties.-- In order to ensure due compliance with these instructions as regards the examination of parties, the High Court has prescribed forms on which such examination should be recorded. Appellate Courts should see that the forms prescribed are used and should not fail to take notice of subordinate Courts which neglect to follow the directions here given.

12. Utility of provisions as to discovery, inspection and admission.-- The provisions of Order XI and Order XII of the Code with regard to "discovery and inspection" and "admissions" are also very important for the purposes of ascertaining the precise cases of the parties and narrowing down the field of controversy.

These provisions are little understood and are not utilized at present as much as they should be. The Courts should make themselves conversant with them and encourage the parties to make free use of them, especially in long and intricate cases. It should be noted that under section 30 of the Code the Court has power to make orders suo moto; as regards delivery of interrogatories for the purposes of discovery, inspection and admissions. If these provisions are properly used, they will result in a saving of considerable cost to the parties and also curtail the duration of the trial.

13. Parties and their counsel should be encouraged to use freely the provisions of order XII, rules 2 and 4, Civil Procedure Code (Notice to admit documents and facts). They should be warned that if they fail to avail themselves of these provisions they will not be allowed costs of proving facts and documents, notice of which could have been given. When hearing evidence the Court should make a note whether the parties have made use of these provisions, and if they have not done so, should disallow costs incurred in proving such facts and documents in passing final orders.

14. Form of issues.-- When the pleadings have thus been exhausted and the Court has before it the plaint, pleas, written statements, admissions and denials recorded under Order X, Rule 1, examination of parties recorded under Order X, Rule 2 and admissions of facts or documents made under Order XII of the Code, it will be in a position to frame correctly the issues upon the points actually in dispute between the parties. Each issue should state in an interrogative form one point in dispute. Every issue should form a single question, and as far as possible issues should not be put in an alternative form. In other words, each issue should contain a definite proposition of fact or law which one party avers and the other denies. An issue in the form, so often seen, of a group of confused questions is no issue at all, and is productive of nothing but confusion at the trial. A double or alternative issue generally indicates that the Court does not see clearly on which side or in what manner the true issue arises, and on whom the burden of proof should lie, and an issue in general terms such as "Is the plaintiff entitled to a decree" is meaningless. If there are more defendants than one who make separate answers to the claim, the Court should note against each issue the defendant or defendants between whom and the plaintiff the issue arises.

15. Burden of proof.-- The burden of proof as to each issue should be carefully determined and the name of the party on whom the burden lies, stated opposite to the issue.

PART G -- DOCUMENTARY EVIDENCE

1. Production of documents and list along with plaint and written statement on final hearing.-- The main provisions of the Code with regard to the production of documents by the parties are as follow:-

(a) According to Order VII, Rule 14, when the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and deliver the document itself or a copy thereof to be filed with the plaint. If he relies on any other documents, whether in his possession or power or not, as evidence in support of his case, he shall enter such documents in a list to be annexed to the plaint. If the documents are not so produced or entered in the list, they cannot be proved at a later stage without the leave of the Court, unless they fall within the exception given in sub-rule 2 of Order VII, Rule 18.

(b) Order VIII, Rule 1 (as amended by the High Court), similarly requires the defendant to produce with his written statement any documents upon which his defence or claim to set-off is founded. The defendant must also annex to the written statement a list of all documents on which he intends to rely -- whether in his possession or power or not -- in support of his defence or claim to set-off.

(c) Order XIII, Rule I, lays down that the parties shall produce at the first hearing of the suit documentary evidence of every description in their possession or power on which they intend to rely, and which has not been already filed in Court and all documents which the Court has ordered to be produced. If the documents are not so produced at the first hearing, they cannot be produced at a later stage unless good cause is shown to the satisfaction of the Court.

[**][(d) Order XVI Rule I provides for filing a list, within seven days after settlement of issues, of such witnesses who may be called to

produce documents. Any application made beyond seven days should not be allowed except on showing good cause.]

2. List of documents and their comparison with the list.-- Whenever any documents are produced by the parties in the course of a suit, whether with the plaint or written statement, or at a later stage, they must always be accompanied by a list, in duplicate, in the form given below. Documents produced must be forthwith compared with the list, and, if found correct, the original list should be signed by the Reader of the Court and its duplicate copy similarly signed should be returned to the party presenting the document. In column 4, the Court should note the manner in which the document was dealt with, i.e. whether it was admitted in evidence or rejected and returned to the party concerned or impounded, as the case may be.

(Continued)

List of documents produced by Plaintiff/Defendant under order XIII, Rule 1, Civil Procedure Code.

In the Court of _____ at_____DISTRICT

Suit No._____of (year)

Plaintiff.

Versus

Defendant.

List of Documents produced with the plaint (or at first hearing)on behalf of (plaintiff or defendant)

This list was filed by _____ this day of (year)

1	2	3	4 WHAT BECAME OF THE DOCUMENT		5
Sr.No.	Description and date if any, of the document.	What the document is intended to prove.	If brought on the record, the Exhibit mark put on the document.	If rejected, date of return to party and signature of party or pleader to whom the document was returned.	Remarks

Signature of party or
pleader producing the list.

Note--Judicial Officers should instruct all petition-writers practising in their Courts to prepare lists in the above form for all documents intended to be produced in Court."

3. Calling upon parties to produce documents.-- The Court should formally call upon the parties at first hearing at the time of framing issues to produce their documents and should make a note that it has done so. [**][On production of documents, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission, or as the case may be, their denial.] Forms have been prescribed by the High Court for

the examination of the parties with reference to their documents and these should be invariably used. If the printed forms are not at any time available, the questions prescribed therein should be asked and the questions as well as the answers noted. If these instructions are strictly carried out, there will be no justification for the plea frequently put forward by ignorant litigants, with regard to the late production of a document that they had brought the document at the first hearing but were not called upon to produce it.

4. Late production of documents.-- The above provisions as regards the production of the documents at the initial stage of a suit are intended to minimise the chances of fabrication of documentary evidence during the course of the suit as well as to give the earliest possible notice to each party of the documentary evidence relied upon by the opposite party. These provisions should, therefore, be strictly observed, and if any document is tendered at a later stage, the Court should consider carefully the nature of the document sought to be produced (e.g., whether there is any suspicion about its genuineness or not) and the reasons given for its non-production at the proper stage, before admitting it. The fact of a document being in possession of a servant or agent of a party on whose behalf it is tendered is not itself a sufficient reason for allowing the document to be produced after the time prescribed by Order XIII, Rule 1. The Court must always record its reasons for admission of the document in such cases, if it decides to admit it (Order XIII, Rule 2).

5. Suspicious, forged or not properly stamped documents.-- Should any document which has been partially erased or interlined, or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings, a note should be made of the fact; and, should a well founded suspicion of fraudulent alteration or forgery subsequently arise, the document should be impounded under Order XIII, Rule 8, and action taken under Section 476, 478 and 479 of the Code of Criminal Procedure. Similarly, should any document be presented which appears to have been executed on unstamped or insufficiently stamped paper, action should be taken under Section 33 and 35 of the stamp Act, 1899. (See also Volume IV, Chapter 4, "Court-fees Stamps").

6. Production and admission of documents distinguished.-- Court should be careful to distinguish between mere production of documents and their 'admission in evidence' after being either 'admitted' by the opposite party or 'proved' according to law. When documents are 'produced' by the parties, they are only temporarily placed on the record subject to their being 'admitted in evidence' in due course. Only documents which are duly 'admitted in evidence' form a part of the record, while the rest must be returned to the parties producing them (Order XIII, Rule 7).

7. Documents must be tendered in evidence.-- Every document which a party intends to use as evidence against his opponent must be formally tendered by him in evidence in the course of proving his case. If a document has been placed on the record, it can be referred to for the purpose. If it is not on the record, it must be called from and produced by, the person in whose custody it is.

8. Procedure when documents admitted by the opposite party.-- If the opponent does not object to the document being admitted in evidence, an endorsement to that effect must be made by the Judge with his own hand; and, if the document is not such as is forbidden by the legislature to be used as evidence, the Judge will admit it, cause it or so much of it as the parties may desire to be read.

9. Procedure when document is not admitted by the opposite party.-- If, on the document being tendered, the opposite party objects to its being admitted in evidence two questions commonly arise: first, whether the document is authentic, or, in other words, is that which the party tendering it represents it to be; and second, whether, supposing it to be authentic, it is legally admissible in evidence as against the party who is sought to be affected by it. The latter question, in general, is matter of argument only; but the first must, as a rule, be supported by such testimony as the party can adduce.

10. Legal objection as to admissibility.-- All legal objections as to the admissibility of a document should, as far as possible, be promptly disposed of, and the Court should carefully note the objection raised and the decision thereon.

The Court is also bound to consider, suo moto, whether any document sought to be proved is relevant and whether there is any legal objection to its admissibility. There are certain classes of documents which are wholly inadmissible in evidence for certain purposes, owing to defects such as want of registration, etc., (see e.g., Section 49 of the Registration Act). There are others in which the defect can be cured, e.g., by payment of penalty in the case of certain unstamped or insufficiently stamped documents.

11. Mode of proof.-- As regards the mode of proof the provisions of the *[Qanoon-e-Shahadat, 1984 (X of 1984)] should be carefully borne in mind. The general rule is that document should be proved by primary evidence, i.e. the document itself should be produced in original and proved. If secondary evidence is permitted, the Court should see that the conditions under which such evidence can be led in, exist.

Old documents.-- If an old document is sought to be proved under Section 90, the Court should satisfy itself by every reasonable means that it comes from proper custody.

When copies instead of original may be put in.-- Under the Bankers' Books Evidence Act, 1891, certified copies can be produced, instead of the original entries in the books of Banks, in certain circumstances, and a similar privilege is extended under Section 26 of the Co-operative Societies Act, *[1925], to entries in books of Societies registered under that Act, and the entries in the account prescribed under *[subsection (1) of Section 14 of the Punjab Money Lenders Ordinance, 1960 (XXIV of 1960)].

12. Proof of signature or attestation.-- There are certain points which the Courts should bear in mind, when the signature or attestation of a document is sought to be proved.

Before a witness is allowed to identify a document, he should ordinarily be made, by proper questioning, to state the grounds of his knowledge with regard to it. For instance, if he is about to speak to the act of signature, he should first be made to explain concisely the occurrences which led to his being present when the document was signed, and if he is about to recognise a signature on the strength of his knowledge of the supposed signer's handwriting, he should first be made to state the mode in which this knowledge was acquired.

This should be done by the party who seeks to prove the document. It is the duty of the Court, in the event of a witness professing ability to recognise or identify hand writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

13. Plans.-- In all cases in which a plan of the property is produced by either of the parties or is required from it by the Court and is not admitted by the opposite party, it must be properly proved by--

(a) examination of the person who prepared it, and by requiring him to certify it as correct and to sign it, or

(b) by affidavits or examination of the parties and witnesses.

It is further open to the Court to issue a commission at the cost of the parties or either of them to any competent person to prepare a correct plan and to examine the person so appointed in order to explain and prove it.

14. Endorsements on documents admitted in evidence.-- Every document "admitted in evidence", must be endorsed and signed or initialled by the Judge in the manner required by Order XIII, Rule 4, and marked with an Exhibit number. Documents produced by the plaintiff may be conveniently marked as Ex. P. 1, Ex. P. 2, etc., while those produced by the defendant as Ex. D. 1, D. 2, D. 3, etc. To ensure strict compliance with the provisions of Order XIII, Rule 4, [***][...] each Civil Court has been supplied with a rubber stamp in the following form:

SUIT No. OF (Year)

Title (Plaintiff) versus (Defendant)

Produced by

On the .... day of

Nature of document

Stamp duty paid Rs. . . . Ps. . . . is (is not)
correct.

Admitted as Exhibit No. _____

on the _____day of _____19

Judge.

The entries in the above form should be filled in at the time when the document is admitted in evidence under the signature of the Judge. This precaution is

necessary to prevent any substitution or tampering with the document. Details as to the nature of the document and the stamp duty paid upon it are required to be entered in order that Courts may not neglect the duties imposed on them by Section 33 of the Stamp Act, 1899. District Judges should see that all Courts subordinate to them are supplied with these stamps.

The above rule also applies to documents produced during the course of an enquiry made on remand by an Appellate Court.

The endorsement and stamp will show that the document is proved. It is to be remembered that the word "proved" used in the context here means "that Judicial evidence has been led about it" and does not imply "proof" in an absolute sense.

15. Endorsements on documents not admitted in evidence.-- Documents which are not admitted in evidence must similarly be endorsed before their return with the particulars specified in Order XIII, Rule 6, together with a statement of their being rejected and the endorsement must be signed or initialled by the Judge.

16. Documents to be placed in strong cover.-- Documents which are admitted in evidence should be placed in strong covers - one cover being used for documents produced by the plaintiff and the other for those produced by the defendant.

17. Consequences of not properly admitting documents.-- Owing to the neglect of the foregoing direction as regards endorsing and stamping of documents it is often impossible to say what papers on the file constitute the true record; copies of extracts from public or private records or accounts, referred to in the judgment as admitted in evidence, are often found to be not "proved" according to law, and sometimes altogether absent.

18. Revision of record before writing judgment to see that only admitted document are on the record. Duty of Appellate Court to see that this has been done.-- It is the duty of the Court, before proceeding to judgment under Order XX, Rule 1, of the Code of Civil Procedure, finally to revise the record which is to form the basis of its judgment, and to see that it and contains all that has been formally admitted in evidence and nothing else. Any papers

still found with the file, which have not been admitted in evidence, should be returned to the parties.

Appellate Courts should examine the records of cases coming before them on appeal with a view to satisfying themselves that subordinate Courts have complied with the provisions of the law and instructions of the High Court on the subject, and should take serious notice of the matter when it appears that any Court has failed to do so.

19. Extracts or copies of settlement record and Riwaj-i-Am to be placed on record.-- It frequently happens that although the wajib-ul-arz or riwaj-i-am of a village or other revenue record is referred to by the parties and by the Court itself as affording most important evidence, there is no certified extract or copy with the record of the entries relied on. When there is a copy, it is often incomplete or so carelessly written as to be un-intelligible. It becomes necessary to call for the originals thus causing damage to the records themselves, and delay and inconvenience to the parties to the suit. It is the duty of Appellate Courts to see that the Courts subordinate to them have proper extracts or copies of relevant entries in Settlement records made, verified and placed on the record.

20. Production of public records.-- No application for the production of a Court record should be entertained unless it is supported by an affidavit and the Court is satisfied that the production of the original record is necessary (Order XIII, Rule 10). The same principle may well be applied to other public records also. In the case of revenue records, the procedure laid down in Chapter 9 of this Volume "Special Kanungo" should be followed.

It should be borne in mind that mere production of a record does not make the documents therein admissible in evidence. The documents must be proved at the trial according to law.

Requisitions for records of Courts in other provinces should be submitted through the Registrar, Lahore High Court, Lahore.

Care should, however, be taken in not treating the applications for production of public records and documents too lightly. Such documents are liable to be lost or mutilated in the course of transmission and a good deal of time of the clerks is wasted in checking these records in order to see whether

they are complete according to the index. Original records or documents should not, therefore, be sent for, unless the Court is fully satisfied that the production of a certified copy will not serve the purpose.

Attention is drawn to rule 5, Order XIII, Civil Procedure Code, under which it is open to the Court to require copy of an entry of a public record to be furnished by one or the other party to the case. In the absence of special reasons which should be recorded in writing, Court should not detain the original of a public document but should return it after a copy has been furnished.

21. Return of documents.-- Documents admitted in evidence can be returned to the persons producing them, subject to the provisions of Order XIII, Rule 9 (as amended by the High Court by Notification No. 563-G, dated the 24th November, 1927). If an application is made for return of a document produced in evidence before the expiry of the period for filing an appeal or before the disposal of the appeal (if one is filed) care should be taken to require a certified copy to be placed on the record, and to take an undertaking for the production of the original, if required.

In pending cases, application for return of documents should be made to the Court where the case is pending.

In decided cases, the officer-in-charge of the Record Room should return the documents without consulting the original Court only when the applicant delivers a certified copy to be substituted for the original and undertakes to produce the original, if required to do so.

In all other cases, application shall be made to the original Court or its successor. If the Court considers that the document may, under Order XIII, Rule 9, be returned, it shall record an order accordingly.

The application should then be presented to the officer in-charge of the Record room who will pass an order for return of the document.

PART H -- HEARING OF SUITS, ADJOURNMENTS, EXAMINATION OF WITNESSES, ETC

1. List of Witnesses.-- Notice of the day of trial, reasonably sufficient to enable the parties to attend with their witnesses, should be given before hand. It is the business of the parties to take all reasonable steps to have their witnesses present in Court on the day fixed. The Court should, on application and deposit of process-fees, issue the requisite summonses as soon as possible so as to secure their attendance on the date fixed for hearing.

*[Not later than seven days after the settlement of issues the parties shall submit to the Court a certificate of readiness to produce evidence, alongwith a list of witnesses whom they propose to call to give evidence or to produce documents] and no party who has begun to call his witnesses shall be entitled to obtain processes to enforce the attendance of any witness against whom process has not been previously issued or to produce any witness not named in the list without an order of the Court made in writing and stating the reasons therefor (Order XVI, Rule 1). ***[...]

2. Statement of case.-- The trial should begin by the party having the right to begin (Order XVIII, Rule 1 of the Code) stating his case, and giving the substance of the facts which he proposes to establish by his evidence. The case thus stated ought to be reasonably in accord with the party's pleadings, because no litigant can be allowed to make at the trial a case materially and substantially different from that which he has placed on record, and which his adversary is prepared to meet. The procedure laid down in the aforesaid rule is often neglected by Courts, but it is highly useful and should be invariably followed.

3. Examination-in-Chief.-- In the examination of witnesses questions ought not to be put in a leading form, nor in such a form as to induce a witness, other than an expert, to state a conclusion of his reasoning, an impression of fact, or a matter of belief. The question should be directed to elicit from him facts which he actually saw, heard or perceived within the meaning of *[Article 71 of the Qannon-e-Shahadat, 1984 (X of 1984).] The questions should be simple, should be put one by one and should be framed so as to elicit from the witness, as nearly as may be in chronological order, all the

material facts to which he can speak of his own personal knowledge. A general request to a witness to tell what he knows, or to state the facts of the case should, as a rule, not be allowed because it gives an opening for a prepared story. Where the party calling witnesses is not aided by Counsel, and is unable himself to properly examine his witnesses he may be asked to suggest questions and the examination may be conducted by the Court.

4. Cross-examination.-- When the examination-in-chief is concluded the opposite side should be allowed to cross-examine the witness, or, if unable to do so, to suggest questions to be put by the Court. In cross-examination leading questions are permissible.

5. Re-examination.-- Then should follow, if necessary, re-examination for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination, and to add such further facts as may be admissible for the purpose.

6. How far should Court interfere in the conduct of examination.-- When the examination, cross examination and re-examination are conducted by the parties or by their pleaders, the Presiding Officer ought not, as a general rule, to interfere, except when necessary, e.g., for the purpose of causing questions to be put in a clear and proper shape of checking improper questions, and of making the witness give precise answers. At the end, however, if these have been reasonably well-conducted he ought to know fairly well the exact position of the witness with regard to the material facts of the case; and he should then put any questions to the witness that he thinks necessary. The examination, cross-examination, re-examination and examination by the Court (if any) should be indicated by marginal notes on the record.

7. Examination of witnesses called by Court.-- The examination of witness called by the Court under the provisions of order XVI, Rules 7 and 14, of the Code, should always be conducted by the Court itself; and after such examination, if the parties to the suit desire it, the witnesses may be cross-examined by the parties. Upon the close of the cross-examination, the re-examination of such witnesses, if necessary, should be conducted by the Court in the manner above stated.

8. Deposition should be read over.-- The deposition of each witness should be read over to him in open Court and corrected, if necessary, [**][and signed] by the Judge as soon as his evidence has been finished (Order XVIII, Rule 5).

9. Mode of recording evidence.-- In all appealable cases the evidence shall be taken by or in the presence of the Judge or under his personal directions and supervision. If he does not write the evidence himself he shall (in all cases whether appealable or non-appealable) as the examination of each witness proceeds make in his own hand a memorandum of the evidence. He shall sign this memorandum and file it with the record. Should he be unable to do so he shall cause the reason of his inability to be recorded, and the memorandum to be taken down in writing from his dictation in open Court.

10. Arguments.-- When the party having the right to begin has stated his case and the witnesses adduced by him have been examined, cross-examined and re-examined, and all the documents tendered by him have been either received in evidence or refused, it then devolves upon each of the opposing parties, who have distinct cases, to state their respective cases in succession, should they desire to do so. After all of them have done so, or have declined to exercise the right, the evidence, whether oral or documentary, adduced by each in order, should be dealt with precisely as in the case of the first party; and on its termination and after they have, if they so desire, addressed the Court generally on the whole case the first party should be allowed to comment in reply upon his opponent's evidence.

The provisions of Order 18, Rules 2 and 3 as to hearing arguments should be strictly followed. The practice prevailing in some Courts of hearing three speeches in every case after the close of evidence of both parties, first by plaintiff, then by defendant and then a reply by plaintiff is irregular.

11. Rebuttal evidence.-- If, however, the case of an opposing party is such as to introduce into the trial, matter which is foreign to and outside the case of the first party and the evidence adduced by him, then the latter must be allowed, if he so desires, to rebut this by additional evidence, and his opponent must be allowed to speak upon it by way of reply before the first party himself makes his own reply. But this is not to be understood as entitling the first party

to ask for an adjournment for that purpose. He is bound to be prepared with such rebutting evidence, and an adjournment should only be allowed by the Court for good and sufficient reasons, costs being, if necessary, allowed to the opposite party.

12. Examination of parties as witnesses.-- The vicious practice of each party summoning his opponent as a witness merely with the design that counsel for each party gets a chance of cross-examining his client, obtains in many of the Muffasil Courts. This practice has been strongly condemned by their Lordships of the Privy Council and must cease (see I.L.R., XXXI, ALL. 116 at page 122). On the other hand, when the parties are personally acquainted with any facts which they have to prove, they are expected to go into the witness-box and stand the test of cross-examination by the opposite party. The failure of a party to go into the witness-box in such circumstances is liable to be regarded, in the absence of some satisfactory explanation, as throwing grave doubt on the bona fides of his case (see 105, I.C., 220(P.C.).

13. Note about closing of evidence.-- It is frequently urged in appeals that a party has had witnesses in attendance whom the lower Court has omitted to examine. It is often impossible to ascertain from the record whether this is the case, and it would be equally impossible to ascertain it by a remand. When the examination of the last witness produced in Court by a party is closed, he should be distinctly asked if he has any more witnesses to produce; and the question and reply should be noted on the record. If more witnesses are named, the Court should either examine them or record its reasons for not doing so. If either party states that he desires additional witnesses to be summoned, the Court should record the fact of the application and pass an order there-upon.

14. Continuous hearing of evidence.-- Judges should always endeavour to hear the evidence on the date fixed, as much expense and inconvenience is caused by postponements ordered on insufficient grounds before the witnesses in attendance have been heard. Under Order XVII, Rule 1 of the Code, when the hearing of the evidence has once begun the hearing of the suit should be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournments of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

It should be noted that sub-rule (1) of Rule 1, of Order XVII as amended by this Court requires that when sufficient cause is not shown for an adjournment, the Court shall proceed with the suit forthwith.

15. Adjournments for evidence.-- It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule 3, also deserve notice in this connection. If a party to a suit to whom time has been granted for a specific purpose as contemplated by Order XVII, Rule 3, Civil Procedure Code, fails to perform the act or acts for which time was granted without any good cause the rule gives the Court discretion to proceed to decide the suit "forthwith" i.e., without granting any adjournment. In such cases a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. In some Courts it is apparently assumed that if such an adjournment is not granted the case will be remanded by an Appellate Court. There are, however, no valid grounds for this assumption. If the record makes it clear that a further adjournment has been refused because of the negligence of the party concerned, such refusal would not in itself justify an Appellate Court in remanding the case. An adjournment granted otherwise than on full and sufficient grounds is a favour and in civil suits favour can be shown to one party only at the expense of the other.

No hard and fast rule can, however, be laid down. Each case must be judged on its own merits.

16. Adjournments for arguments.-- The practice of adjourning a case for arguments after all the evidence has been given should, as a rule, not be followed except in long and complicated cases. But this observation does not extend to an adjournment, when reasonably necessary, for a reply on the whole case by the party who is entitled to such reply nor to an adjournment for argument on a question of law which may have arisen during the trial and may have been, for convenience sake, reserved for argument until after the taking of the evidence.

Whenever a case has to be adjourned for arguments it should be adjourned to the next day, or, if this is not possible, to a very near date.

17. Memo of evidence should be legible.-- The Judge's memoranda of evidence should always be written in a legible manner; and if from any cause they have been illegibly or indistinctly recorded, copies should be made and placed with the record.

18. Interlocutory orders and notes.-- All orders made by the Court relative to change of parties, or adjournments, or bearing upon the course of the hearing of the suit other than depositions, orders deciding any issue and the final judgment, and notes of all material facts and occurrences which may have happened during the hearing of the suit, such as the presence of witnesses, etc. , must be carefully recorded from time to time, by the Presiding Officer in his own handwriting and be dated and appended to the record. Each "order", or "note" should be clearly marked as such.

All interlocutory orders should be recorded separately at one place in chronological order and kept at the beginning of the English record or evidence.

PART J -- DISMISSALS IN DEFAULT AND EX PARTE PROCEEDINGS

1. General.-- Order IX of the Code deals with the appearance of parties and the consequences of non-appearance.

2. Default by parties.-- Order IX, Rule 3, provides that when neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

3. Default by defendants.--[*][(a) "Order IX rule 6 provides that if on the day fixed in the summons for the defendant to appear and answer, the plaintiff appears and the defendant does not appear and it is proved that the summons was duly served in sufficient time to enable the defendant to appear and answer on the day named in the summons, the Court may proceed to try the case ex parte and pass decree without recording evidence. As regards the requisite proof of service in such cases, Chapter 7, Vol. IV on "Service of Processes" may be referred to. The defendant, it will be observed, may apply under Order IX Rule 13 for an order to set aside the ex parte decree and if satisfied that the summons were 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 against him on such terms as to costs as it thinks fit and shall appoint a day for proceeding with the suit. However, no ex parte decree shall be set aside merely on the ground of an irregularity in the service of summons if the Court is satisfied, for reasons to be recorded, that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim. (See section 5, article 164 and 181 of Schedule I, Limitation Act.)]

(b) Attention is drawn to Order IX, Rule 7, which lays down the procedure for setting aside ex parte proceedings when the hearing of the suit has been adjourned ex parte but no ex parte decree has been passed.

(c) Attention is also drawn to Order XVII, Rule 2, which lays down the procedure when the parties or any of them fail to appear at the adjourned hearing.

4. Default by plaintiff.-- Order IX, Rule 8, lays down that if the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order dismissing the suit, unless the claim is admitted wholly or in part, in which case the claim shall be decreed only to the extent to which it is admitted.

5. Hasty dismissal not advisable.-- The above rules must be worked in a reasonable manner, otherwise they will result in a number of applications for setting aside orders passed in the absence of one or both parties. A litigant may have gone away for a few minutes to call his pleader or to refresh himself. It is impossible to expect a man to remain in constant attendance for the whole of the time during which the Court is sitting. (A convenient method is to lay aside a case when it is found that both parties are not present and to call it a second time later on in the day, when all other cases have been called and those in which parties are present have been disposed of, and though it is not desirable to lay down any hard and fast rule as applicable to all cases, the above course should ordinarily be followed. Occasionally when it is brought to the notice of the Court that both the parties to a case, which has been held over are in attendance, it may be found convenient to call up the case before all other cases have been disposed of.)

[**][When a suit or application is dismissed in default, the exact time of dismissal should be noted in the order by the Presiding Officer in his own hand. Where the defendant is absent in spite of service and the Court proceeds ex parte under Order IX Rule 6(1) (a) of the Code of Civil Procedure the Court may proceed ex parte but it has further to decide in exercise of its discretion whether it should pass the decree claimed against the defendant after evidence or without recording evidence and the discretion in this regard is to be exercised Judicially (PLD 1978 S.C. 89).]

6. Hasty dismissal not advisable.-- Some Judicial Officers are inclined to dismiss cases in default hastily in order to show an increased out-turn. This tendency must be strongly deprecated. No case should be dismissed without giving a party reasonable opportunity to appear as indicated above and if this is done, the number of successful applications for setting aside dismissals in default will be appreciably reduced. The same remarks apply to proceedings

taken ex parte and applications to set aside ex parte orders. When a suit or application is dismissed in default, the exact time of dismissal should be noted in the order by the Presiding Officer in his own hand.

7. Order of "Dakhil Daftar" is irregular.-- There is a tendency for Presiding Officers of civil Courts to pass orders that cases should be "dakhil daftar". This practice is incorrect. A Presiding Officer should invariably make it clear what the precise nature of the order is, i.e, whether the case is postponed or dismissed and the rule, if any, under which the order is passed should also be mentioned.

8. Registration suits.-- When a plaint is presented a suit is thereby instituted under Order IV, Rule 1, of the Code and the suit must forthwith be entered in the Register of Civil Suits (Civil Register No. 1) in accordance with Order IV, Rule 2.

9. Procedure when the plaintiff is not present on the preliminary date.-- It is customary, when a plaint is presented, to fix a short preliminary date in order to permit the examination of the plaint. On this preliminary date the plaintiff is expected to appear to receive notice of the date fixed for the hearing of the suit. It sometimes happens that the plaintiff does not appear on this date and several cases have come to the notice of the Judges in which Courts have forthwith dismissed the suit in default by orders purporting to be made under order IX.

This procedure is incorrect as it has been held that the preliminary date is not a date fixed for hearing and, therefore, the provisions of order IX do not apply. The correct procedure in such cases may be deduced from the Code and has been referred to in several rulings of the High Court. It is as follows:

(i) If the plaint is in order and process fee for the summoning of the defendant has been filed with the plaint, the Court should issue summons to the defendant and a notice to the plaintiff to appear on the date for which the defendant is summoned. If on that date the plaintiff does not appear in spite of the service of the notice on him, the suit can be dismissed under Order IX, Rule 3 or Rule 8 of the Code, whichever is applicable.

(ii) If the plaint is in order but process fee has not been filed with it, the Court should fix a date for the appearance of the defendant and issue notice to the plaintiff calling upon him to appear on that date and to deposit process fee by a specified date, so that the defendant may be summoned. If on the date fixed it is found that no summons has issued owing to non-payment of process fees, or that the summons could not be served owing to late payment of process fees, the suit can be dismissed under Order IX, Rule 2. If process fee has been paid as directed, the other provisions of Order IX will apply.

(ii-a) The provisions of Section 5 of the Limitation Act 1908(IX of 1908) have been made applicable to applications under sub rule (i) of Rule 9 and sub rule (i) of Rule 13 of order IX C.P.C.

(iii) If the plaint is not in order and the defects are such as to entail its rejection under Order VII, Rule 11, the Court should record an order rejecting it. If it is to be rejected for failure to pay Court fees, it will be necessary first to issue a notice calling on the plaintiff to make up the deficiency unless he has already been given time to do so (See also paragraph 7 of Chapter 1-C ante). In such cases the final order to be entered in Civil Register No. 1 is "plaint rejected".

If the defects in the plaint are not such as to call for its rejection under Order VII, Rule 11, the Court should proceed in accordance with the procedure outlined in sub-clause (i) and (ii) above, the question of remedying the defects being taken up at the first hearing.

PART K -- SPEEDY DISPOSAL OF CASES

1. Cause-diary--. The speedy disposal of Court business is a matter which requires the earnest attention of every Judicial Officer. Delays of law are notorious in this country and tardy justice is often no better than injustice.

The proper despatch of Court work depends not merely on the ability of an officer, but also to a large extent on the personal attention paid by him to its adjustment and control. Amongst the important matters, which should receive his personal attention is the cause-diary. The practice of leaving the fixing of dates to the clerical staff, leads to abuses and results frequently in confusion of work. The fixing of an adequate cause list which can be got through without difficulty during the Court hours requires some intelligence and forethought, and unless the officer pays personal attention to the matter and fixes the list with due regard to the time likely to be taken over each case, there is risk of a considerable number of cases being postponed from time to time, with consequent delay in their disposal and inconvenience to the litigant public.

2. Causes of delay in disposal of cases.-- As a result of annual inspections, it has been found that the delay in the disposal of cases is mainly due to the following errors:-

(i) Orders for the issue of notice to parties and summonses to witnesses are given without specifying the date by which process fees must be paid into Court. Two days should be the usual time allowed.

(ii) On failure of service, orders for the issue of fresh process are given without ascertaining the cause of the failure of the service and fixing the responsibility therefor.

(iii) Documents, instead of being accepted either with the plaint or at the first hearing, are accepted at every stage of the case.

(iv) Applications for the issue of interrogatories, which should be accepted at the earliest stage of the case only, are accepted at a very late stage.

(v) Witnesses, who are present in Court, are often sent away un-examined on all kinds of inadequate pretexts.

(vi) Cases are not proceeded with from day to day and the evidence is taken in driblets.

(vii) Adjournments are granted for the preparation of arguments at all stages even in the matter of interlocutory orders.

(viii) Unnecessary long adjournments are granted when adjournments are unavoidable.

(ix) Suits are dismissed or restored without adequate reasons.

(x) Orders are written by the Reader instead of by the Presiding Officer.

(xi) Personal attention is not paid to service of processes. The instructions given in Chapter 7-D, Volume IV, should be carefully observed.

(xii) The adjournment on insufficient grounds in cases which have already become old.

(xiii) Fixing a large number of cases for a particular day and then postponing some of them for want of time.

(xiv) Delay in the disposal of appeal against preliminary decree etc.

The Presiding Officer should pay special attention to the above points and follow carefully the proper procedure and instructions issued by the High Court on the subject from time to time.

Of all the foregoing, the most serious causes of delay are errors (i) and (ii).

All orders of whatever nature which are passed after the admission of a plaint(except those of a purely routine character) should be written by the Presiding Officer himself.

A Court should bot adjourn any case for more than three months. If for any reason the diary for the next three months is full, a request for the transfer of some cases to some other Court should be made to the District Judge.

Intermediate dates should be fixed to watch the return of files requisitioned from other Courts and provinces.

District Judges should, from time to time, examine the diaries of *[Civil Judges] in their districts in order to see that too much work is not fixed for any day.

3. Commissions and arbitrations.-- Delays also occur frequently in cases in which a commission has been issued or reference made to arbitration. Courts should insist on submission of reports by the Commissioners or Arbitrators, as the case may be, within a reasonable time and should not grant adjournment without satisfying themselves that the Commissioners or Arbitrators are doing their duties and that sufficient cause has been shown for the grant of an adjournment. Parties and arbitrators should be made to understand that a reference to arbitration is liable to be cancelled if the award is not filed within time. It will be found useful to make a part of the Commissioner's fees depend upon punctual submission of his report.

***[4. Adjournment caused by absence of the Judge or unexpected holiday.--** (1) When a suit or proceedings is set down for a day, which is a holiday, the parties thereto shall appear in the Court on the next working day and the Court may either proceed with the suit on such day or fix some other day thereafter.

(2) If the Presiding Officer is proceeding on leave, he before this departure or before finishing the work on the day preceding the day of his leave should himself fix fresh dates of hearing in his Peshi Register for the cases fixed for the day on which he will not be holding the Court. The Register should then be made over to the Reader of the Court, who shall hand over to the parties and witnesses slips of paper specifying the other dates fixed for proceeding with the suits or proceedings and signed by him. In the event of the death of the Presiding Officer or his suspension or temporary absence due to any cause, the District Judge may empower another Civil Judge to perform his duties and the ministerial officer shall place the files fixed for the said date before the Civil Judge so empowered by the District Judge in this behalf to perform the duties of the Judge in respect of such suit or proceedings.]

5. Transfers.-- Whenever cases are transferred from one Court to another, the instructions contained in Chapter 13 of this volume should be followed.

6. Cases held up owing to records being in the appellate Court or pending decision of another case.-- Efforts should be made to give priority to cases, for the decision of which other cases are held up. *[Civil Judges] are authorised to bring to notice of appellate Courts cases where a suit has already been postponed for more than three months merely because the records happen to be with the appellate Court. The Presiding Officer of the appellate Court should then treat the appeals in which records have been sent for by the lower Courts as "urgent" and dispose of them as early as possible. Appellate Courts should also treat all appeals in which proceedings have been stayed in a lower Court as "urgent".

7. Interlocutory orders.-- Applications for interlocutory orders, the admission of which will hold up the original proceedings, should be carefully scrutinised and promptly disposed of.

8. Old cases and abstracts of order sheets.-- The progress of old cases should be carefully watched. It is advisable for Judicial Officers to keep before them a list of all old cases - say pending over six months or a year - and take proper steps to expedite their disposal. In order to put a stop to bad cases of delay Courts are required to submit to the High Court abstracts of order sheets in cases pending over a year.

9. Priority to certain cases.-- Attention is invited to the instructions as regards the speedy disposal of cases in which Government servants, military officers, soldiers, etc. are involved or to which the state is a party. (See Chapters 6 and 8 of this volume)]

Cases under section 28 of the Sikh Gurdawars Act, 1925 should also receive priority and be disposed of as quickly as possible (Vide Circular Memo. No. 3823-G; dated the 20th May, 1927).

10. Commercial Cases.-- "Commercial Cases" should be disposed of as speedily as practicable. The term "Commercial Case" is taken to include cases arising out of the ordinary transactions of merchants, bankers and traders,

amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency, and mercantile usage, and debts arising out of such transactions.

A plaintiff or appellant may apply at the preliminary hearing at which his plaint or appeal is admitted or by subsequent application before the final hearing thereof, to have his case classed as a "Commercial Case", and the Court before which such application is made shall, if satisfied that the case is a Commercial case, as defined in the above paragraph, cause the appeal or plaint to be marked with the words "Commercial Case".

All cases which have been marked as "Commercial Cases" under the preceding paragraph shall be brought to a hearing as early as may be practicable. Such cases shall be given priority on the day of hearing over other cases, except part heard cases, and shall, so far as possible be heard from day to day until they are finally decided.

11. Commercial Cases.--(a) In order to expedite decision in Commercial Cases, questions of law involving such preliminary points as limitation, causes of action, etc., should be tried and disposed of as preliminary issues before issues dealing with the merits of the case are taken up.

(b) The following form in which specimen entries are given be adopted for elucidation of the pleas at the first hearing:-

IN THE COURT OF ----------

SUIT NO. OF (YEAR)

PLAINTIFF.

Versus

DEFENDANT.

parties

Upon hearing the ---------- on both sides and upon reading the affidavit

counsel

of ---------- filed herein, the following directions are given:-

Particulars-----Defendant in a week to give particulars of ----------

Admission-----That the plaintiff is ----------

Discovery-----Defendant in a week to produce ----------

Interrogatories-----Plaintiff may interrogate as to ----------

only: *Interrogatories* to be initialled by me.

Inspection of Documents-----Plaintiff undertakes to produce at the hearing

Inspection of property-----None.

Commissions-----None.

Examination of witnesses.-----To be examined on commission or otherwise, as the case may be.

12. Compromises.-- The hearing of a suit shall not be postponed on the plea that the parties wish to compromise or for the purpose of deciding whether there has been any compromise between the parties except as provided in Order XXIII, Rule 3, as amended by the High Court.

PART L -- INCIDENTAL PROCEEDINGS

(*a*) Attachment before Judgment and temporary injunction

1. Attachment or arrest before judgment.-- If at the time of filing the plaint, or at any other stage of the suit, an application is made by the plaintiff, under Order XXXVIII of the Code, for the arrest of the defendant or for the attachment of his property before judgment, the Court should proceed to consider the application with reference to the provisions of the Code and the following remarks.

2. Attachment or arrest before judgment.-- Orders for arrest or attachment before judgment ought not to be made on insufficient grounds. The circumstances which justify a Court in passing an order of this nature are distinctly stated in Order XXXVIII of the Code of Civil Procedure. The Court should, in every such case, be satisfied (Order XXXVIII, Rules 1 and 5) that the defendant contemplates a fraudulent disposal or removal of his property, or that he has fraudulently quitted its jurisdiction, leaving property therein.

3. Temporary injunction.-- It has been noticed that temporary injunctions are frequently issued ex parte by subordinate Courts without realising fully their consequences. The following instructions in respect of such orders should, therefore, be ordinarily followed:-

(i) All Courts shall deal critically with plaints and affidavits and, before suddenly interfering with the defendant behind his back, shall satisfy themselves that something has actually occurred, shortly before the application, to justify such interference.

(ii) Court should use the rules in Order XXXIX, C.P.C. with great discrimination, and should not overlook the significance of the word "may" wherever it occurs. They should not treat the exception in Rule 3 as the normal procedure. They should appreciate that interlocutory injunctions should be granted ex parte only in very exceptional circumstances, unless the plaintiff can convince the Court that by no reasonable diligence could he have avoided the necessity of applying behind the defendant's back.

(iii) Such injunction, when granted, should be limited to a week or less, i.e., the minimum time, within which a defendant can come effectively before the Court, assuming that to get rid of the injunction, he will be prepared to use the greatest expedition possible. **[It should be noted that under Rule 2A of Order 39, Code of Civil Procedure, an interim injunction passed in the absence of the defendant shall not ordinarily exceed fifteen days, provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff or when the defendant seeks time for defence of application for injunction].

(iv) The Court should take the greatest care to state exactly what the forbidden acts are and the plaint should not be merely copied out; and if only one or some of the acts, sought to be restrained, need be urgently restrained, the injunction should be confined to those and should not embrace all the acts to which the plaintiff can possibly object.

(v) When the defendant appears and files his affidavit, the plaintiff should be given only a few days to answer it. The contested application should then be heard, as soon as possible, and if the Judge cannot dispose of it at once, should, for the term of the adjournment, which should be as short as possible, either grant an ad interim injunction or obtain an undertaking from the defendant not to do any acts complained against.

*[(vi) The Court should not allow the injunction to be abused by common devices such as failure to produce some person before the Process-Server for identification of the defendant or to serve some proforma defendant or in any other similar way. It may be remembered that an order of injunction made under rules 1 or 2 after hearing the parties or after notice to the defendant shall cease to have effect on the expiration of six months unless extended by the High Court after hearing the parties again and for reasons to be recorded for such extension:

Provided that report of such extension shall be submitted to the High Court.

(vii) The above instructions are not intended to restrict the discretion of the Courts, but every application for an ex part injunction should be very carefully considered in the light of these instructions and should not be granted unless sufficiently good grounds are made out.]

4. [Omitted].

***[(b) Death, Marriage or Insolvency of parties**

1. *Death, Marriage or Insolvency of parties.*-- The procedure to be followed in the event of death, marriage or insolvency of parties is laid down in Order XXII, Code of Civil Procedure. It is to be noted that suits do not abate on the death of one of the several plaintiffs or the sole plaintiff or in case of death of one of the several defendants or sole defendant where the right to sue survives, the decree passed shall have the same force and effect as it had been pronounced before the death took place. Reference is also invited to the provision of Order VII rule 25 Code of Civil Procedure.

2. *Marriage of female party*.-- The marriage of a female plaintiff or defendant does not cause the suit to abate and the suit may be proceeded with and where the decree is against female defendant it may be executed against her alone. 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 her husband also and, in case the decree is in favour of 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.

(c) Compromises

Compromises or adjustment of suits.-- Where a Court is satisfied that a claim has been adjusted by any lawful agreement or compromise or the claim has been satisfied wholly or in part, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass the decree accordingly so far as it relates to the suit. The newly added proviso by this Court to rule 3 of Order XXIII C.P.C. further provides that the hearing of a suit shall proceed and no adjournment shall be granted for the purposes of deciding whether there has been any adjustment or satisfaction, unless the Court, for the reasons to be recorded in writing, thinks fit to grant such an adjournment and that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided.

It is further provided that, when an application is made by all the parties to the suit, either in writing or in open Court through their counsel, that they wish to compromise the suit, the Court may fix a date on which the parties or their counsel should appear and compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance unless, for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If, upon the date fixed, no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which it proposes to adjourn the hearing.

In cases where the compromise goes beyond the subject-matter of the suit, the directions given in 46 I.A. 240(244) and I.L.R. 47 Cal.485 (P.C.) should be followed in preparation of decrees.

When a minor is concerned, the Court should consider and record a finding as to whether the compromise or adjustment is for the benefit of the minor and pass an express order granting or refusing leave for the purpose, as it may think fit.

As to compromises in cases of minors, see Volume-I, Chapter 1-M(d).

As to forms of decrees based on compromises, see Chapter 11(B) paragraph 5.]

(d) Amendment and Review

Amendment and Review.-- When a case is decided on the merits, the Court has no power to vary the judgment or decree, except by way of amendment under Sections 151 and 152 or by review under Order XLVII, C.P.C. The scope of amendment is very limited, being confined to clerical or arithmetical errors, accidental slips, &c. Review can be granted only on the grounds specified in Order XLVII. The words "any other sufficient cause" occurring in Rule 1 of Order XLVII have been held by their Lordships of the Privy Council to mean "a reason sufficient on grounds at least analogous to those specified immediately previously" (See I.L.R. III, Lah. 127--P.C.).

(e) Inherent Powers under Section 151, C.P.C

*[**Inherent Powers under Section 151, C.P.C.--** The scope of Section 151 of the Code of Civil Procedure is frequently misunderstood and applications are made under that section, which do not properly fall within its purview. The section is widely worded to enable Courts to do justice in proper cases, but it cannot be used so as to override the express provisions of statute.]

PART M -- SPECIAL FEATURES OF CERTAIN CLASSES OF CASES

(a) Cases under Punjab Customary Law

1 to 6. [***][Omitted]

(b) Money Suits

1. General--Money suits generally preponderate in the Courts of the Civil Judges of the lowest grade and some features of these suits deserve attention.

2. Typical money suits--(a) The typical money suit in the Mufassil is one between a creditor and an illiterate debtor. The suit is generally based on a running account consisting of petty items in the account book of the former with balances struck from time to time, or an agreement recorded in it with regard to larger loans borrowed on occasions of marriage, etc., and occasionally on a bond. Allegations of fraud, want of consideration, & c., are frequently made in defence and owing to the ignorance of the debtor, on the one hand and the frequent absence of regular accounts on the other, the cases require careful sifting. The examination of the parties themselves under Order X Rule 2, Civil Procedure Code, before framing the issues is generally very useful (see Part F of this Chapter). When fraud, misrepresentation, undue influence, etc., are pleaded, the particulars thereof should be carefully elicited.

(b) **False entry**--It should be noted that [*][section 18 of the Punjab Money Lenders Ordinance, 1960 (XXIV of 1960)], now provides a penalty in a suit for recovery of a loan for a false claim with respect to the principal amount advanced. The Court is empowered to disallow at its discretion, the whole or any part of the sum claimed by the plaintiff if it is satisfied that a false entry has been made to show the sum advanced as being in excess of that actually advanced plus such legitimate expenses as may have been incurred.

[*][(c) **Punjab Regulation of Accounts Act, its scope and duty of Court.--** Special attention is drawn to the provisions of the Punjab Money-Lenders Ordinance, 1960 (XXIV of 1960) and Punjab Relief of Indebtedness Ordinance 1960. Section 14 of the Punjab Money-Lenders Ordinance, 1960

imposes on the creditor an obligation to maintain and furnish regular accounts for each debtor separately in such manner as the Government may prescribe and also to supply each debtor every six months legible statement of accounts signed by the money-lender or his agent, any balance or amount that may be outstanding against such debtor on 30th of June or 31st of December in each year.

Section 15 of the Ordinance makes it obligatory for the Court in every suit or proceeding relating to a loan, to frame and decide an issue as to whether the creditor has complied with the obligation imposed by section 14 of the Ordinance about maintenance and furnishing of regular accounts. If the Court finds that the accounts have not been properly maintained as provided in the Ordinance in computing the amount of interest due upon the loan it may exclude every period for which the money-lender omitted duly to furnish the accounts as required by clause (b) of sub-section (1) of section 14.

It should be noted that the debtor is not bound to acknowledge or deny the correctness of the accounts furnished and his failure to protest cannot by itself amount to an admission (Section 14 Explanation).]

3. Suits on bahi account, copy of the account.-- When a suit is based on a bahi account, the account must be produced with the plaint. To avoid inconvenience to the plaintiff, he is allowed to file a copy, but the copy must be supported by an affidavit by the party producing it to the effect that it is a true copy or by a certificate on the copy that it is a full and true translation or transliteration of the original entry. No examination or comparison by any ministerial officer shall be required except by the special order of the Court. It should be noted, however, that although a copy is allowed to be filed, the original account must be produced (except when it is permissible to produce a certified copy, e.g., under the Bankers' Books Evidence Act, 1891), later in the course of the trial when evidence is led in order to prove it.

4. Presumption as to entries in account books.--(i) Entries in the books of account are relevant under *[Article 48 of Qanun-e-Shahadat, 1984], provided the books are regularly kept and the books must, therefore, be shown to have been so kept if such entries are relied upon. Further, such entries are not, by themselves, sufficient to charge any person with liability and must,

therefore, always be supported by evidence with reference to the correctness of the transaction recorded. There may be cases in which the Court may consider the plaintiff's own sworn testimony on the point sufficient for the purpose, but the main point to remember is that the mere production of an account is not sufficient to prove it.

*[(ii) Entries in the accounts prescribed by the Punjab Money- Lenders Ordinance, 1960 (XXIV of 1960), are deemed to be regularly kept in the course of business for the purposes of Qanoon-e-Shahadat, 1984 and certified copies are admissible in evidence for any purpose in place of the original entries (Section 14(3) of the Ordinance). As to the method of certification for such copies a reference should be made to rule 29 of the Rules framed under the Ordinance.]

5. Bonds and agreements distinguished--The essential difference between a bond and an agreement for payment of a debt is that the former is attested by at least one witness. The question whether a certain writing is a "bond" or an "agreement", does not depend upon whether it is executed on stamped paper or otherwise, but upon its contents. Broadly speaking, if a person binds himself to pay a debt by the writing it amounts to an "agreement", and if the writing is attested by one or more witnesses it is a "bond".

6. Stamps on Bonds and agreements-- An "agreement" as well as a "bond" are liable to stamp duty under the ***[omitted] Stamp Act. If a writing, which is tantamount to an "agreement" or a "bond", does not bear the necessary stamp duty, it is inadmissible in evidence unless the stamp duty and penalty are paid according to the provisions of Section 35 of the ***[omitted] Stamp Act, 1899, ***[...] (For further instructions on the subject, see Volume IV, Chapter-4).

7. Registration of bonds--Registration is not obligatory in the case of simple bonds creating no charge on any immovable property. As regards bonds creating such a charge, Section 17 of the ***[omitted] Registration Act should be consulted.

8. Thumb-mark and signatures--When the thumb-mark or signature on a document is denied, it must be proved in the proper manner. As regards thumb-marks, the most convenient method is to obtain thumb-marks of

the person concerned in Court, if possible, and send the same together with the disputed thumb-mark for comparison by an expert to the Finger Print Bureau at *[Lahore]. The report of the expert must be supported by his testimony on oath or solemn affirmation. Such testimony can be conveniently obtained by issuing a commission for the purpose to the *[Civil-Judge] at Lahore. (For further instructions on the subject, see Volume IV, Chapter 9). As regards proof of signatures, *[Articles 59-61 of Qanoon-e-Shahadat, 1984,] may be consulted and also Chapter 1-G of this Volume.

9. Proof of consideration--When the execution of a document is admitted or proved and the document contains an admission as to payment of consideration, the onus will be shifted to the executant to prove absence of consideration, if he relies on any such plea. An exception to this has been made by section 12 of the Punjab Debtors Protection Act, II of 1936, which lays down that the burden of proving that any consideration, alleged to have been paid by a money-lender, actually passed shall be on him unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the Registering Officer acting under clause (c) of sub-section 1 of section 58 of the Registration Act, 1908, as having been paid in his presence. The definitions of "money-lender" and "loan" as given in the Act should be carefully noted.

10. Costs and interest.-- The instructions contained in Chapter 11-E about the "Award of costs" and in Chapter 11-F about the "Award of interest" should be noted carefully.

***[11. Debt conciliation Boards.--** The provisions of Sections 9, 13, 20, 21 and 25, of the Punjab Relief of Indebtedness Act, 1934 (VII of 1934), should be carefully studied as the Act governs the relationship between debtors and creditors.

12. Payment by debtors.-- The provisions of Order XXI, Rule 1, Civil Procedure Code, relate only to payments made by a judgment debtor towards the satisfaction of a decree of Court.

It is now provided by *[Section 3 of the Punjab Relief of Indebtedness Ordinance, 1960], that any person who owes money may, at any time, deposit in Court a sum of money in full or part payment to the creditor.

The Court, on receipt of any such deposit, has to give notice to the creditor and on his application, pay the sum to him. For form of notice see form No. 218, Volume VI-A, Part A-II.

13. Payment by debtors.-- When a deposit has been so made by the debtor interest ceases to run on the sum deposited.

*[**14. Rules as to deposits.--** The Provincial Government had made the following Rules under section 32 of the Punjab Relief of Indebtedness Act 1934. These Rules shall be deemed to continue in force in view of section 13 read with section 4 of the Punjab Relief of Indebtedness Ordinance, 1960.]

RULES

(1) These rules may be called the Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935, and shall apply to all deposits to be made under section 31 of the Act.

(2) In these rules "the Act" means the Punjab Relief of Indebtedness Act, 1934.

(3) Sums less than Rs. 1,000 may be deposited in any Civil Court having jurisdiction within the district in which the debtor resides:

Provided that where there is more than one such Court in the same town, the deposit shall be made in the Court exercising the highest pecuniary jurisdiction.

(4) Sums of Rs.1,000 or over shall be deposited only in the Court of the Senior *[Civil Judge] of the district in which the debtor resides.

(5) Deposits may be made either by postal money order or by the debtor in person.

(6) All sums deposited shall be accounted for and dealt with according to the ordinary rules for the time being in force in the Courts into which they are paid.

(7) Notices under sub-section (2) of section 31 of the Act shall be served upon the creditor by registered letter acknowledgment due at the expense of the debtor.

*[**15. Punjab Money Lender's Ordinance, 1960.--** According to section 10 of the Punjab Money-Lenders Ordinance, 1960 notwithstanding anything contained in any other enactment, a suit by money-lenders for recovery of a loan or an application for the execution of a decree relating to a loan shall be dismissed unless at the time of the institution of the suit or at the time of presentation of the application for execution of the decree, as the case may be, the money-lender -

(a) holds an effective license granted under section 3; or

(b) holds a certificate granted under section 7 specifying the loan in respect of which the suit is instituted or the decree in respect of which the application for execution is presented.]

(c) Pre-emption suit

*[**1. Prevailing Law.--** The law of pre-emption in the Punjab is now governed by the Punjab Pre-emption Act 1991 (IX of 1991) and in the interpretation and application of its provisions, the Courts are to seek guidance from the injunctions of the Holy Quran, Sunnah and Fiqh.

2. Deposit of one third sale price.-- In every pre-emption suit, the Court is bound to require the plaintiff to deposit one-third of the sale price mentioned in the sale deed or the mutation and if no sale price is mentioned therein, or the price so mentioned appears to be inflated one-third of the probable value of the property within such period as the Court may fix not exceeding thirty days from the date of the filing of the suit.

If the plaintiff fails to make the deposit within the specified time or such further time as the Court may allow within the maximum period prescribed by law or if the plaintiff withdraws the sum deposited, his suit must be dismissed. The sum so deposited shall be available for the discharge of costs.

3. Court to enquire Suo Moto certain matters.-- In every pre-emption suit, the Court should examine the plaint to ascertain that (a) the sale in

dispute does not pertain to a property in respect of which right of pre-emption does not exist; (b) the plaint contains necessary averments as to making of the requisite `talabs'; (c) the plaint contains necessary averments as to Court fee payable under the law, and in any case where the Court fee payable is determined by the Court, the amount of Court fee payable and the date by which Court fee is to be paid and affixed, shall be specified; and (d) the plaint contains averment as to whether public notice of sale was given or not as required by section 31 of the Act. The plaint ordinarily should accompany a copy of the public notice.

4. Investment of the security deposit.-- The security i.e. one-third of the sale price deposited with the Court should be deposited in the State Bank or the National Bank of Pakistan under the head `12,00,000: Receipt from Civil Administration, 1230000 Law and Order Receipts; 1231000 Justice and 1231800 Others (75).]

(d) Suits by and against minors and persons of unsound mind

1. General.-- The procedure to be followed in the case of suits by or against minors is laid down in the rules in Order XXXII of the Code of Civil Procedure. Attention is invited to the additions and alterations made in these rules by the High Court (*vide* Chapter 23 of this volume).

2. Next friend and guardian *ad litem* defined.-- A minor being legally incapable of acting for himself, the law requires that every suit by or against such a person should be conducted on his behalf by a person who has attained majority and is of sound mind. A person conducting a suit on behalf of a minor plaintiff is called his "next friend", while a person defending it on his behalf is called a "guardian *ad litem*" for the purpose of the litigation.

3. Permission to sue.-- Any person as described above may institute a suit on behalf of a minor and no permission of the Court is necessary for the purpose.

4. Procedure for appointment of guardian.-- A "guardian *ad litem*" for a minor must be appointed by the Court and the trial of the suit cannot proceed until such an appointment is made.

To facilitate the appointment of a suitable guardian *ad litem* by the Court, Rule 3 of Order XXXII (as amended by the High Court) requires the plaintiff to file a list of relatives and other persons suitable for such appointments, accompanied by an affidavit to the effect that the persons named have no adverse interest in the matters in controversy in the suit and they are fit for appointment.

5. Notice to minor and relatives, etc.-- No order should be made appointing a guardian ad litem unless notice is issued to the guardian of the minor appointed or declared by a Court (if any), or where there is no such guardian, to the father or other natural guardian, or where there is no such guardian, to the person in whose care the minor is, and the objections of such persons (if any) are heard, **[the Court may if it thinks fit, issue notice to the minor also.] A notice to the minor is not essential under the rules (as amended) and need not issue where the minor is a mere child incapable of understanding the proceedings or helping in the selection of a guardian.

6. Choice of guardian, appointment of Court officers or pleaders, funds for defence and accounts to be kept. Scale of fees of pleader.-- In appointing a guardian ad litem, the following order of preference shall be observed:-

(i) If there is a guardian appointed or declared by a Court, he must be appointed unless the Court considers that it is for the welfare of the minor that some other person should be appointed. If any other person is appointed, the Court must record its reasons;

(ii) in the absence of a guardian appointed or declared by a Court, a relative of the minor best suited for the appointment should be selected;

(iii) in the absence of any such relative, one of the defendants should be appointed, if possible;

(iv) and failing such a defendant a ***[...] pleader may be appointed.

It should be remembered that no person can be appointed to act as a guardian ad litem without his consent. Consent may, however, be presumed unless it is expressly refused.

When a [***][...] pleader is appointed to act as a guardian, the Court has power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence. A [***][...] pleader should be required to maintain and produce accounts of the funds so provided and these should ultimately be recovered from such party as the Court may think it just to direct after the result of the suit.

[*][The Court may allow the pleader appointed to act as a guardian and the fee shall be as under :-

(*i*) Rs.200/- in cases valued upto Rs.5000/-

(*ii*) Rs.500/- in cases valued upto Rs.20,000/- and

(*iii*) Rs.1000/- in cases of beyond that value.]

7. Rejection of plaint where minor is not represented.-- The plaint may be "taken off the file" and all orders made may be set aside, if a minor is not properly represented and the person filing the plaint or obtaining the orders, whether a legal practitioner or not, may be liable to pay costs.

8. Appointment of guardian enures of appeal and execution.-- When a guardian *ad litem* is appointed by a Court the appointment enures for the whole of the litigation including appeals and execution proceedings arising out of the suit.

9. Compromise and agreement.-- No next friend or guardian *ad litem* can enter into any compromise or agreement with reference to the suit without the leave of the Court *expressly recorded* in the proceedings which should not be granted until the Court has applied its mind to the compromise or agreement in order to ascertain, as far as possible, that it is really for the benefit of the minor. If he does so, the compromise or agreement will be voidable at the instance of the minor.

10. Rules relating to suits by or against minors apply *mutatis mutandis* to suits by or against persons of unsound mind.

(e) Suits by Paupers

1. General. Attention is called to Order XXXIII of the Code, on the subject of suits by paupers and the steps which should be taken to protect the interests of Government in such cases.

2. Examination of plaintiff, and evidence for admission notice to Government.-- Before a pauper suit is admitted, the petitioner or his agent, when the applicant is allowed to appear by agent, should be examined regarding the merits of the claim and the property of the applicant. If it appears to the Court that the suit is not framed and presented in the manner prescribed by rules 2 and 3 of Order XXXIII, or that the applicant is not a pauper, or that he has fraudulently made away with any property within the two months preceding the presentation of the plaint, or that his allegations do not show a cause of action, or that 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, the application must be rejected. If the Court sees no reason to refuse the application, it must fix a day (of which at least ten days' previous notice must be given to the opposite party and to the Government Pleader on behalf of Government) 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, and can only pass final orders on the application after hearing the evidence and arguments brought forward on the day so fixed.

3. Dispaupering.-- Under the provisions of Order XXXIII, Rule 9, of the Code of Civil Procedure, the Court may, under certain circumstances, order a plaintiff to be dispaupered.

4. Copy of decree to be sent to Collector.-- Order XXXIII, Rule 14, directs that where an order is made under Rules 10, 11 or 12, the Court shall forthwith forward a copy of the decree to the Collector.

Note:- The Deputy Commissioner of each district in the Punjab has been declared to be the "Government Pleader" for his district for purposes of Order XXXIII, Rule 6, Civil Procedure Code (Punjab Government Notification No. I.C., dated Ist. January, 1909).

(f) Suits for Redemption and Foreclosure of Mortgages.

1. Notice to mortgagor, conditional sale in case of land not permitted--The law regulating the procedure in cases where the mortgagee, whose mortgage-deed also contains a provision for conditional sale, desires to foreclose the mortgage is often misunderstood. Regulation XVII of 1806 is still the law on the subject. It will be seen that, whatever the terms of conditional sale, the mortgagee cannot enforce them till he has, by summary petition to the Court caused notice to be served on the mortgagor to the effect that, if the latter does not pay the sum secured within one year, the mortgage will be held foreclosed. After the lapse of this year, and not till then, the mortgagee can sue for possession, as owner or, if in possession, to be declared owner in accordance with the terms of the mortgage.

The Court should also see whether section 9 (3) of the Punjab Land Alienation Act, 1900, applies to the case.

It should also be noted that according to section 10 of the Punjab Land Alienation Act, 1900, in any mortgage of "land" made after the commencement of the Act, any condition which is intended to operate by way of conditional sale, shall be null and void.

[**]**[Note:-** See Bengal Regulation XVII of 1806 and Section 3 and Schedule of Punjab Laws Act, 1872 (V of 1872). Punjab Code Volume I.]

2. Court competent to hear.-- Only a District or Additional Judge can deal with applications under section 7 and 8 of Regulation XVII of 1806. The procedure prescribed in the Regulation should be very strictly observed as otherwise the notice may have no legal effect.

3. Dismissal for default.-- According to Order IX, Rule 9, of the Civil Procedure Code (as amended by the High Court), when a suit for redemption is dismissed in default under Order IX, Rule 8, the plaintiff is not precluded from bringing another suit for redemption of the mortgage.

[*]**[4. Summary Procedure for redemption.--** The Punjab Redemption and Restitution of Mortgaged Lands Act, 1964 (XIX of 1964), provides a summary procedure for redemption of land through the Collector in the

Province, but any party, aggrieved by the decision of the Collector, can institute a suit in a Civil Court to establish his right (see section 7 of that Act).]

5. Jurisdictional value.-- As to the value of the suit for purposes of jurisdiction see Chapter 3 of this volume.

(g) Suits for Declaratory Decrees

1. Issue as to possession.-- The proviso to section 42 of the Specific Relief Act, lays down that a declaratory decree cannot be passed in a case in which other relief than a mere declaration can be sought. Hence in a suit for a declaration of title to immovable property, where the defendant denies that the plaintiff was in possession of the property on the date of the suit, the Court should first of all decide this point. If the plaintiff is not found to be in possession of the property on the date of suit his suit must fail unless the plaint is amended.

2. All issues to be framed.-- These instructions are not to be taken to imply that the whole of the pleadings should not be exhausted and issues drawn on all points of conflict between the parties at the first hearing, but that, at the trial of the issues, the issue as to possession should be first tried and disposed of where this can be conveniently done.

(h) Suits for Accounts

1. Account may be preferably taken after disposal of other points.-- In suits for accounts the matter of account may either be taken up along with the other issues or after the other issues have been decided. The latter course would be found to be preferable in most cases.

2. Filing of accounts and evidence.-- The accounting party must file the account along with the written statement or at some other time as fixed by the Court. The account filed must be verified by an affidavit. The Court should allow reasonable time to the opposite party to examine the account and put in his objections, if any.

The Court should in such cases first take the evidence adduced in support of the statement filed by the accounting party, then that adduced by the opposing party in the same manner; and should finally, on consideration of the

whole, determine, as nearly as possible, the true state of the account. The matter of account must, in short, be treated as a separate subject of trial, in a certain sense independent of the rest of the suit.

3. Commission.-- In intricate cases, however, Courts will find it convenient to issue a Commission to a suitable person for examining the accounts (*vide* Chapter 10 of this Volume, "Commissions and Letters of Request").

(i) Procedure in "Hadd-Shikni Cases"

1. Local Inquiry.-- In "Hadd-Shikni" suits and other suits of boundary disputes of land, falling within the jurisdiction of a Civil Court, it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:-

(a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits under section *[117(1) of the Punjab Land Revenue Act 1967 (XVII of 1967]. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;

(b) by appointing a local commissioner, and

(c) by the Court itself making a local enquiry.

2. Enquiry by Revenue Officer.-- An order of the Revenue Officer made under section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice, to the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.

3. Appointment of Commissioner.-- Similarly the report of the local commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.

No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local commissioner.

4. Instructions for the guidance of commissioners.-- On the motion of the Judges, the Financial commissioners have issued the following detailed instructions for the guidance of Revenue officials or Field Kanungos appointed as Local Commissioners in civil suits of this nature.

Financial Commissioner's Instructions

(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map the position and distance of those points from a line of a square, and then with a chain and cross-staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 *kadams* apart, which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only

a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

(ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current Settlement field map of the village showing the fields, if any, with their dimensions **(*karu kan*)** of which he took measurements, situated between the points mentioned in instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

(iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement, that also should be demarcated on the ground, so far as this may be possible, and also shown in the copy of the current field map to be submitted under instruction No. (ii).

(iv) On the same copy should be shown also, the limits of existing actual possession.

(v) The areas of the fields abutting on the boundary in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.

(vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effect that they have seen and understood the measurements, that they have no objection to make to this (or if they have any objection he should record it together with his own

opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

(vii) The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

PART N -- MISCELLANEOUS NOTIFICATIONS ETC

General Remarks

1. All references in Government Notifications to the Chief Court of the Punjab shall be construed as referring to the *[Lahore High Court, Lahore].

2. All references in the Notifications to the Lieutenant Governor, Lieutenant-Governor in Council, Local Government and Governor in Council shall be construed as referring to Punjab Government.

3. All references in the notifications to the Governor General of India in Council, Governor-General of India, Governor-General in Council, Governor-General, Government of India shall be construed as referring to *[Federal] Government.

I -- Court Language

1. *[(a) Urdu being the National Language as per Article 251 of the Constitution of the Islamic Republic of Pakistan, 1973, shall be the language of the High Court, provided that English may be continued as the Language of the Court as well till further orders. (See also paragraph 1-A(a) of part A of Chapter 1 and paragraph 1 of part A of Chapter 4 of Volume V of High Court Rules and Orders.]

(b) Urdu has been declared to be the language of all Courts subordinate to the High Court.

II -- Powers under sections 91 and 92 of the Code of Civil Procedure

The powers conferred by Sections 91 and 92 of the Civil Procedure Code on the Advocate-General, may be exercised by all Deputy Commissioners in the Punjab. (Punjab Government Notification No. 1-E., dated the Ist January, 1909).

Notification No. 183-St., Revenue, dated the 27th April, 1935.

In exercise of the powers conferred by section 1 of the Transfer of Property Act, IV of 1882, as amended, the Governor-in-Council, is pleased

to extend the provisions of sections 54, 107 and 123 of the said Act, with effect from the 6th May, 1935, to the following areas in the Punjab:-

(i) All Municipalities; and

(ii) All Notified Areas as declared and notified under section 241 of the Punjab Municipal Act, 1911.

[**][III.-- Enforcement of Provisions of Transfer of Property Act, 1882, in the areas now forming Punjab.

(i) Notification No. 766.79/1/70. LRI dated 23rd August, 1979 (Pb.Gaz.Ext. 10-09-1979). In exercise of the powers conferred by section 1 of the Transfer of Property Act, 1882 (Act IV of 1882) the Governor of the Punjab is pleased to cancel former Government of Bahawalpur State's Notification No.20, dated the 28th May, 1931, with immediate effect.

(ii) Notification No. 3097-8/1511-LRI, dated 22nd November 1978 (Pb. Gaz. Ext. 6-12-1978). In exercise of powers conferred by section 1 of the Transfer of Property Act, 1882 (Act IV of 1882) and in supersession of the Government of the Punjab Revenue Department Notification No.15246-74/2237-LRV, dated the 17th December, 1974, the Governor of the Punjab is pleased to extend the provisions of section 54, 59, 107, 118 and 123 of the said Act to the following areas in the Punjab :-

(i) All Municipalities; and

(ii) All Notified Areas as declared and notified under Section 241 of the Punjab Municipal Act, 1911.

(iii) Notification No.183-St., Revenue, dated the 27th April 1935.

In exercise of the powers conferred by section 1 of the Transfer of Property Act 1882 (IV of 1882), as amended the Governor-in-council, is pleased to extend the provisions of Section 54, 107 and 123 of the said Act, with effect from the 6th May, 1935, to the following areas in the Punjab:-

(i) All Municipalities; and

(ii) All Notified Areas as declared and notified under section 241 of the Punjab Municipal Act, 1911.

(See Pb. Gaz. EXT, dated 30-12-1974)

(iv) Notification No. 15246-74/2237-LRV dated 30.12.74. In exercise of the powers conferred by section 1 of the Transfer of Property Act, 1882 (Act IV of 1882) and in partial modification of Notification No. 183-ST, dated the 27th April, 1935, and Notification No.20, dated the 28th May, 1931, issued by the Government of the Punjab and the Government of the former State of Bahawalpur respectively, the Governor of the Punjab is pleased to extend the provisions of Sections 54, 59,107, 118 and 123 of the said Act to the whole of the Province of the Punjab.]

PART O -- PUNJAB ACTS

1. The attention of all Courts is drawn to the series of Acts of the Punjab Assembly which lay down and define the relations between agriculturist-debtors and their creditors. The provisions of these Acts are very important, and in suits in which the classes named are involved, Courts should invariably refer to these Acts and scrupulously follow their Provisions.

*[The Acts in question are:-

(1) The Punjab Relief of Indebtedness Act, 1934(VII of 1934).

(2) The Punjab Agricultural Produce Markets Ordinance 1978 (XXIII of 1978).

(3) The Punjab Alienation of Land Act, 1950.

(4) The Punjab Money-Lenders' Ordinance, 1960 (XIV of 1960).

(5) The Punjab Relief of Indebtedness Ordinance, 1960 (XV of 1960).

(6) The Punjab Redemption and Restitution of Mortgaged Lands Act, 1964 (XIX of 1964).]

2. Circulars may be issued from time to time by the High Court, inviting the attention of Presiding Officers, to particular provisions of these Acts, which appear to be overlooked, or to errors of procedure, which are found to be common. Presiding Officers should familiarize themselves with these circulars, and avoid the errors therein pointed out.

CHAPTER 2
JURISDICTION -- CIVIL COURTS

*PART A -- **JURISDICTION OF CIVIL COURTS***

1. General.-- The first question which a Court in which a suit or other proceeding is instituted has to consider, is whether it has jurisdiction to hear and decide it. The general rule is that a Civil Court can take cognizance of all suits of a civil nature unless its cognizance is expressly or impliedly barred (vide Section 9, Code of Civil Procedure, 1908). But this general rule is subject to various limitations depending upon the nature, value, or the locality of the subject-matter, the residence of the defendant and so forth.

2. Jurisdiction of civil Courts excluded.-- The jurisdiction of the Civil Courts is excluded in certain matters, e.g.:-

*[(a) By section 77 of the Punjab Tenancy Act 1887 and section 172 of the Punjab Land Revenue Act, 1967 in cases mentioned therein.

(b) Cases falling under section 3 read with Part 1(b) of the Schedule to the Conciliation of Courts Ordinance, 1961 (XLIV of 1961).]

(c) In certain cases triable by the Sikh Gurdwaras Tribunal, see sections 29, 31, 32, 36, 37 and 39 of the Punjab Sikh Gurdwaras Act, 1925 (VIII of 1925).

(d) Suits mentioned in sections 21 and 25 of the Punjab Relief of Indebtedness Act in cases triable by debt Conciliation Boards set up under the Act.

(e) Suits mentioned in section 4 of the pensions Act of 1871 in matters relating to rights in pensions or grants of money or land revenue.

(f) Suits for liability of officers acting judicially for official acts done in good faith and of officers executing warrants and orders, vide section 1 of Act XVIII of 1850 (Protection of Judicial Officers).

[*][(g) to enforce any right under a mortgage declared extinguished under the Punjab Redemption and Restitution of Mortgaged Lands Act 1964 (XIX of 1964),] or to question the validity of any proceedings under that Act.

3. Pecuniary limits.-- The District Judge, [*][Additional District Judge and Civil Judge] of the Ist class have jurisdiction to hear suits without any limit as to their value. In the case of [*][Civil Judges] of a lower class, however, jurisdiction depends, inter alia, on the value of the suit. The value of a suit for purposes of jurisdiction has to be calculated in accordance with the provisions of the Suits Valuation Act and the rules thereunder (see Chapter 3, Valuation of Suits).

[*]**[4. Special Jurisdiction.--** Under certain enactments, Courts of Civil Judges have no jurisdiction at all to take cognizance of proceedings under those enactments e.g. the Companies Ordinance, 1984 (XLVII of 1984), the Banking Companies Recovery of Loan Ordinance (XIX of 1979), the West Pakistan Family Courts Act, (XXXV of 1964) etc. There are proceedings under certain other enactments of which Civil Judges can take cognizance if specifically empowered in that behalf e.g. section 4-A of the Guardians and Wards Act, 1890, read with section 25 of the West Pakistan Family Courts Act, 1964.]

5. Other matters governing jurisdiction.-- Section 15 of the Civil Procedure Code lays down that every suit must be instituted in the Court of the lowest grade having jurisdiction to hear it. Sections 16 and 17 of the Code, lay down certain restrictions as to the locality where certain suits affecting immovable property can be instituted. Section 20 lays down a further restriction that a suit must be instituted where one or more of the defendants actually and voluntarily reside or carry on business or personally work for gain or where the cause of action arises, "wholly or in part". [***][...].

6. Jurisdiction barred by Small Cause Courts Act.-- When a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, has jurisdiction in any locality, ordinary Civil Courts cannot try suits, which are cognizable by that Court, unless it is expressly provided otherwise by the aforesaid Act or any other enactment (see Section 16 of the Provincial Small Cause Courts Act, 1887).

7. Jurisdiction where defendant sets up a claim which is beyond pecuniary Jurisdiction of the Court.-- It happens sometimes that in a suit, which is *prima facie,* within the jurisdiction of a Court, a defendant sets up a claim which is beyond its pecuniary jurisdiction. In such cases, if the Court finds, after enquiry into the case, that a decree must be passed on payment of a sum exceeding its pecuniary jurisdiction, it should stay further proceedings and report the case to the District Judge for transfer to a competent Court. [***][...].

8. Jurisdiction in respect of persons amenable to Military Law.-- For the jurisdiction of Civil Courts in respect of persons amenable to Military Law, see Chapter 6, regarding suits by or against persons in Military Service.

PART B -- JURISDICTION OF CIVIL AND REVENUE COURTS

1. Matter raised in defence which is solely triable by Revenue Court.-- If in a suit which, as framed, is within jurisdiction of a Civil Court, a defendant raises a plea with respect to a matter which can be taken cognizance of only by a Revenue Court, the procedure laid down in the proviso to sub-section (3) of Section 77 of the Punjab Tenancy Act 1887 must be followed and the plaint returned for presentation to the Collector.

2. Suit for correction of entries in Revenue records.-- A civil suit will not lie for the correction of an entry in a Record of Rights, or *[Periodical] Record, but any person, considering himself aggrieved as to any right of which he is in possession by such an entry, may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877. Where the relief sought in a plaint of this nature is not correctly worded, the plaint should be returned for amendment. *[section 53 of the Punjab Land Revenue Act, 1967,] should be referred to on this subject.

3. Question of title arising in land partition proceedings before Revenue Officers.-- A Civil Court can only entertain a suit relating to a dispute as to title in revenue-assessed land arising in partition proceedings, when a Revenue Officer declines to determine the question himself as though he were a civil Court and refuses to proceed to partition until the question is determined by a competent Court. The plaint should, therefore, refer to the order of the Revenue Officer made under *[Section 141, sub-section (1) of the Punjab Land Revenue Act, 1967,] and the Civil Court should satisfy itself that an order giving it jurisdiction has been so made. A copy of such order should accompany the plaint.

4. Reference to Civil Court by Revenue Court.-- Section 98 of the Punjab Tenancy Act, 1887, contains a provision empowering a Revenue Court to refer any party to a Civil Court for settlement of any question which the Revenue Court considers proper for decision by a Civil Court. Such reference must be by an order in writing, and such order must have the previous sanction of the Controlling Revenue Court, if any.

5. Reference to High Court in cases of doubt as to jurisdiction of Civil or Revenue Court.-- Provision has been made for the disposal by reference to the High Court of cases in which doubts may arise as to whether the Civil or Revenue Courts have jurisdiction, and for the registration in the proper Court of decrees passed under a misapprehension as to jurisdiction by either a Revenue or a Civil Court. These provisions will be found in Sections 99 and 100 of the Punjab Tenancy Act. The rules under this head will be found in chapter 15, References to the High Court.

6. Succession to occupancy holding.-- Suits relating to succession to occupancy holdings, under Section 59 of the Punjab Tenancy Act, 1887 lie in the civil Courts.

7. Hadd-Shikni cases.-- Hadd-Shikni cases are triable by Civil Courts. *[section 172 sub-section 2(1) of Punjab Land Revenue Act of 1967] does not apply to such cases. That section merely means that a Civil Court is not competent to question the decision of a Revenue Officer as to the delimitation for the purposes of the *[Punjab Land Revenue Act 1967], of land which is occupied as the site of a town or village and is not assessed to land-revenue.

CHAPTER 3
VALUATION OF SUITS

PART A -- GENERAL

1. General.-- It should be remembered that the value of a suit for the purposes of the Court-fees Act, 1870, and its value for the purposes of jurisdiction are not necessarily identical and are frequently very different. The value for the purposes of Court-fees is determined by the Court-fees Act, 1870 (as amended), and for purposes of jurisdiction by the Suit Valuation Act, 1887, and the rules made thereunder. In certain classes of suits the value for the purposes of Court-fee also can be fixed by rules under section 9 of the Suits Valuation Act, 1887.

2. Part I of Suits Valuation Act extended to Punjab.-- Part I of the Act was extended to this Province by Central Government, Home Department, Notification No. 210, dated the 20th February 1889, and the Punjab Government has made rules under section 3 of the Act determining the value of land and of certain interests therein, for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs (v) and (vi) and paragraph (x), clause (d), which are republished in Part D of this Chapter.

3. Rules under section 3 of the Act apply to all classes of land in the Punjab.-- No restrictions under section 3, sub-section (2), of the Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply, therefore, to all land generally throughout the Province, whether assessed to land revenue or not.

4. Land suits falling under section 7 (iv) or article 17, 22, Schedule II of the Court-Fees Act.-- Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-fees Act, section 7, paragraph (iv), or Schedule II, Article 17 or 22, relates to land or an interest in land, of which the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules.

5. Other suits under section 7 of Court fees Act.-- The suits falling under the Court-fees Act, Section 7, paragraphs (i, ii, iii, iv, vii, viii, x) (a), (b) and (c), and (xi) (a) to (f), inclusive, are either such as are subject to an ad valorem Court-fee, in regard to which the value for the purposes of computing the Court-fee, in regard to which the value for the purposes of computing the Court-fee, and the value for the purpose of determining jurisdiction, are under Section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under Section 9 of the Act.

[**][It is to be noted that Court-fee has been exempted at all stages in all Courts and in all cases the valuation whereof does not exceed twenty five thousand rupees.]

[*]**[6. Value of suits governed by rules made under section 9, Suits Valuation Act.--** Section 8 gives the general rule as stated above, but when the value of a suit for purposes of jurisdiction and Court-fees is determined by rules under section 9, the value as determined by the rules must be accepted. For example in a suit, in which the plaintiff asks for accounts only not being a suit to recover the amount, which may be found due on checking unsettled accounts or a suit of the kind described in Order XX rule 13 of the Code of Civil Procedure, value for the purposes of Suits Valuation Act, 1887, will be rupees one thousand while the value for the purpose of Court fee Act, 1887 will be rupees two-hundred.]

7. Plaint should show value for purposes of Court-fees and jurisdiction.-- In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of Court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing Court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

8. Value in cases governed by Section 7 (iv) and Schedule II, article 17 of the Court-fees Act.-- Special care is necessary with respect to cases falling under the provisions of section 7, Paragraph [*][(iv), (iv-A)] and Schedule II, Article 17, of the Court-fees Act, in valuing suits for the purposes

of jurisdiction and Court-fees. A schedule showing the value of different classes of suits for purposes of jurisdiction and Court-fees, following the classification of suits in the Court fees Act, has been prepared and attached to this Chapter. It must be clearly understood, however, that this schedule in itself has no legal force, and that it is merely intended for ready reference by the Courts in dealing with questions of value.

9. Value of certain suits left to judicial decision.-- There is no express provision in the Suits Valuation Act, 1887, in regard to the classes of suits mentioned below, and they do not admit of being disposed of by rules under Part I, nor are they dealt with by directions under Part II of the Act. The valuation of such suits, therefore, must be left to judicial decision, as occasion arises. The suits are:-

suits for houses;

suits for pre-emption in respect of houses;

suits for removal of attachment of houses;

suits by or against mortgagors or mortgagees as such;

suits falling under Schedule II, Article 17, clause *[(iv) and (iv-A)], which are not provided for by the rules under section 3 or directions under section 9, or by section 4 of the Suits Valuation Act;

suits falling under section 7, subsection (x), clause (d), of the Court-fees Act, and relating to property other than land.

10. Fixing valuation not necessary in certain cases.-- In the case of some classes of suits or petitions e.g., suits under section 28 of the Sikh Gurdwaras Act, 1925, or petitions under the Guardians and Wards Act, 1890, the law allows no choice as regards the Court in which proceedings must be taken. There is, therefore no necessity in such cases to fix any valuation for the purpose of determining jurisdiction.

PART B -- VALUE OF THE SUBJECT - MATTER OF SUITS FOR THE PURPOSES OF APPEAL

1. General.-- Under the *[Punjab Civil Court Ordinance, 1962 (II of 1962),] the number of appeals in a suit and the Court of Appeal are determined partly by the nature of the suit and partly by its value; and serious inconvenience results to Judges of Superior Courts as well as to suitors, when the record of the original Court does not disclose the value of the suit.

The value of the suit, as fixed by the plaintiff or as determined by the Court in the event of its being disputed should, therefore, be always stated on the face of the final Judgment and the decree in the suit.

The term "value", as used in the *[Punjab Civil Courts Ordinance, 1962 (II of 1962)] with reference to a suit, means the amount or value of the subject-matter of the suit.

2. Valuation should be stated in judgment and decree. Meaning of value.-- When the copies filed with the memorandum of appeal do not disclose the value, the Appellate Court should, if in doubt, send for the record, which may show the value. In all cases in which the record does not show the value, the Appellate Court must ascertain and determine whether the value of the suit as instituted (not the value of the subject-matter of appeal), does or does not exceed the limits of its appellate jurisdiction.

3. Objection as to value.-- When either the appellant or the respondent takes exception to the valuation determined by the lower Court, the point must be decided like any other point taken in appeal or by way of cross-objection. It should be noted, however, that, according to section 11 of the Suits Valuation Act, 1887 no objection as to valuation can be entertained in appeal unless it was taken in the trial Court before the issues were framed and recorded; or, in the lower Appellate Court, in the memorandum of appeal to that Court and unless the appellate Court is satisfied (for reasons to be recorded in writing) that the suit or appeal was not properly valued, and that the mistake in valuation had prejudicially affected the disposal of the suit or appeal on merits. This rule applies in all cases of erroneous valuation whether the

valuation is fixed by any statute or rules there-under or in any other manner. [***][...]

4. Suits for redemption of mortgage.-- The valuation of suit for redemption of a mortgage is not regulated by statute or any enactment and would, therefore, depend upon the subject-matter, which in such a suit is the amount which the mortgagor should, before recovering the mortgaged property, pay to the mortgagee. The amount depends not on the valuation originally given by the plaintiff (which can only be considered to be tentative), but on the amount as determined by the Court. It is the amount so determined, therefore, that determines the forum of appeal. If for example, the plaintiff sues for redemption on payment of Rs. 5,000 while the mortgagee claims Rs. 10,000 and the Court decrees the suit on payment of Rs. 7,000 the appeal will lie to the High Court and not the District Court (I.L.R. VII Lah. 570-F.B.) If, on the other hand, the decree had been passed on payment of a sum less than Rs. 5,000, the appeal would have been entertainable by the District Court, and the mere fact that the mortgagee claimed Rs. 10,000/- would not have affected the question of jurisdiction for the purposes of appeal, (c.f. 54 P.R. 1912).

[**]**[Note:**- The appeal under section 18 of the Punjab Civil Courts Ordinance 1962, from the decree or the order of the Civil Judge lies to the High Court if the value of the original suit exceeds two hundred thousand rupees and to the District Judge in any other case. This paragraph should be read accordingly.]

5. Suits for accounts.-- Similarly, in a suit for the amount found to be due after taking accounts, it is not the tentative valuation of the plaintiff, but the amount found to be due and decreed by the Court, that determines the forum of appeal (I.L.R.IX Lah. 23).

PART C -- MANNER OF DETERMINING THE VALUE OF SUITS FOR PURPOSES SPECIFIED IN SECTION 9 OF THE SUITS VALUATION ACT, 1887

RULES

Rules made by the High Court with the previous sanction of the Provincial Government, under the powers conferred by section 9 of the Suits Valuation Act 1887, and all other powers in that behalf, for determining for the purposes specified therein, the value of the subject-matter of certain classes of suits which do not admit of being satisfactorily valued, and for the treatment of such classes of suits as if their subject matter were of the value as hereinafter stated:-

1. (i) Suits in which the plaintiff in the plaint asks for a decree against the other party to an alleged marriage, either alone or with other defendants, for restitution of conjugal rights;

(ii) Similar suits for a decree establishing, annulling or dissolving a marriage or for a declaration that a marriage is void or has been annulled, dissolved or otherwise terminated;

(iii) Suits in which the plaintiff in the plaint asks for a decree establishing an adoption or declaring it void including under the expression "adoption" the customary appointment of an heir--

Value-- (a) For the purposes of the Court-fees Act, 1887.

[**](Under Item 11(v) of Schedule II applicable to Punjab Court-fee of ten rupees is to be fixed on the suit to set aside the adoption.)]

Rs. 200

(b) For the purposes of the Suits Valuation Act, 1887, and the [*][Punjab Civil Courts Ordinance, 1962 (II of 1962).]

Rs. 1,000

*[**Explanation I.]--** Classes (i) and (ii) do not include petitions under any special Act relating to the dissolution of marriage.

****[Explanation II.--** No Court-fee is chargeable by any Court or payable in respect of any criminal case or any case of civil nature the value of the subject-matter thereof or relief claimed thereunder does not exceed twenty-five thousand rupees in view of the Punjab Court-fees (Abolition) Ordinance, 1983(X of 1983).]

2. *****[Omitted].

3. Suits in which the plaintiff in the plaint asks for accounts on not being--

(i) Suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant;

(ii) Suits of either of the kinds described in Order XX, rule 13 of the Code of Civil Procedure.

Value-- (a) For the purposes of the Court-fees Act, 1887.

Rs.200.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918.

Rs.1,000.

4. (i) Suits in which the plaintiff in the plaint seeks to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant;

(ii) Suits of either of the kinds described in Order XX, rule 13 of the Code of Civil Procedure;

Value for the purpose of Court-fees.(a) As determined by the Court-fees Act, 1870.

Value for the purpose of jurisdiction.(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962, as valued by the plaintiff in the plaint, subject to determination by the Court at any stage on the trial.

5. Suits in which the plaintiff in the plaint seeks to establish or to negative any right hereinafter mentioned, with or without an injunction, and with or without damages, namely-

a right of way; a right to open or maintain or close a door or a window, or a drain, or a water-spout (*Parnala*); a right to or in a watercourse or the use of water; a right to build, or raise or alter or demolish a well; or to use an alleged party wall or joint staircase:--

Value--(a) For the propose of the Court-fees Act, 1870---

(i) suits to establish a right--whether or not injunction is prayed for.

Rs. 130

(ii) suits to establish a right and for damages whether or not injunction is prayed for.

Rs. 130

Plus such sum
as is claimed
as damages.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962, as for the purposes of the Court-fees Act, 1870.

6. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications registered as suits under the Provisions of sections 20 and 31 of the Arbitration Act, X of 1940 (to file an agreement to refer to arbitration or to file an award), when or so far as the award or the agreement relates to property:-

Value--

(a) For the purposes of the Court-fees Act, 1870, as determined by the Act.

(b) For the proposes of the Suits Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962,--the market value of the property in dispute, subject to the provision of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

7. Suits in which the plaintiff in the plaint asks for a mere declaration without any consequential relief in respect of property other than land assessed to land revenue--

Value--

(a) For the purpose of the Court-fees Act, 1887, as determined by the Act.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962,--the market value of the property in dispute, at the date of institution of the suit, subject to the provision of Part I of the Suits Valuation Act, 1887, and the rules in force under the said Part, so far as those provisions are applicable.

8. Suits for partition of property-

Court-fee--

(a) As determined by the Court-fees Act, 1870.

Value-- (b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962, --the value of the whole of the property as determined by sections 3, 8 and 9 of the Suits Valuation Act, 1887.

9. Suits in which the plaintiff in the plaint asks for redemption of the property mortgaged or for foreclosure of the mortgage.

Value-- (a) For the purposes of the Court-fees Act, 1870,--as fixed by section 7 (ix) of that Act.

(b) For the purpose of the Suit Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962,--the amount of the principal and interest calculated on the terms of the mortgage at the date of the institution of the suit.

10. Suits in which the plaintiff asks for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,--

Value-- (a) For the purposes of the Court-fees, Act, 1870,--as determined by that Act.

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918,--according to the value of the subject-matter of the suit, and such value shall be deemed to be--

(i) If the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed;

(ii) If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

[10-A. Plaint or Memorandum of appeal for recovery of compensation or damages under the Fatal Accidents Act, 1855--

Value-- (a) for the purposes of Court-fee Act, 1870, as fixed by Schedule II Article 18 as amended;

(b) For the purposes of Suit Valuation Act, 1887, and the Punjab Civil Courts Ordinance, 1962, the amount claimed.]

11. The foregoing rules are subject to the following explanations:-

(i) the terms "plaint" includes an amended as well as original plaint.

(ii) a suit falling within any of the above descriptions is not excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

Note:- These rules came into force on the 2nd January 1943.

High Court Notification No. 363-R/XXX-3, dated the 2nd December, 1942.

(C. S. 17/XXX-3, dated the 23rd December 1942).

PART D -- MANNER OF DETERMINING THE VALUE OF LAND FOR PURPOSES OF JURISDICTION IN CERTAIN CLASSES OF SUITS

CHAPTER 4

Arbitration Proceedings

PART A -- ARBITRATION PROCEEDINGS UNDER THE CODE

*[**1.** The instructions contained in this part are only administrative. The statutory Rules under section 44 of the Arbitration Act 1940 are contained in part-B of this Chapter.]

2. The following rules *[were laid down by the then] Government of India in regard to the appointment of public officers to act as arbitrators for the settlement of disputes:-

(Extract from proceedings of the Government of India Home Department (Public) No. 544, dated Fort William, the 12th February 1873.

(1) An officer shall not act as an arbitrator in any case without the sanction of his immediate superior, or unless he be directed so to act by a Court having authority to appoint an arbitrator.

(2) No public officer shall act as an arbitrator in any case which is likely to come before him in any shape in virtue of any judicial or executive office which he may be holding.

(3) If any officer acts as arbitrator at the private request of disputants, he shall accept no fees.

(4) If he acts by appointment of a Court of law, he may accept such fees as the Court may fix.

3. In the event of an officer in any public department being nominated as arbitrator in a civil suit, the Court, before appointing him arbitrator, should refer to the official superior of the officer nominated to ascertain whether his services can be made available.

The Punjab Government have directed in their circular letter No. 5795-G-43/64326 (H-Gaz.), dated the 14th October 1943, that their servants should not be allowed to undertake arbitration without the previous permission of the competent authority.

PART B -- RULES UNDER THE ARBITRATION ACT, 1940 (ACT X OF 1940)

Rules made by the High Court under the powers conferred by section 44 of the Arbitration Act, 1940 (Act X of 1940), and published in its notification No.45-B/X. W. -5, dated the 9th March 1945.

1. Citation.-- The following rules shall be cited as the Arbitration Rules. All references therein to 'Act' shall be read as meaning the Arbitration Act, 1940.

2. Title of application.--(a) Save as hereinafter provided, all applications, affidavits and proceedings under the Act, shall be intituled "in the matter of the Act, and in the matter of the arbitration."

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

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

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

3. Mode of application.-- All applications under the Act shall be made only to the proper Court and all applications shall be made by petition and shall be presented in the same manner as plaints or other applications to the Clerk of the Court or to such other officer as the Court appoints in that behalf who shall cause them to be registered and take such orders as are necessary from the Presiding Judge. Where application is made with the consent of all the Parties affected thereby, the written petition shall be endorsed with the consent of the parties affected and shall bear their signature.

4. Contents of Petition.-- The petition shall be divided into paragraphs numbered consecutively and shall contain the name, description and place of residence of the petitioner and of the opposite party, with a statement in summary form:-

(a) of the material facts,

(b) of facts showing that the Court to which the application is presented has jurisdiction, and

(c) of the nature of the relief asked for,

and shall specify the persons liable to be affected by the application. A copy of the arbitration agreement, the special case or the award relating to the petition shall be annexed to the application : Provided that where a party is, by reason of absence or for any other good cause, unable to sign the same, it may be signed on his behalf by any person duly authorised by him to sign the same.

5. Registering petitions and awards.-- Applications under section 14 of the Act shall be numbered and registered as regular suits. Other applications under the Act shall be numbered and registered as miscellaneous applications requiring judicial enquiry.

6. Notice of application to persons affected by award.-- Upon any application by petitioner under the Act, the Judge shall direct notice thereof to be given to all persons mentioned in the petition, and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted.

7. Copy of petition.-- A copy of the petition shall be served on each person notified by virtue of the last preceding rule and the applicant shall supply a copy of the petition or affidavit for service on the opposite party.

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

(b) The petitioner or the plaintiff shall deposit the necessary process fees for notice to the other party concerned within three days of the presentation of his petition or within such further time as the Court may permit.

(c) The party who has requested the arbitrator or umpire to cause an award to be filed shall, within three days after the filing of the award, or within such further time as the Court may permit, deposit the process fees for notice to the other parties concerned.

9. Notice to arbitrators.-- Except where misconduct on the part of an arbitrator or umpire is alleged as a ground for setting aside an award or for removing an arbitrator or umpire, or, unless the Court otherwise orders, it shall not be necessary to serve notice of the application upon an arbitrator or umpire and he shall not be allowed his costs of appearing thereto.

10. Filing of Award.--(a) The arbitrator or umpire or any of the parties to the arbitration may cause the award or a signed copy thereof to be filed in Court in the manner prescribed in rule No.3.

(b) When the award is filed by the arbitrator or umpire, he shall, together with the award, send to the Court any depositions and documents which have been taken and proved before him and the opinion pronounced by the Court on the special case submitted by him, if any, in accordance with section 14 of the Act by forwarding the same under a sealed cover addressed to the Court. He shall also send together with the award a copy of the notice given to the parties concerned and affidavit of service of such notice and attestation of his signature on the award.

(c) When the award is filed by any of the parties to the arbitration under clause (a), the party may move the Court for directing the arbitrator to produce in original such of the documents as were produced before him together with the record of the arbitration.

11. Notice of filing award.-- When the award has been filed in Court, the Court shall forthwith issue notice of such filing to the parties interested in the award.

12. Limitation for application for judgment on award.-- An application for judgment in terms of an award shall not be made until after the expiration of 30 days from the date of service of the notice of filing the award.

13. Court to issue notice on application under section 20.-- When an application under section 20 of the Act is filed and registered, the Court shall, on the application, issue a notice, returnable within not less than 10 days from the service thereof calling upon the opposite party to show cause why arbitration agreement should not be filed.

14. Processes to be issued on application by arbitrator or umpire.-- Processes to the parties to arbitration proceedings or to witnesses shall be issued by the Court on the written application of the arbitrator or the umpire.

15. Accompaniment of the above application.-- If the proceedings are under Chapter II of the Act, the application for such processes must be accompanied by a copy of the agreement under which the arbitrator or the umpire is acting. If otherwise, the date of the order appointing him arbitrator or umpire shall be mentioned in the application.

16. Special case.-- Every special case for the Court's opinion under section 13 (b) of the Act shall be made in Form No.I. The arbitrator or umpire, as the case may be shall at the same time give notice of such action to the parties. When the Court has announced its opinion under section 14 (3), it shall be the duty of the arbitrator or umpire concerned to have a certified copy of such opinion added to and made part of the award.

17. Application of Code of Civil Procedure and the High Court Rules and Orders.-- In the cases not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908 and High Court Rules and Orders, mutatis mutandis, shall apply to all the proceeding before the Court and to all appeals under the Act.

18. Forms.-- The forms prescribed by these rules shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require.

(Continued)

FORM NO. I

SPECIAL CASE

(Title of suit)

In the matter of an arbitration between A.B. of _____ and C.D. _____ the following special case is stated for the opinion of the Court:-

(Here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of the Court are--

First -- Weather X

Second -- Weather .. .. .. Y

Dated the _____day of _____19 .

FORM No. II

APPLICATION FOR AN ORDER OF REFERENCE

(Title of suit)

1. This suit is instituted for (state nature of claim).

2. The matter in difference between the parties is (state matter of difference).

3. The applicants being all the parties interested have agreed that the matter in difference between them shall have referred to arbitration.

4. The applicants, therefore, apply for an order of reference.

A.B.

C.D.

Dated the _____day of _____19 .

Note:- If the parties are agreed as to the arbitrators, it should be so stated.

FORM No. III

ORDERS OF REFERENCE

(Title of suit)

Upon reading the application presented on the _____ day of _____19 it is ordered that the following matter in difference arising in this suit, namely_____ be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the _____day of _____19, and in case of the said arbitrators not agreeing in an award, the said umpire is to make his award in writing within _____months after the time during which it is within the power of the arbitrator to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the Court, this _____day of _____19 .

Judge

FORM NO. IV

ORDER FOR APPOINTMENT OF NEW ARBITRATOR

(Title of suit)

Whereas by an order, dated the _____day of _____19 (state order of reference and death, refusal, etc., of arbitrator), it is by consent ordered that Z be appointed in the place of X deceased (or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of _____19 .

Given under my hand and the seal of the Court, this _____day of_____19 .

FORM NO. V

AWARD

(TITLE OF SUIT)

In the matter of an arbitration between A.B. of _____and C.D. of_____.

Whereas in pursuance of an order of reference made by the Court of_____ and dated the _____day of _____19 _____, the following matter in difference between A.B. and C.D. namely:--

has been referred to us for determination:

Now we, having duly considered the matter referred to us do hereby make our award as follows:--

We award_____

(1) that X

(2) that .. .. .. Y

Dated the _____day of_____19 .

PART C -- THE ARBITRATION (PROTOCOL AND CONVENTION) ACT, 1937

I. The following rules have been framed by the Lahore High Court, Lahore of Judicature at Lahore in exercise of the powers conferred by Section 10 of the Arbitration (Protocol and Convention) Act, 1937 and approved by the Governor of the Punjab under section 224 of the Government of India Act, 1935 (25 and 26 Geo. V. Chapter 42):--

Rules under Section 10 of the Arbitration (Protocol and Convention) Act, 1937.

1. Title of applications, etc.-- All applications, affidavits and proceedings under the Act shall be entitled "in the matter of the Act and in the matter of the Arbitration."

2. What application shall be by petition.-- Application under Section 3 shall be made to the Court whose proceedings are intended to be stayed, and applications under Section 5 shall be made to the Court having jurisdiction over the subject-matter of the award.

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

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

5. Documents to be produced with the petition for enforcement of a foreign award.-- The party seeking to enforce a foreign award shall produce with his petition:--

(a) the document specified in Section 8(i) of the Act and, where such document is in a foreign language, the translation thereof into

English, certified in the manner prescribed in subsection (2) of the said Section 8;

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

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

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

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

7. Execution of decrees and orders.-- The provisions of the Code of Civil Procedure and the Rules and Orders of the High Court relating to execution of decrees and orders shall, *mutatis mutandis*, be applicable to the execution of decrees and orders under the Act.

8. Fees payable on proceedings.-- The fees in respect of proceedings under the Act shall be according to the scale of fees applicable to proceedings under Schedule II of the Code of Civil Procedure.

II. As regards the powers which have been notified to be parties to the Convention and the territories to which the Convention applies see Central Government (Department of Commerce) Notification 103 (4)/II-Tr., dated the 8th January 1938.

CHAPTER 5
WITNESSES -- CIVIL COURTS

PART A -- ATTENDANCE OF WITNESSES (GENERAL)

1. Compulsory attendance.-- A Court can compel the personal attendance of any witness residing within the local limits of its jurisdiction, or without such limits if the person to be summoned is at a place, not more than fifty miles from the Court house or not more than two hundred miles if there is a railway communication or public conveyance for 5/6th of distance, provided that he is not exempted under any of the provisions of the Code of Civil Procedure, 1908. (Order XVI, Rule 19).

2. Attendance of *pardah nashin ladies.--* Under Section 132 of the Code of Civil Procedure, 1908, 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 attendance in Court.

3. Privileged persons.-- The Punjab Government may, by Notification in the Official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

The Punjab Government has made the following exemptions:-

(i) The Afghan, Persian, American, Dutch, German, Japanese and Italian Consuls-General residing in or visiting the Punjab (Punjab Government Notification No. 5957-S.-Judl., dated the 24th September, 1929).

(ii) The Ruling Chiefs of the Punjab and their sons (Punjab Government Notification No.I-F., dated the Ist January, 1909).

(iii) Certain Titular Chiefs and gentlemen. The list of these is liable to variation from time to time.

4. Other exemptions.-- The Court has a discretion to exempt from attendance as witness any person, who, in the opinion of the Court, is, from sickness or infirmity, unable so to attend, or who, being a Civil or Military

Officer of the Government, cannot attend without detriment to the Public Service. As regards the attendance of Patwaris in Civil Courts, Part B of this Chapter should be referred to.

5. Evidence by Commission.-- The Court may issue a commission for the examination of a witness, whose attendance cannot be compelled according to law, or cannot be secured for any other sufficient reason, in the circumstances specified in Order XXVI of the Civil Procedure Code.

6. Service Of Processes.-- The general procedure for issue of precesses to witnesses is the same as that in respect of defendants. For detailed instructions on the subject, see Volume IV, Chapter 7 and Volume I, Chapter I-D, (b) and (c).

7. Non-attendance, proof of service.-- Where a witness summoned to attend to give evidence or produce a document, fails to attend or to produce the document, without lawful excuse, the Court shall, on return of the service of the summons, examine the serving officer on oath, if his certificate has not been verified by affidavit and it may do so even when the certificate has already been so verified, to satisfy itself that the summons was duly served.

8. Proclamation, attachment and arrest in case of non-attendance.-- The Court, on being satisfied that the person summoned has intentionally failed to attend or to produce the document in compliance with such summons without any lawful excuse and that his evidence or the document is material, may issue a proclamation requiring him to attend to give evidence or produce the document at a time and place to be named therein. Or, the Court may, in lieu thereof, or in addition to it, issue a warrant, with or without bail, for the arrest of such person and may make also an order for the attachment of his property to such an amount as it deems fit to cover the costs of the attachment and any fine which may be imposed for his failure to attend, not exceeding Rs. *[2000/-] (*vide* Order XVI, Rule 10, Code of Civil Procedure, 1908).

9. Fine.-- Whenever such person appears and satisfies the Court that he did not, without lawful excuse, fail to comply with the summons, the Court may release the attachment or cancel the Warrant of arrest, as the case may be. Where such person does not appear, or appears but fails to satisfy the Court that

there was a lawful excuse for his absence, the Court may impose a fine, not exceeding Rs. *[2000/-], to be recovered by the attachment (if not already effected) and sale of his property (Order XVI, Rule 12, Code of Civil Procedure, 1908).

10. Party as witness.-- It should be noted that, where a party to a suit is required to give evidence or produce a document, the provisions as to witnesses apply to him, so far as they are applicable.

11. Warrants against Government servants for non-attendance.-- The Judges wish to impress upon the Subordinate Courts the desirability of caution in issuing warrants of arrest against a person in Public Service, unless and until the Court is fully satisfied that he is willfully omitting to obey the summons. In most cases, it will produce the desired effect if a notice is issued to the person at fault to show cause why he should not be proceeded against under the penal provisions of Order XVI and the attention of the superior officer is drawn to the conduct of the man. Of course, in cases of pronounced refractoriness, the Courts can set the law in motion in any one or all of the forms, available to them.

12. Non-attendance, duty of parties and Court.-- In cases where proper service of summons has been effected but the witnesses fail to attend, either through negligence or in collusion with the party on whose behalf they have been cited, Civil Courts should use their powers to take penal action against their own witnesses, the issue of any further summons through the Court for their attendance should be refused. The Courts should also, where necessary, take action themselves against defaulting witnesses. The provisions of Order XVI, Rule 16, should be studied and used, and if parties refuse to make an application under Order XVI, Rule 16 (2), the Court may refuse to grant any further adjournment.

13. Prompt disposal of witnesses.-- When witnesses are in attendance, every effort should be made to record their evidence promptly and they should not be required, as far as possible, to attend again at any adjourned hearing. In the case of businessmen and Government servants, the Court should, if possible, give them some indication as to the hour when their evidence is

likely to be recorded, so as to avoid their being detained on the Court premises longer than may be necessary.

14. Summoning Government servants to prove birth or death entries.-- In any case where a party to a suit wishes to prove the fact of a birth or death by reference to one of the registers of vital statistics he should be directed in the first instance to file a certified copy of the entry on which he relies. Civil Courts should refrain from summoning the clerks of Civil Surgeons' offices with the registers except where their presence is deemed absolutely necessary.

PART B -- ATTENDANCE OF PATWARIS IN CIVIL COURTS

Patwari should not be summoned unless absolutely necessary.-- Officers presiding over Civil Courts should be careful to see that Patwaris are not summoned unnecessarily to give merely formal evidence regarding entries in the village records and annual papers, information as to which could be as well obtained from an inspection of the records in the District office or from an examination of the District Qanungo or Record-Keeper. It should be remembered that Patwaris have very important duties to perform and that the discharge of these duties should not be hindered by making them attend Court except when the examination as witnesses is really necessary. In view of these considerations, the following instructions are issued with the concurrence of the Financial Commissioners. The Court should see that every application for summoning a patwari as a witness contains a note stating why a copy of the Revenue Record or an excerpt prepared by a Qanungo would not be sufficient and why the attendance of the Patwari is essential.

2. Summoning Patwari during girdawari season.-- Officers presiding over Civil Courts should not summon Patwaris (except in cases of great urgency) during the times when the principal crop *girdawaris* are going on, viz., ordinarily the months of March, April and October. (Financial Commissioner's Standing Order No. 22).

3. Channel of service and Court certificate.-- When a Civil Court requires the attendance of a Patwari at a time other than that above referred to, such a Court should forward the summons to the Tahsildar of the Tahsil to which the Patwari belongs. The Tahsildar should serve the summons with as little delay as possible. A certificate should be furnished by the Court to every Patwari who attends in obedience to a summons, showing the date of his appearance before the Court and the date on which he was permitted to leave.

4. Summoning during Settlement operations.-- When a Settlement is in progress, it is especially undesirable that Patwaris should be summoned to attend in the Civil Courts, and when they are required to give evidence which cannot be obtained in the manner indicated in paragraph 1, this should usually be obtained by the issue of a Commission under Order XXVI, Rule 4(1) (c), of the Code of Civil Procedure. Such commissions should

ordinarily be addressed to the Settlement Superintendent of the Tahsil; but any wish expressed on this point by the Settlement Officer should be responded to, and the period to be ordinarily allowed for the execution of a Commission should be arranged in consultation with him.

The Civil Court issuing the Commissions should always note thereon the date to which the case has been adjourned, and the officer to whom the Commission is sent, should then be careful either to return the Commission by that date, or to inform the Court, before such date, of the circumstances which will prevent the return of the commission within the time fixed, and what further time will be required.

PART C -- REMUNERATION

1. Payment of expenses by a party: exception.-- Order XVI, Rule 2, of the Civil Procedure Code, requires that the party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance. Government is exempt from the operation of this rule when applying for summons for any of its own officers. In the case of witnesses summoned as "experts," the Court is authorized to allow remuneration in addition, for performing any necessary work of an expert character for the purposes of the case.

2. Expenses of the witnesses summoned by the Court of its own motion.-- When a witness is summoned by the Court of its own motion under Order XVI, rule 14 his diet money, etc., shall be paid by such party or parties as the Court may in its discretion direct.

When diet money, etc,. is not deposited payment shall be made out of contingencies and an order passed for recovery from any property of the party concerned and executed under section 36 of the Code.

3. Expenses to be paid at the time of service.-- According to Order XVI, Rule 3 of the Code, the sum so paid into Court shall, except in the case of a Government servant who is not entitled to receive such sums, be tendered to the person summoned at the time of serving the summons, if it can be served personally.

4. Expenses of Government servants.--(i) A Government servant, shall not accept any subsistence allowance from the Court.

(ii) A Government servant, who is required to give evidence in a Court situated not more than 5 miles from his headquarters, may accept such actual travelling expenses as the Court may allow provided that he is not in receipt of permanent travelling allowance from Government.

(iii) A Government servant, who is summoned to give evidence in a civil case to which Government is a party or in a Criminal Court, may draw

travelling allowance from Government as for a journey on tour provided that (a) the facts as to which he is to give evidence have come to his knowledge in the discharge of his public duties, (b) he attaches to his bill a certificate of attendance given by the Court, and (c) he does not accept any payment of his travelling expenses from the Court.

Any expenses, which may be deposited in the Court for this purpose, must be credited to Government under head *["1230000-Law & order Receipts, 1231000-Justice, 1231003-Justice-General Fees, Fines & Forfeitures (74)".]

(iv) A Government servant, summoned to give evidence in circumstances other than those mentioned in the preceding clause, may receive travelling expenses from the Court according to the scale to which he may be entitled by his status.

*[(v) In the case of employees of the Federal Government or Pakistan Railway or any other Commercial Department of the Government or Corporations controlled by the Government, however, sums deposited for diet money will be credited in the Treasury to the credit of the Government concerned, i.e., Federal, Railway or any other commercial Department of the Government, or a Corporation controlled by the Government, as the case may be.]

5. Further sum for expenses.-- Order XVI, Rule 4, empowers the Court to require a further sum to be paid in for the expenses of a witness, if the sum at first paid is found to be insufficient, or if the witness is detained for more than one day.

6. Scale of Expenses.-- Order XVI, Rule 2 (3), provides that in fixing the scale of expenses to be allowed to witnesses, Subordinate Courts shall be guided by such rules as may be made by competent authority. The rules passed in connection with the scale of expenses are given in Appendix I to this Chapter.

7. Sending expenses by money order.-- When a summons is sent by a Court in one district for service through a Court in another district, the expenses must be remitted by money order at the cost of the party taking out the summons. The practice of sending remittances by postage stamps should never

be resorted to. The Court to which a remittance is made should be informed by letter, on the day on which application is made to the Post Office for the money order, and all necessary information should be furnished regarding the person or persons to whom the money is to be paid. The same procedure will apply when a summons issued by one Court in a district has to be served through the process serving agency of another Court within the same district.

8. Court certificate in case of Government servants.-- In all cases in which an officer of Government is summoned to give evidence, the Court should give him a certificate in the prescribed form A given in Appendix II to this Chapter, specifying the dates on which the officer was required to attend and the amount, if any, paid to him by the Court. This certificate will be attached by the officer concerned to any travelling allowance bill which he may submit under the rule quoted above.

9. Expenses of Process-servers.-- A process-server, who is called upon in *ex parte* proceedings to prove service of a summons by affidavit or statement in Court, is not entitled to any subsistence or other allowances for attendance. Such attendance must be regarded as the discharge of one of the ordinary duties of his office.

10. The attendance of a Chairman or a member of a Debt Conciliation Board as a witness in Civil Courts is required in (1) cases in which he appears as a witness in a Court in the discharge of his duties as Chairman or member, and (2) cases in which he appears in a Court in his private capacity. In the first case, the attendance of a Chairman or a member in the Courts is in his public capacity, and as he is a public servant within the meaning of section 21 of the Pakistan Penal Code, he cannot be treated as a private individual for the purposes of diet money or subsistence allowance. In such a case, the provision of Travelling Allowance Rule 2.36 should apply, and the Chairman or the member concerned should credit to Government any travelling allowance or subsistence allowance received by him from the Court.

In the second case, the attendance of the Chairman or member in the Court is purely in his private capacity and in such a case the Chairman or member should be treated as a private individual, and allowed to retain the amounts paid by the Court.

11. In all cases in which the Chairman or a member of a Debt Conciliation Board is summoned to give evidence the Court should give him a certificate in the prescribed form A given in Appendix II to this Chapter specifying the dates on which he was required to attend the Court and the amount, if any, paid to him by the Court.

APPENDIX-I

(Vide para 6)

*[The following rules have been framed by the High Court under Order XVI Rule 2(3) of the Code of Civil Procedure for the guidance of the Courts.

1. The remuneration to be paid to the witnesses attending the Civil Courts of the Punjab will be not only for the actual period of attendance but also for any reasonable time spent in the journey to and from the place of sitting, the mode of conveyance available being taken into consideration.

2. The Presiding Officer of each Court will, keeping in view the status of the witness, fix the remuneration exclusive of the bona fide travelling expenses. The government servants attending the Courts in private capacity, will be allowed remuneration at the rates admissible in each case under the relevant service rules.

3. In estimating travelling expenses, the amount allowed should cover the actual costs of the journey by means of conveyance considered by the Court to be suitable to the person summoned.

4. The professionals e.g. lawyers, registered accountants (as defined in rule 12 of the Auditors Service Rules, 1932), chartered accountants [as defined in Chartered Accountants Ordinance, 1961 (X of 1961)], doctors and engineers, attending the Civil Courts for giving expert evidence, shall be paid fees ranging

between rupees two hundred and rupees one thousand according to the professional standing of the witness, for each day in attendance or travelling in addition to the expenses for travelling.]

APPENDIX II.

(Vide para 8)

FORM **- A**

Form of certificate to be given by the Court to an officer of Government summoned to give evidence at a Court

In the Court of the _____in the _____District.

1. Certified that _____ *was summoned to give

public

evidence in this Court in his ---------- capacity in the case of _____

private

and was required to attend for a period of -------- days, that is from the ------- to the ---------- 19 .

****2.** To be cut out when nothing is paid.-- He was paid the following amounts in accordance with the rules of the Court:--

3. The amount of ------ as his diet money has been recovered from

. . . . . has been . . . . . Treasury

the litigants and ---------- deposited in the local ----------

. . . . . will be . . . . . Sub-Treasury

on (date) ----------.

FORM - B

Detailed Statement of Subsistence Allowances and Compensation (apart from allowance for travelling expenses) paid to Government Servants by order of the [#]*---------- at ---------- during the quarter ending ---------- 19 , for attending as witnesses in civil cases to which Government is not a party.*

1	2	3	4	5	6	7
Date of payment	Court under whose order the payment was made	Name and Official designation of witnesses	Amount paid or compensation allowance	Nature of subsistence thereto	Nature of case and names of parties	Remarks
			Rs. . . . Ps.			

PART D -- COPYING AND SEARCH FEES PAYABLE TO BANKS FOR PRODUCTION OF DOCUMENTS IN LAW COURTS

*[The following rules are applicable in the Province of the Punjab:-]

1. Responsibility of managing authority for production of documents even if fees allowed insufficient.-- On receipt of a summons addressed to a Bank requiring the production of documents or of certified copies of entries in books of account, the managing authority must arrange for the production of the documents or the copies by an official of the Bank qualified to give evidence thereon, in accordance with the terms of the summons. Unless the documents or entries are incorrectly or insufficiently described in the summons, or are not in the possession of the Bank, the managing authority must comply with summons, and will be liable to all the penalties prescribed for failure to comply with a summons, whether the rates fixed by the Court for search or copying fees are acceptable to him or not. Any representation regarding rates of diet money, etc., must be made to the Court, and dissatisfaction with these rates is no ground for refusing to obey the summons.

2. Search fees.-- If the information given is not exact but is sufficient to enable the Bank to trace the documents by making a search, the Bank should communicate at once with the Court mentioning the amount of search fee it wishes to charge and wait for further order. The Court will communicate with the party concerned and if the party deposits the search fee, it will ask the Bank to comply with the summons.

3. Report if documents cannot be traced.-- If no information whatsoever is given in the summon or if the information given is not sufficient to enable the Bank to trace the document, the summons should be returned with a report to this effect.

4. Scale of search fees.-- Search-fees will be fixed by the Court in proportions to the work involved. Rupees *[50.00] may be taken as a fair amount for the search-fee for a single document not easily accessible; but in the case of documents easily traced, such as cheques, the rate should be less; and when several documents of the same nature, such as cheques, have to be produced, the rate should be further reduced.

5. Scales of copying fees.-- Copying fees for all documents other than entries in account books should be paid for at the Court rates.

*[**6. Scale of copying fees.** - The photo- copies of entries in account books, ledger folios and registers may be issued as certified copies with the necessary certificates and the cost at market-rates for such certified copies will be payable by the person on whose behalf the said certified copies were ordered to be made and produced in Court. Copying fee for all other documents will be paid at the Court rates.]

7. Prohibition against summoning higher officers of the Banks.-- All Courts must scrutinize carefully all applications for summonses to Banks and should refrain from summoning the Banks higher officers unless they are satisfied that their personal attendance is necessary.

CHAPTER 6
SUITS BY OR AGAINST PERSONS IN MILITARY SERVICE

PART A -- AMENABILITY TO THE CIVIL COURTS OF PERSONS SUBJECT TO MILITARY LAW

[*][1. **Jurisdiction of civil Courts.--** The persons subject to Pakistan Army Act 1952 (XXXIX of 1952), Pakistan Air Force Act, 1953 (VI of 1953) and the Pakistan Navy Ordinance, 1961(XXXV of 1961) are now amenable to the jurisdiction of ordinary Civil Courts subject to certain restrictions as regards their personal appearance in Court and execution of decrees against their person and military equipments.]

2. [***][Omitted].

3. [***][Omitted].

4. Authority for conducting litigation.-- When any officer or soldier actually serving Government in military capacity is a party to a suit and cannot obtain leave of absence for prosecuting or defending a suit, he can appoint some other person to act on his behalf by an authority in writing given in the manner prescribed in Order XXVIII of the Code of Civil Procedure.

In the case of [***][...] officers or soldiers, the following form has been prescribed for the authority in writing.

"Whereas I (name)----------inhabitant of village----------Pargunnah ----------in the District of ---------- son of ---------- of the caste of----------at the present rank in---------- Company----------Regiment----------stationed at----------having occasion to institute (or defend) an action for (nature and object of suit and name of adverse party), do hereby nominate and appoint (name, residence and caste and relationship, if any) to be my attorney, and I bind myself to abide by whatever he, the said attorney, may do on my behalf, in the prosecution (or

defence) of the said suit. The said attorney will either prosecute (or defend) the suit in person or will appoint one or more of the authorised *[Advocates] of the Court to prosecute (or defend) the same, under the instructions of the said attorney as he may think proper. In the event of an appeal being preferred from the judgment passed in the suit, the said attorney is hereby empowered to act for me in the appeal in the like manner as in the original suit.

Signature

Signed in my presence O.C."

[Vide paragraph 285, Regulations for the Army in *[Pakistan], 1927].

A power-of-attorney to institute or defend a suit executed as above is not chargeable with Court-fee (vide Section 19, clause (1) of the Court-fees Act, 1870).]

5. Service of processes.-- As regards service of processes on officers and soldiers, see Order V, Rules 28 and 29 of the Civil Procedure Code, 1908, and Rules and Orders, Volume IV, Chapter 7, Processes (Civil).

6. Speedy disposal of cases.-- Civil Courts should dispose of all suits, for the prosecution or defence of which officers, soldiers or reservists have obtained leave of absence, as speedily as is consistent with the administration of justice, irrespective of the order in which they stand on the register.

**[(See section 173 of the Pakistan Army Act, 1952 (XXXIX of 1952), Section 32 of the Pakistan Air Force Act, 1953 (VI of 1953) and Section 27 of the Pakistan Navy Ordinance, 1961 (XXXV of 1961).]

7. Priority certificate-Extension of leave by Court.-- When a person subject to the *[Pakistan Army Act, 1952,] obtains or applies for leave of absence for the purpose of prosecuting or defending a Civil suit, he is provided by his Unit Commander with a certificate to enable him to obtain priority of hearing (I.A.F.D. 902). This certificate must be presented by him in person to the Court. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may grant leave for such period as will admit of the receipt of a reply to an application to the Unit Commander for the necessary extension of leave. The civil officer will at once report to the Unit Commander

any grant of leave sanctioned by him. (See paragraph 288, Regulations for the Army in India 1927).

8. The *[Federal] Government has issued the following notification under section 60 (1)(l) of the Civil Procedure Code:-

The 3rd November, 1938.

No. 191/38-Judicial--In pursuance of clause (l) of the proviso to Subsection (l) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Federal Government is pleased to declare that the allowances payable to Officers in *[Pakistan] subject to the *[Army and Air Force Act] shall be exempt from attachment by order of a Court in satisfaction of a liability incurred after the 31st December, 1938.

Appendix ***[Omitted]

[9. Exemption from arrest and attachment of pay and allowances etc.

(a) **Army:-** No person subject to the Pakistan Army Act, 1952, so long as he belongs to Pakistan Army, is liable to be arrested for debt under any process issued by or under the authority of any Civil or Revenue Officer. The effect of sections 170 and 171 of the Pakistan Army Act, 1952 and clause (j) to the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure is that such person are exempted from arrest and the arms, clothes and equipment, accoutrements and his pay and allowances are all totally exempted from attachment by direction of any Court whether Civil or Revenue.

Under section 172 of the Pakistan Army Act, 1952, persons belonging to the Reserve Forces when called out for or engaged upon or returning from military training or service and all officers and men of Mujahid Force and Janbaz Force under section 18 of National Guards Act, 1973, and Pakistan Territorial Forces Act, 1950, while subject to the Pakistan Army Act, 1952, are also entitled to the same privileges.

(b) **Air Force:-** The position under the Pakistan Air Force Act, 1953 (VI of 1953), is precisely the same as that under Pakistan Army Act, 1952. Sections 28 and 29 of the former correspond to sections 170 and 171 respectively of the latter. Thus the exemption for persons subject to the Pakistan Air Force Act is the same as that stated in sub-para (a) above.

(c) **Navy:-** Persons in Naval Service in Pakistan are subject to Pakistan Navy Ordinance (XXXV of 1961). Sections 24 and 25 of the Pakistan Navy Ordinance correspond to sections 170 and 171 of the Pakistan Army Act, 1952. So the exemption for persons subject to the Pakistan Navy Ordinance is the same as that stated in sub-para (a) above.

As regards pay and allowances, clause (j) of proviso to sub-section (1) of section 60 of the Code of Civil Procedure gives total exemption from attachment to the persons other than Commissioned Officers to whom the Pakistan Navy Ordinance, 1961, applies. Thus all persons in Pakistan Navy other than Commissioned Officers enjoy this total exemption and Commissioned Officers enjoy the total or partial exemption under clauses (i) and (l) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure.]

PART B -- THE [***][...] SOLDIERS' LITIGATION ACT, 1925

1. General.-- During the Great War it was found necessary to enact measures for the protection of the interests of [***][...] soldiers serving under War conditions. This object was effected by the promulgation of Ordinance II of 1915, which provided for the special protection in respect of civil and revenue litigation of [***][...] Soldiers, serving under War conditions. The main objects, sought to be secured, were that cases, to which [***][...] soldiers were parties, should not be proceeded with unless their adequate representation in such proceedings had been secured, and that power should be given to the Courts to set aside the decrees or orders passed when these conditions had not been observed. A further privilege conferred was the exclusion of any period of service under War conditions from the period of limitation.

2. Law applicable.-- The Ordinance was replaced by the [1][...] Soldiers Act, 1915, with certain modifications. The Act of 1915 was, in its turn, replaced by the [***][...] Soldiers' Litigation Act, 1918, and the latter by the [***][...] Soldiers' Litigation Act, 1925, which is now in force.

3. Explanation of various sections.-- A "Soldier" is defined in the Soldiers Litigation Act, 1925, as a person subject to the Army Act, [*][1952.] Section 3 defines the circumstances in which a soldier shall be deemed to be serving "under special conditions". According to Section 6, when a Court (Civil or Revenue) has reasons to believe that a party to a suit before it is a soldier who is not duly represented and is unable to appear, it must give notice thereof to the `prescribed authority in the `prescribed manner' and suspend proceedings in the meantime. If the prescribed authority certifies that the soldier is serving under special conditions, the case must be postponed. Section 10 confers power on the Court to set aside decrees and orders passed against a soldier serving under `War' or `Special Conditions' in certain circumstances. Section 11 permits the period spent in such service to be deducted from the normal period of limitation, except in the case of pre-emption suits. For the purposes of section 10 and section 11, the Court may refer the question as to whether a soldier has been serving under `War' or `special conditions' to the `prescribed authority' and the certificate granted by that authority is conclusive on the point.

4. Rules under the Act.-- The rules framed by the Central Government under section 13 of the [***][...] Soldiers (Litigation) Act, 1925, are given in the following notification:-

DEFENCE DEPARTMENT

Simla the 14th May, 1938

No. 455.-- In exercise of the powers conferred by section 13 of the [1][Indian] Soldiers (Litigation) Act, 1925 (IV of 1925), the Central Government, after consulting the High Courts concerned, is pleased to make the following rules, namely:--

1. Citation.--(1) These rules may be called the Indian Soldiers (Litigation) Rules, 1938.

(2) They extend to the whole of British India including Berar",

2. Definitions.--(1) In these rules, `the Act' means the Indian Soldiers (Litigation) Act, 1925 (IV of 1925).

(2) All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

3. Prescribed authority.-- The prescribed authority for the purposes of sub-clause (iv) of clause (b) of section 3 and sections 6, 7 and 8 of the Act shall be the Officer Commanding the Unit or the Depot of the unit to which the soldier belongs.

4. Form of Collector's certificate.-- The certificate given by a Collector under section 5 of the Act shall be in Form A of the schedule.

5. Notice by Court.-- The notice given by the Court under section 6 of the Act shall be in Form B of the Schedule and shall be sent to the prescribed authority care of the General Officer Commanding-in-Chief of the Command in which the Court is situated, and the certificate of the prescribed authority, under section 7 of the Act, shall be in Form C of the Schedule.

6. Certificate as to that postponement not required.-- If at any time it appears to the prescribed authority that the circumstances in which he

certified to the Court under section 7 of the Act that a postponement of the proceedings was necessary in the interests of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule.

7. Postponement by Court.-- On receipt of a certificate from the prescribed authority under section 7 of the Act that a postponement of the proceedings is necessary in the interests of justice, the Court shall postpone the proceedings until the receipt of a certificate in Form D from the prescribed authority or until the soldier is represented in the proceedings by some persons duly authorised to appear, plead or act in his behalf.

8. Prescribed authority.-- The prescribed authority for the purposes of section 12 of the Act shall be the General Officer Commanding-in-Chief of the Command in which the Court is situated.

(Continued)

SCHEDULE

Form A

(See Rule 4)

Collector's Certificate under section 5 of the ***[...] Soldiers Litigation) Act, 1925).

From

The Collector,
District----------

To

In *re*----------No.----------of 19
---
versus

Sir,

I have the honour to certify under section 5 of the [1][...] Soldiers (Litigation) Act, 1925 (IV of 1925), that I have reason to believe that----------, son

Ordinarily residing

of ----------, who is a ***[...] soldier---------- in my

Having property

district and who is a party in the above-mentioned (enter suit, appeal application or other proceedings) now pending in (enter name of Court) is unable to appear therein.

I have the honour to be
Sir,
Your most obedient servant,
Collector.

Notes:- (1) This certificate should be sent by post in a registered cover or by hand and an acknowledgment should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in other case to the Presiding Officer of the Court.

FORM B

(See rule 5)

Notice under section 6 of the ***[...] Soldiers (Litigation) Act, 1925.

In the ---------- ----------
No.----------of ----------

---

versus

To

Unit

The Officer Commanding (enter name of----------)

Depot of unit

Care of the General Officer Commanding-in-Chief,

----------Command.

Please take notice that [upon the certificate of the Collector of---------- under section 5 of the ***[...] Soldiers (Litigation) Act, 1925 (IV of 1925)] *[having had reason to believe] that----------, son of---------- ----------, a ***[...] soldier, who is a party in the above-mentioned proceeding now pending in this Court and is not represented by any person duly authorized to appear, plead or act on his behalf, is unable to appear therein, this Court has, under section 6 of the said Act, suspended the proceeding. If within the period prescribed in section 8 of the

said Act, no certificate is received from you under section 7 thereof, the Court will, if it thinks fit, continue the proceedings.

Given under my hand and the seal of the Court, this the ---------- day of----------19 .

Presiding Officer of the Court.

Registrar.

FORM C

(See rule 5)

Notice under section 7 of the ***[...] Soldiers (Litigation) Act, 1925

From

The Officer Commanding

Unit

(**enter name of**----------)

Depot of unit

To

----------No.----------of 19 .

---

versus

No. ----------, dated ----------

Sir

I have the honour to acknowledge receipt of your notice, dated ----------, under section 6 of the ***[...] Soldiers (Litigation) Act, 1925 (IV of 1925), in the above-mentioned proceedings, and to certify under section 7 of the said Act that ----------, son of----------, in respect of whom the above-mentioned notice has been given, is serving under special

conditions and that a postponement of the proceedings in respect of that soldier is necessary in the interests of justice.

I have the honour to be
Sir,
Your most obedient servant,
Officer Commanding.

Notes:- (1) This certificate should be sent by post in a registered cover or by hand, and an acknowledgment should be obtained for it.

(2) It should be addressed in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in other cases to the Presiding Officer of the Court.

Form D

(See rule 6)

Certificate under rule 6 of the ***[...] Soldiers (Litigation) Rules, 1938

From

To

In *re*----------No.----------of 19

---

versus

No. ----------, dated ----------

Sir,

I have the honour to invite a reference to my letter No.----------, dated----------, and to certify under rule 6 of the ***[...] Soldiers (Litigation) Rules, 1938, that circumstances no longer exist for the postponement of the above-mentioned (enter suit, appeal, application or other proceedings), now pending in (enter name of Court), wherein ----------

----------, son of----------, a ***[...] Soldier, is a party.

I have the honour to be
Sir,
Your most obedient servant,
Officer Commanding.

Notes:- (1) This certificate should be sent by post in a registered cover, or by hand, and an acknowledgment should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in other cases to the Presiding Officer of the Court.

PART C -- PROCEEDINGS WITH RESPECT TO SUCCESSION CERTIFICATES

Introductory [***][Omitted]

(1). [***][Omitted].

(**2**)**. Notice to soldiers under section 6 of the Succession Act.--** When the Court finds that a person, falling under clause (c) of Section 6(1) aforesaid, is a [***][...] soldier serving under special or War conditions and there is no special and obvious reason for suspecting the good faith of the members of the family actually applying for the certificate, the Court should declare that, in the circumstances, it is unnecessary to make the soldier a party to the proceeding or to issue notice to him; but in such cases the Court should always demand security under Section 9(1) of the Act. If, on the other hand, there is any good reason to suspect the good faith of the applicant, then he should be required to get a power-of-attorney from the absent soldier or some written assurance from him that he does not object to the application.

Footnote [***][Omitted]

CHAPTER 7

SUITS AGAINST OR INVOLVING PRINCES,

CHIEFS ETC……..[***][Omitted]

CHAPTER 8
SUITS BY OR AGAINST
THE *[GOVERNMENT] AND PUBLIC OFFICERS

*[**1.** A suit in which Pakistan or any of its Provinces or any public officer as defined in clause (17) of section 2 of the Code of Civil Procedure, 1908, in his official capacity is a party, shall be instituted in a Court having jurisdiction in original suits without limit as regards value and heard at the headquarters of the district. (See section 24 of the Punjab Civil Courts Ordinance, 1962 (II of 1962).]

1-A. Dates.-- Order XXVII, Rule 5, of the Code of Civil Procedure prescribes that in fixing the date for the hearing of a suit against the *[Government], the Court shall allow a reasonable time for the necessary communication with the *[Government], through the proper channel. The period required will depend upon circumstances and no invariable rule can be laid down on the point, but in most cases a period of two months will probably be suitable.

2. Extension of time.--(i). In fixing the period in any case, the representations of the officer, who receives the summons or who is conducting the case on behalf of the *[Government], should meet with due consideration, as the Code of Civil Procedure clearly contemplates that reference to Government, through the proper departmental channel, involving a certain delay, shall be allowed for and an extension of time should be given on reasonable cause being shown; but, on the other hand, the Civil Courts should be cautious to prevent undue delays in these as in all other classes of suits.

(ii) **Priority.--** Cases, in which Government Departments are concerned, and in which officials have to attend, should be disposed of promptly, care being taken to give due notice where it is necessary, for any reason to adjourn the case.

*[**3. Two months notice before institution of suit and grant of thirty days' time for sub-mission of the written statement in case of non-service of notice.--** A suit may be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer

in his official capacity after the expiration of two months next after notice in writing has been delivered to or left at the office of Secretary to the Government in the case of a suit against the Federal Government and a Secretary to the Government or the Collector of the district in the case of a suit against the Provincial Government and to the General Manager of the Railway in case of a suit against the Federal Government relating to the affairs of Railway and to the public officer concerned in case of a suit filed against such public officer. The notice to be served is to state the cause of action, the name, description of place of residence of the plaintiff and the relief which he claims. The plaint of such a suit shall then contain a statement that such notice has been delivered or left.

Where any such suit is instituted without delivering or leaving the notice as aforesaid or before expiry of two months period or where the plaint does not contain a statement that the notice as aforesaid has been so delivered or left, the plaintiff shall not be entitled to any cost if settlement, as regards the subject matter of the suit, is reached or the Government or the public officer concedes the plaintiff's claim within a period of two months from the date of the institution of the suit. It is also to be remembered that in a suit, instituted without serving such a notice, the Court is required by law to allow not less than three months to the Government to submit its written statement.]

*[**4. Title of case.** - In suits by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be in the case of a suit by or against the Federal Government "Pakistan" and in the case of a suit by or against the Provincial Government, the "Province".]

5. Definition of *[Government] and *[Government] Pleader.-- The definition of Government and Government Pleader for purposes of Order XXVII CPC should be carefully studied.

***[Omitted]

*[**6.** To avoid delays in the disposal of suits and proceedings against the State and to prevent inconvenience to the Law Officers of the State, the following directions shall be observed:-

(i) **Priority.-** Suits or proceedings by or against the Government (Civil and Criminal) should be given priority of hearing; and such cases should, when possible, be heard continuously until completion; and

(ii) **Timely notice of adjournment.-** If a date is fixed in a suit affecting the State and the Court is not prepared to hear the case on that date, timely notice by telegram should be given to the Law Officer concerned by the Court.]

7. The following notifications, issued by the Provincial Government under the Code of Civil Procedure are published for information

I. -- Punjab Government Notification No. I-C.,
dated the Ist January, 1909

Government pleader.-- With reference to the definition of the expression "Government Pleader" contained in section 2 (7) of the Code of Civil Procedure (V of 1908), the Lieutenant-Governor is pleased to appoint the Legal Remembrancer to the Punjab Government, the Government Advocate, Punjab, and the Assistant Legal Remembrancer, Punjab, respectively, to perform all or any of the functions expressly imposed by the said Code on the Government Pleader except the functions specified in Order XXXIII, Rule 6, and in Order XXVII, Rule 4, thereof.

2. The Deputy Commissioner for the time being of every district in the Punjab is appointed to be the Government Pleader for his district for the purposes of Order XXXIII, Rule 6 and of Order XXVII, Rule 4, of the Code of Civil Procedure.

3. Nothing in this notification shall be deemed to affect the provisions of notification No. 1-H., dated Ist January, 1909 (now superseded by Punjab Government notification No. 1073-J-37/13015, dated the Ist April, 1937, given below), regarding the recognized agents of Government under Order XXVII, Rule 2, of the Code of Civil Procedure.

II. -- Punjab Government Notification No. 1073-J-37/13015, dated the Ist April, 1937.

Recognized Agents.-- In supersession of Punjab Government notification No. 1-H., dated the Ist January 1909, and in accordance with the provisions of Order XXVII, Rule 2 of the First Schedule of the Code of Civil Procedure, 1908, the Governor of the Punjab is pleased to authorize all Deputy Commissioners in the Punjab, by virtue of their office to act for the Crown in respect of all judicial proceedings in which the Punjab Government is concerned and in which they may receive instructions from the Financial Commissioners or the Legal Remembrancer to Government.

2. In the absence of the Deputy Commissioner from his headquarters, the Senior Assistant Commissioner or Extra Assistant Commissioner there present is hereby authorized to exercise the power hereby conferred on the Deputy Commissioner.

III.-- Punjab Government Notification No. 22963, Judicial,
dated the 10th December, 1917.

Recognized Agents.-- It is hereby notified that all Government Pleaders are, under Order XXVII, Rule 2, of the First Schedule to the Code of Civil Procedure, ex-officio authorized to act for the Government in respect of all judicial proceedings in the Courts within the Civil districts for which they are appointed.

IV. -- Punjab Government Notification No. 1073-J-37/13017/H, judicial,
dated the Ist April, 1937.

Verification and signing of pleadings.-- In supersession of Punjab Government notification No. 19798 Judicial, dated the 4th July, 1934, and in accordance with the provisions of Order XXVII, Rule 1 of the First Schedule of the Code of Civil Procedure, 1908, it is hereby ordered that in all suits, by or against the Punjab Government, plaints or written statements on behalf of the Punjab Government shall be signed and verified by the Deputy Commissioner for the time being of the district in which the cause of action in whole of in part

arises or by any other gazetted officer of any department concerned who is acquainted with the facts.

*[V. -- West Pakistan Government Law Department, Notification No. 869-Law, Dated the 15th October, 1955.

In accordance with the provisions of Order XXVII, rule 1 of the First Schedule of the Code of Civil Procedure, 1908, the Governor of West Pakistan is pleased to order that in all suits by or against the West Pakistan Government, Plaints or Written Statement on behalf of the West Pakistan Government shall be signed and verified by the Deputy Commissioner for the time being of the district in which the cause of action in whole or in part arises or by any gazetted officer of the department concerned who is acquainted with the facts.

VI. No.870 Law. - In accordance with the provisions of Order XXVII, rule 2 of the first Schedule of the Code of Civil Procedure, 1908, the Governor of West Pakistan is pleased to authorise all Deputy Commissioners in West Pakistan, in virtue of their office to act for the Crown in respect of all Judicial Proceedings in which the West Pakistan Government is concerned and in which they may receive instructions from the Secretary, Law Department, West Pakistan Government.

2. In the absence of the Deputy Commissioner from his headquarters, the Senior Assistant Commissioner or Extra Assistant Commissioner there present is hereby authorised to exercise the power hereby conferred on the Deputy Commissioner.

VII. Government of West Pakistan, Law Department Notification No. 8/57/Genl/255.

In accordance with the provisions of Rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 and in modification of the Law Department notification No.870-Law, dated 14th October 1955, the Governor of West Pakistan is pleased to authorise every Deputy Commissioner and every Political Agent in West Pakistan and, in his absence from the headquarters, the Senior Assistant Commissioner, as the case may be, present there to act in

virtue of his office for the Province of West Pakistan in respect of any judicial proceedings by or against the Province in which he may receive instruction from the Secretary to Government, West Pakistan, Law Department, or from the Solicitor to the Government, West Pakistan.]

VIII. -- Government Of India, Defence Department, Notification No.939,
dated the 11th December, 1937.

Verification and signing of pleadings in cases relating to Military lands.-- In pursuance of Rule 1 of Order XXVII in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) and in supersession of the notification of the Government of India in the late Army Department, No. 336, dated the 16th June, 1934, the Central Government is pleased to appoint Military Estates Officers to be the persons by whom the plaint or written statement may be signed and verified in any suit by or against the Crown relating to military lands---

(i) in Cantonments irrespective of the fact whether they are entrusted to the executive management of the Military Estates Officers or the Cantonment Board;

(ii) out side Cantonments whether entrusted to the management of the Military Estate Officer by or under any order of the Central Government or not.

IX. -- Central Government Notification No. E.38-II.23, dated the 25th August, 1938.

Verification and signing of pleadings in suits re G.I.P. Railway.-- In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government is pleased to appoint the General Manager and the Deputy General Manager for the time being of the Great Indian Peninsulas Railway to be the persons by whom the plaint or written statement may be signed and verified in any suit by or against the central Government or against the Secretary of State relating to the affairs of the said Railway.

The Railway Department notifications Nos. 523-E/23, dated the 27th August, 1925, and 523-E/1, dated the 17th September, 1925, are hereby cancelled.

X.-- Central Government Notification No. E.-38-ll.23,dated the 25th August, 1938.

Verification and signing of pleadings in suits re E.I. Railway.-- In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government is pleased to appoint the General Manager and the Deputy General Manager for the time being of East Indian Railway to be the persons by whom the plaint or written statement may be signed and verified in any suit by or against the Central Government or against the Secretary of State relating to the affairs of the said Railway.

The Railway department notification No. 523-E/II dated the 20th August, 1925, is hereby cancelled.

CHAPTER 9
UTILIZATION OF THE SERVICES OF THE SPECIAL KANUNGO OR PATWARI MUHARRIR

1. Procedure for obtaining excerpts.-- For the purpose of making the information contained in the revenue records accessible to the litigating public and to the Courts, a Special Kanungo or Patwari Muharrir has been appointed in all the districts of the Punjab. ***[...] The procedure to be followed in such cases is that the Court, in which the suit is pending, issues a summons to the Special Kanungo or Patwari Muharrir who, after preparing his excerpt, goes to the Court on the date fixed taking with him the revenue records from which the excerpt has been compiled. He is then placed in the witness box. Counsel thus have the opportunity of comparing the excerpt with the originals and of examining him on any points they choose.

2. Particulars to be supplied to Kanungo or Patwari Muharrir.-- Parties who desire to summon the Special Kanungo or Patwari Muharrir as a witness with his records must be required to state succinctly and in writing the point on which information is required, and the application must be sent along with the summons to the Special Kanungo or Patwari Muharrir. The Courts must see that the application is in a readily intelligible form before they issue it, and the practice, where it occurs, of sending for the Special Kanungo or Patwari Muharrir to tell him what is required must be discontinued, though Courts may also issue written instructions, or supplement or correct the application.

3. Kanungo or Patwari Muharrir should be utilized for special purposes and only at earlier stages.-- Courts must be on their guard against using the Kanungo or Patwari Muharrir for purposes for which he is not intended, e.g., he is not to be required to give opinions, he is not to be used as a local Commissioner, or to be asked to provide instances in support of or to refute an alleged custom. Courts must also see that, if the Special Kanungo or Patwari Muharrir is required, he is summoned for the first hearing after issues are framed, and not, as sometimes happens at present, at the end of the case. They must also never fail to ask him on oath whether the excerpt is in accordance with the revenue records.

4. Excerpt to be proved. Utilizing of Kanungo or Patwari Muharrir by outlying Courts.-- The excerpt prepared by the Special Kanungo or Patwari Muharrir is not evidence unless proved and cannot be used as such. He cannot be allowed to go to outlying Courts because he cannot take the revenue records with him, and without them there would be no check over his excerpt. It is, however, very desirable that outlying Courts should be able to utilize the Special Kanungo or the Patwari Muharrir, and, as the best practicable method of securing that object, Presiding Officers of outlying Courts may issue either interrogatories for the Special Kanungo or Patwari Muharrir or an open Commission to a senior official at headquarters ordinarily and, unless there is some special reason to the contrary, the Senior Civil Judge. This official, who will have other duties and is described in the instructions appended as the officer-in-charge, will then comply with the directions given, summon the Special Kanungo or Patwari Muharrir, record his statement on oath and make the return to the Court. In this connection attention is drawn to Order XXVI, Rule 18 (1), of the Code of Civil Procedure. The issue of a Commission should not become a source of unnecessary delay, and the officer-in-charge should in the absence of very strong reasons proceed in the absence of parties if they do not appear. Parties should be informed that their appearance at headquarters is optional if interrogatories are issued.

5. The following instructions have been issued for the guidance of the Courts and of the Special Kanungo or Patwari Muharrir and it will be the immediate duty of the officer-in-charge to see that these instructions are followed:-

INSTRUCTIONS REGARDING THE UTILIZATION OF THE SERVICES OF THE SPECIAL KANUNGO OR PATWARI MUHARRIR

(i) **Application should be made to Court.--** Applications for the services of the Special Kanungo or Patwari Muharrir must be made to the Court and may not be made direct to the Special Kanungo or Patwari Muharrir.

(ii) **It should specify the points of information.--** Such applications must state clearly the point on which information is required; and if this

condition is not fulfilled, they will be liable to be returned for amendment. They may, however, be supplemented or corrected by the Court.

(iii) **Fees.--** Whenever an application is sent to the Special Kanungo or Patwari Muharrir he must, at the same time be summoned as a witness, and the applicant must at once, deposit into Court the fee for evidence which is Rs. 3, and the excerpt fee, which is also Rs.3.

Note:- If the Special Kanungo or Patwari Muharrir is only required to produce a revenue record or if he is only summoned with the original revenue record in order to verify whether a copy is correct, an evidence fee of Rs. 3 only will suffice.

This deposit shall be credited at once into the treasury under the head "XXI Administration of Justice--General Fees, Fines and Forfeitures--Other General Fees, Fines and Forfeitures" and particulars of the credit noted on the application and the summons issued to the Special Kanungo or Patwari Muharrir. No summons shall be issued until this amount is paid by the party concerned and credit into the treasury.

(iv) **Application should be made in time.--** Courts to which applications are made must see that they are made promptly (within a short time to be fixed by the Court after the date on which issues are framed), so that the Special Kanungo or Patwari Muharrir may be ready with his excerpt and to give evidence on the next date fixed.

(v) **Excerpt should be a true copy and should be proved.--** Courts must remember that unless proved the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court, always bring with him the original records from which his excerpt has been compiled, so that they may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records.

The excerpt must be a correct copy of such portions of the revenue records as are relevant and not merely a summary or paraphrase.

(vi) **Comparison with original.--** The Court should, as a rule, compare with the original records some of the entries in the abstract and initial and date those thus compared.

(vii) **Fees.--** The fee for the preparation of the excerpt will be a consolidated one of Rs.3 which will cover the cost of search and preparation of the excerpt. Any extra fee fixed should be recovered at the hearing.

(viii) **Register kept by Kanungo or Patwari Muharrir.--** A register in form "A" annexed is prescribed for the Special Kanungo or Patwari Muharrir.

(ix) **Register kept by Court.--** A very simple form of register in form "B" is prescribed for Courts using the Special Kanungo or Patwari Muharrir. The main objects of it are to facilitate inspection and to provide, if necessary, means of checking that of the Special Kanungo or Patwari Muharrir and to verify the amounts credited into the Treasury.

Each entry in the Register shall be attested by the Presiding Officer of the court, in the column provided for the purpose, in token that the amount has been credited to Government as required by rule (iii).

(x) **Procedure of outlying Courts.--** If the application is made to a Court, which is not situated at the district headquarters, the Court will forward the application to the officer-in-charge together with a certificate that the fee of Rs. 6 has been recovered and credited to Government as in rule (iii), and will either issue an open Commission to him or will send interrogatories.

(xi) **Procedure of officer-in-charge when excerpt required by outlying Court.--** The officer-in-charge will then transmit the application to the Special Kanungo or Patwari Muharrir together with the interrogatories, if any, and will call upon him to prepare the excerpt required and to attend to give evidence. When he attends his evidence, whether in the form of answers to interrogatories or otherwise, must be recorded on oath. The officer-in-charge must see that the Special Kanungo or Patwari Muharrir complies with rule (v) above, and his attention is particularly drawn to the provisions of Order XXVI, rule 18. The examination of the Special Kanungo or Patwari Muharrir must not

be postponed for the absence of parties. The outlying Court must inform parties that their presence at Sadr is unnecessary if interrogatories have been issued.

(xii) **Procedure of officer-in-charge when excerpt required by outlying Court.--** When the evidence has been recorded, the officer-in-charge will fix the excerpt fee and the application will be returned with the evidence and the report, if any, together with an intimation of the amount of the excerpt fee to the Court of issue. Any additional excerpt fee payable will be recovered from the party concerned at the next hearing before the Special Kanungo's or Patwari Muharrir's evidence is admitted to the record and will be credited to Government in the treasury by the Court in the manner prescribed in rule (iii) above.

(xiii) **Purpose for which Kanungo or Patwari Muharrir can be utilized.--** The officer-in-charge and the Court must understand that the Special Kanungo or Patwari Muharrir is to be used only for the purpose of obtaining information which is not readily available. Thus he must not be asked to prepare copies of pedigree-tables or of histories of villages, which can be obtained from the Copying Agency. Nor must he be required to search for instances in support of or against an alleged custom, or be used as a local Commissioner.

(xiv) **Kanungo or Patwari Muharrir to report when he is utilized against rules.--** The Special Kanungo or Patwari Muharrir should report at once to the officer-in-charge any case in which he considers that rule (xiii) is being infringed.

(xv) **Duty of officer-in-charge.--** It is the duty of the officer-in-charge to control generally the work of the Special Kanungo or Patwari Muharrir and the use made of him by the Courts and to report any irregularities to the District Judge.

(xvi) **Inspection Book.--** An inspection book in form C for recording notes on inspection of Courts will be maintained and kept in the office of the District Judge. But it may be used either by him or by the officer-in-charge.

(xvii) **Duty of District Judge.--** The District Judge is expected to watch the system carefully and to record his inspection notes in this inspection book.

REGISTRAR A . - (For Special Kanungo or Patwari Muharrir)

1.	Serial No.	-
2.	Date of receipt of summons from Court.	-
3.	Name of Court.	-
4.	Number and year of institution of suit.	-
5.	Names of parties.	-
6.	Date fixed for hearing.	-
7.	Brief description of kind of evidence required.	-
8.	Amount of evidence fee and consolidated excerpt fee recovered in advance.	-
9.	Date of receipt.	-
10.	Amount of additional excerpt fee recovered at the hearing.	-
11.	Date of receipt.	-
12.	Total of columns 8 and 10	-
13.	Attestation of the Presiding Officer of the Court.	-
14.	**Remarks**	-

NOTE :- Column 12 should be totalled six-monthly

REGISTRAR B. - (For Courts)

1.	Serial No.	-
2.	Number and year of institution of suits	-
3.	Names of parties	-
4.	Brief description of kind of evidence required	-
5.	Date of application.	-
6.	Date of hearing.	-
7.	Amount of evidence and consolidated excerpt fee recovered in advance	-
8.	Date of receipt.	-
9.	Amount of Additional excerpt fee recovered at the hearing	-
10.	Date of recovery	-
11.	Total of columns 7 and 9	-
12.	Attestation of the Presiding Officer of the Court	-
13.	Date of credit into the Treasury.	-
14.	**Remarks**	-

NOTE :- Column 11 should be totalled six-monthly

Register C -- (For Inspection Notes by District Judge and Officer-in-charge).

Serial No.	Number and year of case	Name of Court	Date of Inspection	Remarks, and order, if any, passed
1	2	3	4	5
-	-	-	-	-

Note:- The register will be kept in the office of the District Judge, but will be used either by him or by the officer-in-charge for record-inspection notes.

CHAPTER 10
COMMISSIONS AND LETTERS OF REQUEST

PART A -- GENERAL INSTRUCTIONS

1. Reference to C. P. C.-- The general law as to Commissions and Letters of Request is contained in Section 75 to 78 and Order XXVI of the Code of Civil Procedure, and the Forms to be used are Nos. 7 or 8 of Appendix H of Schedule 1.

2. Fees of Commissioner.-- Applications for the issue of Commissions should be made as early as possible. Notice of any such application should be given to the other side. If the application is granted, the Court should fix a sum for the expenses of the Commission, which should, ordinarily, provide a reasonable fee to the Commissioner. If, at any time, the sum so fixed is found to be insufficient, it may, for special reasons, be increased by the Court. When the Commission is executed to the satisfaction of the Court, the full sum fixed should be paid to the Commissioner; but where the Commission is not executed at all or not fully or satisfactorily executed or the work done turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid, or to make any other order in the matter which it thinks just and proper in the circumstances.

3. Commission for local inquiry and accounts.-- Whenever it becomes necessary in the course of a suit to appoint a Commissioner to make a local inquiry or to examine accounts (see Order XXVI), the Judicial Officer who makes the order for such appointment should write the order with his own hand, and specify therein-

(a) the precise matter of the inquiry;

(b) the reason why the evidence bearing on that matter could not reasonably have been taken in the usual way at the trial in Court. A Court cannot issue a Commission merely to save itself the time and trouble of examining witnesses.

4. Functions of Commissioners.-- The Commissioner's duties should be strictly limited by the order to such matters as taking accounts and depositions of witnesses, inspecting the land or other subject of dispute, and reporting to the Court, either by means of a map or plan, or in writing, or both, the existing physical features of the subject inspected, its boundaries and situation relative to other objects, and so on, as the case may be. The functions of the Commissioner are thus limited to procuring evidence and information for the purpose of the trial; and this evidence, including the maps, reports, and record of evidence made by the Commissioner, must be adduced in open Court before the parties, and placed on record like all other evidence. The Court has no power to depute to the Commissioner the final determination of any issue between the parties. The Court can take into consideration the report of the Commissioner, but must itself decide the issue.

5. Commissioners for partition of property.-- Under Order XXVI, Rules 13 and 14, a Commission for the partition of immovable property may be issued to such person as the Court thinks fit. Under Section 396 of Act XIV of 1882 it was apparently necessary to issue a Commission of this kind to two or more persons, but the wording of Order XXVI, Rule 14 (3), makes it clear that any Commission mentioned in Order XXVI may issue to one or more persons.

*[**6. Execution of Commission in the Federally administered tribal areas.--** Commission and Letters of request intended for execution in the Federally Administered Tribal Areas and in the Provincially Administered Tribal Areas can be directly sent to the Political Agent concerned. (See Article 246 and 247 of the Constitution of Islamic Republic of Pakistan.)]

PART B -- APPOINTMENT OF COMMISSIONERS

1. List of Commissioners for recording evidence, payment of fees.--

District Judges should appoint a panel of not more than four men in each district as Commissioners for recording evidence. Such Commissioners should ordinarily be younger members of the Bar, but not men in large practice, and retired Civil Judicial Officers. But in order to ensure punctuality of the return of the Commissions, only a part of the fee should be paid in advance and the balance should be paid when the Commission is returned by the Commissioners within the period fixed by the Court.

2.

(i) Commissioners for recording evidence should normally be appointed to the panel for a period of six years or until further orders, whichever may be earlier. After six years there should normally be no re-appointment.

(ii) Official Receivers, except the Special Official Receiver attached to the High Court, should be appointed ex officio to the panel on the understanding that the appointment is until further orders or until the end of the period of appointment as Official Receiver, whichever may be earlier.

3. List to be circulated to all Courts.--

Each Court should be supplied with a copy of the panel of Commissioners in each district with their addresses. It is believed that by sending Commissions direct to Commissioners, time would be saved. District Judges are, therefore, instructed to send a copy of the list of Commissioners appointed by them to the Registrar of the High Court, so that he can consolidate the lists and issue them to all Courts.

4. Court officials not to be employed as Commissioners for local inquiry.--

Court Readers or other Ministerial Officers should never be appointed to make local investigations, such as finding out the market value of the property, etc. Such Commissions should be issued wherever possible to retired Revenue Officers or professional men, such as engineers, contractors, auctioneers and accountants. Legal Practitioners are not excluded from appointment as local investigation Commissioners, but the best man for the particular commission in question should be appointed. Revenue Officers in

service such as Tahsildars and Naib-Tahsildars should not, as a rule, be appointed when retired officers suitable for the work are available.

5. Selection of Commissioner to examine accounts.--

Commissioners to examine accounts should be selected from men competent in the particular form of accounts. It is absolutely futile to issue Commissions in a particular form of account to a person who is unable even to read the script in which those accounts are written.

6. Selection of Commissioners.--

Great care should be exercised by the Courts in selecting persons for appointment as Commissioners for the purpose of making local inquires; and District Judges should exercise strict supervision over the action of subordinate Courts in this respect. The habitual employment of the same person should not be encouraged. The issue of Commissions to petition-writers and persons who hang about the Courts should not be permitted.

7.

The instructions contained in this chapter are administrative and are not to be regarded as binding the discretion of Civil Courts in making appointments of Commissioners.

PART C -- [COMMISSIONS FOR EXAMINATIONS OF WITNESSES IN HYDERABAD…. ***[Omitted]

PART D -- *[ARRANGEMENT WITH COURTS OF AZAD JAMMU AND KASHMIR

1. When Civil Courts in Azad Jammu and Kashmir are obliged to issue commissions to Courts in the Punjab, these will be transmitted to the District Judge concerned through the High Court of Azad Jammu and Kashmir in like manner through the District Judge to the High Court of Azad Jammu and Kashmir.

2. Similarly Letters of Request issued by Courts in Punjab under section 77 of the Civil Procedure Code should be forwarded by District Judge to the High Court of Azad Jammu and Kashmir for transmission to the concerned Civil Court of Azad Jammu and Kashmir.]

PART E -- [RECIPROCAL ARRANGEMENTS WITH PUNJAB SATES…. ***[Omitted]

PART F -- COMMISSIONS AND LETTERS OF REQUEST FOR THE EXAMINATION OF WITNESSES IN FOREIGN COUNTRIES

*[1. The method of obtaining evidence abroad, depends upon the question, whether the country has bilateral conventions with other countries, and, whether it has ratified the Hague Convention on the taking of evidence abroad in Civil or Commercial matters concluded on March 18, 1970. #

BILATERAL CONVENTIONS BETWEEN COUNTRIES

2. In case the bilateral conventions between the countries have been concluded the procedure provided in the conventions is to be followed. Pakistan has entered into bilateral convention with the Government of Turkey only. (The Convention is reproduced in the Appendix). Pakistan has not ratified Hague Conventions referred to above. The Conventions provide for substantially the same matters of taking evidence abroad in civil or commercial matters as the bilateral conventions referred to above do, but the Hague Convention is multilateral in its scope and operation. So far, however, it has been rarely, if at all, used either by the United Kingdom or by the countries which have ratified it and in which it has been brought into force.

3. The countries to which the Hague Convention applies are:

Czechoslovakia
Denmark
Finland
France
Gibraltar
Hong Kong
Luxembourg
Monaco
The Netherlands
Norway
Portugal
Sweden
Uinited Kingdom
United States of America
United States Possessions.

4. There are two methods of obtaining evidence in a foreign country, namely, by a Letter of Request addressed to a foreign Court or by means of a commission appointing an individual to take the evidence, thus constituting him protanto an officer of the Court. It may be noted that the

commission has ordinarily no power to compel the attendance of a witness. He can invite the witness to present himself and give evidence. If the witness declines to do so, the commission is helpless. If on the other hand, recourse is had to a Letter of Request addressed to the Court within whose jurisdiction, the witness sought to be examined is resident it should be forwarded to the Registrar of the High Court for onward transmission to the said Court in the foreign country through Foreign Office. The Registrar of the High Court transmits the Letter of Request through the Ministry of Foreign Affairs, Islamabad to the Embassy concerned for sending the same to the appropriate Court of its own country.

5. The Letter of Request for obtaining the evidence of a resident in England is processed by the Royal Courts of Justice under the Evidence (Proceedings in other Jurisdiction) Act, 1975. On receipt of such a request, the Court passes the order appointing the special examiner usually a Barrister-at-Law to record the evidence of a witness at the Treasury Solicitor's Office. The senior Master of the Queen's Bench Division of the Supreme Court in England and Wales then informs the Registrar of the High Court of the date and the place where the witness is to be examined.

6. Pakistan is not a party to any Civil Procedure convention except the convention entered into with Turkey and, therefore, it depends entirely on the local law of the foreign country in question, whether any member of the Embassy of Pakistan is permitted to serve documents or to take evidence on behalf of the Courts in Pakistan and if so under what circumstances. Any official of the Embassy of Pakistan cannot be appointed a commission or examiner to take evidence in any case unless and until the permission of the Foreign Office has been obtained. While making such a request to the Foreign Office, the nationality of the intended witness or witnesses would be stated.

7. Commission should be issued in Form No.7, Appendix H, Civil Procedure Code. In countries where process to compel the attendance of the witness will not be issued by the local court, the words "process to compel the attendance of the witness will be issued by any court having jurisdiction on your application" should be deleted from the Form.

8. Letters of Request are addressed to the judicial authorities of the country in which the evidence is to be recorded. These authorities can enforce the attendance by civil process as the courts in Pakistan can do.]

9. [***][Omitted].

10. [***][Omitted].

11. Form.-- The Letter of Request should begin with the name of the Court issuing it and the title of the case in which it is issued.

12. Instructions for filling in form.-- The form in Appendix H should be carefully read and properly filled in after making necessary alterations. e.g:-

(a) Where *viva voce* examination is not to be made these words should be deleted.

(b) Where the consent of His Majesty's Secretary of State for Foreign Affairs is not required or where the request is not to be sent through him the note at the end of the form should be deleted.

(c) In the heading "the President and Judges of the Supreme Court of --------(name the place)" or whatever is the correct designation of the presiding officer of the Court should be given. It should not be addressed to the Registrar of the Court or Consular Officer, etc., who are not presiding officers of the Court.

(d) The words "together with such request in writing if any for the examination of other witnesses" should be deleted where the Letter of Request is not to be returned for the examination of other witnesses.

(e) The laws of some countries, e.g. Japan, require that the parties of the case should be informed of the date fixed for the examination of the witnesses.

This naturally involves a great delay. So where it is desired that notice of the date fixed should not be given to the parties this fact should be mentioned in the Letter of Request and the words "in the presence of the agents of---------- attend such examination " should be deleted.

13. When proper address is not known.-- Where the proper description of the Foreign Judicial Authority in question is not known, the

Letter of Request should be addressed to the Competent Judicial Authority in ---------- ---------- (name of the country concerned).

14. Witnesses living in different states.-- Where witnesses reside in different states of the same country, separate Letters of Request for each state should be sent.

15. Foreign Courts not to collect evidence or appoint experts.-- Foreign Courts should not be asked in Letters of Request to name and appoint experts to give evidence, or themselves to collect evidence.

16. Mode of preparation.-- The letter of Request in duplicate should be signed by the judge or Registrar of the *[Pakistani] Court and bear the official seal of the Court. The Letter of Request in duplicate should either at the foot thereof contain a Schedule of all relevant documents forming part of such Letter of Request or be followed immediately by an Index of such documents. The first document should be a concise narrative of the action of the parties thereto and of the course to be pursued. This document and the other documents which should be as far as possible in chronological order should be numbered or lettered to correspond with the Schedule or Index mentioned above. If any of the documents in the Letter of Request are in original, the copies appearing in the duplicate letter of Request should be certified by an official of the Court that they have been examined and should bear the seal of the Court.

General

17. General.-- The following general instructions should be observed when issuing Commissions or Letters of Request:-

18. To be issued only when absolutely necessary.-- Order XXVI, Rule 5 of the Code of Civil Procedure lays down that a Court may issue a Letter of Request or Commission if it is *satisfied* that the evidence of "a person residing at any place not within *[Pakistan] is *necessary*.

Courts should, therefore, exercise proper discretion in dealing with applications for the issue of such Letters of Request and Commissions which should be granted only in exceptional cases. In suits of a comparatively petty nature it is obviously undesirable to allow the delay in disposal which is bound to result from the issue of a Letter of Request or Commission.

19. Fixing of dates.-- In no case should a precise date be fixed in the Letter of Request for the return of the service. It is impossible for a Court in *[Pakistan] to order a date before which a foreign judicial authority must execute a request which it is under no obligation to execute at all.

A sufficiently long date however (in any case not less than four months) may be fixed for the appearance of the parties before the Court in expectation of the return of the service after making allowance (a) for the time which is bound to be taken by the various channels through which the documents have to pass, and (b) the distance and means of communication between the place of residence of the witness and the place where his evidence is to be recorded and the time required for service on the person to be examined.

20. ***[Omitted].

21. ***[Omitted].

22. ***[Omitted].

23. Translation.-- Commissions and Letters of Request, interrogatories and cross-interrogatories and all other accompaniments should be translated in duplicate into English and in the language of the country where the writ is to be executed. Such translations should be certified to be correct.

24. Documents should be typed.-- All these documents should be neatly typed on superior paper and should be expressed in grammatical and properly spelt idiomatic English.

25. Signature and seal.-- The Commission and Letter of Request and all their enclosures should be signed and sealed by the Presiding Officer of the Court. The signature and seal impression should be clear.

26. Addresses of witnesses.-- The exact postal addresses and full name and description of the persons to be examined should be given in the writ of commission or Letter of Request and also in the forwarding letter or in the first document referred to in rule 16.

27. Preparation of the writ of Commission.-- A complete description of the enclosures accompanying the writ of Commission should be

given in the writ as well as in the forwarding letter and such lists should be prepared in triplicate.

*[**28. Translation.--** Where the language of the country to which the commission or Letter of Request is to be sent is not English, the translation in the language of the said country of all the documents will also be provided by the party concerned for transmission alongwith Letter of Request etc.]

29. Procedure when parties are to be represented at examination.-- In cases where both parties are to be represented at the examination, the Letter of Request or Commission may be sent either without interrogatories, a request being made that the local agents of the parties be permitted to appear at the examination of the witnesses and ask or submit the questions which they desire to ask, or with interrogatories, a request being made that the local agents might be permitted to ask other supplementary questions. If neither party proposes to attend or be represented at the taking of the evidence this fact should be noted in the Letter of Request or Commission in order to avoid delay.

Note:- The names and addresses of the local agents should always be given.

30. Preparation of the writ.-- The Court sending the Commission or Letter of Request should satisfy itself that the interrogatories and cross-interrogatories which are enclosed, are legibly written in an intelligible language and all the documents to which a reference is made in them have been attached. All such documents should be duly authenticated and marks of identification should be put on them.

31. Signing, etc., of interrogatories.-- The interrogatories and cross-interrogatories should be signed by the parties and their counsel if any and should be inserted in proper sequence in the complete Letters of Request and Commission and in the certified copies of the translation.

32. Duplicate copies of documents.-- Duplicate copies of all documents should be furnished and marked as duplicate.

33. Binding of the papers.--(i) The complete Letter of Request or Commission with the accompanying documents should be on strong paper and sewn together in a parchment paper cover down the left hand side, the end of

the silk, tape or thread with which they are sewn being brought out on the front cover and the ends sealed down and the binding signed and sealed by the Judge so that there is no possibility of the removal, substitution or addition of any sheet without breaking the seal.

(ii) **Arrangement of the papers.--** The Letter of Request and accompanying documents should be in the following order:-

(a) Letter of Request.

(b) Index in English if not included in (a). This must be complete, that is to say, every document in the bundle and which follows the letter of request must be separately specified together with its serial or page number corresponding to the number opposite that document in the index or the whole bundle of documents following the letter of request must be paged consecutively. Moreover all numbers appearing at the top or foot of any page of the documents other than the number (if any) assigned to that page by the index should be deleted.

(c) Narrative if not included in (a) including, where necessary, an explanation of the reasons for the institution of two suits for the same amount.

(d) Interrogatories, cross-interrogatories and re-interrogatories. These should contain the same description of witnesses as appears in the letter of request.

(e) Other documents (in chronological order) accompanying the letter of request.

(f) Translations of (a) to (e) inclusive where necessary arranged in the same order and each one of them properly certified by an official of the Court as true translation.

(g) Duplicates of (a) to (f) inclusive and not excluding telegrams arranged in the same order and each one of them properly certified by an official of the Court as true copies.

34. Responsibility of Presiding Officer for correct preparation.-- The preparation of a Letter of Request or Commission must not be left to clerks. The Presiding Officer of the issuing Court will primarily be held responsible for its accuracy and completeness in every respect before transmission to the High Court, and it is the duty of the Superintendent to the District and Sessions Judge to examine the Letter of Request and Commission and its accompaniments carefully and to see that all instructions have been complied with.

35. [***][Omitted].

36. Points of examination of witnesses should be specified.-- Letters of Request and Commission should always set forth a clear and concise explanation of the exact points on which it is desired that the witnesses should be examined.

PART G – COMMISSIONS AND LETTERS OF REQUEST…..***[Omitted.]

PART H -- LETTERS OF REQUESTS AND COMMISSIONS ISSUED BY FOREIGN COURTS

*[Section 78 and rules 19 to 22 of Order XXVI, Code of Civil Procedure lay down the procedure for execution of Commission issued at the instance of Foreign Courts and Tribunals.

CHAPTER 11
JUDGMENT AND DECREES

PART A -- PREPARATION AND DELIVERY OF JUDGMENTS

***[1. Early pronouncement advisable..**(a) On completion of evidence, the Court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties, and the trial shall be over after such hearing.

(b) When the trial in Court is over the judge should proceed at once or as soon as possible to the consideration of his judgment. It is essentially necessary that he should do so while the demeanour of the witness and their individual characteristics are fresh in his memory. In any case pronouncement of judgment should not be delayed beyond a period of thirty days. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and documentary evidence adduced upon each issue should be carefully reviewed and considered in the judgment.]

2. Directions re: judgments.—In the preparation and delivery of judgment the attention of the Civil Courts is drawn to the following directions;-

(1) The judgment should be written either in the language of the Court, or in English.
(2) When a judgment is not written by the Presiding Officer with his hand, every page of such judgment shall be signed by him.
(3) It should be pronounced in open Court after it has been written and signed.
(4) It should be dated and signed in open court at the time of being pronounced and when once signed shall not afterwards be added or added to, save as provided by section 152, C.P.C. or on review.
(5) If it is the judgment of any Court other than a Court of Small causes, it should contain a concise statement of the case; the points for determination, the decision thereon and the reasons for such decision.
(6) If it is the judgment of a Court of small Causes, it should contain the points for determination and the decision thereupon.

(7) It should contain the direction of the Court as to costs.

3. Reference to evidence.— Some Judicial Officers make a practice of prefacing judgments with a memorandum of the substance of the evidence, given by each witness examined which has to be referred to. This practice is irregular, when the memorandum is in addition to that made under Order XVIII, rule 8, of the Code of Civil Procedure. All that the law requires is a concise statement of the case and not a reproduction of the evidence. The judgment should, however, be complete in itself as regards the requirements of Order XX, rule 4, or the Code, and should set forth the grounds of decision as concisely as is consistent with the introduction of all important matter. It may be necessary, in particular cases, to refer to, and give and summary of, the statements of a witness or witnesses; but, if so, such summary should be incorporated in the reasons given for the decision of the Court on the issue to which it relates. When it is necessary to refer to the evidence of a witness in the course of a judgment, the refrence should be by name as well as the number of the witness.

4. Postponement.— Instances have occurred of judgments not being written until a considerable time after final arguments in a case have been heard. This practice is open to grave objection, and in any case in which judgment is not written and pronounced within 14 days from the date on which arguments were heard, a written explanation of the delay must be furnished by the subordinate Court concerned to the District Judge. This not meant to encourage a practice of reserving judgments; on the contrary, judgments should ordinarily be written as soon as arguments have been heard. It is only in the exceptional case where the court has to consider many rulings and cannot conveniently give judgment at once, that there is any justification for judgment being reserved.

5. Certificate of Postponement.—The subordinate Courts should append to their monthly and quarterly statements, a certificate to the effect that judgments have been pronounced in all cases, within a month of the hearing of the final arguments. Explanation should be given as regards any judgments not delivered within such period.

*[**6. Procedure when Judge gives over charge before pronouncing judgment.**.— Every district Judge or Civil Judge proceeding on leave or transfer, must before making over the charge, sign a certificate that he has written judgments in all cases in which he has heard arguments. Should an officer be forced to lay down his charge suddenly, he shall, nevertheless write the judgments in such cases, and send them for pronouncement to his successor].

7. Persons employed for dictation of judgments.—Subordinate Courts should note that judgments are to be dictated only to persons employed for that express purpose or employed as copyist or candidates.

8. Not to be written in Court before disposal of cause list.—The practice of writing up judgments during the Court hours in the early part of the day is to be deprecated. Judgments may be written after the day's cause list has been completed.

9. Language.—Presiding Officers of Civil Courts**,** who are well acquainted with the English language, should write their judgments in English in appealable cases. When a Civil Judge writes his judgments in English, the decree should also be framed in the same language.

10. Translation in Urdu.— Whenever the judgment is written in the English language, and any of the parties to the suit or appeal, or, if they were represented by counsel their counsel are not acquainted with that language, the judgment must, if any of the parties so require, and unless it is the judgment of a Court of Small Causes, be translated into Urdu. The high Court has not thought it advisable to issue instructions as to when the judgment of a Subordinate Court shall be translated by the Presiding Officer and when other agency may be employed, as this is a matter which can be best settled by each District Judge for the Courts subordinate to him. District Judges are, however, requested to issue definite instructions on the subject. When the translation is not made by the Presiding Officer, he should always satisfy himself that it is correct.

11. Information of cancellation of registered instrument to be sent to registering officer.— It should be remembered that section 39 of the Specific Relief Act, 1877, requires that, when any registered instrument has been adjudged void or voidable, and the Court orders it to be delivered up and

cancelled, the Court shall send a copy of its decree to the officer in whose office the instrument was registered with a view to such office noting the fact or cancellation in his books.

12. Pronouncing judgment after death of a party.— In Order XXII, rule 6, it is provided that, if any party to a suit dies between the conclusion of the hearing and the pronounced, notwithstanding the death, and shall have the same force and effect as if it had been pronounced before the death took place.

13. Judgment not legibly written.— Judgments (when not typewritten) should always be written in a clear and legible hand. If they are not so written, such a copy should be made and placed on the record.

14. Civil powers to be disclosed in the record, judgment and decree.— Every Judicial Officer hearing or deciding a civil suit, proceeding or appeal, is responsible that the record and the final order of judgment and the decree in such civil suit, proceeding or appeal, shall disclose the civil powers which such officer exercised in hearing or decidng such suit, proceeding or appeal.

***[15. Civil Powers.**— The powers above referred to are the following;-

(a) Civil Judge, third class.
(b) Civil Judge, second class.
(c) Civil Judge, first class.
(d) Civil Judge invested with appellate powers under section 18(3) of the punjab Civil Courts Ordinance, 1962(II of 1962).
(e) Civil Judge invested with powers of a Court of Small Cause.
(f) Judge, Small Cause Court]

16. *[Omitted].**

***[17. Appellate powers.**— [Section 18(3) of the Punjab Civil Courts Ordinance, 1962(II of 1962) empowers the High Court to direct by Notification that the appeals lying to the District Judge from all or any of the decrees or orders passed in any original suit by any Civil Judge shall be referred to such other Civil Judge as may be mentioned in the Notification and the appeals shall

thereupon be preferred accordingly and the Court of such Civil judge shall be deemed to be the District Court for the purposes of all appeals so preferred.

By High Court Notification No. 170-Gaz/XXI.C.6, dated 16.5.1935, the then Senior Subordinate judges of First Class of 22 Districts of the then Punjab exercising jurisdiction within respective Civil Districts were invested with the powers to hear appeals lying in the District Courts from decrees or orders passed by any Subordinate Judge in a small cause of the valuation not exceeding Rs. 500/- and in an un-classed suit of the valuation not exceeding Rs. 100/-. The district of Dera Ghazi Khan was excluded from the said notification vide Notification No. 53-Gaz/XXI.C.6 dated 26.2.1940. The district of Dera Ghazi Khan was again included in the said Notification vide Notification No. 78-Gaz/XXI.C.6 dated 5.4.1966. The Senior Civil Judges of the districts of Bahawalpur., Bahawalnagar, and Rahim Yar Khan were invested with the same appellate powers vide Notification No. 138-Gaz/XXI. C. 6 dated 30.7.1963.]

18. *[Omitted].**

19. *[Omitted].**

PART B -- PREPARATION OF DECREES

1. Points to be borne in mind.-- The decree should be framed by the Judge with the most careful attention. It must agree with the judgment, and be not only complete in itself but also precise and definite in its terms. It should specify clearly and distinctly the nature and extent of the relief granted, and what each party, affected by it, is ordered to do or to forbear from doing. Every declaration of right made by it must be concise, yet accurate; every injunction, simple and plain.

2. Directions.-- The following directions relate to the preparation of decrees:-

(i) **Date for delivery of possession of land.--** In decrees for possession of agricultural land, it should be stated whether possession is to be given at once, or after the removal of any crop that may be standing on the land at the time, when the decree is executed, or on or after any specified date.

(ii) **Appellate decrees.--** In Appellate Courts, the language used in filling in the decretal order, shall conform to the action recognised by the law, and shall direct that the decree of the lower Courts be either "affirmed," "varied," "set aside" or "reversed." In each case in which a decree is affirmed the terms thereof shall be recited, so as to make the appellate decretal order complete in itself. In varying a decree, the relief granted, in lieu of that originally granted shall be fully and accurately set out. Where a decree is reversed on appeal, the consequential relief granted to the successful party shall similarly be stated. Every decretal order shall be so worded as to be capable of execution without reference to any other document, and so as to create no difficulty of interpretation.

3. Preliminary decrees.-- Under section 2 of the Code of Civil Procedure a decree may be either "preliminary" or "final". A preliminary decree should be based on a preliminary judgment.

4. Mesne profits.-- In cases where mesne profits are asked for in the plaint, the question as to the amount thereof (if any) which should be paid to the plaintiff, in respect to the period of dispossession before and up to the date of filing the plaint, must be determined at the hearing of the suit, and decree

must specify clearly the portion of this amount which each defendant is to pay, either severally or jointly with others, to the plaintiff (Order XX, Rule 12).

5. Decree in case of compromise.-- (1) When a decree is to be passed on the basis of a compromise, the Court should order the terms of the compromise to be recorded in accordance with the provisions of Order XXIII, rule 3, Civil Procedure Code, and then pass a decree in accordance with the terms. When, however, the compromise goes beyond the subject-matter of the suit, a decree can be passed only in so far as it relates to the suit. As regards the proper form of decree in the latter class of cases, the directions of their lordships of the Privy Council in 'Hemant Kumari Devi versus Midnapur Zamindari Company' (46 I.A. 240 and 244 I.L.R. 18 Cal. 485) should be followed.

(2) **Compromise by minors.--** When any of the parties to the case are minors, care should be taken to see whether the compromise is to their benefit and record a finding to that effect if the compromise is sanctioned and made the basis of a decree.

6. Addition or substitution of Parties.-- When any parties are added or substituted in the course of the suit, care should be taken to see that their names are properly shown in the decree-sheet.

7. Decrees in certain cases.-- As regards the proper form of decree in certain classes of suits, the provisions of Order XX and Order XXIV, Civil Procedure Code, should be consulted.

8. ***[Omitted].

9. Powers of Court to be set forth.-- Every decree must set forth the powers of the officer deciding the suit.

10. Pauper suits.-- In suits by `paupers,' when an order is passed under rules 10, 11 or 12 of Order XXXIII, a copy of the decree should be forthwith forwarded to the Collector.

11. ***[Omitted].

PART C -- DECREES IN PRE-EMPTION CASES

1. Decrees should be prepared immediately and specify the date of payment.-- Decree sheets in pre-emption suits should be prepared on the date on which the decree is passed. The decree should specify the date (it should not be a date on which the Court would be closed) by or on which the payment of pre-emption money is to be made.

It is the duty of the decree-holder to secure a copy of the decree and comply with its conditions.

2. ***[Omitted].

3. Contents of decree.-- The provisions of Order XX, Rule 14, Code of Civil Procedure, relating to the contents of the decree in a pre-emption suit, should be carefully studied. Sub-rule (2) relating to the adjudication of rival claims to pre-emption is new and requires special attention.

4. ***[Omitted].

PART D -- DECREES CONTRAVENING THE PROVISIONS OF THE PUNJAB LAND ALIENATION ACT

1. Copy to be sent to Collector.--Under section 21-A of the Punjab Land Alienation Act, every Civil Court, which passes a decree or order involving (1) the permanent alienation of his land by a member of an agricultural tribe or (2) the mortgage by a member of an agricultural tribe of his land, when the mortgagee is not a member of the same tribe or of a tribe in the same group, is required to send to the Deputy Commissioner a copy of such decree or order.

[1-A. Notification No.657-R dated 3rd April, 1953, has almost removed the distinction between an "agriculturist" and "non-agriculturist". The notification reads as under:-

No.657-R dated 3rd April, 1953. In exercise of the powers conferred by section 4 of the Punjab Alienation of Lands Act, 1900, as amended, and in supersession of all the notifications of the Punjab Government now in force in this behalf, the Governor of the Punjab is pleased to determine that for the purpose of the said Act, there shall be the following groups of Agricultural Tribes in the Punjab:

(1) All persons holding land as landlord or tenant or ordinarily residing anywhere in the Punjab except the Mianwali and Bhakkar Tehsils of the Mianwali and Bhakkar Districts respectively, the Kot Adu and Layyah Tehsils of the Muzaffargarh and Layyah District, Khushab Tehsil of the Shahpur District, shall be deemed to be a group of agricultural tribes.

(2) All persons holding land as landlord or tenant or ordinarily residing in the Mianwali and Bahakkar Tehsils of the Mianwali and Bhakkar Districts on the date of this notification shall be deemed to be a group of agricultural tribes.

(3) All persons holding as landlord or tenant or ordinarily residing in the Kot Adu and Layyah Tehsils of the Muzaffargarh and

Layyah Districts on the date of this Notification shall be deemed to be a group of agricultural tribes; and

(4) All persons holding land as landlord or tenant or ordinarily residing in the Khushab Tehsil of Shahpur District on the date of this notification shall be deemed to be a group of agricultural tribes.]

PART E -- AWARD OF COSTS IN CIVIL SUITS

1. General rule.—The general rule as to the award of costs in civil suits is that costs follow the event of the action; that is, the costs of the successful party are to be paid by the party who is unsuccessful.

2. When costs may be disallowed.— A wide discretion, however, is given to the Court to grant or withhold or apportion costs as it thinks fit. This discretion is to be exercised judiciously, e.g., ;-

Costs or a portion thereof may be disallowed to a successful pary and he may even be liable to be burdened with costs in the following cases;-

(a) Where a party has without just cause resorted to litigation.
(b) Where a party has raised an unsuccessful plea or answer to a plea(such as fraud, limitation, minority, etc.) without sufficient grounds.
(c) In cases mentioned in Order XXIV, rule 4, C.P.C. when a defendant deposits money in satisfaction of the claim.
(d) Whenever the demand, whether of debt or damages or property claimed, is excessive or is only successful to a small extent.
(e) In cases where notice to admit facts or documents has not been given (*See* Chapter I-F, paragraph 13 of this volume).

When notice to admit documents or facts has been given under Order XII, rules 2 and 4 of the Code of Civil Procedure to a party and it has withheld its admission without sufficient cause it must bear the costs incurred by the other party in providing the documents or facts whatever the result of the suit may be.

3. When costs shall be disallowed.—Costs shall be disallowed—

(a) in a suit or proceeding relating to a loan where the Court finds that the creditor has failed to regularly record and maintain an account as required by section 3 (1) (a) of the Punjab Regulation of Accounts Act, 1930. (See section 4 of the Act);
(b) when a creditor sues for recovery of a debt in respect of which a cerfificate has been granted by the Debt Conciliation Board----(vide section 20(2) of the Punjab Relief of Indebtedness Act of 1934); and
(c) as against a minor or a person of unsound mind, where such a person has not been represented by a next friend or guardian.

(Order XXXII, rules 2, 5(2) and 15 of the Civil Procedure Code.) In such cases pleaders may under certain circumstances be made personally liable for costs.

4. Reasons for disallowing costs to be recorded.—Whenever the Court orders that costs shall not follow the event, it must record its reasons. (Section 35(2), civil Procedure Code).

5. Costs of applications.—In disposing of applications made under the Civil Procedure Code the Court may award costs at once to either party or may postpone its consideration to a later stage.

6. Expenses included in costs.-- The Code of Civil Procedure is silent as to what expenses are to be considered, as included in the term "costs."

Such expenses ordinarily fall under the following heads;-

(a) Court-fee stamps on all necessary petitions.
(b) Process-fees.
(c) Expenses of proving and filing copies of necessary documents.
(d) Pleader's fees.
(e) Charges incurred in procuring the attendance of witnesses, whether such witnesses were summoned through the Court or not.
(f) Expenses of Arbitrators and Commissioners.

Pleader's fees are regulated by the rules contained in chapter 16 of this Volume—"Legal Practioner."

Note:- Charges incurred on inspection of records (for one inspection only may be included in costs).

***[7. Compensatory costs for false or vexatious claims or pleas.—**

The provision of section 35-A, Civil Procedure Code, 1908, is to be applied with utmost care and discrimination. The Court must satisfy itself and record in writing its reasons that there are definite grounds for believing that the claim or plea is false or vexatious to the knowledge of the party by whom it has been put forward. Mere failure to prove the pleas or claims is not sufficient.

Under the powers conferred by sub-section (2) of section 35-A, Code of Civil Procedure, 1908, the High Court has directed that the amount, which any

Court or class of Courts is empowered to award as costs by way of compensation, shall be limited as follows;-

(a) Court of Civil Judges 3rd Class- Rs. 1000/-
(b) Court of Civil Judge 2nd Class- Rs. 2500/-
(c) Court of Civil Judge First Class shall be guided by the provision of sub-section(2) of section 35-A of the Code.]

PART F -- AWARD OF INTEREST IN CIVIL SUITS

1. [*][Provision in Act XXVIII of 1855.-- The law relating to interest should be carefully studied, particularly the following enactments:-

(a) Punjab Relief of Indebtedness Ordinance, 1960 (XV of 1960);

(b) Punjab Money-lenders Ordinance, 1960 (XXIV of 1960);

(c) Code of Civil Procedure, 1908 [*][sections 34, 34-A, 34-B and 35(3)];

(d) The Contract Act, 1872 (IX of 1872). (section 74);

(e) The Punjab Usurious Loans Ordinance, 1959 (XVIII of 1959)].

2. [***][Omitted].

3. Future interest.-- Section 34 of the Code of Civil Procedure enacts that where and in so far as a suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit; with further interest on the aggregate sum so adjudged from the date of the decree to the date of payment. It will be observed that by this section, a discretion is given in respect of two periods of time; viz., from the date of the suit to the date of the decree, and from the date of the decree to the date of payment.

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

3-B. Where the Court is of the opinion that the recovery of any public dues from the plaintiff was unjustified, the Court may, while disposing of the suit, make an order for payment of interest on the amount recovered at the rate of two per cent, per annum, above the prevailing bank rate.]

4. Interest on costs.-- Section 35(3) of the Code of Civil Procedure also empowers the Court to give interest on costs at any rate not exceeding six per centum per annum.

5. Future interest.-- In awarding interest subsequent to the date of the decree, the Courts, in the exercise of the discretion, which the law has conferred, should not ordinarily award a rate of interest approaching in amount that which may be obtainable in common dealings by persons who have not the security of a decree of Court to enforce payment. No inducement should be given to decree-holders to allow their decrees to remain unexecuted. The practice of the High Court, in ordinary cases, is not to award interest after decree at a higher rate than six per centum per annum

6. Penal interest.-- The plea is often raised that the "interest" claimed is "penal". Courts should be careful to distinguish between high or excessive interest and "penal" interest. The mere fact that the rate of interest is high or that compound interest is charged is, by itself, no justification under the Contract Act for its reduction unless some other ground such as coercion, undue influence, etc, is established (see 101 and 124 P.R. 1918, P.C.). There is no definition of "Penalty" given in the Contract Act but its nature is indicated in section 74 of that Act. It would appear from that section that if a sum is named in a contract as the amount to be paid in the event of a breach of the contract or where there is any other stipulation in the contract making a person liable for an extra sum (e.g., in the shape of interest), for which he would not have been otherwise liable, the stipulation is to be considered penal. According to section 74 of the Contract Act, in such cases, the person entitled to claim advantage of the penal clause can recover only such reasonable compensation not exceeding the penalty, as the Court may think it fit to award, and cannot legally enforce the payment of the "Penalty" as such.

7. Penal interest.-- The question, whether a particular stipulation is or is not "Penal" is to be determined by the Court on the facts of each case. It has been held generally that a stipulation, which imposes a higher rate of interest in the event of a breach of the contract with retrospective effect from the date of contract, is "Penal" (e.f. 99 P.R. 1894).

8. Effect of Usurious Loans Ordinance.-- *[The Punjab Usurious Loans Ordinance, 1959,] gives wider powers to Courts to interfere on equitable grounds in order to do justice between the parties when it is found that inter alia the transaction was, as between the parties thereto, substantially unfair (vide

section 4 of the Act). In such cases the Act empowers the Court to re-open past transactions and relieve the debtor from liability in respect of excessive interest, etc. Attention is invited in this connection to I.L.R. VIII Lah. 205. The provisions of the Ordinance should be carefully studied and used in proper cases coming within its purview.

*[**9. Changes made by Punjab Relief of Indebtedness Ordinance.--** The Court can grant relief in any suit to which the Punjab Usurious Loans Ordinance, 1959, applies where the interest is excessive or the transaction, as between the parties, was substantially unfair. The Court, according to the wording of section 4 of the Punjab Usurious Loans Ordinance, 1959 shall exercise all or any of the powers specified therein. The Ordinance further prescribes the maximum rate of interest beyond which the Court shall deem interest to be excessive.

The maximum limit--

(a) for secured loans, shall be -

(i) 7.5% per annum simple interest, or

(ii) more than two per cent over the bank rate,

whichever is higher at the time of taking the loan; and

(b) for unsecured loans, shall be--

12.5% per annum simple interest.]

10. Rule of Damdupat.-- Except in the case of a loan advanced by a registered Bank or by a company the rule of Damdupat has now been made applicable to the Punjab by section 30 of the Punjab Relief of Indebtedness Act, 1934, in suits brought against a "debtor" as defined in section 7 of the Act.

(a) If the loan was borrowed after the commencement of this Act, the Court cannot pass a decree for a sum larger than twice the amount advanced as principal.

(b) If the loan was contracted before, the Court cannot grant a decree for a sum larger than twice the amount which the Court finds to have been due at the commencement of the Act.

[10-A. Non-applicability of provisions of rule 10.--** (1) The provisions contained in paragraph 10 are not applicable to the loans advanced by any bank which is a scheduled Bank as defined by State Bank of Pakistan or any

banking company registered under Companies Ordinance, 1984, or any co-operative society duly Registered under any law for the time being in force or credit institution to be notified by the Government in this behalf.

(2) No Court can pass or execute a decree or give effect to an award in respect of debt for a larger sum than twice the amount of the sum found by the Court to have been actually advanced less any amount already received by the creditor. (See section 3 of the Punjab Relief of Indebtedness Ordinance, 1960)].

11. ***[Omitted].

12. ***[Omitted].

13. Interest disallowed if accounts not maintained.-- If the Court finds, that the accounts have not been maintained as prescribed, it must disallow the whole or a portion of the interest found due as it thinks fit, and also disallow costs.

14. Interest disallowed if accounts not furnished.-- If the accounts have been maintained but not furnished to the debtor as prescribed, the Court must disallow interest for the whole period for which the creditor failed to furnish the accounts unless the creditor actually furnished the accounts after the time prescribed and can satisfy the Court that he had some sufficient cause for not furnishing them earlier.

**[(See Section 15 of the Punjab Money Lenders Ordinance, 1960 (XXIV of 1960)].

15. Interest permissible in case of certificate by Debt Conciliation Board.-- It should also be noted that where any creditor sues in a Civil Court for the recovery of debt in respect of which a Debt Conciliation Board had granted a certificate under section 20 (1) of the Punjab Relief of Indebtedness Act, 1934, the Court cannot allow any costs or interest after the date of certification in excess of simple interest at six per centum per annum on the amount due on the date of such certificate.

16. ***[Omitted.]

CHAPTER 12
EXECUTION OF DECREES

PART A -- GENERAL

1. [*][References.-- The law relating to execution of decree is to be found in section 36 to 56, 58, 60 to 74, 82 and 135 and Order XXI of the Code of Civil Procedure as amended by the Lahore High Court (vide Chapter 22 of this Volume). These provisions should be carefully studied and strictly followed. The changes introduced by the Punjab Relief of Indebtedness Act 1934 (VII of 1934), the Punjab Relief of Indebtedness Ordinance, 1960 (XV of 1960) and the Punjab Debtors Protection Act, 1936 (II of 1936) also require careful consideration.]

2. Special day to be reserved for execution work.-- Execution of decrees should receive the same attention from the Courts as original civil work and should be methodically and regularly dealt with, as promptly as possible. Where parties have to be heard or evidence recorded in the course of execution proceedings, notice should be given, processes issued and dates fixed as in the case of original suits. As a rule one day during the week should be reserved for execution work so as to ensure proper attention being paid to it; sometimes two days are necessary. District Judges are responsible for seeing that proper arrangements are made for execution work by all Courts subordinate to them.

3. All orders to be recorded by the Judge in his own hand.-- All orders passed in execution proceedings shall be carefully and distinctly put on record, and, with the exception of purely formal orders, -- which, however, must be signed by the Presiding Officer of the Court, -- shall be recorded by the presiding Judge with his own hand.

4. Distribution of execution work by District Judges.-- District Judges should record standing orders regulating the distribution of applications for the execution of decrees among the Courts subordinate to them, providing for the disposal of cases in which decrees were passed by officers who have ceased to be attached to the district, and for carrying on the execution proceedings already pending before such officers at the time of their ceasing to

be employed therein. In framing such orders, every Court should be required, as far as possible, to execute all decrees passed by itself; but, where this is not possible and it is necessary to send the decree to another Court for execution, care should be taken to see that the decree is not in excess of that Court's limits of pecuniary jurisdiction as an Original Court, as by section 39 (2) Code of Civil Procedure the pecuniary jurisdiction of a Court in execution proceedings is limited to the amount of its pecuniary jurisdiction as an Original Court.

5. District Judge to see that execution work is not neglected in lower Courts.-- Close supervision and control should be exercised by District Judges over the execution of decree business pending in all Courts subordinate to them; and where any officer is found habitually to neglect this branch of work or to dispose of it in a perfunctory manner, he should be reported to the High Court.

6. Application for stay of execution.-- All applications for stay of execution should be treated as urgent.

7. Presiding Officer to see that money realised on warrants has been accounted for.-- To prevent defalcation, Presiding Officer should, while hearing execution applications, verify by personal inspection of previous warrants issued by him that any money previously realised by the execution bailiff or process-server has been duly accounted for in the Nazirs account or otherwise disposed of through those accounts.

PART B -- COURTS COMPETENT TO EXECUTE DECREES

1. Courts competent to execute.-- Section 37 to 39 of the Code of Civil Procedure define the Courts by which a decree may be executed. A decree may be executed by "the Court which passed it", or by any Court to which it is transferred for execution. It should be noted that the expression 'Court which passed a decree' has been defined in section 37 so as to include certain Courts other than the Court which actually passed the decree.

2. Transfer of decree, fees for preparation of necessary documents.-- When a decree is transferred by the Court which passed it to another Court for execution, the documents mentioned in Order XXI, Rule 6, must be sent to the latter Court. The work in connection with the preparation of these documents should be done by Court officials holding permanent appointments, on payment in the first instance, by the person applying for the transfer of the decree, of a fee of Re. 1. The amount so recovered shall be credited to Government under the head ["1230000 -- Law & Order Receipts, 1231000 -- Justice, 1231003 -- Justice-General Fees. Fines & Forfeitures (74)".]

A decree-holder, however, may, at his option, file with his application a copy of his decree duly stamped in accordance with Article 7 of Schedule I to the Court-fees Act VII of 1870, and when he does so, he shall be exempted from the fee of Re. 1 prescribed in this paragraph, the remaining documents being prepared by the officials of the Court without further payment by the decree-holder.

2-A. Execution pending receipt of order of transfer of decree.-- A provision has been made in Order XXI, Rule 10, Civil Procedure Code, as amended by the Lahore High Court, to enable the decree-holder to apply for immediate execution through the Court within whose jurisdiction the judgment-debtor, is, by producing merely the decree and an affidavit of non-satisfaction pending the receipt of a formal order of transfer under section 39, Civil Procedure Code.

3. Channel of transmission of decrees transferred.-- Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, the Court passing the decree, shall

send the same *directly* to the former Court. But, where the former Court is situate in a different district the Court, which passed the decree, shall send it to the *District Court,* of the district in which the decree is to be executed. (Order XXI, Rule 5 of the Code).

4. Execution of transferred decree.-- Under Order XXI, Rule 8 of Code of Civil Procedure, 1908, a decree sent under the provisions of section 39 for execution to another district may be executed either by the District Court to which it is sent, or by any Subordinate Court of competent jurisdiction to which the District Court may refer it, and under section 42, C.P.C. the Court executing the decree has the same powers of execution as if the decree had been passed by itself. The execution files of such cases should remain with the record of the Court by which the decree is executed, and should not be returned to the Court by which the decree was passed.

5. Amount realised on transfer of decrees to be certified and noted.-- A certificate showing the extent to which the decree has been executed is required, by section 41 of the Code of Civil Procedure, 1908, to be sent to the Court which passed the decree, as to execution so certified, and the particulars should be entered in that Court's register of Civil suits under the head `Return of Execution' in order to prevent a double execution being taken out in any other district.

6. Register of decrees transferred and decrees received by transfer.-- As a further safeguard, and to ensure due compliance with the provisions of Order XXI, Rule 6 of the Code of Civil Procedure, 1908, a register should be maintained in each district showing the decrees transferred to other Courts for execution, and those received from other Courts. The register should be in two parts and in the form prescribed; one part of the register should be reserved for decrees transferred to other Courts, and the other half for decrees received from other Courts.

PART C -- POWERS OF EXECUTING COURTS

1. Mode of execution Receivers.-- The various modes in which execution of a decree may the ordered are given in section 51 of the Code as follows:--

(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 of the judgment-debtor.

(d) By appointment of a Receiver; or

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

In most cases, the methods specified in (a), (b) and (c) alone are resorted to and are found adequate. The appointment of a Receiver may be tried where the value of the property is sufficient to bear the cost and where such appointment is expected to be conducive to harmonious relations between the judgment-debtor and the decree-holder and to provide for the discharge of the decree in a satisfactory manner.

1-A. Execution of a decree for delivery of property.-- When it is sought to enforce a decree in Clause (b) by attachment of the judgment-debtor's property, it should be noted that the period of six months prescribed by Rule 31, sub-rule (2) of Order XXI, Civil Procedure Code, for the sale of the property has been reduced to three months by the Lahore High Court.

The Court is empowered, however, to extend this period up to six months in any special case.

The period of six months mentioned in Order XXI, Rule 32 Civil Procedure Code, has also been reduced to three.

2. Power of executing Court to question the validity of the decree.-- An executing Court cannot go behind the decree or question the jurisdiction of the Court which passed it (22 P.R. 1919, I.L.R., V. Lah. 54). Its function is to execute the decree as it stands. It may, however, refer to the judgment to ascertain its meaning when the terms of the decree are ambiguous.

3. Power of executing Court to decide question arising in execution.-- Section 47 of the Code of Civil Procedure confers wide powers on

the executing Court to decide 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. Such questions must be decided by the executing Court and no separate suit is maintainable for the purpose.

*[An order under rules 60, 98, 99, 101 and 103 of Order XXI Civil Procedure Code is to be deemed to be a decree and is, therefore, appealable.]

4. Execution of decree pending appeal.-- The filing of an appeal from a decree, is by itself no bar to its execution, and execution may proceed unless it is stayed by an order of the Appellate Court or the Court which passed the decree (*vide* Order XLI, Rules 5 and 6). It should be noted, however, that when an order is made for the sale of immovable property during the pendency of the appeal, and the judgment-debtor applies for stay of the sale, the Court ordering the sale is bound to stay it, though it can impose such terms as to security or otherwise as it thinks fit *[Order XLI, Rule 6(2)].

5. Security when execution is stayed.-- When a stay of execution is granted under Order XXI, Rule 26, Civil Procedure Code, the rule, as amended by the Lahore High Court, makes it compulsory for the Court to require security or impose such conditions as it thinks fit unless sufficient cause is shown to the contrary.

PART D -- PAYMENT INTO COURT AND CERTIFICATION OF PAYMENTS OUT OF COURT

1. Payment or adjustment need not be certified.-- Order XXI, Rule 2(1) provides that, where money is paid or a decree is adjusted out of Court, the creditor shall certify the payment. Rule 2(2) provides that the judgment debtor may do so. Rule 2(3) provides that a payment or adjustment, which has not been certified, shall not be recognised by the executing Court.

***[Omitted].

2. Application to deposit decretal amount requires no stamp and no talbana required for notice to decree-holder.-- No stamp duty shall be levied on an application by a judgment-debtor to deposit money under a decree of Court, and no *talbana* for the issue of the notice to be given to the decree-holder under Order XXI, Rule 1(2) of the Code of Civil Procedure, should be recovered. The decree-holder should be informed of any payment made by service post-card. The deposit money should be disposed of in accordance with Article 247 of the Civil Account Code, Volume I and paragraph 161 of the Punjab Treasury Manual.

3. Payment by money order special form.-- Under the "Explanation" to sub-rule (i) of Rule 1 Order XXI, of the First Schedule to the Civil Procedure Code, a judgment-debtor may, if he so desires, pay the decretal amount or any part thereof, into the Court by money order on a form which has been specially approved by the High Court. The form to be used is Pakistan Money Order form No. L./M.O. 6 prescribed by the Postal authorities and can be obtained from all Post Offices.

PART E -- PROCEDURE ON APPLICATION FOR EXECUTION

1. Form and contents.-- An application for execution must be in writing except when an oral application is made under Order XXI, Rule 11 (*i*). Upon an application for execution being filed, the Court shall scrutinize it to see that all the requirements of Order XXI, Rules 11 (2), 12, 13 and 14 of the Code of Civil Procedure, 1908, have been duly complied with. The application should state distinctly the mode in which the assistance of the Court is sought and the proceedings should be confined to that mode, unless any amendment has been allowed. When an application is for the attachment of immovable property, special care shall be taken that the specification and verification required by Order XXI, Rule 13, of the Code have been furnished. The Court may also require the applicant to produce the authenticated extract mentioned in Order XXI, Rule 14, when the property is land registered in the Collector's office.

*[**2. Limitation.--** The law of limitation, as regards applications for execution, found in Article 181 of the First Schedule of the Limitation Act, 1908 (IX of 1908) and section 48 of the Code of Civil Procedure, 1908 (V of 1908), needs careful attention. An application for execution must be filed within three years of the date of the final decree but no order for execution of a decree can be passed if an application presented more than six years after certain dates specified in section 48 of the Code of Civil Procedure. This section only bars execution for a specified time but the rights of the decree-holder in other respects are not affected. Section 48 of the Code lays down a maximum period of limitation after the expiry of which it is not open to a decree-holder to make a fresh application for the execution of the decree. The presentation of fresh application for the execution of the decree is prohibited but the Court can make order in execution proceedings which have been presented before the expiry of such period even after the expiry of the period of six years.

By section 11 of the Punjab Debtors Protection Act, 1936, the period of limitation is also six years in certain cases specified therein.]

2-A. Restrictions placed by Punjab Relief of Indebtedness Act.-- The restrictions imposed by section 21 (*b*) of the Punjab Relief of Indebtedness Act, 1934, on the power of a Civil Court to execute its decrees in certain

circumstances should be carefully noted. The decrees passed by a Civil Court in certain cases cannot be executed during the period provided for payment in an agreement authenticated by a Debt Conciliation Board under section 17 of the Act and for a further period of six months thereafter. The restriction applies only to decrees passed in suits brought--

(i) by an unsecured creditor for the recovery of debt in respect of which a certificate has been granted by the Board under section 20 (1) of the Act, or

(ii) by any creditor for the recovery of a debt incurred after the date of agreement made under section 17 of the Act.

3. Admission and further proceeding.-- When the application for execution is in order, or has been amended under Order XXI, Rule 7, of the Code of Civil Procedure, 1908, and is within time, the Court shall proceed as directed in Order XXI, Rule 17 (4), and shall cause the application to be entered in the proper register. A copy of the decree need not be filed when execution is taken out in the Court by which the decree was passed. If in any case it is not possible to verify the correctness of the application from the Court register, the original decree should be sent for and examined by the Court.

3-A. Amendment.-- It should be noted that according to Order XXI, Rule 17 (1) Civil Procedure Code, the Court can either reject the application if it is not in order or allow the defect to be remedied. The Lahore High Court has amended this rule so as to make it compulsory for the Court to fix a time within which the defect shall be remedied.

4. Duty of Court to ascertain the amount due.-- Whenever, on an application for the execution of a decree, or whenever, in the course of execution proceedings, it is necessary to ascertain the amount of money which is or which remains due under the decree, the judicial officer should form his own conclusion on the matter therefrom. He should not rely on mere *kaifyats* or office notes made by ministerial officers.

5. Several Decree holders.-- When an application is made to a Judicial Officer, under Order XXI, Rule 15, of the Code of Civil Procedure for the execution of the whole decree by one or more persons not being all the persons in whose favour the decree appears to be, he should cause notice thereof to be given to the remaining decree-holders or their representatives, and he

ought not to grant the application unless, after all these parties have had an opportunity of being heard, he is satisfied that there is good reason for the application.

6. Several decree-holders.-- Where the decree is *severally* in favour of more persons than one, specifying what each is entitled to, there may be applications for partial execution. But where the decree is *jointly* in favour of more persons than one, the application must be for the execution of the entire decree, so far as it remains unexecuted or unsatisfied, and if the application is for execution of a fraction or a proportionate part of the decree only, it should be refused.

7. Transferee.-- When an application for the execution of a decree is made, under the provisions of Order XXI, rule 16, of the Code of Civil Procedure, by a person claiming to be entitled to the benefit of the decree in consequence of a transfer of the same to him from the original decree-holder by an assignment in writing, the Court must cause notice of the application to be given to the transferor, and it cannot grant the application unless it is satisfied after the transferor has had an opportunity of being heard that the transfer has in fact been effected.

In cases in which the Court grants the application, it should record its reasons for so doing and make an order that thenceforward the name of the applicant shall stand on the record as decree-holder instead of that of the original decree-holder.

8. Notice to judgment debtor.-- When an application is made more than two years after the date of the decree or against the legal representatives of a party to the decree, the Court must first issue a notice to the person against whom execution is applied for requiring him to show cause why the decree should not be executed against him, unless the case falls within the proviso to sub-rule (1) of Rule 22 of Order XXI, or the Court dispenses with the notice under sub-rule (2) of the same Rule in which latter case the failure to record any reasons is now deemed to be only an irregularity not amounting to a defect in jurisdiction (*vide* the rule as amended by the Lahore High Court).

9. Attention to service of process.-- Attention is invited to the provisions of Order XXI, Rules 24 and 25, regarding process for execution.

Rule 24 requires that in every case a day shall be specified on or before which the process is to be executed. Rule 25 makes it incumbent on the Court to examine the officer entrusted with the execution, when the process is not duly executed, to satisfy itself as regards the reasons for its non-execution and to record the result of its inquiry. If the Courts make careful inquiry in such cases and do not blindly accept the reports on the processes, the percentage of infructuous applications will appreciably diminish.

9-A. Address for service.-- It should be noted that according to Order XXI, Rule 104, Civil Procedure Code, as framed by the Lahore High Court, service on any party shall be deemed to be sufficient in execution proceedings if it is effected at the address for service referred to in Order VIII, Rule 11, Civil Procedure Code, subject to the provisions of Order VII, Rule 24, Civil Procedure Code. This rule, however, does not apply to notices prescribed by Order XXI, Rule 22, Civil Procedure Code, to show cause against execution in certain cases.

10. Period of Pendency.-- Execution proceedings will, for statistical purposes, be considered as only pending for the period during which something is being done towards execution. If the decree-holder has realized his instalment, or obtained the satisfaction asked for in the application for execution, the case should be struck off, even though a portion of the decree still remains unexecuted. Similarly, the case should be dismissed if the applicant for execution does not take necessary steps to prosecute his application. The Court should record its reasons for the action taken in such cases.

11. Attachment of moneys due to judgment-debtors.-- A case in which the judgment-creditor prays for a prohibitory order for the attachment of moneys due to the judgment-debtor (whether as a moiety of his salary or otherwise), should be dismissed as soon as the prohibitory order has been duly served and the file should be sent to the Civil Nazir. The subsequent realisation of the moneys concerned forms part of the ministerial duties of the Civil Nazir. If, for any reason, such realisation is not promptly and satisfactorily effected, the judgment-creditor can ask the Court to take necessary action.

PART F -- EXECUTION BY ARREST AND IMPRISONMENT

1. [***][Omitted].

2. [***][Omitted].

[*]**[3. Present law of arrest.--** No Judgment-debtor, as defined in Section 2(c) of the Punjab Relief of Indebtedness Ordinance, 1960, (XV of 1960) shall be arrested in execution of a decree for money (Section 5 of Ordinance XV of 1960). These changes should be carefully studied and followed.]

4. Judgment-debtor should be asked whether he wants to be declared insolvent.-- A judgment-debtor against whom no act of bad faith is proved can obtain his discharge as an insolvent under Act V of 1920; whenever a judgment-debtor is to be committed to jail, he should be informed that he may apply to be declared insolvent (Section 55 (3) of the Code).

5. [***][Omitted].

6. Arrest during vacation.-- Warrants of arrest should be held in suspense during the [*][August] Vacation.

PART G -- EXECUTION OF DECREES FOR THE DELIVERY OF IMMOVABLE PROPERTY

The steps to be taken, under Order XXI, Rules 35 and 36 of the Code of Civil Procedure, 1908, in the case of the delivery of immovable property are as follows:-

(a) **When the property is in possession of a person who is bound by the decree or who holds-possession on behalf of one who is so bound.--** *First,* where a decree is for delivery of immovable property, if such property is in the possession of any person bound by the decree, such person may be called upon to vacate the property in order that possession may be delivered to the person to whom it has been adjudged, or his agent; and if he refuses to do so he may be removed from the property in order to effect such delivery of possession. Here the endorsement on the warrant should state that the property was found in the possession of A (naming the person), and that he was one of the persons bound by the decree or held on behalf of one of those persons (naming the persons); that he was required to vacate the property, and that, on his doing so, the person entitled under the decree was put in possession; or that, on his refusal to do so, he was removed from the property, and the person entitled under the decree was put in possession.

(b) **Decree for joint possession.--** *Secondly*, where a decree is for joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming by beat of drum at some convenient place the substance of the decree. Here the endorsement on the warrant should state on what part of the property the copy of the process was affixed, and at what place the substance of decree was proclaimed.

(c) **Obtaining access to deliver possession.--** *Thirdly*, where possession of any building or enclosure is to be delivered, and the person in possession, being bound by the decree, does not afford

free access, the officers of the Court may (after giving reasonable warning and facility to any woman, not appearing in public according to custom, 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.

Here the endorsement should describe briefly the action taken, as in paragraph (a) above.

(d) **When property is in possession of a person who is not bound by the decree.--** *Fourthly*, if the property is in the occupancy of a tenant or other person entitled to occupy it and not bound by the decree to relinquish such occupancy, a copy of the warrant must be affixed in some conspicuous place on the property, and proclamation made as provided in Order XXI, Rule 36 of the Code. Here the endorsement should state that a copy of the warrant had been put up (stating where it was affixed), and that the substance of the decree had been proclaimed.

Before issuing a warrant for the delivery of immovable property, the Court should ascertain from the decree-holder, or his agent, the name of the person whom he believes to be in possession of such property to guide it in selecting the particular mode of delivery suitable to the case.

When a decree is passed giving possession of agricultural land, the date on which possession is to be delivered should always be specified in the decree, and orders passed as to any standing crops that may be on the land. If this has not been done in the decree, it should be done in the order which is sent to the Collector by the Court executing the decree. If, however, no date is specified in either the decree or the order, and the land of which possession is to be delivered is in the cultivating possession of the judgment-debtor, the Collector should at once refer to the Civil Court for instructions as to whether or not he is to delay execution of the decree, until any crop which may have been sown by the judgment-debtor and is standing on the land, has been removed.

PART H -- ATTACHMENT

1. Attachment of standing crops, trees and salary.-- The law as to attachment is contained in sections 60-64 and Order XXI, Rules 41-57, Civil Procedure Code, and Section *[170, Punjab Land Revenue Act, 1967(XVII of 1967).]

The changes made in Rules 53 and 54 by the Lahore High Court (vide Chapter *[22] should be noted as also the fact that in the Punjab standing crops, excepting cotton and sugarcane, are not now liable to attachment or sale in execution of a decree. Standing trees (apart from land) are also exempt from sale (vide section 10 of the Punjab Debtor's Protection Act).

Attention is drawn to Act IX of 1937 amending Section 60, Civil Procedure Code, which provides that the salary of any public officer or of any servant of a Railway Company or local authority shall be exempt from attachment to the extent of the first hundred rupees and one-half the remainder of such salary in respect of any proceedings arising out of any suit instituted on or after the Ist June, 1937. Attachment orders should contain the information whether the suit was filed before or after the Ist June, 1937.

2. Mode of attachment of immovable property.-- The mode of attaching immovable property is by issuing a prohibitory order to the judgment-debtor and to the public generally (Order XXI, Rule 54). When the property is land paying revenue to Government, three copies of the prohibitory order shall be prepared. In the case of other immovable property, only two copies are necessary. The details given in the schedule annexed to the order shall be identical with those given in the schedule of the property given in the warrant. Strict compliance with provisions of law is necessary to make the attachment valid.

3. Mode of attachment of immovable property.-- The warrant, together with the requisite copies of the prohibitory order, shall be delivered to the Nazir, who will himself, or through his subordinates, fix up the copies and proclaim the order, in accordance with the directions given in the warrant. The Nazir will personally make upon the warrant the endorsement required by law, and return it duly endorsed within the specified time to the Court. Any person deputed by the Nazir, who performs any of the acts constituting the attachment,

shall submit a separate return stating the manner in which, and the day and hour at which, he did such act. This return will be attached by the Nazir to the warrant.

4. Attention to compliance with legal formalities.-- The attention of all civil courts is drawn to the necessity of making it a point to scrutinize the service of warrants of attachment before they take further action with regard to the sale or temporary alienation of the property attached. The attachment of land and houses requires particular care and the court should thoroughly satisfy itself that all the formalities, necessary for a legal attachment, have been complied with. Failure to comply with these legal formalities may constitute material irregularity within the meaning of Order XXI, Rule 90, Code of Civil Procedure, and may cause very serious trouble and loss to the parties later on. It should be noted that a copy of the attachment order is first to be affixed on the property and then upon the Court house. All Courts will, therefore, require the Reader to record a note on the warrant of attachment or on file, that the specific formalities, required by law in the case, have been actually compiled with. The Presiding Officer will carefully scrutinize such note and initial in token of its correctness.

5. Warrant of attachment of land. Drum-beating charges.-- Where the order is for the attachment of land, the warrant should, in accordance with the provisions of Section *[170] of the *[Punjab Land Revenue Act, 1967 (XVII of 1967)], be addressed to the Collector and be sent to him for execution along with the necessary copies of the prohibitory-order. The Collector and his office will then be responsible for executing it in accordance with the specified legal formalities and to affix necessary prohibitory-orders, first on the property and then on the Court-house of the Judge, issuing the attachment, and in his own office. The collector will return the warrant to the Court concerned when it has been duly executed, with an endorsement under his signature certifying that all the legal formalities required have actually been complied with and the Court will, thereafter, proceed as directed in paragraph 4 above.

*[Payment of drum-beating charges may be allowed to be made at the discretion of the District Judge.]

6. Precept.-- Upon the application by a decree-holder, the Court which passes a decree may issue a precept to another Court to attach the judgment-debtor's property, when this course is convenient, provided that the Court to which the precept is issued is competent to execute the decree (see Section 46, Code of Civil Procedure).

7. Effect of dismissal of execution petition.-- It should be noted that on the dismissal of an execution petition, `attachment' automatically comes to an end (see Order XXI, Rule 57).

8. The Central Government has issued the following notification under section 60 (1) (l) of the Civil Procedure Code :-

The 2nd October 1940.

No. 186/37.- In pursuance of clause (*l*) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government is pleased to declare that the following allowances payable to any public officer in the service of the said Government, or any servant of a Federal Railway or of a Cantonment authority or of the port authority of a major port, shall be exempt from attachment by order of a Court, namely:-

(1) All kinds of travelling allowances.

(2) All kinds of conveyance allowances.

(3) All allowances granted for meeting the cost of --

(a) uniforms, and

(b) rations.

(4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.

(5) All house-rent allowances.

9. The Punjab Government has issued the following notification under clause (l) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure:-

HOME DEPARTMENT JUDICIAL

The 5th January 1943.

No. 8298-J-42/489-In exercise of the powers conferred by clause (l) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the Governor of the Punjab is pleased to declare that the "Dearness allowance" payable to any public officer serving His Majesty in connection with the affairs of the Province shall be exempt from attachment in execution of a decree.

PART J -- OBJECTIONS TO ATTACHMENT

*[**1. Summary Procedure.--** Investigation of objections to attachment of property under Order XXI Rule 58, Code of Civil Procedure, 1908, should be confined to the points indicated in Rules 59, 60 and 62 of the said Order. It is to be remembered that the order passed under Rule 60 is now to be treated as a decree and is appealable and no separate suit lies to establish right, title or interest claimed in the attached property.

2. Power to dismiss objections without trial.-- (1) The amendment made in Rule 58 of Order XXI of the Code of Civil Procedure, 1908 (V of 1908), should be carefully noted and followed.....Where any claim is preferred 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 is to investigate the claim or objection treating the same as if it was a suit and the claimant was party to it as now under Rule 62 of Order XXI Code of Civil Procedure an independent suit is barred. The Court will, however, not make any investigation where it appears to it that the claim or objection (whether made before or after the sale) has been designedly or unreasonably delayed or was not made within reasonable time or within one year of the date of first attachment of the said property in the execution of said decree, whichever is earlier, unless the claimant or objector-

(a) proves title acquired in good faith and for consideration subsequent to the date of the first attachment;

(b) proves that his predecessor-in-interest, whether his interest existed at the time of such attachment or was acquired thereafter, fraudulently omitted to make a claim or objection; and

(c) impleads all such predecessors-in-interest.

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

3. Objection by Parties.-- Order XXI, Rule 58, deals with claims by third persons. Objections by parties to execution proceedings as such or their representatives fall within the scope of Section 47 of the Code. Such objections must be decided in the execution proceedings, as a regular suit for the purpose is barred by the provisions of Section 47.

PART K -- CUSTODY AND DISPOSAL OF MOVABLE PROPERTY PENDING SALE

1. References.-- Rules relating to the custody and disposal of movable property (other than agricultural produce) attached pending sale, are contained in Rules 43 to 43-D of Order XXI of the First Schedule to the Code of Civil Procedure (Act V of 1908), as modified or added by the High Court which are reproduced below for facility of reference:-

Code of Civil Procedure, First Schedule
(RULES MADE BY THE HIGH COURT UNDER SECTION 122, OF THE CODE)
Order XXI, Rules 43 to 43-D

43. Attachment of movable property other than agricultural produce in possession of judgment-debtor.-- (1) Where the property to be attached is moveable property other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

When property may be sold at once.-- 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

Livestock and other articles which cannot be conveniently removed: Superdar.-- Provided also that, when the property attached consists of livestock, 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. 15-A 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, or

(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.15-B of Appendix E with one or more sureties for its production.

(2) **Restitution.--** Whenever an attachment made under the provisions of this Rule ceases for any of the reasons specified in Rules 55, 57 or 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) **Schedule of property.--** When property is made over to a custodian under sub-clauses (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 who made the attachment,

(c) the person whose property is attached and made over, and

(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.

43-A. When property kept in the village.-- (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) **When property removed to Court.--** 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.

(3) **Resignation by custodian.--** 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) **Receipt to be given to custodian.--** When any property is taken back from a custodian, he shall be granted a receipt for the same.

43-B. Foddering of livestock.-- (1) Whenever attached property kept in the village or place where it is attached is livestock, the person at whose instance it is 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) **Recovery of expenses.--** 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.

43-C. Expenses to be paid in advance by decree-holder.-- When an application is made for the attachment of livestock 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 15 days. If within three 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 officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

43-D. Liability of Superdar.-- Any person who has undertaken to keep attached property under Rule 43 (1) (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 willfully lost by him.

FORM NO.15-A

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

Order XXI, Rule 43

In the Court of ---------- at----------

Civil suit No.---------- of----------

A.B. of----------

against

C.D. of----------

Know all men by these presents that we, I.J. of----------, etc., and K.L. of---------- etc., and M.N. of----------etc., are jointly and severally bound to the Judge of the Court of----------in Rupees---------- to be paid to the said Judge, 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----------

And whereas the movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the----------day of---------- 19----------, in execution of a decree in favour of---------- in the suit No.---------- of---------- 19----------on the file of---------- and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounden I.J. shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation will be void: otherwise it shall remain in full force.

I.J.

K.L.

M.N.

Signed and delivered by the above bounden---------- in the presence of----------

FORM NO. 15-B
BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES
Order XXI, Rule 43 (1) (c)

In the Court of ---------- at----------Civil suit No.---------- of----------

A.B. of----------

against

C.D. of----------

Know all men by these presents that we, I.J. of----------, etc., and K.L. of---------- etc., and M.N. of----------etc., are jointly and severally bound to the Judge of the Court of----------in Rupees---------- to be paid to the said Judge, 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----------

And whereas the movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the----------day of---------- 19----------, in execution of a decree in favour of---------- in the suit No.---------- of----------19----------on the file of---------- and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounden I. J. shall duly account for and produce when required before the said Court all and every of the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void: otherwise it shall remain in full force and be enforceable against the above bounden I.J. in accordance with the procedure laid down in Section 145, Civil Procedure Code, as if the

aforesaid I.J. were a surety for the restoration of property taken in execution of a decree.

I.J.

K.L.

M.N.

Signed and delivered by the above bounden---------- in the presence of----------

2. Jewels and portable property to be brought to Court.--Light and readily portable articles of all kinds, and especially valuable property of small bulk, such as jewels, etc., shall, after seizure, be taken to the head quarters of the Court executing the decree and be made over there to the custody of such officer as the Court may direct.

Note:- Property of the nature described in this rule when placed in the custody of the Nazir may be placed by him in his cash chest and lodged in the outer room of Treasury, if it is open, as provided in order 4(2) of the Punjab Treasury Manual; if it is closed, the Presiding Officer of the Court must make other suitable arrangement for its safe custody.

3. Bulky property and Livestock.--Live Stock and other property which is bulky or not readily portable should be dealt with in accordance with the second proviso to Rule 43.

4. Form of schedule of property.-- The schedule of property to be annexed to the bond which a custodian must furnish under the above-mentioned Rule must be in the following form:-

Schedule of property attached

Schedule of property attached and made over to----------son of ---------- of---------- as custodian on the ---------- 19----------.

Detail of property	Estimated value.
	Total value----------
Sd.----------	Sd.----------
Witness.	Custodian.
Sd.----------	Sd.----------
Witness.	Attaching Officer
	Sd.----------
	Judgment-debtor

(TO BE PRINTED ON THE REVERSE OF THE FORM)

Directions in regard to attached property

I. No person can be compelled by the Court or attaching officer thereof to take charge of attached property as a custodian.

II. A custodian 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.

III. When any property is taken back from a custodian he should be granted a receipt for the same.

IV. When property is made over to a custodian, a schedule of property should be drawn up by the attaching officer in triplicate, dated and signed by--

(a) the custodian and his sureties;

(b) the officer of the Court who made the attachment;

(c) the person whose property is attached and made over; and

(d) two respectable witnesses.

One copy will be transmitted to the Court by the attaching officer and placed on the record; one copy will be made over to the person whose property is attached and one copy will be made over to the custodian.

V. In regard to livestock the following directions apply:-

(a) The custodian is bound to take all reasonable and proper care of any livestock entrusted to him.

(b) The custodian is responsible for the value of any livestock which he fails to deliver to the Court or its authorised officer, when required so to do. If any live-stock is lost or stolen or dies while in the hands of a custodian such custodian is bound to satisfy the Court that its loss or death was not due to his fault or neglect.

(c) If the judgment-debtor or any person claiming to be interested in any attached animal has been permitted to make arrangements for feeding the same (not being inconsistent with its safe custody, while it is under attachment) he may, in the case of poultry, milch cows, etc., take the eggs, milk, etc.

5. Arrangement for feeding to be noted on Schedule.-- Whenever attached property kept in the village or place where it is attached is live-stock, a note shall be added on the schedule to show what arrangements have been made for its keep, i.e., whether it is to be fed by the custodian and, if so, at what charge or by the judgment-debtor or any person interested. If it is to be fed by the judgment-debtor or a person claiming to be interested as permitted by Rule 43-B (1) of Order XXI, the arrangements made should be described on the Schedule to show that they are not inconsistent with its safe custody.

6. Arrangements when value of property is liable to deteriorate.-- If the property is of such a nature that its value will deteriorate unless special arrangements are made for its storage or for carrying out some preparatory process during the period of attachment, the necessary arrangements shall be made and noted at the foot of the schedule; *provided* that, if in such cases the judgement-debtor and decree-holder agree in writing to the immediate sale of the property, the officer shall proceed to sell it by auction forthwith, after giving such notice to intending purchasers as the circumstances of the case allow.

7. Arrangements subject to approval of Court.-- All arrangements made under these rules shall be made subject to the approval and confirmation of the Court executing the decree.

8. Modification of arrangements.-- If the arrangements made by the attaching officer are modified by the Court, a note of the modifications ordered shall be made on the schedule and such note shall be signed by the parties who originally signed the schedule or a fresh schedule shall be prepared in the manner provided above according as the Court may direct.

9. Release of property.-- If the Court directs the release of the property, in whole or in part, the articles released shall be made over to the person to whom the Court orders them to be delivered, by an officer of the Court, in the presence of the custodian, judgment-debtor and the witnesses mentioned; or, if their presence cannot be conveniently obtained, two other respectable witnesses.

10. Reclamations.-- If any reclamations are then made, a note of such reclamation shall be made at the time by the officer of the Court, and such note shall be signed by the person making them. The statements of the custodian and witnesses shall, likewise, be recorded on the subject by the officer of the Court, and shall be signed by such custodian and witnesses.

11. Custodian liable for criminal breach of trust.-- Any person who has undertaken to keep attached property under Rule 43(1)(c) of Order XXI shall not only be liable to be proceeded against as a surety under Section 145 (*vide* Rule 43-D), but if the facts disclose that he has been guilty of `criminal breach of trust', he will also be liable to be prosecuted for that offence.

12. Instructions regarding attachment of property which is not left in local custody.-- Instructions laid down in Rule 43 to 43-D of Order XXI refer, in the main, to cases in which attached property is not removed from the town or village in which it is found by the attaching officer. In cases in which the property is not left in local custody, the attaching officer should still, in order to avoid, as far as possible, resistance or obstruction and to facilitate the disposal of claims be careful to attach the property in the presence of two respectable house-holders of the village or town where the attachment is made and to draw up a schedule of property attached and to procure their signature to it.

PART L -- SALE OF PROPERTY AND DELIVERY TO THE PURCHASER

1. References.-- The provisions of Act V of 1908 on the subject of sales are contained in Order XXI, Rules 64 to 102 as amended by the Lahore High Court (*vide* Chapter 22). Rules 64 to 73 deal with "sale generally"; Rules 74 to 81, with sale of movable property; and Rules 82 to 102, with sale of immovable property.

2. Settlements of proclamation of sale.-- Whenever a Court makes an order for the sale of any attached property under Order XXI, Rule 64, it shall, if the property be land assessed to land revenue, revenue-paying or revenue free land, or any interest in such land, act as directed in the rules hereinafter prescribed. If the property be of any other description, the Court shall fix a convenient day, not being distant more than fifteen days, for ascertaining the particulars specified in Order XXI, Rule 66 (2), and settling the proclamation of sale. Notice of the day so fixed shall be given to the parties or their pleaders.

*[3. Enquiry as to encumbrances from Sub-Registrar's office.--** (1) If the property be immovable property (other than revenue-paying or revenue-free land), the Court may call upon the Sub-Registrar, within whose sub-district such property is situated, to search his registers and report, before the date fixed for settling the proclamation, to what encumbrances, if any, the property is liable. It is very desirable that such searches should be ordered in all cases, with a view to the preventing of fraud, but it should be noted that they cannot be ordered if the decree-holder is not willing to pay the necessary fees. The fees payable are at the rates prescribed in the second proviso to Article II of the table of registration fees published with Punjab Government notification No. 2818-73/2013-St-I, dated 28th June 1973, which is as follows:-

In exercise of the powers conferred by sections 78 & 79 of the Registration Act, 1908, the Governor of the Punjab is pleased to substitute the existing rates of Registration-fee with the following table of Registration-fees which shall take effect from 1st of July, 1973:-

ARTICLE II.-- For inspections or searches by the registering officer under section 57-

(1) search for or inspection of a single entry or document -

(a) for the first year in the books of which search is made, for each entry or document.....Rs.2.00;

(b) for every other year in the books of which search is continued, for each entry or document.....Rs.0.50;

(2) general search for or inspection of any number of entries or documents relating to one and the same property or executed by or in favour of one and the same individual -

(a) for the first year in the books of which search is made..... Rs.4.00;

(b) for every other year in the books of which search is continued.....Rs.1.00;

Provided that no search fee shall be charged in respect of a document of which a copy is applied for when the names of the claiming and executing parties, the nature and date of documents and the date of registration are shown in the application for the copy;

Provided further that if a search is made at the request of a Civil Court for the purpose of ascertaining whether a specified property is encumbered or not, the fee to be levied in each such case shall be at the rates prescribed by clause (1) above, subject to the condition that a fee of not more than ten rupees shall be so levied.]

4. Settlement of proclamation of sale. Estimate of value.-- On the day so fixed, the Court shall, after perusing the documents, if any, filed under Order XXI, Rules 13 and 14, of the Code, and the report referred to in the preceding paragraph, after examining the decree-holder and judgment-debtor, if present, and after making such further inquiry as it may be considered necessary, settle the proclamation of sale specifying as clearly and accurately as possible the matters required by Order XXI, Rule 66(2), of the Code, in the following form:-

Description of property including name of village and boundaries, if necessary	Name of judgment-debtor	Extent of interest of judgment-debtor in the property, so far as it has been ascertained by the Court	Detail of encumbrances, if any, to which the property is liable so far as they can be ascertained by the Court	Any other known particulars bearing on the nature and value of the property

This proclamation for sale is an important part of the proceedings, and the details should be ascertained and noted with care. This will remove the basis for many a belated objection to the sale at a later stage.

It is necessary for the Court itself to give in this proclamation its own estimate of the value of the property. It is sufficient to include in it the estimate, if any, given by either or both of the parties (Proviso added to Order XXI, Rule 66 (2) (e) by the Lahore High Court).

*[The proclamation, when settled, shall be signed by the Judge, and shall be made in the manner prescribed by Order XXI, rule 67 of the Code. The rule added by the Lahore High Court may be noted and applied where applicable.

It should be noted that an interval of fifteen days must elapse between the date of the sale and the date of the proclamation being affixed on the Court-house and on the property, in the case of immovable property, and an interval of seven days must elapse, in the case of movable property. However, the judgment debtor can, by consent in writing, permit the sale to be held earlier. (See Order XXI, Rule 68 of the Code, as amended by the Lahore High Court.)].

5. Information obtained after proclamation.-- If, after the proclamation has been published, any matter is brought to the notice of the

Court which it considers material for intending purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale.

6. Costs of proclamation.-- The costs of the proceedings hereinbefore prescribed shall be paid, in the first instance, by the decree holder; but they shall be charged as part of the costs of execution, unless the Court, for reasons to be specified in writing, considers that they should, either wholly or in part, be omitted therefrom.

7. Grant of time to debtor to arrange private alienation.-- Attention is called to the provisions of Order XXI Rule 83, of the Code, which confers on the Court the power of postponing, at the instance of the judgment-debtor, a sale of immovable property in execution of decree, if it is satisfied that the amount of the decree may be raised by mortgage or lease or private sale of such property or of any other property of the judgment-debtor. Care must be taken that this power is not so exercised as to inflict an injury on the decree-holder.

In clause (3) of Rule 83 quoted above it is expressly laid down that the Rule does not apply to a sale of property directed to be sold in execution of decree for sale in enforcement of a mortgage of, or charge on, such property.

8. Adjournment of sale.-- The sale shall be held at the time and place specified in the proclamation, unless the Court adjourns it to a specified day and hour, or the officer conducting the sale (with the leave of the Court, if the sale is made in or within the precincts of the Court-house) adjourns it for reasons which must be duly recorded. Whenever a sale is adjourned for a longer period than thirty days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

9. Purchase at auction by decree-holder or officer connected with auction.-- Attention is drawn to Order XXI, Rule 73, of the Code of Civil Procedure, 1908, which directs that an officer having any duty to perform in connection with any sale in execution of a decree, shall not directly or indirectly bid for, acquire, or attempt to acquire any interest in the property sold; and to Order XXI, Rule 72, of the Code, which prohibits the holder of a decree in

execution of which property is sold from bidding for or purchasing the property without the express permission of the Court executing the decree.

10. Decree-holder need not pay sale money.-- Clause (2) of Rule 84 of Order XXI enables the Court to dispense with the deposit of earnest-money when the decree-holder is the purchaser and is entitled to set-off the purchase-money under Rule 72. Rule 86 makes the forfeiture of earnest money optional.

11. Submission of statements of forfeiture of earnest money.-- For procedure regarding submission of statements of forfeiture of deposits see Volume IV, Chapter 10-A, para. 6.

12. Purchase money: its payment to decree-holder or its refund. Refund of commission.-- "Purchase-money" deposited in Court upon the sale of immovable property shall be retained by the Court until the expiry of a period of fifteen days from the date of the order confirming the sale. If no notice of an appeal having been presented by the party seeking to set the sale aside, be given to the Court within that period, the purchase money less the sum which has to be credited to Government or paid to the Court Auctioneer as commission on the sale (see paragraph 21) may be paid on the demand of the decree holder. If such notice be given within the prescribed period, the purchase money shall be retained in deposit until the appeal is decided, unless the party at the time entitled to receive it gives security, to the satisfaction of the Court, to repay it at any time when he may be required by the Court so to do.

12-A. The changes introduced by the Lahore High Court in Order XXI, Rule 89, Civil Procedure Code, require careful attention (*vide* chapter 22).

13. Application to set aside sale.-- Applications for setting aside sales are frequently made under Order XXI, Rule 90, Civil Procedure Code. An application under this Rule can be made not only by the decree-holder or a person entitled to rateable distribution in the assets but also by any person "whose interests are affected by the decree." But the grounds on which such an application can be made are restricted and should be carefully borne in mind. An application under this Rule can only be made on the ground of material irregularity or fraud in publishing or conducting the sale, and, secondly, it must be proved that the applicant has suffered substantial injury as a result of the

material irregularity or fraud complained of. Both these conditions must be satisfied before any sale is set aside under this Rule. It has been provided further in the Punjab that no sale can be set aside on any ground which the applicant could have put forward before the sale was conducted. An application under this Rule must be made within 30 days of the sale (Art. 166--Schedule I, of the Limitation Act, 1908).

14. Application by purchaser to set aside sale.-- Order XXI, Rule 91, of the Code of Civil Procedure 1908, enables the purchaser at a sale of immovable property in execution of decree to apply to the Court to set aside the sale on the ground, that the debtor had no saleable interest therein. Such an application must also be made within thirty days from the date of the sale (*see* Article 166, Schedule I to the Limitation Act, IX of 1908). It should be noted that the Rule applies only when the judgment-debtor has no interest at all in the property sold but not when he has some interest at any rate in it, however small that interest may be.

15. Confirmation of sale: Appeal.-- If no application to set aside the sale is made under Rules 89, 90 or 91 within thirty days or the application is disallowed, the Court must confirm the same. An appeal lies from an order confirming or setting aside a sale, but no separate suit is maintainable to challenge such an order. (Order XXI, Rule 92)

16. Refund to purchaser.-- When such a sale is set aside under Order XXI Rule 92, rule 93 provides for the recovery and repayment to the purchaser of the purchase-money. The Court should not refer him to a separate suit for the money paid by him, which should be recovered (if necessary) and refunded to him, subject to the provisions of paragraph 22.

17. Certificate of sale.-- When a sale of immovable property has become absolute, the Court shall grant a certificate stating the property sold and the name of the person who at the time of the sale, is declared to be the purchaser. This certificate should be in the prescribed form, and must bear the date of the confirmation of the sale and be stamped, at the expense of the purchaser, in conformity with the provisions of chapter II, Part B, and Article 18 of Schedule I-A of the Stamp Act, II of 1899, as amended by Punjab Act, VIII of 1922. When the terms of the certificate have been finally settled, the

draft shall be signed by the Judge and placed with the record of the execution proceedings and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. Instances have occurred where the purchaser has not taken his certificate, but has asked merely for a draft certificate to be appended to the file of execution, his idea being to use the draft certificate in proof of his title to the property purchased. Subordinate Courts are warned to guard against such subterfuges. No draft certificate should in any case be drawn up *until the stamp duty required by law has been paid.*

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation.

18. Copy of certificate of sale of immovable property to be sent to Registration office.-- A copy of the certificate, whether the property sold be land or other immovable property, and without regard to the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated, to be filed in his Supplementary Book No. 1.

This copy should be drawn up in vernacular with permanent black ink.

19. Court officials for conducting sales.-- (i) Sales in execution of decree shall ordinarily be conducted by the Court Auctioneer. The District Judge may direct by special order that the sale in a particular case or cases shall be conducted by the Nazarat Staff.

(ii) **Official Receivers as Auctioneers.--** In every district, save as otherwise prescribed, the Official Receiver should ordinarily be appointed Court Auctioneer.

(iii) **Security by Court Auctioneers.--** Every Court Auctioneer shall give security in the sum of Rs. 2,000, over and above any security he may have given as Official Receiver, for the satisfactory discharge of his duties. This security shall be furnished to the satisfaction of the District Judge. The rules in Chapter 5, High Court Rules and Orders, Volume II, which govern the taking of security from Official Receivers shall, mutatis mutandis, apply also to Court Auctioners.

20. Procedure for return of sale warrant.-- (i) A warrant of sale shall not be delivered to the Court Auctioneer direct by the Court ordering the sale but shall be forwarded to him through the process-serving agency. After the sale the warrant and connected papers shall be returned by the Auctioneer to the process-serving Agency which shall forward it to the Court concerned.

(ii) **Sale under supervision of Court Auctioneers.--** All sales of property whose estimated value exceeds Rs. 500 shall be conducted under the general supervision of the Court Auctioneer. Sales of property whose estimated value is Rs. 500 or less may be conducted by agents of the Court Auctioneer. In all cases the Court Auctioneer is responsible for proper compliance with all legal requirements and for all the acts of his agents.

The Court Auctioneer shall each morning, supply to each Court a date-sheet showing the sales already fixed by all Courts, in order that sales, which he has to attend may not be fixed at different places on the same day.

(iii) **Deposit of sale proceeds into Government treasury.--** The Court Auctioneer shall himself deposit into the treasury all sums realised at auction sales conducted by him or his staff. All sums realised at sales conducted at places where there is a treasury shall be deposited into the treasury or the State Bank of Pakistan, as the case may be, on the first working day after the sale. The District Judge shall prescribe periods, within which the proceeds of sales conducted at other places shall be deposited. The periods so prescribed shall be reported to the High Court and shall be as short as possible.

21. Government Commission.-- (i) Commission at the following rates shall be deducted from the proceeds of sales under this Chapter:-

(a) If this sale proceeds do not exceed rupees five thousand--at five per centum.

(b) If the sale-proceeds exceed rupees five thousand--at five per centum on rupees five thousand and two and a half per centum on the remainder:

**[Provided that the maximum amount of commission deductable according to the aforesaid rates shall not exceed rupees five thousand.]

(ii) If the sale is conducted by the Court Auctioneer, 80 per cent of the Commission will be paid to him and 20 per cent will be paid into the

Treasury to the credit of Government. All incidental expenditure shall be met by the Auctioneer.

(iii) If the sale is conducted by the Nazarat Staff, the whole of the commission shall be credited to Government and nothing shall be paid to the officer conducting the sale. In such cases, the expenses incurred in conducting the sale, including the cost of advertisement, must not exceed the amount of commission.

(iv) **Expenses of custody, etc.--** The expenses incurred in the care, custody and keep of attached property (as taxed by the Court) shall be a first charge on the sale-proceeds thereof, after the deduction of the commission mentioned above.

22. Charges of Court Auctioneers.-- (i) No commission shall be paid on the proceeds of sales set aside for a material irregularity in publishing or conducting the sale. The commission on the proceeds of a sale set aside for any other cause shall be paid by the person at whose instance and for whose benefit the sale is set aside and the Court Auctioneer shall be entitled to his share of such commission.

(ii) If a sale is set aside the purchase money shall be refunded in full to the Auction Purchaser unless it is set aside at his instance and for his benefit in which event the commission due under paragraph 21 shall be deducted from the sum to be refunded.

(iii) Where a sale is set aside after the commission has been paid to the Court Auctioneer, the Court shall recover it from him and shall refund it to the Auction Purchaser if he is entitled to the refund of the whole of the purchase money. In such cases the Government share of the commission shall also be refunded.

(iv) In cases in which auction sales are ordered, but not completed or do not take place at all, the Court auctioneer shall be paid only his actual expenses, provided that if there has been, in the opinion of the Court, clear negligence on the part of the auctioneer (e.g., failure to advertise, leading to absence of bidders) he will not be entitled to any compensation. The amount of actual expenses if held due under this rule will be determined by the Court and

shall be paid by the decree-holder or the judgment-debtor as the Court may direct.

23. Conduct of sale by Nazarat Staff.-- (i) Where the District Judge directs that a sale be conducted by the Nazarat Staff, the proper officer to conduct the sale is--

(a) where the sale is ordered by a Court of Small Causes-the Departmental Officer or such other officer as the Court may appoint;

(b) where the sale is ordered by a Court other than a Court of Small Causes:

(1) the Civil Nazir, for all sales ordered by Courts located at District Headquarters and for all other sales in which the value of the property to be paid sold is estimated to exceed Rs. 5,000;

(2) the Naib Nazir of the Court ordering the sale for other sales.

(ii) In every case in which the Civil Nazir is not required, under these directions or the directions of the District Judge, to conduct the sale in person, such sale may be conducted under the orders and upon the responsibility of the Civil Nazir, by a Naib Nazir deputed by him for the purpose.

(iii) When it is desirable to have the sale conducted at the place where the attached property is situate, and the property is of small value, and a Nazir or Naib-Nazir is not available for the duty, an execution bailiff may be deputed to conduct the sale.

(iv) A process-server shall not be employed to conduct a sale without the authority in writing of the Officer in charge of the Process-Serving Agency concerned. Such order shall not be made unless no other officer is available and the value of the property to be sold is estimated at Rs. 100 or less.

(v) The District Judge may issue instructions, consistent with these directions, for the further regulation of the conduct of sales by the Civil Nazir and his establishment.

24. Sale of guns or arms.-- Whenever guns or other arms, in respect of which licenses have to be taken by purchasers under the Arms Act, 1878 (XI of 1878), **[or the Arms Ordinance], 1965, and Rules thereunder, are sold by public auction in execution of decrees, the Court, directing the sale, 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 or the Ordinance.

25. Sale of land.-- For attachment and sale of land or interest in land see Chapter 12-M. of this Volume.

PART M -- EXECUTION OF DECREES BY THE ATTACHMENT AND SALE OR TEMPORARY ALIENATION OF REVENUE-PAYING OR REVENUE-FREE LAND

*[(1) In dealing with applications for the execution of decrees by the sale or temporary alienation of land, the provisions of the Punjab Alienation of Land Act, 1900 (XIII of 1900), and the Punjab Debtors Protection Act, 1936 (II of 1936) should not be overlooked. Attention is also drawn to section 170 of the Punjab Land Revenue Act, 1967 (XVII of 1967) and sections 68 to 71 of the Code of Civil Procedure, 1908 (V of 1908). It should be observed that land which has been built upon ceases to be land within the meaning of section 170 of the Punjab Land Revenue Act, 1967 (XVII of 1967) notwithstanding the fact that it is assessed to land revenue (see I.L.R. 1946; Lah. 52, A. I.R. 1944 Lah. 455)].

(2) The following notification has been issued by the Punjab Government under section 68 of the Civil Procedure Code:-

"In exercise of the powers conferred by section 68 of the Code of Civil Procedure, the Governor of the Punjab is pleased to declare that throughout the Punjab, in all cases in which a Civil Court has ordered any land as defined in the Punjab Tenancy Act, 1887, or any interest in such land, to be sold, the execution of the decree shall be transferred to the Collector except when the decree is one for the recovery of money specifically charged on the land ordered to be sold".

(Punjab Government, Revenue Department Notification No. 365-R dated 17th January 1939).

(3) As laid down in section 69 of the Civil Procedure Code, the provisions of Schedule III of the Civil Procedure Code apply to cases in which the execution of the decree has been transferred to the Collector.

(4) The rules framed by Government under section 70, Civil Procedure Code, are reproduced below:-

RULES

1. Definitions.-- In these rules unless there is anything repugnant in the context-

(1) "Collector" means-

(a) the Collector of the district where the land ordered to be sold in execution of the decree is situated;

(b) if the land is situated in more districts than one, the Collector of the district within the limits of which the judgment-debtor resides, or if he has no such residence, where the major portion of the land is situated;

(c) if the judgment-debtor does not reside in any such district and the areas situated in different districts are equal, the Collector before whom, in the opinion of the Court, it is more convenient for the parties to the decree to attend.

(2) "Court" means a civil Court of original, appellate or revisional jurisdiction in the Punjab.

(3) "Decree" means a decree of a civil Court not being one for the recovery of money specially charged on land.

(4) "Land" means land as specified in the notification issued by the Punjab Government under section 68 of the Code of Civil Procedure.

(5) "Schedule" means Schedule III of the Code of Civil Procedure, 1908.

2. Transmission of copies of record.-- (1) Immediately after an attachment has been made and an order passed that any land be sold in the execution of a decree, the Court shall transmit, by post, or in such other manner as may be most convenient, the following documents to the Collector:-

(i) a copy of the application for execution certified by the Court to be correct;

(ii) a certified copy of the relevant portion of the latest jamabandi showing the land attached;

(iii) a copy of the warrant of attachment along with their report of attachment;

(iv) a statement showing the extent, if any, to which the decree has been already executed and clearly setting forth what portion of the decree still remains to be satisfied, along with a statement showing, as clearly as possible, of which land and of what interests of the judgment-debtor in such land as far as they are known to the Court, sale has been ordered;

(v) any other document which in the opinion of the Court would be necessary to enable the Collector to determine the land to which sale has been ordered and the rights and interests therein of the judgment-debtor.

(2) The Court shall, if practicable, fix a date, which will ensure speedy disposal, for the appearance of the parties before the Collector. The date so fixed shall be noted on the record and communicated to such of the parties as may be present.

3. Preparation of copies and documents.-- The documents mentioned under sub-rule (1) of rule 2 shall be prepared and transmitted to the Collector free of all cost to the parties. The decree-holder shall file his application for execution in duplicate. Of these only one copy shall be stamped as required by the Court Fees Act, and the other shall be transmitted to the Collector after being certified by the Court to be correct. The copy of the warrant of attachment shall be prepared on a printed form, and the copy of the relevant portion of the jamabandi filed by the decree-holder with his application shall in original be sent to the Collector. The other statements shall be prepared by the establishment of the Court.

4. Note in register of executions and consignment of record.-- (1) The Court shall make a note in column No. 22 of Civil Register No. X(Register of Execution of Decrees) regarding the transmission and documents to the Collector and the date on which these were transmitted.

(2) On receipt of the intimation from the Collector under rule 5, the Court shall attach it to the record of the case, which shall then be consigned to the record room, unless the execution is to be proceeded with in some other respect.

5. Case to be registered.-- The Collector shall notify the receipt of the documents to the Court, and shall register the decree in a book which may be prescribed departmentally for the purpose.

6. Date of first hearing.-- The case shall be taken up by the Collector on the date, if any, fixed by the Court under sub-rule (2) of rule 2:

Provided that if on the date so fixed, the Collector be not present at his headquarters, the file shall be put up before some other gazetted revenue officer

subordinate to the Collector, or before an Assistant Collector of the first grade, if any, on duty at the headquarters, and he shall fix a fresh date for the appearance of the parties before the Collector which shall be noted and communicated as prescribed under sub-rule (2) of rule 2;

Provided further that if there be no such gazetted officer on duty in the station, the case shall come up before the Collector on his return to headquarters.

7. Delegation of powers to Sub-Divisional Officer.-- The Collector may by a written order make over, generally or in special cases, the execution of any decree transferred to him for execution to any Sub-Divisional Officer subordinate to him, who shall thereupon, in relation to the execution of that decree, act as and exercise all the powers conferred by these rules on the Collector. When the execution proceedings are over, the Sub-Divisional officer shall return the record of the proceedings to the Collector.

8. Objections as to the liability of the land ordered to be sold and its attachment to be decided by the Court.-- (1) All objections, whenever preferred regarding the liability to attachment of the land ordered to be sold, or the factum or procedure of its attachment shall be preferred to, and heard and decided by the Court transferring the decree.

(2) If any objection of the nature mentioned under sub-clause (1) above is at any time, whether during the continuance of the proceedings or thereafter, made in writing before the Collector, he shall forward it in original to the Court by which the decree was transferred:

Provided that in case the objection is preferred during the continuance of the proceedings before the Collector, further proceedings shall be suspended for such time as may be sufficient to receive directions from the Court.

(3) If after the transmission of the record under sub-rule (1) of rule 2 but prior to the confirmation of the sale or other arrangement under paragraphs 1 or 7 of the schedule, an objection about the liability of the land to, or the factum or procedure of, attachment is preferred directly before the Court transferring the decree or is received by it under sub-clause (2) above, the Court shall, if it decides to enquire into the objection, forthwith communicate its

decision, to the Collector who shall cause further proceedings to be stayed pending the disposal of the objection.

9. Court to intimate the result of objection to Collector.-- After the objection is disposed of, the Court shall communicate the result to the Collector, and if in consequence thereof any further proceedings are to be taken in the case, the Court shall, if practicable, fix a date for the appearance of the parties before the Collector, notifying the same in the manner prescribed in sub-rule (2) of rule 2.

10. Result of objection to determine further proceedings.-- (1) If the objection succeeds and the entire land is released from attachment, the Collector shall dismiss the execution case, and after, forwarding a non-satisfaction certificate to the Court he shall consign the record to the Record Room.

(2) If the attachment of the whole or a part of the land is upheld the Collector on receipt of the information shall proceed to complete the proceedings in accordance with law.

11. Procedure where the same land is ordered to be sold in two or more decrees.-- (1) If the same land is ordered to be sold in two or more decrees transferred to the Collector under sub-rule (1) of rule 2, the following procedure shall with regard to such land be observed:-

(i) If all the orders of sale have been received from the same Court, the Collector shall enquire from the Court in which particular case the main proceedings are to be held.

(ii) If the orders of sale have been received from different Courts of the same grade, the main proceedings shall be held in the case in which attachment was first effected, and an intimation about this fact shall be sent to all the other Courts.

(iii) If the orders of sale have been received from Courts of different grades the main proceedings shall be held in the case received from the Court of the highest grade, and an intimation about this fact shall be sent to all the other Courts.

(2) In the above-mentioned cases though the proceedings are to be held in one case only, the result shall ensure for the benefit of all other cases as well.

(3) If on account of the decree-holder's default, or any adjustment of the decree or any order from the Court, the case in which proceedings are being held is dismissed and such a result does not affect the connected case or cases, the Collector shall start or continue proceedings, as the case may be, in the latter cases in accordance with the above procedure.

12. Procedure where land is within the jurisdiction of two or more Collectors.-- (1) If the land to be proceeded against under these rules is situated within the jurisdiction of more Collectors than one, the Collector holding these proceedings shall forthwith intimate the factum of his having taken cognizance of the case to every other Collector within whose jurisdiction any part of the said land is situated.

(2) If at any time after the Collector has started proceedings under sub-rule (1) above, any one of the other Collectors receives under sub-rule (1) of rule 2 any decree for execution by sale of the same land, he shall after stating the above circumstances forthwith return the papers to the Court from which the decree has been received.

(3) If prior to the receipt of the intimation under sub-clause (1) above, any other Collector has also started proceedings against the same land, the following procedure shall be adopted:-

(a) If there is any difference in the areas involved in the different cases, the case involving a larger area shall proceed and the proceedings in the other case or cases shall be stopped.

(b) If there is no difference in the areas involved in different cases, the case in which proceedings were first started by the Collector seized thereof shall proceed, and the proceedings in the other case or cases shall be stopped.

(c) The Collector dealing with the case the proceedings of which have be stopped under sub-clause (a) or (b) above, shall after intimating the circumstances to the Court concerned, and issuing a non-satisfaction certificate, dismiss the execution case.

13. Enquiry by Collector.-- The Collector shall make a summary enquiry in terms of paragraph 2 of the schedule, with a view to finding out if all the liabilities of the judgment-debtor can be discharged without selling all the land available for the purpose.

14. Proceedings to be drawn up.-- As soon as the enquiry contemplated by rule 13 is completed, the Collector shall draw up the proceedings in English setting forth the steps taken by him in this connection with the result of his enquiry.

15. Sale of land.-- If the Collector comes to the conclusion that all the liabilities of the judgment-debtor cannot be discharged without the sale of the entire land available for the purpose, he shall record his opinion and proceed to sell the land ordered to be sold.

16. Arrangement Short of sale.-- (1) If the Collector comes to the conclusion that all the liabilities of the judgment-debtor can be discharged without the sale of the entire land available for the purpose, he shall record his opinion with the reasons therefor, and shall proceed as laid down in paragraph 3 or 5 of the Schedule.

(2) The Collector shall ordinarily follow the procedure laid down in paragraph 5 of the Schedule, unless the summary enquiry held under rule 13 points to conclusion that no complicated question requiring to be determined by the civil Court is likely to arise.

17. Tenancy Act procedure to be followed.-- (1) In holding the enquiry under rule 13 the Collector shall, in so far as it may be possible, follow the procedure laid down for the guidance of Revenue Officers under the Punjab Tenancy Act, 1887.

(2) In the proceedings contemplated by sub-rule (1) above, the decree-holder, the judgment-debtor and such other creditors of the judgment-debtor, if any, as may have responded to the notice under paragraph 3 of the schedule shall be given an opportunity of leading such evidence oral or documentary, as they may wish to produce.

18. Powers of Collector.-- (1) The Collector dealing with a case under these rules shall have all the powers and be subject to all the limitations regarding sale, mortgage, lease or other temporary alienation of land, the awarding of costs incurred by the parties as also costs of adjournments and the dismissal of the case, as may for the time being be exercisable by or imposed on the Court ordering the sale, and shall be competent to pass any order incidental

or relating to the execution of the decree which but for the transfer of the case could have been passed by the Court.

(2) Fees for the services of processes and fees for proclamations issued under these rules shall be levied according to scale laid down for processes and proclamations issued by a revenue Court. These fees shall in the first instance be paid by the decree-holder, or if the process or proclamation is ordered to be issued at the instance of any other person, by such person and be treated as costs in the case.

19. Proclamation of sale by public auction.-- (1) When any land is to be sold under these rules, the Collector shall cause a proclamation of the intended sale to be made in the language of the Court.

(2) Such proclamation shall be drawn after notice to the decree-holder and the judgment-debtor, and besides stating the time and place of the intended sale, it shall specify as fairly and accurately as possible--

(a) the land to be sold;

(b) the revenue assessment on such land;

(c) any encumbrance to which the land is liable;

(d) the amount for the recovery of which the sale is ordered;

(e) the number of lots in which the Collector proposes to sell the land, if he considers that the land should not be sold in one lot, and the reserved price fixed for each lot;

(f) every other thing which the Collector considers material for a purchaser to know in order to judge the nature and the value of the property.

Note:- If the area to which the encumbrance mentioned in clause (c) attached is more than the area mentioned in clause (a), whole of the area shall be specified in the proclamation.

(3) For purposes of ascertaining the matters to be specified in the proclamation the Collector may summon any person whom he considers necessary to summon, and may examine him in respect of any such matters and require him to produce any document in his possession or power relating thereto.

20. (1) The collector may subsequent to the drawing up of the proclamation for good and sufficient cause modify it in any respect.

(2) Where the sum total of the decretal amount to be realized and the encumbrance on the land to be sold is less than the value of the land, the Collector, when making proposals regarding the sale in lots, shall take into account only that proportion of the encumbrance which appertains to the lot or lots proposed for sale. In order, however, to give information to the intending purchaser he shall in the proclamation issued under the last rule declare the whole amount of the encumbrance and the entire property to which it pertains.

21. Publication of proclamation.-- (1) The proclamation drawn up under the above rules shall be published by beat of drum or other customary mode at some place on or adjacent to the land to be sold. A copy of the proclamation shall be affixed on or near the land to be sold, and in the Office of the Collector as also in the Court-house of the Court issuing the order for sale:

Provided that if the Collector considers it necessary such proclamation shall also be published in the official gazette or in any local newspaper or in both, and the cost of such publication shall be deemed to be part of the costs of the sale.

(2) Where the land 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 same, in the opinion of the Collector, cannot otherwise be given.

22. Time of sale.-- No sale shall, without the consent in writing of the judgment-debtor, take place until after the expiration of 30 days calculated from the date on which the copy of the proclamation has been affixed in the office of the Collector.

23. Sale by whom conducted.-- Sale under these rules shall be conducted by the Collector in person or by an Assistant Collector generally or specially empowered by him in this behalf.

24. Adjournment of sale.-- The Collector may in his discretion adjourn a sale ordered by him to a specified day and hour, and any other officer conducting such sale may also in his discretion adjourn the sale recording his reasons for such adjournment. When a sale is adjourned under this rule for a

longer period than 15 days, a fresh proclamation shall be made unless the judgment-debtor consents in writing to waive it:

Provided that the Collector may dispense with the consent of any judgment-debtor who has failed to attend in answer to the notice issued under rule 19(2).

25. Stoppage of sale.-- A sale held under these rules be stopped if before the lot put up for sale is knocked down, the amount of the decree 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 decree and costs has been paid to the Collector ordering the sale.

26. Officer conducting sale not to bid or purchase.-- No officer or other person having any duty to perform in connection with any sale under these rules shall directly or indirectly bid for acquiring, or attempt to acquire, any interest in the land to be sold.

27. Co-sharer's bid to be preferred.-- Where the land sold is an undivided share of a larger area and two or more persons of whom one is co-sharer in that area make the same bid, the co-sharer's bid shall prevail as against the bid of the other person.

28. Purchase money to be set off against decree-money.-- If the decree-holder purchases the land put up for sale, the purchase money and the amount due on the decree may, subject to the rights of the other decree-holders, if any, to claim ratable distribution, be set off against one another, and the Collector executing the decree shall enter satisfaction of the decree in whole or in part, as the case may be.

29. Deposit by purchaser and resale on default.-- As soon as a bid made under these rules is accepted, the person making the bid shall pay to the officer conducting the sale a sum equal to 25 per cent of the amount of his purchase money. In default of the purchaser's making such a deposit, the land shall forthwith be resold:

Provided that where the decree-holder is the purchaser and is entitled to set off the purchase money under rule 28 above, the Collector may dispense with this deposit.

30. Payment in full of purchase money.-- The balance of the purchase money left after the deposit of 25 per cent made under rule 29 shall be paid by the purchaser to the Collector before his office closes on the 15th day from the sale of the land:

Provided that in calculating the amount to be so paid to the Collector the purchaser shall have the advantage of any set off to which he may be entitled under rule 28 above.

31. Procedure on default of payment.-- (1) If the purchaser does not pay the full amount of the purchase money within the period mentioned in the last preceding rule, the deposit made under rule 29 may, if the Collector thinks fit, after defraying the expenses of the sale, be forfeited to the Government.

(2) In a case covered by sub-rule (1) above, the land shall be resold subject to the issue of a fresh proclamation in the manner and for the period herein before prescribed for sale, and the defaulting purchaser shall forfeit all claims to the land or to any part of the sum for which it may subsequently be sold.

32. Deficiency in sale price of resale.-- Any deficiency in price which may occur on a resale under rule 31 and all expenses attending such resale shall be certified to the Collector by the officer conducting the sale, and shall at the instance of 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.

33. Application to set aside sale on deposit.-- (1) Where land has been sold in accordance with these rules, the judgment-debtor or any person holding an interest therein by virtue of a title acquired before the sale may within 30 days of date of the sale apply to have it set aside on his depositing with the Collector--

(a) for a payment to the purchaser a sum equal to 5 per cent of the purchase money together with the amount realised as commission from him under rule 40;

(b) for payment to the decree-holder the amount specified in the proclamation may have been received by the decree-holder, sale

was ordered less any amount which, since the date of such proclamation may have been received by the decree-holder.

(2) Where a person applies under the rule next following to set aside the sale he shall not unless he withdraws that application be entitled to make or prosecute his 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 interests not covered by the proclamation of sale.

(4) If the application to have the sale set aside is disallowed, the deposit made under this rule shall be refunded to the applicant.

34. Application to set aside sale on ground of irregularity or fraud.-- In case of sale of land under these rules the decree-holder, the judgment-debtor or any person entitled to share in a ratable distribution of assets or whose interests are affected by the sale, may within 30 days of the date of the sale apply to the Collector to set it aside on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no such sale shall be set aside on the ground of irregularity or fraud unless the Collector is satisfied that the applicant has sustained some injury by reason of such irregularity or fraud.

35. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.-- The purchaser at any such sale may within thirty days of the date of the sale apply to the Collector to set it aside on the ground that the judgment-debtor had no saleable interest in the land.

36. Sale when to become absolute and power of Collector to order resale.-- Where no application is made under rules 33, 34 or 35, or where such application is made and disallowed, the Collector shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that if in any case the Collector is of opinion that the price offered is inadequate, he may refuse to confirm the sale, and the land shall thereupon, subject to the provisions made in these rules, be again put up for sale;

Provided further that no order shall be passed under this proviso unless notice has been given to all persons affected, and their objections, if any, heard.

37. Setting aside of sale.-- Where an application is made under rules 33, 34 or 35 and allowed, the Collector shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby and their objections, if any, heard.

38. Bar of civil suit.-- No suit to set aside an order made under rules 36 and 37 shall be brought by any person against whom such order is made.

39. Return of purchase money in certain cases.-- Where a sale is set aside under rule 36 or 37 the purchaser shall be entitled--

(a) in the case of a sale set aside on an application under rule 33 to an order sanctioning his withdrawal of the deposit made under that rule;

(b) in case of a sale set aside on application under rule 34 to an order for a refund of he commission, if any, deducted under rule 40.

40. Commission fee, how to be realised.-- (1) Commission fee at the rate of 1 per cent shall be levied on all sales held under these rules.

(2) The Commission fee shall be realised--

(a) where no deposit is required under rule 29 by the person conducting the sale from the decree-holder, before he is declared the purchaser;

(b) where a deposit is required under rule 29 by deduction by the Collector from the deposit; and

(3) when realised, the commission fee shall be credited to Government.

41. Grant of sale certificate.-- Where a sale of land has become absolute, the Collector shall grant a certificate specifying--

(i) the land sold;

(ii) the name of the person who is declared to be the purchaser;

(iii) the encumbrance, if any, and the entire area to which it attaches; and

(iv) the date on and the amount for which the sale has taken place.

Such certificate shall bear the date when the sale becomes absolute.

42. Procedure for delivering possession of land.-- In delivering possession to a purchaser or transferee in any other form, the Collector shall follow the following procedure:-

(a) Where the land 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 subsequent to the attachment of the land, the Collector shall on the application of the purchaser, or transferee, order delivery to be made by putting such person or any person whom he may appoint to receive delivery on his behalf in possession of the land and if need be by removing any person who refuses to vacate the same.

(b) Where the land is in the occupancy of a tenant or other person entitled to occupy the same, the Collector shall, on the application of the purchaser or transferee order delivery to be made by affixing a copy of the certificate or order 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 in its entirety or to a limited extent, as the case may be, has been transferred to the auction purchaser or the other transferee.

43. Objections as to liability of land and delivery of possession.-- Objections regarding the liability of the land, other than that the sale of which has been ordered, by the Court, for the satisfaction of the judgment-debtor's debts, and objections regarding the delivery of possession shall be made to and decided by the Collector.

44. Resistance or obstruction to possession of land.-- (1) Where the person entitled under the order of the Collector passed under these rules to the possession of land as an auction purchaser or transferee in any other form is resisted or obstructed by any person in obtaining possession of land, he may within thirty days of the resistance or obstruction make an application to the Collector about such resistance or obstruction.

(2) The Collector may of his own accord initiate proceedings under this rule.

(3) The Collector shall fix a date for investigating the matter, and shall summon the party against whom the application is made or who is reported to have offered resistance or obstruction to appear and answer the allegation.

45. Resistance or obstruction by judgment-debtor.-- Where the Collector is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or some other person at his instigation, he shall direct that the applicant be put into the possession of the land, and where he applicant is still resisted or obstructed in obtaining possession, the Collector may also at the instance of the applicant order the judgment-debtor or any other person acting at his instigation to be detained in the prison for a term which may extend to 30 days.

46. Resistance or obstruction by bona fide claimant.-- Where the Collector is satisfied that the resistance or obstruction was occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the land on his own account or on account of some person other than the judgment-debtor, the Collector shall make an order dismissing the application.

47. Application by a person other than the judgment-debtor when dispossessed.-- Where any person other than the judgment-debtor, whose case does not fall under rule 45 is dispossessed of land under these rules, he may make an application to the Collector complaining of such dispossession.

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

48. Decision of the application.-- Where the Collector is satisfied that the applicant was in possession of the land on his own account or on account of some person other than the judgment-debtor, he shall direct that the applicant be put into possession of the land. In case the Collector comes to a contrary decision, the application shall be dismissed.

49. Rules not applicable to transferee lite pendente.-- Nothing in rule 46, 47 and 48 shall apply to resistance or obstruction by a person to whom

the judgment-debtor has transferred the land after its attachment by the Court, in case the resistance or obstruction relates to such land, or after the initiation of proceedings under paragraph 2 of the schedule in case the resistance or obstruction relates to any land proceeded against under that paragraph but not attached by the Court.

50. Order conclusive subject to civil suit.-- Any party, not being a judgment-debtor, against whom an order is made under rules 45, 46 and 48 may within one year of the date of such order institute a suit in a civil Court to establish the right which he claims to the present possession of the land, but subject to the result of such suit, if any, the Collector's order passed under these rules shall be conclusive.

51. Costs how to be adjusted.-- If any costs are allowed under these rules, the amount so awarded shall be added to the decretal sum in case the order be in favour of the decree-holder, and be deducted therefrom in case the order be against him.

52. Information about and orders regarding land outside the Collector's jurisdiction how to be collected and executed.-- (1) The Collector seized of a case under these proceedings shall deal with it as if the entire land ordered to be sold or otherwise to be dealt with were situated within his jurisdiction.

(2) If the Collector is of the opinion that it is necessary to obtain any information regarding the judgment-debtor's land lying within the jurisdiction of any other Collector, he shall make a requisition in this behalf, and the Collector of the district concerned shall supply him with the requisite information.

(3) If the Collector passes any order regarding any land situated within the jurisdiction of any other Collector, he shall communicate it to the latter, who shall execute it as if it had been passed by himself.

53. Consignment of record.-- After the Collector has completed his proceedings and informed the Court as contemplated by paragraph 9 of the schedule, the record shall be consigned to the record room.

54. Result of execution to be noted in Court's register and procedure of Court.-- On receipt of the information under rule 53, the Court

shall make a note in column No. 22 of civil register No. X (Register of Execution of Decrees), showing the date of the receipt of the intimation and, if necessary, after sending for the record of the execution case from the record room shall proceed in the manner prescribed in paragraph 9 (3) of the schedule.

55. Delegation of power by Collector.-- For the purpose of these rules, the Collector may make over to any Assistant Collector of the first grade any of the powers and duties conferred and imposed upon the collector with the exception of the following:-

(1) Power to let or mortgage under paragraph 1 (b) of the schedule.

(2) Power to order sale under paragraph 1 (c) or paragraph 8 of the schedule.

(3) Power to take action under paragraph 3 or paragraph 5 of the schedule.

(4) Power to let, mortgage or order direct management under paragraph 7(1)(b) of the schedule.

(5) Power to raise funds for and discharge encumbrances under paragraph 7(3) of the schedule.

(6) Power to confirm sale under rule 36.

(7) Power to set aside sale under rule 37.

56. Appeals.-- (1) An appeal shall lie under these rules to the Collector, when the order is passed by an Assistant Collector, and to the Commissioner when the original order is passed by the Collector:

Provided that the order would have been appealable, had it been passed by a civil Court executing the decree.

(2) A second appeal shall lie from an appellate order passed by the Collector to the Commissioner, and from an appellate order passed by the Commissioner to the Board of Revenue on grounds on which a second civil appeal would have been competent had the appellate order been passed by a civil Court.

(3) No appeal shall lie except as provided in these rules.

57. Period of appeals.-- The period of limitation for an appeal under the foregoing rule shall be as follows:-

(a) When the appeal lies to the collector, 30 days.

(b) When the appeal lies to the Commissioner, 60 days.

(c) When the appeal lies to the Board of Revenue, 90 days.

58. Revisional powers of the Financial Commissioner.-- The Financial Commissioner may, at any time, call for the record of any case, which has been decided under these rules by an officer subordinate to him and in which no appeal lies to him or, if an appeal lies, it has not been preferred and the period of limitation has expired, and if the said officer appears-

(a) to have exercised a jurisdiction not vested in him by law; or

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

(c) to have acted in the exercise of his jurisdiction illegally or with material irregularity;

the Board of Revenue may make such orders as it may think fit.

59. Procedure for the disposal of appeals and applications for revision.--

(1) An appeal or application for revision filed under these rules shall be filed, heard and disposed of in accordance with the procedure laid down in the Code of Civil Procedure as far as it may be applicable.

(2) It should be borne in mind that the powers of Civil Courts to deal with objections under section 47, Civil Procedure Code, or Order XXI, Rule 58, as amended by Lahore High Court, are the same irrespective of whether the objections are received by the Court direct or through the Collector under rule 8 of the Government rules framed under section 70, of the Civil Procedure Code.

(3) Objections under section 9 of the Debtor's Protection Act are to be decided by the Civil Court and not the collector.

(A.I.R. 1941 Lah. 225 Lakhmi Chand v. Aulia Khan.)

[**]**[Note** IN rule 58 the words "Financial Commissioner" shall mean "The Board of Revenue, Punjab".]

PART N -- EXECUTION OF DECREES AGAINST AGRICULTURISTS

1. Property exempt from attachment.-- The following property of an agriculturist is exempt from attachment and sale:-

(a) The necessary wearing apparel, cooking vessels, beds and beddings 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. (Section 60 (1) (a) of the Code).

(b) Implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as an agriculturist and such portion of agricultural-produce or any class of agricultural-produce as may have been declared by the Provincial Government to be free from liability under Section 61. (Vide also clause (b) of the proviso to Section 60 (1) of the Code).

(c) Where the judgment- debtor is liable to pay land-revenue, so much of the produce of the land as the Collector thinks necessary for seed-grain and the subsistence, until the harvest next following, of the judgment-debtor, his family and cattle exempted under head (b) (Section *[83 of the Punjab Land Revenue Act, 1967], read with Section 88 of the Punjab Tenancy Act and Section 60 (1) (p) of the Code of Civil Procedure). Under Section 61 of the Civil Procedure Code, the Punjab Government has declared that, in the case of agriculturists, the judgment-debtor's entire fodder crops, including gram, oats, chari, maize and guara, one third or 20 maunds, whichever is greater, of food-grains, and one third of all other crops shall, subject to the provisions of clauses (b) and (p) of sub-section (1) of Section 60 of the Civil Procedure Code and of the proviso to [Section 83 of the Land Revenue Act, 1967], be exempted from liability to attachment or sale in the execution of a decree, for the purpose of providing, until the next harvest, for the due cultivation of land and for the support of the judgment-debtor and his family.

(d) Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and not let on rent or lent to others or left vacant for a period of a year or more.

(See Section 60 (1) (c) of the Code of Civil Procedure and Section 35 of the Punjab Relief of Indebtedness Act).

(e) Standing crops except cotton and sugarcane. (Section 10 of the Punjab Debtors' Protection Act).

2. Land and trees exempt from sale.-- According to Section 16 of the Punjab Land Alienation Act, 1900, no land belonging to a member of an agricultural tribe, notified under that Act, can be sold in execution of any decree or order of a Civil or Revenue Court.

Standing trees apart from the land on which they stand cannot be sold. (Section 10 of the Punjab Debtors' Protection Act).

3. Exemption of ancestral immovable property.-- Attention is invited to the provision of section 9 of the Punjab Debtors' Protection Act which lays down that ancestral immovable property in the hands of a subsequent holder shall not be liable in the execution of a decree or order of Court relating to a debt incurred by any of his predecessors-in-interest. This rule, however, is to be applied only "When custom is the rule of decision in regard to secession of immovable property." It is not applicable when the debt has been expressly charged by way of a mortgage.

4. Attachment and sale to be carried out through Collector.-- The attachment and sale of the land and its produce will be carried out by an order addressed by the Civil Court to the Collector or such Revenue-Officer as he may appoint in this behalf under Section *[170 of the Punjab Land Revenue Act, 1967,] and subject to the rules made thereunder and the provisions of the Code contained in Order XXI, Rules 44, 45, 74 and 75.

PART O – EXECUTION OF DECREES AGAINST PERSONS IN MILITARY SERVICE…….***[Omitted]

PART P -- RECEIPTS FOR PROPERTY REALISED OR RECOVERED OR RECOVERED IN EXECUTION OF DECREES

1. Receipts.-- Receipt should invariably be furnished by decree-holders for money paid or goods delivered through the Courts in satisfaction of decrees.

2. Payment by debtor.-- Sums tendered by a judgment-debtor in payment or part payment of a decree shall be received by the Court which framed the decree or to which the decree has been sent for execution, whether the judgment-creditor has taken out execution or not; and whether, in case he has taken out execution, he is actually in attendance at the Court-house or not.

3. Payment to decree-holder when present.-- If the judgment-creditor is in attendance at the time of such tender (whether for the purpose of prosecuting his execution or not), the money so received by the Court shall be made over to him upon his giving a receipt, duly stamped if the sum so paid exceeds rupees twenty, and the receipt taken shall be filed with the proceedings.

4. Amount to be deposited when decree-holder is not present.-- If the judgment-creditor is not in attendance the sum paid in by the judgment-debtor shall be made over by the Court to the Nazir, who shall forthwith deposit it in the Treasury, at the Sadar or Tahsil, as the case may be, and notify to the Court the number under, and date on, which the sum has been entered in the deposit register. A corresponding entry will be made in the Court's record:

Provided that if the Treasury is closed for business when the money is paid into Court, it should be placed in the Nazir's Cash Chest, which should be lodged in the outer room of the Treasury, if it is open, as provided in Order 4 (2), of the Punjab Treasury Manual, 2nd edition, page 2, and if it is closed, the Presiding Officer of the Court must make other suitable arrangements for its safe custody.

5. Receipt to be given to debtor by Court.-- An unstamped acknowledgment will, in every case, be given to the judgment-debtor, by the officer to whom the payment is made, for any sum paid into Court under the preceding paragraphs.

6. Payment to decree-holder of the sum deposited.-- When the judgment-creditor appears and claims the sum received by the Court, such Court shall give the claimant (after identification) a cheque on the Treasury, payable to his order, for the amount, and shall note thereon the date of deposit and the number in the deposit register. An unstamped receipt, particularising the amount of the cheque, its date and number, together with the deposit number and date, shall be taken from the judgment-creditor in acknowledgment of such cheque, and this receipt will remain on the record, and will be deemed sufficient to mark the finality of the proceedings.

7. Payment to decree-holder of the sum deposited.-- The cheque mentioned in the preceding paragraph shall be presented to the Treasury Officer for payment, and the receipt of the payee, endorsed thereon, shall be sufficient acquittance for the Treasury Officer, who will forward such endorsed cheque to the Accountant-General, as his voucher for the withdrawal of the amount from deposit.

8. Stamp on receipt.-- When the amount exceeds rupees twenty the receipt will be stamped at the expense of the judgment-creditor.

9. *Dakhalnama* does not require stamp.-- The practice prevailing in some districts of requiring the *dakhalnama* or acknowledgment, taken from a decree-holder when he has been placed in possession of immovable property in execution of a decree, to be stamped, is not authorized either by the Court Fees Act or by the Stamp Act. The *Dakhalnama,* not being an acknowledgment of the receipt of money or other moveable property, is not a receipt within the meaning of Section 2 (23) of the Stamp Act, and does not require to be stamped.

PART Q -- RESISTANCE TO EXECUTION

1. Resistance by judgment-debtor or by some person on his behalf or at his instigation.-- If 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, and the decree-holder complains of such resistance or obstruction, Order XXI, Rules 97 to 99, prescribe the procedure to be followed.

In proper cases the provision of Section 74 of the Code of Civil procedure may also be availed of.

According to Order XXI, Rule 98, Civil Procedure Code, as amended by the Lahore High Court, a Court can now take action not only when the obstruction was occasioned by the judgment-debtor himself or by some person at his instigation but also when it was caused by any one "on his behalf." It has also been provided that the detention ordered in this rule shall be at public expense. The provision as to limitation is contained in Article 167 of Schedule I to Act IX of 1908 which provides a period of thirty days from the date of resistance or obstruction.

2. Resistance by others.-- Order XXI, Rule 99, provides for cases where the resistance or obstruction has been occasioned by any person other than the judgment-debtor, claiming in good faith to be in possession on his own account or on account of some person other than the judgment-debtor.

3. Restoration of possession to a person who was in possession not on account of debtor but was dispossessed in execution.-- If any person not bound by the decree should be dispossessed of any property in execution, whether by the decree-holder or by the purchaser in execution, he may apply to the Court executing the decree under Order XXI, Rule 100, if he disputes the right of such decree-holder or purchaser to be put in possession. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it should, under Rule 101, direct that the applicant be put into possession of the property. Attention is drawn to this provision, as in such cases it is not uncommon for a Court to refuse to make any inquiry and to refer the applicant to a regular suit.

The limitation for such applications is thirty days from the date of dispossession (see Article 165, Schedule I to Act IX of 1908).

PART R -- COSTS IN EXECUTION PROCEEDINGS

1. Costs of pleaders.--Unless there is any reason to the contrary, costs of pleaders in execution cases should be allowed on the scale laid down for miscellaneous proceedings in Chapter 16, "Legal Practitioners," Part B.

2. ***[Omitted].

3. ***[Omitted].

*[PART S. -- RECIPROCAL EXECUTION OF DECREES BY COURTS IN PAKISTAN AND COURTS IN FOREIGN COUNTRIES

1. References.-- The law on the subject of execution of decrees of Courts in Pakistan to which the provisions relating to execution do not extend and the decrees passed by Courts in the United Kingdom or any other reciprocating territory is contained in section 43 and section 44-A of the Code of Civil Procedure, 1908 (V of 1908).

2. Reciprocity of execution between Courts in United Kingdom and certain foreign Courts.-- As regards execution of decrees passed by Courts in United Kingdom or any other reciprocating territory, the provisions of Section 44-A of the Code of Civil Procedure, 1908 (V of 1908) as amended, be carefully noted and followed.

3. Reciprocity between Courts in Pakistan and foreign Courts.-- The following countries have been declared by the Government of Pakistan to be reciprocating territories within the meaning of section 44-A of the Code of Civil Procedure:

S.No.	Name of the country.	No. of Notification etc.
1.	United Kingdom	No. 11(5)/56, dated, 26th July, 1958.
2.	Fiji	F.227/48-Law, dated 3.6.1949 Gazette of Pakistan Part-I, dated 10.6.1949, Page 275.
3.	Singapore	F.12/52-Sol, dated 22.4.1954, Gazette of Pakistan, Part-I, dated 30.4.1954. Page 106.
4.	Australian Capital Territory	F.12/55-Sol, dated 11.4.1957 Gazette of Pakistan Part-I, dated 11.4.1957, Page 174.

5.	**New Zealand including the Cook Islands (including Niue) and the Trust Territory of Eastern Samoa.**	**F.11(2)/56-Sol, dated 3.11.1958 Gazette of Pakistan Part-I, dated 7.11.1958, Page 455.**
6.	**Northern Territory of Australia.**	**S.R.O. 403, dated 22.8.1959, Gazette of Pakistan, Part-I, dated 22.8.1959, Page 425.**
7.	**Australian State of Victoria**	**S.R.O. 1067(K)/70 dated 21.9.1970 Gazette of Pakistan, Part-I, dated 9.10.1970, Page 870.**
8.	**States of Queensland and Western Australia**	**S.R.O. 482(I)/73, dated 2.4.1973 Gazette of Pakistan Extraordinary Part-II, dated 2.4.1973, Page 550.**
9.	**State of Kuwait**	**S.R.O. 567(I)/83, dated 6.6.1983, Gazette of Pakistan Extraordinary Part-II, dated 6.6.1983, Page 769.**
10.	**Republic of Turkey**	**S.R.O. 477(I)/85, dated 20.5.1985 Gazette of Pakistan Extraordinary Part-II, dated 21.5.1985, Page 513.**

APPENDEX

(NOTIFICATIONS)

MINISTRY OF LAW

Karachi, the 26th July 1958

1. No.11(5)/56-Sol, dated 26th July 1958. The Government of the United Kingdom, with the concurrence of the Government of Pakistan has made the following order providing for the execution in the United Kingdom of the decrees of Superior Courts in Pakistan on the basis of reciprocity. The Order is published for general information-

"STATUTORY INSTRUCTIONS"

1958 No. 141

JUDGMENTS

The Reciprocal Enforcement of Judgment (Pakistan Order, 1958. Made.....28th January, 1958. At the Court at Buckingham Palace, the 28th Day of January, 1958.

PRESENT

The Queen's Most Excellent Majesty in Council.

Her majesty by virtue and in exercise of the powers conferred on Her by section one of the Foreign Judgments (Reciprocal Enforcement) Act, 1933(a) and of all other powers enabling Her, is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:

1. This Order may be cited as the Reciprocal Enforcement of Judgment(Pakistan) Order, 1958.

2. The Reciprocal Enforcement of Judgments (Pakistan) Order, 1953(b), is hereby revoked provided that in relation to judgments given before the date of this order the High Courts of Dacca and Lahore, the Chief Court at Karachi and Judicial Commissioner's Courts at Peshawar and Quetta shall continue to be deemed to be Superior Courts for the purposes of part 1 of this Act.

3. Part 1 of the Act shall extend to all the territories of Pakistan.

4. The following Courts of Pakistan shall be deemed Superior Courts for the purposes of Part 1 of the Act, that is to say:-

(a) The Supreme Court of Pakistan and all the High Courts.

(b) All District Courts.

(c) All other Courts whose civil jurisdiction is subject to no pecuniary limit provided that the judgment sought to be registered under the Act is sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit.

W.G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order, but is included to indicate its general purport)

The purpose of this Order is to revise the list of Courts of Pakistan deemed to be Superior Courts for the purpose of Part 1 of the Act, and to continue the application of Part 1 of the Act in respect of judgments of Courts of Pakistan which have ceased to exist.

MINISTRY OF LAW AND LABOUR (LAW DIVISION)

Karachi the 3rd June, 1949.

No. F.227/48--Law.-- In exercise of the powers conferred by Explanation 2 to section 44-A of the Code of Civil Procedure 1908 (V of 1908), the Central Government in supersession of this Ministry's Notification No.F.227/48-Law, dated the 6th May, 1949, is pleased to declare Fiji to be a reciprocating territory and the Supreme Court of Fiji to be a Superior Court of the territory for the purposes of the said section.

MINISTRY OF LAW

Karachi the 22nd April, 1954

No. F.12/52-Sol.-- In exercise of the powers conferred by Explanation 2 to section 44-A of the Code of Civil Procedure 1908 (V of 1908), the Central Government is pleased to declare the Colony of Singapore to be a reciprocating territory and the Supreme Court of Singapore to be a Superior Court of the territory for the purposes of the said section.

MINISTRY OF LAW

Karachi, the 11th April, 1957

No. F.12/55-Sol.-- In exercise of the powers conferred by section 44-A of the Code of Civil Procedure 1908 (V of 1908), the Central Government is pleased to declare the Australian Capital Territory to be a reciprocating territory and the Supreme Court of Australian Capital Territory to be a Superior Court of the territory for the purposes of the said section.

THE GAZETTE OF PAKISTAN, APRIL 19, 1957

Karachi, the 11th April, 1957

No. F.12/55-Sol.-- The following Proclamation is published for general information:

Extract from "Commonwealth of Australia Gazette", No. 77, dated the 24th December, 1956.

PROCLAMATION

Commonwealth of Australia to wit. W.J./SLIM, Governor General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

Whereas it is provided by sub-section (2) of section 5 of the Foreign Judgment (Reciprocal Enforcement) Ordinance, 1954, of the Australian Capital Territory, that, if the Governor-General is satisfied that in the event of the benefits conferred by Part II of that Ordinance being extended to judgments given in the superior Courts of any country, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court of the Australian Capital Territory, he may by Proclamation declare:-

(a) that Part II of that Ordinance extends in relation to that country; and

(b) that such Courts as are specified in the proclamation shall, for the purpose of Part II of the Ordinance, be deemed to be Superior Courts of that country:

AND WHEREAS I, Sir William Joseph Slim, the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, am satisfied that, in the event of the benefits conferred by Part II of the Foreign Judgment (Reciprocal Enforcement) Ordinance, 1954, being extended to judgments given in the superior Courts of a country which is specified in column 1 of the Schedule to this Proclamation, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court of the Australian Capital Territory:

NOW, THEREFORE, I, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby declare:-

(a) that Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1954, of the Australian Capital Territory extends in relation to a country specified in column 1 of the Schedule to this Proclamation; and

(b) that the Court or Courts specified in column 2 of that Schedule opposite to a country shall, for the purposes of Part II of that Ordinance be deemed to be superior Court or superior Courts, as the case may be, of that country.

THE SCHEDULE

Column I	Column 2
Ceylon	The Supreme Court of Ceylon. The District Courts of Ceylon.
Fiji	The Supreme Court of Fiji.
Hong Kong	The Supreme Court of Hong Kong.
New Zealand	The Supreme Court of New Zealand.
Federation of Malaya	The High Court of the Federation of Malaya.
Pakistan	The Supreme Court of Pakistan. The High Court for the Province of East Pakistan. The High Court for the Province of West Pakistan. The District Courts of Pakistan. All other Courts of Pakistan whose civil jurisdiction is subject to no pecuniary limit.
Singapore	The High Court of the Colony of Singapore.
The Cook Islands (including Niue)	The Supreme Court of New Zealand.
The Trust Territory of Western Samoa	The Supreme Court of New Zealand.

Given under my hand and the Great seal of the (L.S.) Commonwealth this twenty-first day of December in the Year of our Lord One thousand nine hundred and fifty-six, and in the fifth year of Her Majesty's reign.

By His Excellency's Command.

NELL O'SULLIVAN,
Attorney-General

God Save the Queen;

By Authority: A.J. Arthor, Commonwealth Government Printer, Canberra.

MINISTRY OF LAW

Karachi, the 3rd November 1958

No.F.11(2)/56-Sol.-- In exercise of the powers conferred by explanation 2 to section 44-A of the Code of Civil Procedure 1908 (V of 1908), the Central Government is pleased to declare the New Zealand, including the cook Islands (including Nitte) and the Trust Territory of Western Samoa to be a reciprocating territory,and the Supreme Court of the New Zealand to be a Superior Court of that territory for the purposes of the said section.

This notification shall be deemed to have taken effect as on and from the twenty seventh day of August, nineteen hundred and fifty eight.

MINISTRY OF LAW

Karachi, the 3rd November 1958

No. F.11(2)/56-Sol.-The Government of New Zealand with the concurrence of the Government of Pakistan has made the following order providing for the executing of the decrees of Superior Courts in Pakistan on the basis of reciprocity. The order is published for general information.

"THE RECIPROCAL ENFORCEMENT OF JUDGMENTS (PAKISTAN) ORDER, 1958

COBHAM, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 27th day of August 1958.

PRESENT

His Excellency the Governor-General in Council. PURSUANT to the Reciprocal Enforcement of Judgments Act, 1934, His Excellency the Governor-General acting by and with the advice and consent of the Executive Council, and being satisfied that substantial reciprocity of treatment will be assured as respects the enforcement within Pakistan of judgments given in the Superior Courts of New Zealand, hereby make the following order.

ORDER

1. This order may be cited as the Reciprocal Enforcement of Judgments (Pakistan) Order, 1958.

2. Part 1 of the Reciprocal Enforcement of Judgments Act, 1934, shall extend to Pakistan.

3. The Supreme Court of Pakistan, the High Court for the province of West Pakistan, the High Court for the province of East Pakistan, and all Pakistan District and other Courts where civil jurisdiction is subject to no pecuniary limit, shall be deemed to be Superior Courts of Pakistan for the purposes of Part I of the Reciprocal Enforcement of Judgments Act, 1934.

MINISTRY OF LAW

Karachi, the 22nd April, 1959

No.S.R.O.403.-In exercise of the powers conferred by Explanation 2 to section 44-A of the Code of Civil Procedure, 1908 (V of 1908), the Central Government is pleased to declare the Northern Territory of Australia to be a reciprocating territory, and the Supreme Court of the Northern Territory of

Australia to be a Superior Court of the territory for the purposes of the said section.

No.F.12/56-Sol. The following notice is published for general information.

(Extract from Commonwealth of Australia Gazette No.27 dated 7th May, 1959).

NORTHERN TERRITORY OF Australia FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE, 1955.

Whereas it is provided by sub-section 1 of section 5 the Foreign Judgment (Reciprocal Enforcement) Ordinance 1955 of the Northern Territory of Australia, that if the Attorney-General is satisfied that, in the event of the benefits conferred by Part II of that Ordinance being applied to judgments given in the Superior Courts of a country outside Australia substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court of the Northern Territory, he may by notice declare:

(a) that Part II of that Ordinance applies in relation to that country, and

(b) that such Courts of that country as are specified in the notice shall, for the purposes of part II of that Ordinance, be deemed to be Superior Courts of that country.

AND WHEREAS, I, Sir Garfield Edward John Barwick, the Attorney-General of the Commonwealth of Australia am satisfied that in the event of the benefits conferred by Part II of that Ordinance being applied to judgments given in the Superior Courts of Pakistan, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court of the Northern Territory.

NOW, THEREFORE, I, the Attorney-General aforesaid hereby declare-

(a) that Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1955, of the Northern Territory applies in relation to Pakistan and

(b) that the following Courts, shall, for the purposes of part II of that Ordinance, be deemed to be Superior Courts of that country:

The Supreme Court of Pakistan;

The High Courts for the Provinces of West Pakistan and East Pakistan;

All District Courts;

All other Courts in Pakistan when exercising a civil jurisdiction which is subject to no pecuniary limit provided that a judgment of any such other Court which is sought to be enforced is endorsed with the statement under the seal of the Court that the Court's jurisdiction in the matter in which the judgment was given was subject to no pecuniary limit.

Dated this twentieth day of April, 1959. G.E. BARWICK GENERAL

Attorney General

MINISTRY OF LAW AND PARLIAMENTARY AFFAIRS

(Law Division)

Islamabad, the 21st September, 1970

No. S.R.O. 1067(K)/10.-- In exercise of the powers conferred by section 44-A of the Code of Civil Procedure, 1908 (V of 1908), the Central Government is pleased to declare the Australian State of Victoria to be a reciprocating territory, and the Supreme Court of Australian State of Victoria to be a Superior Court of the territory for the purposes of the said section.

No.S.R.O. 1068(K)/70.

The following proclamation is published for general information.

(Extract from the Victoria Government Gazette No.10, dated 4th February, 1970.)

DECLARATION OF RECIPROCATING COUNTRY FOR THE PURPOSES OF PART II OF THE FOREIGN JUDGMENTS ACT, 1962, No. 6916.

PROCLAMATION

By His Excellency the Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia & C, & C &C.

I, the Governor of the State of Victoria acting by and with the advice of the Executive Council thereof and being satisfied that the law of Pakistan makes provision for the enforcement in that country of judgments given in the Superior Courts of Victoria.

DO BY THIS MY PROCLAMATION DIRECT-

(a) that part II of the Foreign Judgments Act, 1962, shall extend to Pakistan and

(b) that the Courts of Pakistan named hereunder be deemed Superior Courts for the purposes of the said Part II of the Foreign Judgments Act, 1962:-

(i) The Supreme Court of Pakistan,

(ii) the High Courts for the Province of West Pakistan and East Pakistan,

(iii) all District Courts, and

(iv) all other Courts whose civil jurisdiction is subject to no pecuniary limit, provided that the judgment sought to be enforced is sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit.

GIVEN under my Hand and the Seal of the State of Victoria aforesaid, at Melbourne, this twenty-eight day of January, in the year of our Lord One thousand nine hundred and seventy and in the eighteenth year of Her Majesty Queen Elizabeth II.

MINISTRY OF LAW AND PARLIAMENTARY AFFAIRS

(Law Division)

Islamabad the 2nd April 1973

No. S.R.O.482(1)/73.-- In exercise of the powers conferred by section 44-A of the Code of Civil Procedure, 1908 (V of 1908), the Federal Government is pleased to declare the State of Queensland and Western Australia to be the reciprocating territory, and the Superior Courts of those States to be Superior Courts of the territory for the purposes of the said section.

S.R.O. 483(1)/73. The following Orders in Council are hereby published for general information.

(1) Order in Council dated the 24th September, 1970, extending of the Reciprocal Enforcement of Judgments Act of 1959 of Queensland to Pakistan etc.

WHEREAS by "The Reciprocal Enforcement of Judgments Act of 1979, it is amongst other things enacted that if the Governor in Council is satisfied that in the event of the benefits conferred by Part II of the said Act being extended to judgments given in the Superior Courts of any Commonwealth country not including the United Kingdom and Commonwealth of Australia or given in the Superior Courts of any foreign country substantial reciprocity of treatment will be assured as respects the enforcement within that Commonwealth country or in that foreign country, as the case may be of judgments given in the Superior Courts of Queensland, he may by Order in Council direct:

(a) that the said Part II of the said Act shall extend to that Commonwealth country or to that foreign country, and

(b) that such Courts as are specified in the Order in Council shall be for the purposes of the said Part II of the said Act be deemed Superior Courts of that Commonwealth country or of that foreign country.

AND WHEREAS the Governor in Council is satisfied that in the event of the benefits conferred by the said part II of the said Act, being extended to judgments given in the Superior Courts of the countries set forth in the Schedule hereto substantial reciprocity of treatment will be assured as respects the enforcement within such countries of judgments given in the Superior Courts of Queensland:

NOW, THEREFORE, his Excellency the Governor, acting by and with the advice of the Executive Council and in pursuance of the powers and authorities vested in him by the said Act doth hereby direct that Part II of the said Act shall extend to the countries set forth in the said Schedule and that the Court or Courts respectively set forth in such Schedule opposite the name of each country shall for the purposes of Part II of the said Act be deemed the Superior Court or Courts of such country.

And the Honourable the Minister for Justice and Attorney-General is to give the necessary directions herein accordingly:

SCHEDULE

Column 1	Column 2
Ceylon:	The Supreme Court of Ceylon. The District Court of Ceylon.
India:	The Supreme Court of India. All High Courts and judicial Commissioner Courts in India. All other Courts in India when exercising a civil jurisdiction which is subject to no pecuniary limit.
Pakistan:	The Supreme Court of Pakistan. The High Courts for the Province of West Pakistan and East Pakistan. All District Courts. All other Courts whose civil jurisdiction is subject to no pecuniary limit.
British Columbia:	The Court of Appeal for British Columbia. The Supreme Court of British Columbia.
Bahama Islands:	The Supreme Court of the Bahama Islands.
Singapore:	The High Court of Singapore.
Fiji:	The Supreme Court of Fiji.
Manitoba:	Court of appeal for Manitoba. Her Majesty's Court of Queen's Bench for Manitoba. All Country Courts in Manitoba.
British Honduras:	The Supreme Court of British Honduras.
Cayman Islands:	The Grand Court of Cayman Islands.

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(2) Order in Council published in the Government of the State of Western Australia, Gazette dated the 24th July, 1970, extending part II of its Foreign Judgment (Reciprocal Enforcement) Act, 1963-65 to Pakistan, etc.

WHEREAS it is enacted, inter alia, by sub-section (2) of section six in Part II of the Foreign Judgment (Reciprocal Enforcement) Act, 1963-65, that where the Governor is satisfied that, if the benefits conferred by that Part are extended to judgments given in the Superior Courts of any Commonwealth country, or given in the Superior Courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement within that Commonwealth country or in that foreign country as the case may be of judgments given in the Supreme Court, he may by Order, direct-

(a) that Part II shall extend to that Commonwealth country or to that foreign country; and

(b) that such Courts as are specified in the order shall be deemed to be Superior Courts of that Commonwealth country or of that foreign country for the purposes of that Part:

NOW, THEREFORE, His Excellency the Governor, being so satisfied with respect to each country specified in column 1 of the Schedule to this Order and the Superior Court or Superior Courts, as the case may be specified in column 2 of that Schedule, by virtue and in exercise of the powers conferred on the Governor by the above recited sub-section and acting with the advice and consent of the Executive Council, doth hereby direct-

(a) that part II of the Foreign Judgments (Reciprocal Enforcement) Act, 1963-65, shall extend to a country specified in column 1 of the Schedule to this Order; and

(b) that the Court or Courts specified in column 2 of that Schedule opposite to a country shall for the purposes of that Part be deemed a Superior Court or Superior Courts, as the case may be of that country.

THE SCHEDULE

Column 1	**Column 2**
Bahama Islands	The Supreme Court of Bahama Islands.
British Honduras	The Supreme Court of British Honduras.
Cayman Islands	Grand Court of the Cayman Islands.
Ceylon	The Supreme Court of Ceylon. The District Courts of Ceylon.

Federation of Malaysia	The Federal Court of Malaysia. The High Court of Malaya. The High Court of Borneo.
Fiji	The Supreme Court of Fiji.
India	The Supreme Court of India; all High Courts and Judicial Commissioner's Courts in India; all District Courts in India; all other Courts in India when exercising a civil jurisdiction which is subject to no pecuniary limit, if a judgment of any such Court which is sought to be enforced is endorsed with a statement under the seal of the Court that the Court's jurisdiction in the matter in which the judgment was given was subject to no pecuniary limit.
Italy	The Superior Courts of Italy.
Manitoba	The Court of Appeal for Manitoba; Her Majesty's Court of Queen's Bench for Manitoba; all County Courts in Manitoba.
Pakistan	The Supreme Court of Pakistan; The High Court for the Province East Pakistan; the High Court for the Province of West Pakistan; all District Courts in Pakistan; all other Courts in Pakistan when exercising a civil jurisdiction which is subject to no pecuniary limit, if a judgment of any such other Court which is sought to be enforced is endorsed with a statement under the seal of the Court that the Courts jurisdiction in the matter in which the judgment was given was subject to no pecuniary limit.
Singapore	The High Court of Singapore.

File No. F1(1)/72-Sol.II.

S.A.M. Wahidi, CSS
Section Officer.

MINISTRY OF JUSTICE AND PARLIAMENTARY AFFAIRS

(Justice Division)

Islamabad, the 6th June, 1983

S.R.O. 567(1)/83.-- In exercise of the powers conferred by Explanation 2 to section 44-A of the Code of Civil Procedure, 1908 (V of 1908) the Federal Government is pleased to declare the State of Kuwait to be a reciprocating territory, and the following Courts of the State of Kuwait to be the Superior Courts of the territory for the purposes of the said section, namely -

1. Constitutional Court.

2. Court of Causation

3. High Court of Appeal.

MINISTRY OF LAW AND PARLIAMENTARY AFFAIRS

(Justice Division)

Islamabad the 20th May, 1985

No. S.R.O.477(1)/85.-- In exercise of the powers conferred by Explanation 2 below section 44-A of the Code of Civil Procedure, 1908 (V of 1908) the Federal Government is pleased to declare the Republic of Turkey to be a reciprocating territory and the Ashye Mukul Maikemereri (First Instance Courts) of the Republic of Turkey to be the Superior Courts of the territory for the purposes of the said section.

Saif-ul-Islam

Section Officer

S.R.O. 478(1)/85.-- The following Convention on Mutual Assistance in Civil and Commercial Matters between the Islamic Republic of Pakistan and the Republic of Turkey, which came into force on the 5th day of June, 1983, is hereby published for general information.

(No.F.9(4)/78-Sol.II)

CONVENTION ON MUTUAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS BETWEEN THE ISLAMIC REPUBLIC OF PAKISTAN AND THE REPUBLIC OF TURKEY

The Islamic Republic of Pakistan and the Republic of Turkey.

Desiring to regulate the legal protection of Pakistani nationals in Turkey and to Turkish nationals in Pakistan and the mutual assistance of Judicial authorities of the two States in civil and commercial matters.

Have decided to conclude a Convention and have agreed as follows:

CHAPTER I
DEFINITIONS AND FIELD OF APPLICATION
Article 1

1. Except for the contrary cases expressly indicated, this Convention shall apply only to civil and commercial matters, including indisputable affairs.

2. For the purposes of this convention:

(a) the expression "consul" means any person who, having been appointed by the sending State to the receiving State to exercise consular functions, has been granted an exequatur or any other authorization by the receiving State;

(b) the expression "diplomatic agent" means the chief of mission of the sending State, duly admitted by the receiving State, or any member of the diplomatic staff of this mission;

(c) the expression "person" means physical and juridical persons;

(d) the expression "designated authority" means the authority designated by each contracting party to receive request under the provisions of this Convention.

CHAPTER II
SERVICE OF JUDICIAL AND EXTRA - JUDICIAL DOCUMENTS
Article 2

1. When judicial and extra-judicial documents drawn up in the territory of a Contracting party are to be served on persons resident in the territory of the other Party, they shall be served on the addressee whatever his nationality, through one of the forms provided for in Article 3.

2. The expression "requesting Party" which occurs in Chapter II of this Convention, means the country where the documents to be served are drawn up and the expression "requested Party" means the country where the documents are to be served.

Article 3

1. The request for service shall be addressed by a diplomatic agent or consul, acting on behalf of the requesting Party to the designated authority of the requested Party, so that the document concerned may be served by the competent authority.

2. The request for service, specifying the names and capacities of the parties, the name, address and capacity of the addressee and the nature of the document to be served, must be in the language of the requested Party and be accompanied by two copies of the document concerned.

3. The document to be served shall be either in the language of the requested Party or accompanied by two copies of translation made into this language. The translation must be certified as accurate by the diplomatic agent or consul of the requesting Party.

4. Except when the service is effected in a special form, which is indicated in the request in so far as it is compatible with the law of the executing country, the competent authority shall effect the service in the form provided for in the law of that country as regards the service of similar documents.

5. A request for service which conforms to the preceding provisions of this Article may be refused only:

(a) if the authenticity of the request for service is not established, or

(b) if the Contracting Party which will effect the service in its territory, considers that such service is likely to prejudice the sovereignty or security of the State or is contrary to its public policy.

6. In all cases where a request for service is not executed, the requested authority shall, as soon as possible, inform the diplomatic agent or consul of the requesting Party the reason why the request has been refused.

7. The designated authority to which the request is made for the execution of service shall send to the diplomatic agent or consul of the requesting Party an attestation stating that the service has been effected. In case of failure, the requested Party shall inform the diplomatic agent or consul of the requesting Party the reasons which prevented the execution of the service. An attestation specifying the fact in regard to failure of such service will be attached thereto.

Article 4

1. In the case where the documents are served in accordance with the provisions of Article 3, the Contracting Party, whose diplomatic agent or consul has transmitted the request for service, shall refund to the other Contracting Party the fees which must be, under the law of the country where the service is effected, paid to the officials charged with the execution of the service as well as the costs incurred by reason thereof. The fees and costs may not exceed the amount usually paid in the law Courts of the requested State.

2. The competent authority which has effected the service shall request the diplomatic agent or consul of the requesting Party to reimburse the fees and costs in question while sending the attestation provided for in paragraph 7 of Article 3.

3. In connection with the service of documents, a Contracting Party shall not pay any fees, under whatever denomination, to the other Party other than those mentioned above.

CHAPTER III

TAKING OF EVIDENCE

Article 5

1. When a judicial authority of a Contracting Party deems it necessary to take evidence in the territory of the other Contracting Party, the evidence may be taken in the form provided for in Article 6, whatever the nationality of parties and witnesses may be.

2. For the purposes of Chapter III of this Convention:

(a) The expression "taking of evidence" comprises taking of testimonies, on oath or on solemn affirmation, of plaintiff, respondent, witness, expert, defender or of any other person; administering oath to the plaintiff, respondent, witness, defender, expert or to any other person pursuant to any provision of the procedure; producing, identifying or examining of any documents, samples or any other object;

(b) the expression "witness" means any person from whom it is deemed necessary to take any evidence;

(c) the expression "requesting Party" means the country where the law Court requires to take evidence, and the expression "requested Party" means the country where the evidence is to be taken.

Article 6

1. The judicial authority of the requesting Party may, in conformity with the law of its country, request for taking of evidence by means of a Letter Rogatory addressed to the designated authority of the requested Party to be transmitted to the competent judicial authority.

2. Letter Rogatory shall be either in the language of the requested Party or accompanied by two copies of a translation made into this language. The translation shall be certified as accurate by the competent authority of the requesting Party. The Letter Rogatory shall contain the nature of the action motivating the request for taking of evidence, all the necessary information

relating to the subject, the names of the parties, the names, capacities and addresses of the witnesses. In addition to this:

(a) either a list of questions to be put to witnesses or, if required, information on the qualities of the documents, samples or other objects, production, identification or examination of which is required shall be provided together with their translation duly certified as accurate; or

(b) the competent authority shall be requested to permit the parties or their representatives to ask the questions they wish to put.

3. Except when the Letter Rogatory is executed in a special from, should an express request to this effect have been made in the Letter Rogatory, in so far as it is compatible with the law of the requested Party, the competent authority of the requested Party shall execute the Letter Rogatory observing the same form and employing the same means as it would when carrying out a Commission from the authorities of its own country.

4. The diplomatic agent or consul of the requesting Party shall, if it is so required, be informed of the date and place where the Letter Rogatory is to be executed, in order that the Party or parties may be notified that they may be present themselves or, if they so wish, be represented by an Advocate, pursue of action or any other person having the power of representation in the law Courts of the requested Party.

5. A request for executing a Letter Rogatory which conforms to the preceding provisions of this Article may be refused only:

(a) if the authenticity of the Letter Rogatory is not established; or

(b) if, in the territory of the requested Party, execution of the Letter Rogatory does not fall within the competence of its judicial power;

(c) if the Contracting Party, in whose territory execution should be effected, deems it likely to prejudice the sovereignty or security of the State or contrary to its public policy.

6. In all cases where a Letter Rogatory is not executed by the competent authority, the designated authority, shall, as soon as possible, inform the diplomatic agent or consul of the requesting Party the reasons why it has not been executed.

7. When a Letter Rogatory is executed, the designated authority shall send to the diplomatic agent or consul of the requesting Party the required documents establishing that the Letter Rogatory has been executed.

Article 7

1. In the case where the evidence is taken in accordance with Article 6, the Contracting Party whose judicial authority has sent the Letter Rogatory shall refund to the other Contracting Party the fees paid, in execution of the request, by the competent authority to witnesses, experts and interpreters and the costs incurred by reason of the execution and the expenses incurred by the summons of the witnesses because they have not appeared of their own free will as well as the fees paid to and expenses incurred by the competent authority to act on its behalf, if the law of the executing country so permits, and the charges and costs incurred by reason of the observance of a special form if it is requested. These expenses shall be such as those which are usually admissible in similar cases before the law Courts of the requested Party.

2. The competent authority which has executed the Letter Rogatory shall require the diplomatic agent or consul of the requesting Party to reimburse the expenses in question while sending the documents provided for in paragraph 7 of Article 6, stating that the Letter Rogatory has been executed.

3. In connection with the taking of evidence, a Contracting Party shall not pay any fees, under whatever denomination, to the other Party other than those mentioned above.

CHAPTER IV
PROVISIONS RELATING TO EQUALITY OF TREATMENT IN JUDICIAL MATTERS
Article 8

The nationals of a Contracting Party shall, in the territory of the other Party, be entitled to legal protection for their persons and property and to bring actions or defend themselves under the same conditions, including charges and costs and shall enjoy the same rights as the nationals of the other Contracting Party.

Article 9

The nationals of a Contracting Party resident in the territory of the other Party shall not be constrained to effect any payment as security for Court costs which the nationals of the other Party are not obliged to deposit or pay.

Article 10

The nationals of a Contracting Party shall, in the territory of the other Party, enjoy free legal aid on the same basis as the nationals of the latter.

Article 11

Any difficulties which may arise in connection with the application of this Convention shall be settled through diplomatic channels.

Article 12

The present Convention shall be ratified and the instruments of ratification thereof shall be exchanged at Ankara.

The present Convention shall come into force one month after the exchange of the instruments of ratification.

Article 13

The Convention shall remain in force for an indefinite duration.

Any contracting Party may denounce the Convention at any time by giving notice to the other Party. Denunciation shall take effect six months after the date when the other Contracting Party received such notification

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorized by their Governments, have signed the present Convention and have affixed hereunto their seals.

DONE in duplicate in English language, at Ankara on this twenty-third day of June, in the year one thousand nine hundred and eighty-one.

For the Government of the Republic of	For the Government the Islamic Republic
Turkey.	of Pakistan.
CEDVET METES,	S. SHARIFUDDIN PIRZADA,

Minister of justice. Minister of Law and Parliamentary Affairs and Attorney General.

Saif-ul-Islam
Section Officer

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These notifications have been produced in the Appendix to this Chapter.

4. Reciprocity has also been established between Pakistan and other countries for the enforcement of maintenance orders as per following details.

LIST OF COUNTRIES WITH WHICH RECIPROCAL ARRANGEMENTS EXIST

SERVICE OF SUMMONS

(SECTION 29, C.P.C.)

***A.* PRE-INDEPENDENCE AGREEMENTS.**

1. Ceylon.
2. Egypt.
3. European Countries:
   (a) Belgium, (b) France, (c) Portugal, (d) Russia, (e) Spain, (f) Sweden.
4. French Colonial Countries.
   (a) Pondichery.
   (b) Maraikal.
   (c) Mahe.
   (d) Yanam.
   (e) Saigon and French Indo-China.
5. Iran
6. Iraq.
7. Japan.
8. Kenya.
9. Mauritius.
10. Nepal
11. Siam.
12. Strait Settlements and Union of South Africa.
13. State of Johore.

B. **NEW AGREEMENTS**	**FILE NO.**
1. India and Indian States	F.218/48-Law, dated 1.8.1952
2. Federation of Malaya	F.31/49-Leg, dated 20.8.1952
3. Union of Burma	F.53-VI/50-Sol, dated 13.10.1953
4. Federal Republic of Germany	F.15(23)/52-Sol, dated 2.5.1955
5. Switzerland.	S.R.O 1714(k) dated 29.11.1960
6. Denmark	F.6(4)/75-Sol.II
7. Turkey	F.9(4)/78-Sol.II
8. Greece	F.9(2)/78-Sol.II

ENFORCEMENT OF MAINTENANCE ORDERS

A. PRE-INDEPENDENCE AGREEMENTS	**FILE NO.**
1. Union of South Africa.	2(1)/66-Sol-II.
2. Southern Rhodesia.	
3. Northern Rhodesia.	
4. Nayasaland.	
5. Kenya.	
6. Victoria.	
7. The Commonwealth of Austrailia.	
8. Federated Malaya States.	
9. Western Australia.	
10. Zanzibar.	
11. England and Ireland	F.120 dated 6.3.1922(F.11(4)/56-Sol)
12. Ceylon.	
13. Colony of Scyehellen.	
14. New South Wales.	
15. Strait Settlements.	
16. Colony of Mauritius.	
17. Somaliland Protectorate.	
18. Uganda.	
19. Besutoland.	
20. British Burma	
21. Sarawak.	

B. NEW AGREEMENTS FILE NO.

1. Federation of Malaya (including unfederated states of Nedah, Kelantan, Perlis, Tengganu & Johore)

F. 18(2)/55-Sol. Dated 21-11-56

2. Victoria SRO 354(k)/61 dated 1-3-61 (F.18/56-Sol.II)

3. Jersey SRO 304(k)/64 dated 7-4-64 (F.11(4)/60-Sol.II)

4. Monaco, Upper Volta, Finland, Central African Republic.
SRO 582(k)/63 dated 22-7-63 (F.10(2)/62-Sol.II)

5. Isle of Man SRO 382(k)/66 dated 15-4-66 (F.1/64-Sol.II)

6. Australian States and Territories. F.1(1)/67-Sol-II)

EXECUTION OF DECREES AND JUDGMENTS

(Section 44-A, CPC)

A. **PRE-INDEPENDENCE AGREEMENTS File/ Notification No.**

1. Colony of Aden

2. British Burma F.2(1)/66-Sol-II

3. South West Africa

B. **NEW AGREEMENTS**

1. United Kingdom F.11(5)/56.Sol.dt.26-7-58

2. Colony of SingaporeF. 12/52-Sol. dt.22-4-54

3. Fiji F. 227/48-Sol. dt.3-6-49

4. Australian Capital Territory F. 12/55-Sol. dt. 11-4-57

5. Northern Territory of Australia SRO 403, dated 22-8-59 F-12/56-Sol

6. New Zealand including the Cook Islands (including Niue) and the Trust Territory of Western Samoa.

F.11(2)/56-Sol dt.3-11-58 (Deemed to have taken effect as on from 27-8-58)

7. States of Queensaland and of Western Australia

SRO 482(I)/73 dt. 2-4-73 F.1(2)/72-Sol.II

8. Australian State of Victoria.

SRO 1067(k)/70 dt. 21-9-70 F.1(2)/67-Sol-II

9. State of Kuwait

SRO 567(1)/83.

F.1(1)/71-Sol.II

10. Turkey

F.9(4)/78-Sol.II]

CHAPTER 13

TRANSFER AND WITHDRAWAL OF SUITS AND APPEALS

1. Transfer of Part-heard cases.-- Section 24 of the Code of Civil Procedure provides for the transfer of suits, appeals or other proceedings pending in subordinate Courts. Although this power of transfer may be exercised at any stage of suit, appeal or other proceedings, no part-heard case should be transferred from one Court to another, if this can possibly be avoided

2. Courts requesting for transfer should record reasons.-- In submitting applications to superior authority for the transfer or withdrawal of cases under section 24 of the Code of Civil Procedure, Civil Courts should always record a short statement of the case, with their reasons for making the application.

3. Transfer of a case in which the judge is personally interested or in which the order appealed against was passed by him.-- Whenever a suit or appeal comes before a Judge ***[...] in which the order appealed against was passed by himself, a report should at once be made to the superior Court concerned with a view to the case being transferred to another Court.

**[The transfer of cases on personal grounds should be regulated in accordance with the observations made in 1988 S.C.M.R. 897 (902).]

4. Parties should be informed of the date for appearance before District Judge when a Court requests for transfer. District Judge to inform parties the date for appearance before the Court to which he transfers the case.-- If a subordinate Court sends a case to the District Judge with an application for its transfer, on the ground that it is beyond his jurisdiction or on similar grounds, it should give the parties a date of appearance before the District Judge. The District Judge will either hear the matter on that day, or, when this is not possible, give an other date. If orders for transfer are passed, the parties present should be informed of the Court to which the case has been transferred, and a date should be fixed by the District Judge, for their next appearance in the new Court.

5. On transfer of a case to another Court parties to be informed of date for appearance before that Court.-- If an application is made by one

of the parties for a transfer, and orders of transfer are passed after notice to the other side, the parties present should similarly be informed by the District Judge of the Court to which the case has been sent and the date on which they should appear before it.

6. Records to be sent immediately to the Court to which case is transferred.-- When a case is transferred by administrative order from one Court to another, the Presiding Officer of the Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the Court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.

7. Withdrawal of a suit by plaintiff.-- A plaintiff is at liberty to withdraw from a suit at any time (subject to any order as to costs that the Court may pass), but if he wishes to reserve his right to sue again he must obtain permission of the Court under Order XXIII, Rule 2, Civil Procedure Code. Permission can only be granted on the grounds specified in the rule. The words "other sufficient grounds" have been interpreted to mean grounds of the same nature as the grounds specified in clause (a) of sub-rule 2 of Rule I of the Order. The mere fact that plaintiff has not been able to produce adequate evidence to establish his case is no justification for granting permission under this rule.

8. District Judge may transfer a case to Additional District Judge.-- A District Judge may, with due regard to convenience, transfer a case under section 24, Civil Procedure Code, to an Officer in another district when that officer is acting as an *ex-officio* Additional District Judge of the district from which the case is to be transferred. In such case no reference to High Court is necessary except when any difficulty is experienced in making transfers.

9. District Judge can transfer or withdraw an appeal without reference to High Court.-- The District Judge can, without reference to the

High Court, transfer or withdraw any appeal pending in the Court of the Additional or *ex-officio* District Judge.

But he cannot exercise jurisdiction in such a manner as to set aside the orders of the High Court. Thus an appeal once transferred under the orders of the High Court cannot be re-transferred without further orders from the High Court.

10. Record of applications for transfer.-- Applications for transfer of civil cases and the proceedings therein should form files separate from the record of the main case sought to be transferred and the records of such transfer applications should be separately consigned to the Record Room. The original order on transfer application should be kept on the record of the transfer proceedings and a copy of this order should be sent to the Court concerned.

11. Record of transferred cases.-- Cases transferred by a Court of its own motion or on administrative grounds should not be entered in any register and it is unnecessary to keep any statement of cases so transferred. It is not necessary in such cases to make any separate record of the transfer proceedings and the original order of transfer instead of a copy, may be sent to the Court concerned.

CHAPTER 14

APPEALS AND REVISIONS -- CIVIL

PART A -- THE APPELLATE SYSTEM OF THE PUNJAB

*[**1. Classes of appellate Courts.--** There are four classes of Appellate Courts in the Punjab - the High Court; the Court of the District Judge; the Court of the Additional District Judge, where functions are assigned to him (See Section 6(2) of the Punjab Civil Courts Ordinance, 1962 (II of 1962), and the Court of Civil Judge, if so empowered by a notification issued by the High Court under section 18(3) of the aforesaid Ordinance. For appellate powers conferred on Civil Judges see paragraph 17 of Part A of Chapter 10 of this volume.

2. Forum of appeal.--(i) An appeal from a decree or order of a Civil Judge lies-

(a) to the Senior Civil Judge, if specially empowered as indicated in paragraph 1 above;

(b) to the High Court if the value of the original suit in which the decree or order was made exceeds two hundred thousand rupees; and

(c) to the District Judge in any other case.

(ii) An appeal from a decree or order of a District Judge or Additional District Judge exercising original jurisdiction lies to the High Court.

(*See* section 17 and 18 of the Punjab Civil Courts Ordinance, 1962).

3. Forum of appeal.-- When a Civil Judge has been invested with appellate powers under section 18(3) of the Punjab Civil Courts Ordinance, 1962 (II of 1962), all appeals from decrees or orders of Civil Judges of the first, second and third classes, which such Civil Judge has been empowered to hear, shall be preferred to such Civil Judge.

4. Withdrawal of appeal from and transfer to Civil Judges.-- If any such appeal is pending before a District Judge, the latter may transfer it to any Civil Judge under his control competent to dispose of it. He may also withdraw any appeal so transferred and either dispose of it himself or transfer it

to any competent Court under his control. (Section 15 Punjab Civil Courts Ordinance, 1962).

5. Second appeal in certain cases.-- Section 102 of the Civil Procedure Code, 1908 provides the condition under which a second appeal lies to the High Court from a decree passed in appeal by a Court subordinate to the High Court. No second appeal lies in any suit of the nature cognizable by Courts of Small Cause when the amount or value of the subject matter of the original suit does not exceed twenty five thousand rupees and, in any other suit when the amount or the value of the subject matter of the original suit does not exceed two hundred fifty thousand rupees.]

6. Appeal in compromise cases.-- Section 96(3) of the Code of Civil Procedure provides that no appeal shall lie from a decree passed with consent of parties.

7. Appeal from preliminary decrees.-- Section 97 of the Code provides that a preliminary decree, which has not been appealed against, shall not be questioned in any appeal preferred from the final decree.

8. Appeal from orders.-- An appeal lies from any order of the kinds specified in section 104 of the Code and Order XLIII, Rule 1, and from no other orders.

8-A. Every appeal for interlocutory order shall be accompanied by an affidavit of the appellant or his agent or his Advocate to the effect that a copy of Memorandum of Appeal and a copy of the order appealed from have been delivered to the respondent or his Advocate.

PART B -- GENERAL PROCEDURE OF APPELLATE COURTS

(a) Copies to accompany the memorandum of appeal

1. First Appeals, Second Appeals, Judgment, Disposal of some issues, Duty of copying agency.-- Order XLI, Rule 1, of the Code of Civil Procedure, provides that the memorandum of appeal shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

In second appeals 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 Rule 2, Order XLII, framed by the High Court.

When some issues are disposed of at first and the rest by the final judgment, it is sufficient to attach a copy of the final judgment to the memorandum of appeal, for the purposes of the above Rules.

Whenever an application is made for a copy of a civil judgment for the purpose of appeal, the applicant should be informed that a copy of the decree is also requisite, and he should be supplied with such copy, unless he declines to pay the necessary fees, in which case a certificate, under the signature of the officer-in-charge of the Copying Department, should be endorsed on the copy of the judgment supplied to the applicant to the effect that he was duly informed that a copy of the decree was requisite, and, after being so informed, declined to pay fees for the same. Similarly, an applicant for a copy of an Appellate judgment for the purposes of a second appeal should be told that a copy of the trial Court's judgment is also requisite.

2. Exclusion of time spent in obtaining copies for limitation purposes.-- Section 12 of the Limitation Act, 1908, directs that the period allowed for appeal shall be reckoned exclusive of the time requisite for obtaining a copy of the judgment and decree appealed against. The time requisite is the time beyond the applicant's control occupied by the Copying Agency after an application for a copy has been duly made to the proper officer. In granting copies, therefore, the Court or the Copying Agency should be careful to endorse on the copy the following particulars:-

(a) The date of presentation of the application for a copy.

(b) The date on which the copy was examined and attested.

(c) The date of delivery or despatch of the copy.

Appellate Courts should be careful to notice any delay in furnishing these copies.

3. Translations.-- Where the order appealed against is in English, it will be sufficient to file a copy of the English order without its counterpart in the vernacular. But should the appellant require it, he should be allowed to take a copy of the vernacular translation (if any) as well.

(b) Preliminary reception of appeals

4. Reception, service of processes, addresses for service.-- The general rules regarding the reception of plaint and service of summonses on defendants in Chapter 1, 'Practice in the trial of civil suits,' apply *mutatis mutandis* to the reception, of appeals and service of notices on respondents. It should be noted that an address for service filed during the course of the trial holds good for the purposes of Appellate proceedings also, and such addresses given by the respondents must be stated in the memorandum of appeal according to Order XLI, Rule 38, as amended by the High Court.

5. Reception by Court official.-- In District Courts, the usual practice is for the Superintendent to receive, in the first instance, the memorandum of appeal. There is no objection to this practice, which is a convenient one for both the Court and suitors. It must, however, be distinctly remembered that the only duty, which can legally be delegated to the Superintendent, is to receive the memorandum of appeal and note thereon the date of its receipt. The order as to its admission or rejection can be passed only by the Court itself.

*[**6. Amendment.--** If the grounds of objection to the decree appealed against are not set out concisely or are argumentative or in narrative form in contravention of Order XLI, Rule 1, of the Code of Civil Procedure, the petition of appeal should be returned for amendment under Order XLI, Rule 3, of the Code, and Courts should exercise freely the discretion thereby vested in

them with a view to stricter compliance with the provisions of the second sub-rule of Order XLI, Rule 1, of the Code.]

7. Admission.-- The memorandum of appeal, when bearing the proper Court-fees, must be admitted, if presented in the prescribed form and within the prescribed time, unless it is rejected or returned for amendment under Order XLI, Rule 3, of the Code. When an appeal has been admitted, it will be endorsed with the date of presentation, and the date fixed for hearing, and will be registered by the proper officer of the Court.

8. Disposal under Order XLI, Rule 2.--(i) In admitting the memorandum of appeal the Court should decide, whether it will proceed under Order XLI, Rule 2, of the Code, and fix a time for hearing the appellant or his pleader (with or without the records) without issuing notice to the respondent, or send notice of the appeal to the respondent and to the Court against whose order the appeal is made, and fix a day for hearing the appeal.

(ii) Notice ought not to be issued to a respondent unless the Appellate Court, either without perusing the records of the lower Court or after calling for and perusing such records, is in doubt as to the correctness of the decree appealed against.

9. Disposal under Order XLI, Rule 2.-- The Appellate Courts should be careful to see that the object of the statutory provision of Order XLI, Rule 2, is not defeated and respondents put to unnecessary trouble and expense by the indiscriminate issue of notice to the respondent in all cases.

When decision is confirmed under this rule, the confirmation should be notified to the lower Court.

Such confirmation falls within the definition of 'decree, as given in section 2 of the Code, and being, as such, appealable, a formal decree should be framed in every case disposed of under the provisions of Order XLI, Rule 2.

10. Amendment after admission.-- When an appeal has been registered and a date has been fixed for hearing the petition cannot be returned for amendment. The appeal must be disposed of in the regular manner by dismissal, or by a judgment affirming, varying or reversing the decree of the lower Court. If the appellant should desire to urge any ground of objection not

set forth in the memorandum of appeal, can, under the provisions of Order XLI, Rule 2, of the Code of Civil Procedure, do so only with the permission of the Court, and such permission should ordinarily be applied for in writing, some time before the date fixed for the hearing, under Order XLI, Rule 12, of the Code, in order that the respondent may have sufficient opportunity of contesting the case on that ground, without the necessity of a postponement.

11. Pauper appeals.-- Attention is drawn to the definition of decree given in section 2 of the Code and to sections 104, 105 and Order XLIII which specify what orders are appealable.

12. Default in appearance.-- Appeals in *forma pauperis* should not be admitted, unless the Court, after perusal of the judgment and decree finds the decree to be contrary to law or some usage having the force of law or is otherwise erroneous or unjust (Order XLIV, Rule 1).

(c) Hearing and disposal of appeal

13. (i) If, on the day fixed for the hearing of the appeal under Order XLI, Rule 12, of the Code or any other day to which the hearing is adjourned, the appellant does not attend in person or by agent, the appeal should usually be dismissed for default. It is illegal to take up a civil appeal in the absence of the appellant or his agent and confirm the decision of the lower Court on the merits instead of dismissing the appeal for default; for if appellant afterwards appears, shows good cause for his absence on the day fixed for hearing and applies for re-admission of the appeal, the Court is met by the difficulty that the appeal has already been heard on the merits.

(ii) In any case, where a party, whose non-attendance is a ground for dismissal of the proceeding for default, is not present when the proceeding is called on for hearing, the Court may postpone passing final order, if there is other work, which the Court can conveniently take up in the meantime. No hard and fast rule can be laid down, and the matter is one for the exercise of proper discretion in view of all the circumstances. But Courts should endeavour to dispose of cases on merits as far as practicable and avoid dismissals in default, when this can be done without wasting of time of the Court or prejudice to other litigants.

The above remarks also apply to the hearing of an appeal *ex parte* owing to the absence of a respondent.

If an adjournment is necessary by reason of a party not having appeared when first called, he may properly be ordered to pay all the costs caused by the adjournment.

14. Special Power.-- Special attention is invited to Order XLI, Rule 33, which introduces an English rule of law whereby an Appellate Court is given the fullest power to do complete justice between the parties concerned in the suit, whether such parties have joined in the appeal or not.

15. Appeals from orders during proceedings.-- Appeals from orders in pending proceedings should be disposed of as promptly as possible, so as not to delay those proceedings unnecessarily.

(d) Judgment in appeal

16. Contents.-- The judgment of the Appellate Court should contain the point or points for determination, the decision thereupon and the reasons for the decision, and, when the decree appealed against is reversed or varied, the relief to which the appellant is entitled (Order XLI, rule 31, of the Code of Civil Procedure). In other words, the judgment should be complete in itself and should give a concise account of the case between the parties, intelligible not only to the superior Appellate Courts, but to the public.

17. Grounds of Appeal and evidence.-- It is not intended that the judgment of the lower Appellate Court should ordinarily be as detailed as that of the Court of first instance, e.g., it will rarely be necessary for the lower Appellate Court to deal with the evidence of particular witnesses or to examine in detail the whole of the evidence; but it should give an intelligent and clear summary of the evidence which it has to consider and state the reasons for which it thinks particular portions of the evidence to have been more or less worthy of consideration. If any ground of appeal is not pressed by counsel or is withdrawn, the Appellate Court should invariably mention this fact in the judgment. At present, owing to the failure of Courts to show that all the grounds of appeal have been either argued or considered, or withdrawn or not pressed, second appeals have frequently to be admitted to a hearing owing to the

plea that some ground of appeal has been overlooked by the lower Appellate Court. An appellant is entitled to expect not only that every objection to the judgment or the proceedings of the lower Court, which is taken in due form and is relevant and of a substantial character, should be considered, but also that a decision upon the point raised by such objection should be recorded in the Appellate Court's judgment.

18. Findings of facts.-- The findings of fact in first appeals are as a rule final and cannot be challenged except on certain grounds. Appellate Courts should, therefore, realise their responsibility in the matter and should take care to see that the findings of fact on which their decision is based are clear and precise and to indicate that all relevant evidence, oral as well as documentary, has been duly considered. If this is not done, second appeals have to be frequently admitted on the ground that the necessary findings of fact are either vague or non-existent or that important evidence on the record has been ignored.

19. How parties to be named.-- As confusion frequently arises from the use of the words "appellant" and "respondent" in two successive Appellate Courts, especially when the parties appealing belong to different sides, Appellate Courts should not use these terms without the addition of the words 'plaintiff' or 'defendant' as the case may be; or the latter terms alone may be used.

(e) Decrees in appeal

20. Contents of decrees.-- Under the provisions of Order XLI, Rule 35, of the Code, the decree of the Appellate Court is required to contain the number of the appeal, the names and description of the parties, a clear statement of the relief granted or other determination of the appeal, and an order as to costs.

Note:- For directions as to filling up decretal orders of Appellate Court see 'Chapter 11-B.'

(f) Remands

21. Fixing date of appearance in lower Court.-- Whenever a case is remanded for re-decision under Order XLI, Rule 23, or for the trial of certain

issues under Order XLI, Rule 25, the Court ordering the remand shall at once, in the presence of the parties, give them a date on which they shall appear before the trial Court and note the fact on the record.

22. Court in which remand case is pending.-- When a case is remanded by an Appellate Court under Order XLI, Rule 23, it must be restored to its original number on the register of the Court, to which it is remanded and be considered as a pending regular suit; but if it is referred for the re-investigation of certain issues, under Order XLI, Rule 25, it should remain on the register of the Appellate Court and be considered as an appeal pending in that Court.

23. Framing of decree.-- An order of remand under Order XLI, Rule 23, of the Code of Civil Procedure not being a decree as defined in the said Code, the framing of a formal decree by the Appellate Court in cases remanded by it under that rule is incorrect.

24. Date of return by lower Court.-- When a case is remanded under Order XLI, Rule 25, of the Code of Civil Procedure, reasonable time should be fixed for the return of findings by the lower Court. The latter Court should make every effort to submit the report by the date fixed, but if this is found to be impracticable, it should apply at once for an extension of time, stating its reasons and mentioning the date by which it expects to be able to submit the required report.

25. Date for objections.-- Appellate Courts should pay special attention to the provisions of Order XLI, Rule 26, of the Code of Civil Procedure. They should take measures to ensure that in all cases of remand under Order XLI, Rule 25, a definite period, subsequent to the return of the record of the inquiry to the Appellate Court, shall be fixed to admit of objections being filed by any dissatisfied party, due notice of such period being given to the parties. No Court should proceed to final judgment without ascertaining that such period has been duly allowed. If it has not, the Appellate Court should either postpone the appeal or ascertain and record the objections of the parties or either of them, or ascertain, and record that neither party has any objection to advance.

26. Additional evidence.-- Appellate Courts have the power to admit additional evidence under Order XLI, Rule 27, of the Code of Civil Procedure, but this can only be done on the grounds stated therein and the reasons for admitting the evidence must always be clearly recorded.

(g) Service of processes of Appellate Courts.

27. Duty of lower Court in the matter of service.-- It not infrequently happens that processes of Appellate Courts sent to districts for service on respondents are returned with a note to the effect that the respondent has left or is not residing in the district, and the hearing of the appeals has therefore to be postponed. To obviate this in future, attention is drawn to Order V, Rule 23, of the Code of Civil Procedure, which places the Court called upon to serve the process in the same position as if it had itself issued it. The provisions of the Code on this point should be carefully attended to and when a party on whom process has to be served is not in the district to which such process has been sent, it should be forwarded by the Court, to which it was originally sent, to the Court having jurisdiction in the district in which such party may be residing. (See also Order V, Rule 21).

28. Statement of serving officer.-- In the case of summonses from the High Court, the Court serving the summons shall record the statement of the peon as to such service on solemn affirmation, and shall verify the same with its signature before returning the summons.

PART C -- SECURITY IN REVISION CASES

1. Security to be given in lower Court.-- When an application for revision under section 115 of the Code of Civil Procedure, 1908 or under section 25 of the Provincial Small Cause Courts Act, 1887, has been made in the High Court and it is ordered in that Court that the applicant shall give security in any Court subordinate to the High Court for the due performance of the decree or order sought to be revised, such Court shall, upon receiving intimation from the High Court of such order, accept, from the applicant any amount which he may offer to deposit, or any security which he may tender for the purpose of satisfying or giving security for the performance of the said decree or order, and shall retain the same in its custody pending the further order of the High Court.

2. Report by lower Court to High Court.-- When a deposit has been made or security tendered in the Subordinate Court, such Court shall, on the request of the applicant or on receipt of a precept from the High Court, certify in writing addressed to the Deputy Registrar of the High Court what has been done by the applicant, with its own opinion, if required, as to the sufficiency of the security tendered.

3. Procedure in lower Court.-- In all cases not provided for in these directions or by a special order of the High Court the same practice shall be followed in the Subordinate Court as prevails in such Court, when taking security in pursuance of an order made under Order XXI, Rule 26 (3), of the Code of Civil Procedure (requiring security upon stay of execution of a decree), or under Order XLI, Rule 5, of the Code of Civil Procedure (for the taking of security for the performance of a decree or order under appeal to a superior Court).

4. Procedure in lower Court.-- The preceding directions shall apply, so for as may be, when a person intending to apply to the High Court under section 115 of the Code of Civil Procedure, or section 25 of Act IX of 1887, has performed, or tendered security for the performance of, or deposits the amount of the decree or order which he desires to have revised, in the Court in which such decree or order is pending for execution, or by which it would ordinarily be executed under section 38 of the Code of Civil Procedure.

PART D -- PROCEDURE IN THE CASE OF APPEAL AND APPLICATIONS PRESENTED AFTER PERIOD OF LIMITATION

1. Memorandum of appeal to be checked for purposes of limitation.-- Upon the presentation of a memorandum of appeal to an Appellate Court, the officer whose duty it is to examine such memorandum shall examine the copy or copies of judgments and decrees attached to the appeal, and shall calculate whether, after deducting the allowance sanctioned by law, the memorandum has been presented within time.

2. (i) **Office to note when appeal appears to be time-barred.--** If the memorandum of appeal appears to be presented after time, or there appears to be ground for doubting whether it is within time, such officer shall record upon or annex to the memorandum of appeal a note of his calculation, showing--

(1) the date when the period expired, without, any allowances;

(2) the allowances to which appellant seems entitled;

(3) the date when the period expired, after all the allowances, to be made under head (2) have been made.

(ii) **Points to be borne in mind in making calculation.--** In making such calculations the following points must be borne in mind:--

(a) The date when the time expired under head (1) is to be calculated irrespective of such date falling upon a day when the Court is closed for a holiday (including Friday) or for vacation, any allowance on this account being noted under head (2) of the calculation.

(b) The entries endorsed on copies of judgments and the like will be assumed to be correct.

(c) The date on which the application for copy is made and also the day on which the copy is given will each be reckoned separately as one day unless both events occur on the same day.

(d) Applicants for copies shall be given a date on which delivery of the copy is to be taken. If the copy is not then completed, such date shall be extended from time to time, under intimation to the applicant, until the copy is ready for delivery. The final date so intimated shall, for the purpose of the calculation required by this rule be deemed to be the day on which the copy is given.

Calculation in case of copies sent by post.-- In this connection attention is invited to the ruling of the High Court in I.L.R. III Lah. 280, where it was held that when copies of judgments are despatched by post, in accordance with rules, the period intervening between completion and despatch of the copies must be excluded in computing the period allowed for an appeal.

3. Duty of office to obtain orders of the court.-- It shall be the duty of the officer presenting the memorandum of appeal for the consideration of the Court of appeal to bring to its notice the note of calculation above prescribed.

4. Note by Court.-- Whenever, on the date fixed for taking a memorandum of appeal into consideration, it appears *prima facie* to the Court to have been presented after the expiry of the period prescribed by law, as calculated in the manner prescribed by law, the Court shall record its opinion to that effect, stating the number of days by which such period seems to have been exceeded.

5. Appellant required to explain for delay.-- In such cases, if the appellant has not tendered, with the memorandum of appeal, any explanation of the delay in presenting it, the Court shall, if the appellant is present in person or by agent, record an order thereon, or to be annexed thereto, requiring the appellant to supply such explanation in writing, and to re-present such appeal within a period to be specified in the order. Such period may be enlarged in the discretion of the Court, either before or after it has expired, upon sufficient cause for such enlargement being shown to the satisfaction of the Court.

6. Examination of appellant.-- When the memorandum of appeal is re-presented with the explanation required, or when the memorandum of appeal as first presented contains an explanation of the delay in presenting it, the Court shall take into consideration the explanation offered, and may examine the appellant or his agent, in order to elucidate the explanation.

7. Court may dismiss appeal as barred by time.-- If the Court is of opinion that assuming all the facts stated by way of explanation to be true the explanation is insufficient, the Court shall record an order to that effect, and shall reject the appeal as barred by time.

8. Appellants to be called upon to prove facts which bring appeal within time.-- If the Court considers that if all or any of the facts stated by way of application be true, the explanation will be sufficient to justify the admission of appeal it shall give the appellant an opportunity of proving the truth of the facts stated.

9. Mode of proof.-- Such proof may be given either by affidavit, or by oral testimony, upon a date to be fixed by the Court for that purpose, unless the appellant be ready to give, and the Court finds it convenient to receive, such proof at once.

10. Power of court to dismiss appeal as barred by time when no explanation of delay attached to memorandum of appeal.-- When no such explanation is presented with the memorandum of appeal, and the appellant is not present in person or by agent, the Court may, after recording its opinion as directed in paragraph 4 above, unless it sees cause to postpone the passing of a final order, forthwith dismiss the appeal as barred by time without considering the merits of the appeal as set forth in the memorandum.

11. Procedure as to applications.-- Similar procedure should be observed, so far as may be, by all Civil Courts, whether of original jurisdiction or not, in respect of applications for review, and any other application which may by law to be admitted upon sufficient cause being shown, although it has been presented after the period prescribed by law has expired.

PART E -- TRANSMISSION OF APPELLATE COURT'S ORDERS TO LOWER COURTS

The following rules are made by the High Court in regard to the transmission of Appellate Court's orders to lower Courts:-

RULES

1. District Judge to send copies of his judgments to Senior Civil Judge.-- The District Judge will send copies of all his judgments on appeal to the Senior Civil Judge.

2. Senior Civil Judge to send it to Court concerned.-- The Senior Civil Judge will transmit the copies to the original Court for information and return direct to the Record-keeper, to whom the original records will be sent at once.

3. Senior Civil Judge to send copies of his judgments to Court concerned.-- The Senior Civil Judge will send copies of all his judgments on appeal to the original Court for information and return direct to the Record-keeper, to whom the original record will be sent at once.

4. Form to be attached by appellate court to original record.-- Appellate Courts will attach to the original record the following form:-

Date.

Copy of judgment attached by District Judge .. ..

Copy of judgment attached by Senior Civil Judge .. ..

Copy of judgment despatched by Senior Civil Judge .. ..

Copy of judgment received by Record-keeper .. ..

(It will be simpler to have only one form)

5. Running list of the record-keeper.--(a) The Record-keeper will maintain a running list prepared from the above form of all cases in which copies of judgments have been sent out. When the copies of judgments are returned to him by the original Courts, he will add them to the records, fill in the date of receipt, and strike those cases off his running list.

(b) If copies are not returned within 10 days of despatch he will issue a reminder(which should be on a printed form) and if that is ineffective, report the matter to the despatching Court.

(c) The running list will be in the following form:-

Name of case Date of Despatch Date of reminder, if any

(d) The reminder will be in the following printed form:-

To the Court of.....

A copy of the judgment of the ..... was despatched to you by the .....on.....and has not yet been received by the Record-keeper. Please return at once.

Date..... Record-keeper

6. Sending for records from record-room.-- Officers presiding over Subordinate Courts held at the District Headquarters, if in any particular case they desire to see their original record, will be allowed to call for it, provided that it must not leave their Court-room.

CHAPTER 15
REFERENCES TO THE HIGH COURT

References to the High Court under Order XLVI of the Code of Civil Procedure, 1908, and sections 99 and 100 of the Punjab Tenancy Act, 1887.

1. Reference under section 113 and Order XLVI, Civil Procedure Code.-- A reference to the High Court by ***[a Court], under the provisions of section 113 and Order XLVI, rule 1 of the Code of Civil Procedure, should be made only when the Presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred and not merely on the importunity of pleaders.

2. "Reasonable doubt on a point of law" explained.-- A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the ***[Supreme Court]. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference. (vide 8 P.R. 1914; 61 P.R. 1913).

3. Mode of reference.-- In making a reference, the Presiding Judge should be careful to conform to the requirements of Order XLVI, Rule 1, of the Code of Civil Procedure by--

(i) drawing up a statement of the facts;

(ii) stating the point on which doubt is entertained; and

(iii) stating his opinion on such point.

Each of the above statements should be precise and clear, or the High Court may find itself compelled to return the reference for amendment under Order XLVI, rule 5, of the Code of Civil Procedure.

4. Optional and compulsory references.-- It should be noted that references under section 99 of the Punjab Tenancy Act, 1887, and under Order XLVI, rule 6, of the Code of Civil Procedure, are made at the discretion of the Court, as are also those under Order XLVI, rule 7, when not required by a party to the suit. There is no such discretion in cases falling under section 100

of the Punjab Tenancy Act, 1887, or Order XLVI, rule 7, if required by a party.

5. References under Order XLVI, rule 7.-- It should also be noted that, by the terms of Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it 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; unless this condition is fulfilled, -- that is, unless the Court is itself of opinion that one of these errors has been committed, -- it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

6. Channel for reference.-- References under section 100 of the Punjab Tenancy Act, 1887, and under Order XLVI, rule 6 of the Code of Civil Procedure, may be made to the High Court direct, but references under section 99 of the Punjab Tenancy Act, 1887 must be made through the District Judge who should forward them without avoidable delay.

7. Reference by Civil Judge as a Court of appeal.-- If a Civil Judge sitting as a Court of Appeal is of opinion that a reference ought to be made under Order XLVI, rule 7, of the Code of Civil Procedure, he should submit the record of the case to the District Judge for orders with a statement of reasons.

8. Character of suit to be described in reference.-- It is essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

9. Reference under suction 99, Tenancy Act.-- When a subordinate Revenue Court has returned a plaint on the ground that the suit is one over which such Revenue Court has no jurisdiction, and the plaint is subsequently presented in any subordinate Civil Court, such Civil Court, if it considers that the suit is not in fact triable by a Civil Court, should not again return the plaint, but should refer the point at once under section 99 of the Punjab Tenancy Act, XVI of 1887.

10. Parties should be heard before making reference.-- A reference by a Civil Court under section 99 or section 100 of the Punjab Tenancy Act, 1887, or under Order XLVI, rule 6 or 7, of the Code of Civil Procedure, shall not be made until the parties to the suit have had an opportunity of showing cause against such reference in the Court which proposes to make it.

11. Objections of parties to be placed on record.-- The Court making a reference under any of the sections mentioned in the preceding paragraph shall, in its order of reference, certify that such opportunity has been given, and shall place on record the objections, oral or written (if any), of any party against the making of such reference, and, when the reference is under section 100 of the Punjab Tenancy Act, 1887, any objection of any party to the effect that he has been prejudiced by the alleged mistake as to jurisdiction.

12. Notice of reference to parties.-- The Court making the reference shall give notice either orally or in writing, to such parties as attended or are represented in Court when the order of reference is made--

(i) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory;

(ii) that any party desirous of attending at such hearing must enter an appearance at the office of the Deputy Registrar of the High Court in Lahore on or before a date to be specified in the notice.

13. Date fixed for appearance in High Court.-- The date specified shall be such as to allow a reasonable time for the parties to appear in the High Court, and shall be a date not less than one month in advance of the date of making the reference.

14. Court shall specify that parties have been informed.-- The Court shall certify in its order, (1) that the notice required by paragraph 12 has been duly given, orally or in writing as the case may be, and (2) the date specified in such notice.

15. Points to be noted in references under sections 99-100 of the Tenancy Act.-- Every reference under section 99 or section 100 of the Punjab Tenancy Act, 1887, shall state the reasons for making the reference, and shall indicate the Revenue Court which in the opinion of the Court making the

reference, has or had (as the case may be) jurisdiction under section 77 of the Act over the suit in which the reference is made. The Revenue Court in which the referring officer thinks the decree should be registered, should be accurately described according to the nomenclature prescribed in section 7 of the Punjab Land Revenue Act, 1967, (read with sections 75, 76 and 77, clauses (1) and (2) of the Punjab Tenancy Act, 1887).

16. Necessary records to be sent alongwith order of reference.-- The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suits subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

17. Application of these directions to Revenue Courts.-- The above directions apply *mutatis mutandis* to Revenue Courts.

18. Reminder from High Court if no reply received.-- Whenever it is found that a reference made to the High Court has not been replied to, or intimation of a date having been fixed given within two months of making such reference, the attention of the Registrar should be drawn to the fact.

CHAPTER 16
LEGAL PRACTITIONERS

PART A -- THE FILING OF POWERS-OF-ATTORNEY BY PLEADERS IN SUBORDINATE COURTS

Pleading and acting by pleaders.-- Whereas by Order III, rule 4, of the Code of Civil Procedure, no pleader shall 'act', for any person in any Court unless he has been appointed by an instrument in writing, nor shall any pleader, who has been engaged for the purpose of pleading only, plead on behalf of any person unless he has filed in Court a memorandum-of-appearance or unless he has been engaged by another pleader duly appointed, and no such pleader can be recognised in the absence of a written authority or memorandum-of-appearance as aforesaid as empowered to plead or act for any person in any proceeding governed by the Code of Civil Procedure, and it is expedient to provide for ascertaining that every such pleader is duly authorised to appear, plead or act in any such proceeding before subordinate Courts, the following instructions have been issued by the High Court:--

(1) **Power-of-attorney to act to be executed by the principal.--** Every appointment of a pleader to act shall contain in full the name of the person, or where there are more than one, of every person who thereby appoints the pleader to act on his behalf, and shall be executed by every such person.

(2) **Proof required when power of attorney not executed by the principal.--** When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf, the pleader will not be recognised by the Court without proof that such person was duly authorised by the principal to execute such appointment or power.

(3) **Power of attorney or memorandum of appearance in cross-appeals.--** In cross-appeals a pleader who has already filed a power-of-attorney or memorandum-of-appearance for the appellant shall not be required to file another power-of-attorney or memorandum-of-appearance for his client as respondent in the cross-appeal.

PART B -- FEES OF COUNSEL

*[*Rules made by the High Court under the powers conferred by section 60 of the Legal Practitioners' and Bar Councils Act, 1973, fixing and regulating the fees payable by any party in respect of the fees of his adversary's Advocate, upon proceedings in Civil Courts subordinate to the High Court.*]

RULES

***[1. Liability for the fees of adversary's advocate.--** (1) In all proceedings before the Courts subordinate to the High Court, the unsuccessful litigant shall ordinarily be liable for the fees of his adversary's Advocate (to be hereinafter called "the fee") subject to the conditions and according to rates as provided in these Rules.

(2) The fee shall be included in the costs of the proceedings.]

2. ***[Omitted]

3. Suits for recovery of property, breach of contract or damages.-- In suits for the recovery of specific property, or a share of specific property, whether immovable or movable, or for the breach of any contract or for damages--

(a) if the amount or value of the property, debt or damages decreed shall not exceed Rs. 5000, at *[10] per cent on the amount or value decreed;

(b) if the amount or value shall exceed Rs. 5000, and not exceed Rs. 20,000, on Rs. 5,000 at *[10] per cent and on the remainder at *[5] per cent;

(c) if the amount or value shall exceed Rs. 20,000 and not exceed Rs. 50,000, on Rs. 20,000 as above, and on the remainder at 1-$^1/_2$ per cent;

(d) if the amount or value shall exceed Rs.50,000, on Rs. 50,000 as above, and on the remainder at *[1] per cent:

Provided that in no case shall the amount of any fee exceed Rs. *[15,000].

***[Note:-** In suits for land, the fee shall be calculated on the value of the suit as determined for purposes of jurisdiction by the Rules made under of the Suits Valuation Act, 1887.]

4. Other suits.-- In suits for injuries to the person or character of the plaintiff, such as suits for assault or defamation, or for injuries to property or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined as in suits for interference with a right to light or water, or to enforce a right of pre-emption or suits for the partition of joint property, where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court under section 9 of the Suits Valuation Act, 1887, for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated either with reference to the amount decreed or with reference to such a sum, not exceeding the valuation as the Court shall deem reasonable bearing in mind the importance of the subject of dispute. In any such case the amount of the fee shall be calculated according to rule 3.

Note:- The words "valuation of the suit" in the above rule mean the value of the suit as determined for purposes of jurisdiction by the rules made by the High Court, under section 9 of the Suits Valuation Act, 1887.

5. Fees allowed to defendant.-- If the suit be dismissed for default, or upon the merits the fee allowed to the defendant shall be calculated according to rules 3 and 4 on the value of the suit.

6. Fees in case plaintiff's case only partially decreed.-- If the suit shall be decreed for the plaintiff as to part only of the claim, and as to the remainder shall be dismissed, the fee allowed to each party shall be fixed with reference to the value of that part of the claim in respect of which he shall succeed, and shall be calculated according to rules 3 and 4.

7. Suit for damages.-- If in any suit for damages the plaintiff shall succeed as to the whole of his cause of action, but shall fail to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance in respect of the difference between the amount of damages claimed and the amount recovered, unless the Court shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall for that or any other cause to be specified, direct that a fee shall be allowed to the defendant.

If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff, and shall be calculated according to rule 3.

8. Several defendants.-- If several defendants, who have a joint or common interest, succeed upon a joint defence or upon separate defences substantially the same, not more than one fee shall be allowed, unless the Court shall otherwise order for a reason which shall be recorded. If only one fee be allowed, the Court shall direct to which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as the Court shall think fit.

9. Ditto.-- If several defendants, who have separate interests, set up separate distinct defences and succeed thereon, a fee for each of the defendants who shall appear by a separate counsel may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated with reference to the value of the separate interest of such defendant according to rule 3.

*[**10. Miscellaneous proceedings.--** In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree the fee shall not exceed rupees five hundred in the Court of a District Judge or of an officer exercising the powers of Civil Judge of the first, second and third class in respect of cases not exceeding the value of Rs.20,000/-. In all other cases, amount of the fee shall be calculated according to paragraph 3.]

11. Undefended suits.-- If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.

12. Review.-- If a review be rejected after summoning the opposite party, or if, after the admission of a review, the former judgment be upheld, the fee, if allowed to the successful party in the review, shall be fixed by the Court at an amount which shall not in any case exceed one-half of the amount allowed by these rules in case of an original decree.

13. Ditto.-- If, after the admission of a review, the former judgment be revised, the fee in respect of the review, if allowed to the party who succeeds in the review, shall not exceed one-half the amount allowed by these rules in case of an original decree. The fee allowed in respect of the review will be irrespective of any fee which may be included in any costs in respect of the original suit, which may be adjudged to the successful party by the judgment in review.

14. Appeals.-- In appeals, the fee shall be calculated on the same scale as in the original suits, and the principles of the above rules as to original suits shall be applied, as nearly as may be.

15. Several appellants.-- When the interest of several appellants is joint, not more than one fee shall be allowed, unless the Court shall otherwise order. If one fee only be allowed, the Court shall direct to which of the appellants it shall be paid, or shall apportion it among the several appellants in such proportion as it shall think fit.

16. Several respondents.-- If several respondents in one appeal appear by separate pleaders, in determining whether separate fees shall be allowed, the Court shall be guided by the principles laid down in rules 8 and 9.

17. Discretion of Court. Remand. Appeal from decree passed on remand. Issue referred for trial to lower Court.-- If, in any instance, the payment of fees according to the preceding rules shall not appear to the Court to be just and equitable, the Court may exercise its discretion in allowing such fee as may appear just and equitable. *******[...]

If the decree of a lower Court be reversed on appeal and the case be remanded to the lower Court to be tried upon the merits, the lower Court, on passing its decree, may allow to the successful party such a sum as the Court shall consider to be reasonable, not exceeding half the amount calculated according to rule 3, in respect of the rehearing, in addition to the full amount calculated according to that scale:

Provided that, if an appeal be preferred against the decree passed on remand, the fee, if any, allowed by the Appellate Court to the party succeeding in that appeal shall not, unless for a special reason to be recorded, be less than one-quarter, nor more than one-half, of the amount calculated at the rate mentioned in rule 3, if by the decree of the appellate Court remanding the case the same party shall have been allowed a full fee in respect of the former appeal in the suit either absolutely or conditionally upon his succeeding upon the remand;

Provided also that, if an issue be framed and referred by the Appellate Court for trial by the lower Court, the Appellate Court may, if it thinks proper,

allow to the party who shall succeed in the appeal such a sum as the Court shall consider reasonable, not exceeding half the amount calculated at the rate mentioned in rule 3, in respect of the trial of the issue in the lower Court, in addition to a full fee in respect of the appeal calculated at that rate.

18. Certificate as to fees to be filed by counsel in the Court of District Judge.-- Notwithstanding anything contained in these rules and notwithstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits, in the Courts of District Judges shall, except as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, file in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.

19. Certificate in the Court of Civil-Judge.-- Notwithstanding anything contained in these rules and notwithstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in original suits of which the jurisdictional value is over Rs. 5,000 (five thousand), pending in the Courts of Civil Judges shall except as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the commencement of the argument at the conclusion of the evidence, file in the Court a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.

*[**Note:-** In cases to which the Lahore Metropolitan Corporation, the Provincial Government, a Semi Government Organization or an autonomous Body is a party and is represented by a Legal Advisor or a Legal Practitioner, who is not paid professional fee in each individual case or whose fee is assessed or paid after decision of the case, if a certificate in the above terms is filed, the fee of the Counsel engaged by the said party should be taxed according to rules contained in this chapter. The Legal Practioner engaged by or representing a party need not file the fee certificate referred to in these rules.]

20. Contents of certificate.-- The certificate mentioned in rules 18 and 19 shall state--

(a) the appeal or suit in respect of which such fee or fees was or were paid;

(b) the date or dates when such fee or fees was or were actually paid to the legal practitioner engaged in the case;

(c) the precise amount or amounts which was or were so paid;

(d) that no portion of such fee or fees has been, or has been agreed to be, returned or remitted or appropriated to the use of any other person by the legal practitioner or by any one acting on his behalf or on behalf of any one who was associated with him in the case; and

(e) the name and address of the person who made such payment:

Provided that when a higher fee than is allowed by the scale is allowed by special order of the Court, a certificate of the payment of the additional fee at any time may be accepted, if filed before taxation, in lieu of the certificate required by these rules.

21. Form of certificate.-- The certificate shall, so far as possible, be in the following form:-

District Judge

In the Court of ----------, A.B. (add description and

Civil Judge

residence) ---------- (Plaintiff or appellant).

versus

C.D. (add description and residence) ---------- (Defendant or respondent).

For the purpose of having my fee allowed on taxation as against the party or parties, who may be liable for costs under the judgment or order of the Court, I ----------, in accordance with rule 20 of the rules regulating the fees of counsel in the Court, hereby certify that in the above case the following fees were paid to me as my exclusive fee on the dates and by the person or persons specified below, and that

before the final hearing of the appeal

such fees were paid to me ----------,

before the commencement of the arguments at the conclusion of the evidence

and that no portion of such fees has been, or has been agreed to be, returned or remitted or appropriated to the use of any other person by me or by any one acting on my behalf.

Matter	Fee	Date of payment	By whom paid	Address of person who actually made such payment.

Signature----------

Date of signature----------

Address of Legal Practitioner----------

Note:- ***[**Omitted].

PART C -- FEES IN DECLARATORY SUITS, ETC

1. To be calculated on the valuation of suit.-- As some diversity of practice appears to exist in regard to the fixing of counsel's fees in declaratory suits, injunctions, etc., the Judges deem it necessary to point out that in such cases the value of the subject matter of the suit must first be arrived at for purposes of jurisdiction in accordance with Chapter 3, ` Valuation of Suits ', Part A, and then counsel's fees calculated according to the scale laid down in Part B of this Chapter.

2. To be calculated on the valuation of suit.-- Several appeals have had to be admitted to a hearing by this Court solely on the ground that counsel's fees, which should have been fixed by rule, had been fixed at the discretion of the District Judge, at a rate higher than that allowed by the rules. Although rules 4 and 17 of Part B of this Chapter permit District Judges to exercise their discretion in allowing fees which appear just and equitable, it must be remembered that the fee to be allowed is to be calculated in accordance with the scale laid down in Rule 3 of that Part, and any fee not exceeding the sum so arrived at may be allowed.

For instance:-

(i) In a suit for an injunction where the plaintiff values the relief sought at Rs. 110, the maximum fee which can be allowed is Rs. 8-4-0.

(ii) In a suit for a declaration that an alienation of land of which 30 times the land revenue is Rs. 300 and where the consideration is Rs. 1,000 shall not affect the plaintiff's reversionary rights, the maximum fee allowable is Rs. 22-8-0 calculated upon the jurisdictional value and not Rs. 75 calculated upon the consideration.

(High Court circular memo. No. I-1334, dated the 8th March, 1920).

CHAPTER 17

PETITION - WRITERS

PART A—REMARKS AND DIRECTIONS…….***[OMITTED]

PART B—RULES…….***[OMITTED]

CHAPTER 18
PETITION - WRITERS

PART A—CONTROL…….***[OMITTED]

(Note: Chapter 18-A is currently under revision and shall be published in due course).

PART B—CHARACTER ROLLS…….***[OMITTED]

PART C—SECURITY…….***[OMITTED]

CHAPTER 19

SUPPLY OF LIVERIES….. ***[OMITTED]

CHAPTER 20
CIVIL DISTRICTS

*[**1. Power of Government to fix Civil District.--** Section 4 of the Punjab Civil Courts Ordinance, 1962, (II of 1962), provides that, for the purposes of the Ordinance, the Government may, by notification, divide the Province into Civil Districts, fix the limits of such Districts and determine the headquarters of each such Districts.".

2. Civil Districts.--The following Civil Districts have been so constituted by the Provincial Government with the limits shown against each:-

S. No.	District.	Limits
1.	Attock	
2.	Bahawalnagar	
3.	Bahawalpur	
4.	Bhakkar	
5.	Chakwal	
6.	Dera Ghazi Khan	
7.	Faisalabad	
8.	Gujranwala	
9.	Gujrat	
10.	Hafizabad	
11.	Islamabad	
12.	Jhang	
13.	Jhelum	
14.	Kasur	
15.	Khanawal	
16.	Khushab	
17.	Lahore	
18.	Layya	
19.	Lodhran	
20.	Mandi Bahuddin	
21.	Mianwali	
22.	Multan	
23.	Muzaffargarh	
24.	Narowal	

25. Okara
26. Pakpattan
27. Rahim Yar Khan
28. Rajanpur
29. Rawalpindi
30. Sahiwal
31. Sargodha
32. Sheikhupura
33. Sialkot
34. Toba Tek Singh
35. Vehari].

3. ***[Omitted].

4. ***[Omitted].

5. ***[Omitted].

6. ***[Omitted].

CHAPTER 21

*[JUDICIAL POWERS--CIVIL

PART A -- CONFERMENT OF POWERS -- JUDICIAL

1. Pecuniary limits of the jurisdiction exercisable by Civil Judges in original civil suits and proceedings.-- Section 9 of the Punjab Civil Courts Ordinance, 1962 empowers the High Court to determine the pecuniary limits of the jurisdiction exercisable in original civil suits and proceedings. The following notification was issued by the High Court in this behalf:-

(No. 2110-Gaz. (1)/XXI, C.35, dated Lahore, the 20th November, 1978).

In exercise of the powers conferred by section 9 of the Punjab Civil Courts Ordinance, 1962, the Chief Justice and Judges of the Lahore High Court, Lahore, are pleased to order, in supersession of all previous orders, issued in this behalf, that for the purpose of determining the pecuniary limits of the jurisdiction exercisable by Civil Judges in original civil suits and proceedings, Civil Judges be placed in the under-mentioned three classes, namely:-

Civil Judge Ist Class

--To exercise jurisdiction in original civil suits or proceedings without limits as regards value.

Civil Judge IInd Class

--To exercise jurisdiction in original civil suits or proceedings where in the subject-matter in amount or value does not exceed Rs. 50,000.

Civil Judge 3rd Class

--To exercise jurisdiction in original civil suits or proceedings wherein the subject-matter in amount or value does not exceed Rs. 20,000.

2. Conferment of Powers upon Civil Judges.-- It was decided in a Full Court Judges meeting that the normal period of inclusion in Class III be

two years with effect from the date of the first posting subject to the receipt of good reports of District Judges with regard to the work and conduct of Civil Judges, and that the normal period in Class-II be three years with effect from the date on which the said powers are first conferred subject to the receipt of good reports from District Judges in respect of the work and conduct of Civil Judges.

(See high Court Circular letter No.4013-Gaz./XXI-C.35 dated 25 March, 1964).]

PART B -- POWERS (GENERAL)

The following notifications issued by the Provincial Government or the High Court under various Acts are Published for information and guidance:-

I. Insolvency cases.-- Punjab Government notification No. 780, dated the 15th July, 1914.--In exercise of the powers conferred on him by section 3 (1) of the Provincial Insolvency Act, 1907 (III of 1907), as amended by Act IV of 1914, the Lieutenant-Governor is pleased, with effect from the Ist August 1914, to invest all Subordinate Judges of the Ist class with jurisdiction in all classes of cases under the said Act.

II. Succession Certificate Act.-- Punjab Government notification No. 781, dated the 15th July 1914.-Under Section 26 (1) of the Succession Certificate Act, 1889, the Lieutenant-Governor is pleased, with effect from the Ist August 1914, to invest all Civil Judges of the first and second classes in the Punjab with the functions of a District Court under the said Act.

Note:- Section 26 (1) of the Succession Certificate Act 1889 corresponds to section 388 of the Indian Succession Act, 1925, which now incorporates it.

III. ***[Omitted].

IV. Enhanced powers of Senior Civil Judges.--(a) High Court Notification No. 170-Gaz/XXI-C.6, dated the 16th of May, 1935, as amended by notification No. 53-Gaz./XXI-C-6, dated the 23rd February, 1940--In exercise of the powers conferred by section 39 (3) of the Punjab Courts Act, 1918, as amended by Act IX of 1922, the Honourable Judges of the High Court of Judicature at Lahore are pleased to direct that, within the limits of each of the Civil Districts set forth in the schedule appended hereto, appeals lying to the District Courts from decrees or orders passed by any Subordinate Judge--

(a) in a small cause of a value not exceeding Rs. 500 (five hundred), and

(b) in an unclassed suit of a value not exceeding Rs. 100 (one hundred),

shall be preferred to the Senior Subordinate Judge of the first class exercising jurisdiction within such civil district.

2. It is further directed that the Court of such Senior Subordinate Judge of the first class shall be deemed to be a District Court for the purpose of all such appeals preferred to it.

3. The following High Court notifications are hereby cancelled:-

(i) No. 233-Gaz./XXI-C-6, dated the 22nd of April, 1931.

(ii) No. 84-Gaz./XXI-C-6, dated the Ist of March, 1932.

(iii) No. 552-Gaz./XXI-C-6, dated the 28th of October, 1932.

SCHEDULE

S.No.	District
1.	Hissar.
2.	Gurgaon.
3.	Karnal.
4.	Rohtak.
5.	Ambala.
6.	Hoshiarpur.
7.	Kangra.
8.	Jullundur.
9.	Ludhiana.
10.	Feraozepore.
11.	Lahore.
12.	Amritsar.
13.	Gurdaspur.
14.	Sialkot.
15.	Gujranwala.
16.	Gujrat.
17.	Sheikhupura.
18.	Shahpur.
19.	Jhang.
20.	Jhelum.
21.	Rawalpindi.
22.	Attock.

23.	Mianwali.
24.	Montgomery.
25.	Lyallpur.
26.	Multan.
27.	Muzaffargarh.
28.	Simla.

[**][The District of Dera Ghazi Khan was excluded from the above Notification vide Notification No.53-Gaz/XXI-C-6, dated 26.2.1940. The District of Dera Ghazi Khan was again included in the said Notification vide notification No.78-Gaz, dated 5-4-1966. The Senior Civil Judges of the Districts of Bahawalpur, Bahawalnagar and Rahim Yar Khan were invested with the same appellate powers vide Notification No.138-Gaz dated 30-7-1963.]

(b) (1) [***][Omitted.]

2. It is further directed that the Court of such Senior Civil Judge of the first class shall be deemed to be a District Court for the purpose of all such appeals preferred to it.

3. The following High Court notifications are hereby cancelled:--

(i) No. 265-Gaz./XXI-C.-6, dated the 8th of May, 1931.

(ii) No. 85-Gaz./XXI-C.-6, dated the 1st of March, 1932.

V. [***][Omitted.]

VI. [***][Omitted.]

VII. [***][Omitted.]

VIII. Powers under Succession Act.-- High Court notification No.273-Gaz./XV-C.16, dated the 22nd June, 1932 -- Under section 265 of the Succession Act, XXXIX of 1925, the Honourable Judges of the High Court of Judicature at Lahore are pleased to appoint the Senior Subordinate Judges of the first class in each of the civil districts set forth in the schedule appended hereto to act, within the limits of the said civil district, for the District Judge as a Delegate to grant probate and letters of administration in non-contentious cases.

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SCHEDULE

1. Simla 3. Hoshiarpur 5. Ferozepore

2. Kangra 4. Lahore 6. Amritsar.

IX. Powers under Succession Act.-- High Court notification No.274-Gaz./XV-C-16, dated the 22nd June, 1932-In exercise of the powers conferred by section 30(1) of the Punjab Courts Act, VI of 1918, the Honourable Judges of the High Court of Judicature at Lahore are pleased to authorise the Senior Subordinate Judge of the first class in each of the civil districts set forth in the schedule appended hereto to take cognizance, within the limits of the said civil district, of proceedings under the Succession Act, XXXIX of 1925, which cannot be disposed of by District Delegates.

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SCHEDULE

1. Simla. 3. Hoshiarpur 5. Ferozepore

2. Kangra 4. Lahore 6. Amritsar.

Note:- Similar powers under both Acts have been conferred upon the Senior Subordinate Judge of the first class in the Delhi District,- vide High Court notifications Nos. 499 and 500-Gaz./XXI-C.3, dated the 19th September, 1932, as reproduced in the Chief Commissioner`s notification No.B.3(2)-32-Home, dated the 28th September, 1932.

X. ***[Omitted].

XI. Punjab Government notification No. 4845-G.-40/31898, dated the 2nd August, 1940.-- Under the provisions of sub-clause (d) of section 3 of the Land Acquisition Act, 1894, the Governor of the Punjab is pleased to appoint all persons holding temporarily or permanently the office of Senior

Subordinate Judge of the Ist Class in the Punjab (except the office of the Senior Subordinate Judge of Dera Ghazi Khan) to perform the functions of Court under the said Act.

[**][All the Administrative Civil Judges exercising Fist Class Powers in the Districts of Mianwali, Attock, Rawalpindi, Gujrat, Gujranwala, Lahore, Sheikhupura, Faisalabad, Jhang, Multan, Dera Ghazi Khan, Sialkot, Sargodha, Muzaffargarh, Jhelum, Sahiwal, vide Notification No.LR-3123-57, dated 19-2-1959 and all Civil Judges Ist Class in Districts of Bahawalpur, Rahim Yar Khan and Bahawalnagar vide Notification No. 13/59-H-Judl. (II)/65 dated 18-2-1966 have been appointed to perform functions of "Court" under the Land Acquisition Act, 1894.]

CHAPTER 22

RULES MADE BY THE HIGH COURT UNDER SECTION 122 OF THE CODE OF CIVIL PROCEDURE ANNULLING, ALTERING OR ADDING TO THE RULES IN THE FIRST SCHEDULE OF THE CODE

On the recommendation of the rule Committee at Lahore the following additions and alterations to the Rules contained in the First Schedule of the Code of Civil Procedure have been made by the High Court under section 122 of the Code of Civil Procedure to regulate it's own procedure and the procedure of the Civil Courts subject to its superintendence:-

(i) **Order II, rule 8.--** After rule 7 insert the following as rule 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 plaint for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of the Order VI and as required by the provisions of the Court-fees Act.

(Chief Court notification No. 2212-G., dated 12th May, 1909).

(ii) **Order V, rule 7.--** 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.

(High Court notification No. 213-R./XI-Y-17, dated the 24th July, 1936).

(iii) **Order V, rule 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. ***[...]

(iv) **Order V, rule 15.--**Where service may be on male member of defendant's family.-- Where in any suit the defendant cannot be found or is absent from his residence 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.

(High Court notification No. 563-G, dated the 24th November, 1927).

(v) **Order V, rule 18, Form No. 11 of Appendix B:-**

No. 11

Affidavit of process-server to accompany return

of a summons or notice (O. 5, R. 18.)

(TITLE)

The affidavit of ----------, son of ----------

I---------- make oath ----------and say as follows:-

affirm

(1) I am a process-server of this Court.

(2) On the ----------day of ---------- 19------- I received

summons

a ---------- issued by the Court of----------in suit No.----------

notice

of 19----------in the said Court, dated the----------day of----------19--------for service

on----------.

(3) The said----------was at the time personally known to me, and

summons him

I served the said----------on --------on the---------day of---------- 19-----,

notice her

at about----------o' clock in the---------- noon at---------- by tendering a

him his summons

copy thereof to -------- and requiring -------- signature to the original----------.

her her 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 him

----------on ---------- on the day of ----------19------ at about

notice her

----------o' clock in the---------- noon at----------by tendering a

him his

copy thereof to---------- and requiring---------- signature to the

her her

summons

original ----------.

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 his house in which he ordinarily

personally known to me

resides being---------- I went to the said house in----------

pointed out to me by

and there on the ---------- day of ---------- 19---------

fore

at---------o` clock in the ----------noon I did not find the said----------

after

I enquired { (a) ----------}

{ (b) ----------} neighbours

I was told that ----------had gone to---------- and would not be back till----------.

Signature of process-server.

If substituted service has been ordered, state fully and exactly the manner in which the summons was served, with special reference to the terms of the order for substituted service.

Sworn

---------- by the said----------before me this----------

Affirmed

----------day of ---------- 19-------.

Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.

(Chief Court notification No.2212-G., dated the 12th May, 1909).

(vi) **Order VII, rule 2.--**In money suits.-- Where the plaintiff seeks the recovery of money the plaint shall state the precise amount claimed.

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, 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.

(Chief Court notification No.2212-G., dated 12th May, 1909).

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

(2) Original entry to be marked and returned.-- The Court, or such officer as it appoints in this behalf, shall forthwith mark the documents for the purposes 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.

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.

(High Court notification No. 88-Gaz./XI-Y. 7, dated the 9th March, 1935)

(viii) **Order VII, rule 19**.....***[Omitted].

(ix) **Order VII, rule 20**.....***[Omitted].

(x) **Order VII, rule 21**.....***[Omitted].

(xi) **Order VII, rule 22**.....***[Omitted].

(xii) **Order VII, rule 23**.....***[Omitted].

(xiii) **Order VII, rule 24**.....***[Omitted].

(xiv) **Order VII, rule 25**.....***[Omitted].

(xv) **Order VIII, rule 1**.-- 1. The defendant may, and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence; **[provided that the period allowed for filing the written statement shall not ordinarily exceed thirty days]; and with such written statement, or if there is no written statement, at the first hearing, shall produce in Court all documents in his possession or power on which he bases his defence or any claim for set-off.

2. Where he relies on any other documents 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, or where there is no written statement, to be presented at the first hearing. If no such list is so annexed or presented, the defendant shall be allowed a further period of ten days to file this list of documents.

3. A document which ought to be entered in the list referred to in sub-clause (2); but which has not been so entered, shall not, without the leave of the Court, be received in evidence on the defendants behalf at the hearing of the suit.

4. Nothing in this rule shall apply to documents produced for cross-examination of plaintiff's witnesses or handed to a witness merely to refresh his memory.

(High Court notification No. 191-R/XI-Y-8, dated the 19th June, 1939).

(xvi) **Order VIII, rule 11**.....***[Omitted].

(xvii) **Order VIII, rule 12** .....***[Omitted].

(xviii) **Order IX, rule 9.--**(1) Decree against plaintiff by default bars fresh suit.-- Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and , if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

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.

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

(Chief Court notification No.2212-G.,dated 12th May, 1909).

(xix) **Order XIII, rule 9.--** Return of admitted documents.--(1) Any person, whether a party to the suit or not desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same-

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has

elapsed and that no appeal has been preferred or if an appeal has been preferred, when the appeal has been disposed of;

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

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

Provided further that the cost of such certified copy shall be recoverable as a fine from the party at whose instance the original document has been produced.

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

(High Court notification No. 563-G., dated the 24th November, 1927.)

(xx) **Order XVI, rule** 1.-- Summons to attend to give evidence or produce documents- At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

***[Omitted]

(xxi) [**Order XVI, rule 2.--** (2) Expenses of witness to be paid into Court on applying for summons.-- The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Exception.-- When applying for a summons for any of its own officers, Government will be exempted from the operation of clause (1).

(2) Experts.-- In determining the amount payable under this rule, the Court may in the case of any person summoned to give evidence as an expert,

allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

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

(High Court notification No. 156-G., dated the 9th January, 1919).

(xxii) **Order XVI, rule 3.--**(1) Tender of expenses to witness.-- 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 expenses 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.

(High Court notification No. 156-G., dated the 9th January, 1919).

(xxiii) **Order XVI, rule 4.--**(1) Procedure where insufficient sum paid in.-- 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, or, when such person is a Government servant, to be paid into Court, 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.

(High Court notification No.156-G., dated the 9th January, 1919.)

(xxiv) **Order XVI, rule 16.--**(1) When they may depart.-- 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 prison.

(3) In the absence of the Presiding Officer the powers conferred by sub-rule (2) may be exercised by the Senior Civil Judge of the first class exercising jurisdiction at headquarters of the districts, or by any Judge or Court official nominated by him for the purposes:

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.

(High Court notifications No.209-R/XI-Y-11, dated the 25th July, 1938, and No.24-R/XI-Y-11, dated the 23rd January, 1940).

(xxv) **Order XVII, rule 1.--**(1) Court may grant time and adjourn hearing.-- Subject to the provisions of Order XXIII, rule 3, the Court may, if sufficient cause is shown at any stage of the suit, grant time to the parties or any of them, and may from time to time adjourn the hearing of the suit.

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

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

(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.

(High Court notifications No.95-G., dated the 26th February, 1925, and No.211-R/XI-Y-22, dated the 21st July, 1937.)

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

(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.

EXPLANATION I. Nothing in this rule shall affect the jurisdiction of the Court, of its own accord or on the application of any party, for reasons to be recorded in writing to direct any party to examine any witness at any stage.

EXPLANATION II. The expression "witness" in Explanation I shall include any party as his one witness.

Rule 8.-- 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, *[in his own hand or from his dictation in open Court] and such memorandum shall be signed by the Judge and shall form part of the record.

Rule 13.-- In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes in his own hand or from his dictation in open Court, and such memorandum shall be signed by the Judge and shall from part of the record.

Rule 14 -- Deleted.

(xxvii) **Order XXI, rule 1.--**(1) Mode of paying money under a decree.-- All money payable under a decree shall be paid as follows, namely:-

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

*[(b) out of Court to the decree-holder through a Bank or by Postal Money Order or evidenced by writing signed by the decree-holder or his authorised agent;] or

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

Explanation.-- The judgment-debtor may, if he so desires, pay the decretal amount, or any part thereof, into the Court under clause (a) by postal money order on a form specially approved by the High Court for the purpose.

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

(xxviii) **Order XXI, rule 5.--** Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court or the Court of any Judge having jurisdiction in the place where the decree is to be executed to whom power to receive plaints has been delegated by the District Judge of the district in which the decree is to be executed.

(High Court notifications No. 193-Gaz./XI-Y-14, dated the 11th July, 1933 and No. 72-R/XI-Y-14, dated the 23rd March, 1938).

(xxix) **Order XXI, rule 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:

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 this 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.

(High Court notification No.125-Gaz./XI.-Y-14, dated the 7th April, 1932).

(xxx) **Order XXI, rule 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 applications were made by such decree-holder:

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

(High Court notification No. 26-R/XI-Y-14, dated the 24th January, 1940).

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.

(High Court notification No. 125-Gaz/XI-Y-14, dated the 7th April, 1932)

(xxxi) **Order XXI, rule 17.--** (1) Procedure on receiving application for execution of decree.-- On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; *[and, if they have not been complied with, the Court shall fix a time within which the defect shall be remedied, and if it is not remedied within such time, may reject the application.]

(2) Where an application is amended under the provision 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 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 notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932).

(xxxii) **Order XXI, rule 22.--** Notice to show cause against execution in certain cases-

(1) where an application for execution is made--

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than 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, 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. Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction.

(High Court notification No. 125-Gaz./XI-Y 14, dated the 7th April, 1932).

(xxxiii) **Order XXI, rule 26**.....[Omitted].

(xxxiv) **Order XXI, rule 29-A.--** Which was added by Chief Court notification No.2212-G., dated the 12th May, 1909, has been omitted by High Court notification No.563-G., dated the 24th November, 1927.

(xxxv) **Order XXI, rule 31.--** (1) Decree for specific movable property.-- 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 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 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:

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.

(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

three months or such other period as may have been prescribed by the Court 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.

(High Court notification No.125-Gaz./XI-Y14, dated the 7th April, 1932).

(xxxvi) **Order XXI, rule 32.--**(1) **Decree for specific performance, for restitution of conjugal rights, or for an injunction.--** Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced 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 prison, or by the attachment of his property, or by both.

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

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

Provided that the Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three months but it shall in no case exceed one year in all.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months or such other period as may have been prescribed by the Court

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.

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, inspite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal, from A in the execution proceedings.

(High Court notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932).

[(xxxvi-A). Order XXI, rule 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 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 detained in the prison.

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

(xxxvii) **Order XXI, Rules 39.--** ***[Omitted]

(xxxviii) **Order XXI, rule 43.--** (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 one of his subordinates, and shall be responsible for the due custody thereof:

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

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 the Form No. 15-A 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; or

(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. 15-B of Appendix E with one or more sureties for its production.

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rules 55, 57 or 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 property is made over to a custodian under sub-clauses (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 who made the attachment;

(c) the person whose property is attached and made over and

(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.

(xxxix) **Order XXI, rule 43-A.--**(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.

(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.

(xl) **Order XXI, rule 43-B.--**(1) Whenever attached property kept in the village or place where it is attached is livestock, the person at whose instance it is 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 arrangement 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 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.

(xli) **Order XXI, rule 43-C.--** When an application is made for the attachment of livestock 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 15 days. If within 3 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 officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

(xlii) **Order XXI, rule 43-D.--** Any person who has undertaken to keep attached property under rule 43(1) (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 willfully lost by him.

(xliii) **Appendix E to Schedule 1.--**

FORM NO. 15-A.

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

Order XXI, rule 43(1)(A)

In the Court of----------at---------- Civil suit No. ----------of----------

A.B. of _____

against

C.D. of _____

Know all men by these presents that we, I.J. of----etc., and K.L. of------etc., and M.N. of----------, etc., are jointly and severally bound to the Judge of the Court of----------in Rupees ---------- to be paid to the said Judge 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------ And whereas the movable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the---------- day of---------- 19--------- in execution of a decree in favour of ---------- in suit No.---------- of----------19----------on the file of---------- and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounden I.J. shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force.

I.J.

K.L.

M.N.

Singed and delivered by the above bounden----------in the presence of----------

(xliv)--

FORM NO. 15-B

BOND FOR SAFE CUSTODY OF MOVABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES

SURETIES

Order XXI, rule 43 (1)(c)

In the Court of ----------at----------Civil suit No.-------of----------

A.B. of _____

against

C.D. of _____

Know all men by these presents that we, I.J. of ----------, etc, and K.L. of ----------, etc, and M.N. of----------, etc, are jointly and severally bound to the Judge of the Court of---------- in Rupees---------- to be paid to the said Judge for which payment to be made we bind ourselves, and each of us, in the whole, our and each or our heirs, executors and administrators, jointly and severally, by these presents.

Dated this ----------day of---------- 19---------- And whereas the movable property specified in the schedules hereunto annexed has been attached under a warrant from the said Court, dated the ----------day of---------- 19------- in execution of a decree in favour of----------in suit No.---------- of---------19---------- on the file of ----------and the said property has been left in the charge of the said I.J.

Now the condition of this obligation is that, if the above bounden I.J. shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force and be enforceable against the above bounden I.J. in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I.J. were a surety for the restoration of property taken in execution of decree.

I.J.

K.L.

M.N.

Signed and delivered by the above bounden---------- in the presence of----------.

(Rules 43 to 43-D and forms 15-A and 15-B added (by High Court Notification No. 606-G., dated 13th December, 1928).

(xlv) **Order XXI rule 45.--**(1) Provisions as to agricultural produce attachment.--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 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.

(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 condition, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree holder shall be recoverable from the judgment-debtor as if they were included in, or formed part, of the decree.

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

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

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

(High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April 1932).

(xlvi) **Order XXI, rule 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, the attachment shall be made,-

(a) if the decree was 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 and to the Court to which it has been transferred for execution, of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until-

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court, his judgment-debtor 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 decree of the nature specified in sub-rule(1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of 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 with the knowledge thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

(High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April 1932 and High Court Notification No.225-R/XI-Y-14 dated the 5th August, 1937).

(xlvii) **Order XXI, rule 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.

(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; 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.

(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.

(High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932; No 109-R/XI-Y-14 dated 21st April, 1939 and No. 273-R-XI-Y-14, dated the 30th July, 1941).

(xlviii) **Order XXI, rule 58**.-- **Investigation of claims to and objections to attachment of attached property**.-- Where any claim is

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

*[Provided that no such investigation shall be made when the Court considers that the claims or objection was designedly or unnecessarily delayed.]

Postponement sale- Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.- (High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932.

(xlix) **Order XXI, rule 66.--**(1) Proclamation of sale by public auction.-- Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible -

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any encumbrance 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 the nature and value of the property, 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.

(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.

(4) 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.

(5) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

(High Court Notifications No. 567-Gaz., dated the 4th November 1929 and No. 150-R/XI-Y-14 dated the 16th May 1939).

(l) **Order XXI rule 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 fifteen days in the case of immovable property and of at least one week 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.

(High Court Notification No.125-Gaz./XI-Y-14, dated the 7th April, 1932).

(li) **Order XXI rule 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) for a longer period than thirty days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

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

(High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April 1932).

(lii) **Order XXI rule 75.--**(1) Special provisions relating to growing crops.-- 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 or can be sold to great advantage in an unripe state 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 tendering and cutting or gathering it.

(Chief Court Notification No. 2212-G., dated the 12th May 1909 and High Court Notification No. 123-R/XI-Y-14, dated the 28th April, 1938).

(liii) **Order XXI, rule 89.--**(1) Application to set aside sale on deposit.-- Where immovable property has been sold in execution of decree, any person claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person, may apply to have the sale set aside on his depositing in Court-

(a) for payment to the purchaser, a sum equal to five percent 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 dates 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.

(High Court Notification No. 125-Gaz./XI-Y.-14, dated the 7th April, 1932).

(liv) **Order XXI, rule 90**.-- **Application to set aside sale on ground of irregularity, fraud.**-- (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

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

**[Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realized at the sale or furnishes such security, as the Court may direct;]

Provided further that no such sale be set aside on any ground which the applicant could have put forward before the sale was conducted.

(High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April, 1932).

(lv) **Order XXI, rule 98.-- Resistance or obstruction by judgment-debtor.--** Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other

person at his instigation or on his behalf, 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 prison for a term which may extend to thirty days. Such detention shall be at the public expense and the person at whose instance the detention is ordered shall not be required to pay subsistence allowance.

(High Court Notification No. 125-Gaz./XI-Y-14 dated 7.4.1932)

(lvi) **Order XXI, rule 104.--** For the purpose of all proceedings under this order, service on any party shall be deemed to be sufficient if effected at the address for service referred to in Order VIII, rule 11, subject to the provisions of Order VII, rule 24, provided that this rule shall not apply to the notice prescribed by rule 22 of this Order.

(High Court Notification No. 567-G., dated the 24th November, 1927).

Note I:- Rule 29-A., which was added by Chief Court Notification No. 563-G., dated the 24th November, 1927.

Note II:- Rule 63.A., which was added by High Court Notification No. 125-Gaz./XI-Y-14, dated the 7th April 1932, has been omitted by High Court Notification No. 106-R/XI-Y-14, dated 27th April, 1937].

(lvii) **Order XXIII, rule 3.--** Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit:

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purposes of deciding whether there has been any adjustment or satisfaction, unless the Court for reasons to be recorded in writing, thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided;

Provided further that when an application is made by all the parties to the suit, either in writing or in open Court through their counsel, that they wish to compromise the suit, the Court may fix a date on which the parties or their counsel should appear and the compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which the Court proposes to adjourn the hearing.

(High Court Notification No. 211-R/XI-Y-22, dated the 21st July, 1937).

(lviii) **Order XXX, rule 1.--** (1) Suing of partners in name of firms.-- Any two or more persons claiming or being liable as partners and carrying on business in Pakistan 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 as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code, to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Explanation.-- This rule applies to a joint Hindu family trading partnership.

(Chief Court Notification No. 2212-G dated 12th May, 1909).

(lix) **Order XXXII, rule 1.--**Minor to sue by next friend.-- Every suit by a minor shall be instituted in his name by person who in such suit shall be

called the next-friend of the minor. Such person may be ordered to pay any costs in the suit as if he were the plaintiff.

(Chief Court Notification No. 2212.G.,dated 12th May 1909).

(lx) **Order XXXII, rule 3.--**(1) Guardian for the suit to be appointed by Court for minor defendants.-- Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint 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) The plaintiff shall file with his plaint a list of relatives of the minor and other persons, with their addresses, 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) 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.

(6) 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.

(7) 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.

(High Court Notification No.95-G., dated 15th February, 1925, and No. 566-G., dated 24th November, 1927).

(lxi) **Order XXXII, rule 4.--**(1) Who may act as next friend or be appointed guardian for the suit.-- 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 minor's welfare that another person be permitted to act or be appointed, as the case may be.

(2-A) 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.

(3) No person shall without his consent, be appointed guardian for the suit, but the Court may presume such consent to have been given unless it is expressly refused.

(4) Where there in no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader to be such guardian, and may direct that the costs to be incurred by such person in the

performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

(High Court Notification No. 566-G. dated 24th November, 1927 as amended by High Court Notification No. 209-R/XI-Y.-3, dated the 22nd July, 1936 and No. 281-R/XI-Y-3, dated 19th September, 1936).

(lxii) ***[Omitted].

(lxiii) **Order XXXVII, rule 3.--** (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally, or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise, as the Court thinks fit.

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

(High Court Notification No. 577-G., dated the 15th November, 1928).

(lxiv) **Order XLI, rule 1.--** (1) Form of appeal. What to accompany memorandum.--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 when two or more cases are tried together and decided by the same judgment, and two or more appeals are filed against the decrees, whether by the same or different appellants, the officer appointed in this behalf, may , if satisfied that the questions for decision are analogous in each appeal, dispense with the production 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 arguments or narrative; and such grounds shall be numbered consecutively.

(High Court Notification No.631-Gaz./XI-Y-I, dated the 7th December, 1932).

(lxv) **Order XLI, rule 14.--**(1) Publication and service of notice of day for hearing appeal.-- 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.

(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 the 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 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.

(High Court notification No.319.R/XI-Y-1, dated 13th November,1943).

(lxvi) **Order XLI, rule 23-A.--** 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 retrial is considered necessary the appellate Court shall have the same powers as it has under rule 23.

(High Court Notification No. 216.R/XI-Y-I/XI-Y-25, dated the 4th August, 1938).

(lxvii) **Order XLI, rule 35.--**(1) Date and contents of decree.-- The decree of the appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions, such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it.

Judge dissenting from judgment need not sign decree; Provided that, where there are more Judges than one, and there is a difference of opinion among them, it shall not be necessary, for any Judge dissenting from the judgment of the Court, to sign the decree;

Provided also in the case of 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.

(High Court Notification No. 20-R/XI-Y-1, dated 29th January, 1937).

(lxviii) **Order XLI, rule 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 (1) 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.

(High Court Notifications No. 567-G., dated 24th November, 1927 and No. 20-R/XI-Y-1, dated 29th January, 1937).

(lxix) **Order XLII, rule 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 there with. (High Court Notification No. 4685-G., dated 17th October, 1919, and No. 138-G., dated 19th March, 1926).

(lxx) Order XLIII, rule 1. Appeal 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;

(b) an order under rule 10 of Order VIII pronouncing judgment against a party;

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

(e) an order under rule 4 of Order X pronouncing judgment against a party;

(f) an order under rule 21 of Order XI.

(g) an order under rule 10 of Order XVI for the attachment of property;

(h) an order under rule 20 of Order XVI pronouncing judgment against a party;

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

**[(i-A) an order under rule 62 or rule 103 of Order XXI relating to the right, title or interest of the claimant or objector in attached property;]

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(o) an order under rule 2, rule 4 or rule 7 of Order XXXIV refusing to extend the time for the payment of mortgage money;

(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, 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 under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;

(w) an order under rule 4 of Order XLVII granting an application for review.

(High Court Notification No. 216-R/XI-Y-25, dated the 4th August 1938).

[(lxx-A) Order XLIII, Rules 3 & 4.--(a) Notice before presentation of appeal.-- (1) Where an appeal against an order is preferred during the pendency of a suit, the appellant shall, before presenting the appeal give notice of such appeal to the respondent or his Advocate by delivering a copy of the memorandum and grounds of appeal alongwith a copy of the order appealed

against either personally or through "Registered post acknowledgment due", returnable to the Appellate Court. The postal or the other receipt shall be filed with the memorandum of appeal for the record of the Appellate Court.

(2) On receipt of notice referred to in sub-paragraph (1), the respondent may, with the permission of the Court, appear before it and contest the appeal and may be awarded costs on dismissal of the appeal in limine.

(b) **Application of rule 3.--** The provisions of rule 3 shall, mutatis mutandis, apply to all applications filed before an Appellate Court during the pendency of a suit.]

(lxxi) **Order XLV-A.--** ***[Omitted].