

## **THE CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS.**

VOLUME I

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## PART I

**RULES MADE UNDER THE CODE OF CIVIL PROCEDURE, 1908.**

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### CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS.

#### VOLUME I.

(ROC. NO. 266/71.)

#### PREAMBLE.

No. SRO C-25/90.

In exercise of the powers conferred by section 122 of the Code of Civil Procedure 1908. (Central Act V of 1908) and all other powers nereunto enabling and with the previous approval of the Government of Tamil Nadu, the High Court makes the following revised rules for the rules contained in part I of the Civil Rules of Practice and Circular Orders, Volume I.

#### (REVISED RULES.)

### CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS.

#### VOLUME I.

#### PRELIMINARY.

1. *Short title.*—These rules may be called the Civil Rules of Practice and Circular Orders.

2. *Forms.*—The forms in the Appendix-III, Part II, Volume II hereto shall be used with such variations as circumstances may require.

3. *Definitions.*—In these rules, unless there is something repugnant in the subject or context—

(1) 'Address for service' means the place appointed by a party, or his pleader at which service of summons, notice or other process, may be made on such party ;

(2) 'Application' includes execution application, execution petition, and interlocutory application, whether written or oral ;

(3) 'Code' means the Code of Civil Procedure 1908 (Central Act V of 1908) as amended from time to time ;

(4) 'Execution Petition' means a petition to the court for the execution of any decree or order ;

(5) 'Execution application' means an application to the court made in execution proceedings other than an execution petition ;

(6) 'First hearing' includes the hearing of a suit for settlement of issues, and any adjournment thereof ;

(7) 'Interlocutory application' means an application to the court in any suit, appeal or proceeding already instituted in such court other than a proceeding for execution of a decree or order ;

(8) 'Interim decree' means a decree which follows Judgment or order passed under rule 6 of Order XII of the Code;

(9) 'Original petition' means a petition whereby any proceeding other than a suit or appeal or a proceeding in execution of a decree or order, is instituted in a court ;

(10) 'Proceeding' includes all documents presented to or filed in court by any party, or commissioner or other officer of court, other than documents produced as evidence;

(11) 'Verified' means verified in the manner provided by rule 15 of Order VI of the code; and

(12) *Other expressions*—All other expressions used herein shall have the respective meanings prescribed by the Code or the General Clauses Act, 1897.

4. *Reckoning of prescribed day*.—(1) In all cases in which any particular number of days not expressed to be clear days, is prescribed by these rules the same shall be reckoned exclusively of the first day and inclusively of the last day; unless the last day falls on a Sunday, or other day on which the office of the court is closed, in which case the time shall be reckoned exclusively of that day also, and of any other following day in days during which the office may continue to be closed.

(2) In all cases in which any particular number of days not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and of the last day and also of any day on which the office is closed.

5. *Service of notice*.—Except where otherwise provided by the Code, or these rules or any law for the time being in force, any notice directed to be given to any party shall be in writing and may be served by the party, or his pleader, on the other party, or his pleader personally, or by sending the same by post, in a registered pre-paid cover, to the address for service of the party or his pleader.

## PART I.

### RULES MADE UNDER THE CODE OF CIVIL PROCEDURE.

#### CHAPTER I (GENERAL).

##### 'A' FORM OF PROCEEDING.

###### *Form of Plaints etc.*

*Substituted \**

6. All plaints, written statements, applications, affidavits, memoranda of appeal, and other proceedings presented to the court, shall be written, typewritten or printed fairly and legibly, on stamped paper or on substantial white foolscap folio paper with an outer margin about two inches wide and an inner margin about one inch wide and separate sheets shall be stitched together bookwise. The writing or printing may be on both sides of the paper and number shall be expressed in figures and with thick sheet as docket;

Provided that the High Court otherwise may direct whenever special circumstances relating to scarcity of paper arise.

7. *Cause title of Plaintiff, etc*.—(1) A plaint or original petition, shall be headed with a cause title as in Form No. 1. The cause title shall set out the name of the court the names of the parties separately numbered, and described as plaintiffs and defendants or petitioners and respondents, as the case may be.

(2) *Cause title of memorandum of appeal*.—A memorandum of appeal shall be headed with a cause title setting out the names of the courts to and from which the appeal is brought, the names of the parties separately numbered and described as appellants and respondents and also the full cause-title of the suit or matter in the lower court, as in Form No. 2.

(3) *Cause title of subsequent proceedings*.—All proceedings, subsequent to a plaint or original petition shall be headed with a cause title as in Form No. 1 and all proceedings subsequent to a memorandum of appeal shall be headed with a cause title as in the first part of Form No. 2.

(4) *Description of Contents*.—Every proceeding shall also contain immediately after the cause-title a short description of its contents as in Form Nos. 5 and 6

**NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.,****JUDICIAL NOTIFICATIONS****THE HIGH COURT OF JUDICATURE AT MADRAS****Amendment to Rule 6 of Civil Rules of Practice and Circular Orders**

(Roc.No. 38/2020/F1)

No. SRO C-30/2021.

In exercise of the powers conferred by Section 122 of the Code of Civil Procedure 1908, (Act V of 1908) and all other powers hereunto enabling and with the approval of the Government of Tamil Nadu, the High Court, Madras, hereby makes the following amendment to Rule 6 of Civil Rules of Practice and Circular Orders. The Amendment shall come into force with effect from the date of publication in the Gazette.

**AMENDMENT**

In the Civil Rules of Practice and Circular Orders, for existing Rule 6, the following rule shall be substituted, namely:-

"6. All plaints, written statements, applications, affidavits, memoranda of appeal and other proceedings presented to the Court, shall be written, typewritten or printed, fairly and legibly, on stamped paper or on substantially white A4 Size paper not less than 75 GSM, or any other quality as may be prescribed from time to time instead of green or embossed paper and separate sheets shall be stitched together bookwise. The writing or printing may be on both sides of the paper and numbers shall be expressed in figures and with thick sheet as docket, with the following margins:

*For the Appellate Side*

From the top - 2.5 cm  
From the bottom - 2.5 cm  
From the left - 3 cm  
From the right - 2.5 cm

*For the Original Side*

From the top - 2.5 cm  
From the bottom - 2.5 cm  
From the left - 3 cm  
From the right - 2.5 cm

Provided that the High Court otherwise may direct whenever special circumstances relating to scarcity of paper arise."

High Court, Madras,  
22nd September 2021.

P. DHANABAL,  
Registrar General.

8. *Name, etc., of parties.*—(1) The full name, father's name, sex, age, occupation and residence of each party and if such is the case, the fact that any party sues or is sued in a representative character, shall be set out at the beginning of the plaint, original petition, or memorandum of appeal as in Form No. 5, and need not be repeated in the subsequent proceedings in the same suit, appeal, or matter.

(2) *Address for service.*—The first proceeding filed by any party shall also state and address for service, which shall be within the local limits of the jurisdiction of the court in which the same is filed or of the District Court in which the party ordinarily resides.

9. *List of documents filed along with the plaint.*—Every plaint shall at the foot thereof, contain a list to be signed by the plaintiff or his pleader, of the documents filed therewith in Form No. 7, or a statement, signed as aforesaid that no document is filed therewith.

10. *Form prescribed for list filed under Order XIII rule 1.*—The list of documents if any, filed by the parties; Order XIII rule 1 of the Code, shall be in Form No. 7.

11. *Proceedings in respect of immovable property.*—Every plaint, original petition and memorandum of appeal, in which relief is sought with respect to immovable property shall state as part of the description thereof, the registration district or sub-district in which the property is situate and the survey number, if any and in cases where the value of the property is required to be estimated for the purposes of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955) there shall be annexed thereto a statement, duly filled in and signed by the party of the particulars mentioned in Form No. 8. In case of default, the proceeding may be received but shall not be admitted or filed until the provisions of this rule have been complied with.

12. *Leave to sue.*—(1) If under section 20 (b) of the Code leave to institute a suit is required the plaint shall contain a prayer that leave may be granted and shall be accompanied by an affidavit stating the residence and occupations of the several defendants, and the reasons for instituting the suit in the court.

(2) If leave to sue is granted, the summons to the defendants shall contain the notice set out in Form No. 9.

(3) The Court may, in its discretion, issue notice of the application to the defendants, before passing an order thereon.

13. *Suits by or against numerous parties.*—(1) An application under rule 8 of Order I of the Code, shall be supported by an affidavit stating the number of approximate number of the parties, and the places where they respectively reside; that they have all the same interest in the subject matter of the suit, and the nature of the said interest and the best means of giving notice of the institution of the suit to the said parties, and the probable cost thereof. If the application is made by the plaintiff, it may be made in Form No. 10, and the estimated costs of giving notice of the institution of the suit shall at the same time be deposited in court.

(2) The plaint shall state that the plaintiff sues on behalf of himself and all other persons interested in the subject matter of the suit, or sues the defendant as representing all persons so interested and the summons to the defendant shall contain the notice set forth in Form No. 11.

14. *When application is made by defendant.*—If the application is made by a defendant, notice thereof shall be given to all parties to the suit and if permission is granted, the plaint shall be amended by inserting a statement that the defendants with the leave of the court, sued as the representative of all persons, interested in the subject matter of the suit.

15. *Adding plaintiff or next friends.*—If an application is made to add any person as plaintiff, or as the next friend of a plaintiff, he shall either appear in person, in  
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which case his consent to be so added shall be recorded by the Judge in writing or a written consent thereto signed by him, and authenticated by a person authorised take affidavits, shall be filed in court.

#### RECOGNISED AGENTS AND PLEADERS

16. *Party appearing by agent.*—(1) When a party appears by an agent other than a pleader or advocate the agent shall before making or doing any appearance application or act, in or to the court file in court the power of attorney or written authority thereunto authorising him; or a properly authenticated copy thereof, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority an affidavit stating the residence of his principal the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorised to make or do such appearance application or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party and unless and until the said permission is granted no appearance application or act of the agent shall be recognised by the court.

17. *Signing or verification by agent.*—If any proceeding which under any provision of law or these rules is required to be signed or verified by a party is signed or verified by any person on his behalf a written authority in this behalf signed by the party shall be filed in court together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verifying the proceedings and proving the means of knowledge of the facts set out in the proceeding of the person signing or verifying the same.

18. *Appointment of Pleader.*—Save as provided in paragraph 3 of this rule every Vakalatnama or appointment of a pleader shall be executed or its execution attested before any of the following persons:—

- (i) any Judicial Officer;
- (ii) an advocate or Pleader other than the Advocate or Pleader in whose favour the vaka-latnama is executed or appointment made;
- (iii) Notary appointed under the Notaries Act, 1952, or a Commissioner of Oaths;
- (iv) A Gazetted Officer or an Officer belonging to Group A or Group B the Government of Tamil Nadu as provided in G.O. Ms.No.843,Personnel and AdministrativeReforms(Personnel-M) Department, dated 11th July 1977 as amended by G.O. Ms. No. 577, Personnel and Administrative Reforms (Personnel-M) Department, dated 11th May 1979;
- (v) a retired Gazetted Officers receiving pension from the Government or a retired Officer belonging to Group A or Group B of the Government of Tamil Nadu as mentioned in clause (iv) supra;
- (vi) a retired Non-gazetted Officer receiving pension from Government who has served as a Sub-Magistrate or Additional First Class Magistrate prior to his retirement.
- (vii) a member of the Legislative Council, or Legislative Assembly of any state or a Member of Parliament;
- (viii) a Municipal Councillor;
- (ix) a Member of Panchayat or a Panchayat Union constituted under the enactment in force;
- (x) a Village Administrative Officer.

- (xi) the Manager of the Office of the Board of Commissioners for the Hindu Religious and Charitable Endowments, or any Superintendent or Inspector working under the Board; and  
 (xii) a Sub-Registrar;

Who shall subscribe his own signature adding his designation on the Vakalatnama in authentication of its execution or attestation;

Provided that when a Vakalatnama is executed by any person who appears to the Officer before whom it is executed or the execution is attested to be illiterate, blind, or unacquainted with the language in which the Vakala nama is written the officer shall certify that the Vakalatnama was read, translated or explained in his presence to the executant, that he seemed to understand it and that he made his signature or mark in the presence of the officer.

When the executant of a Vakalatnama is himself a Public Officer of whose signature a court must take judicial notice, authentication on the Vakalatnama shall not be necessary.

A statement of the Pleader's address for service shall be endorsed on the Vakalatnama and subscribed with his own signature by the Pleader.

In the case of Sub-Registrars, the Government direct that they shall attest the execution of Vakalats only in which they know the parties personally or in which the Vakalats are presented by persons who appear before them for the registration of documents and whose identity has been proved in connection with the registration of those documents and they shall not hold special inquiries in this connection (G.O. Ms. No 232, Judicial dated 28th January 1961 H C. Dis No. 482/1916.)

18-A. (1) In these rules, the expression "Advocate Pleader and Attorney" shall be deemed to include a partnership composed of such persons;

(2) No such partnership shall be entitled to act or plead in any court unless all the members thereof are entitled to act or plead in such court;

(3) A Partnership may include in its name, the names of persons who were or are members of the partnership but of no others;

(4) The name of no person who has ceased to be a member of the partnership otherwise than by death shall be included in the name of the partnership except with his consent in writing;

Provided that this rule shall not apply to any partnership in existence on the 1st July 1957;

(5) ~~The words "and company" shall not be affixed to the name of any partnership;~~

*omitted*

(6) The names of all the members of partnership (i) shall be recorded with the Registrar of the High Court and the Bar Council of Tamil Nadu and (ii) shall also be set out in all professional communications set out by the partnership;

(7) A partnership shall notify the Registrar of the High Court and the Bar Council of Tamil Nadu any change in the composition of the partnership not later than three months from the date on which such change has occurred;

(8) Every member of a partnership shall be bound to disclose the names of all the members of the partnership whenever called upon to do so by the Registrar of the High Court the Bar Council of Tamil Nadu any court or tribunal or any partner for or against whom the partnership or any member thereof has entered appearance before such court or tribunal;

(9) In every case where a member of the partnership signs any document or writing on behalf of the partnership he shall do so in the name of the partnership and shall authenticate the same by affixing his signature; and

(10) Neither the partnership nor any member thereof shall advise act or plead on behalf of a party in any matter or proceeding where the opposite party is represented by any other member of the partnership or by the partnership.

18-B. *Senior Advocates as defined in section 16 of the Advocates Act, 1961.—A senior Advocate shall not.—*

- (i) file a vakalat or act in any court or Tribunal in the State of Tamil Nadu.

**NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.****JUDICIAL NOTIFICATION****THE HIGH COURT OF JUDICATURE AT MADRAS****Amendment to Civil Rules of Practice and Circular Order***(R.O.C. No. 444/2007/F1)***No. SRO C-22/2021.**

In exercise of the powers conferred by Section 122 of the Code of Civil Procedure 1908 (Central Act V of 1908) and all other powers hereunto enabling and with the previous approval of the Government of Tamil Nadu, the High Court of Madras, hereby makes the following amendment to Rule 18-A of the Civil Rules of Practice and Circular Orders Volume I, Edition 1941.

**AMENDMENT**

In the Civil Rules of Practice and Circular Orders, in Volume I, in Part I, Chapter I, in Rule 18-A, sub-rule (5) shall be omitted.

High Court, Madras,  
13th July 2021.

P. DHANABAL,  
*Registrar General.*

(ii) appear without an advocate on record, or pleader in any Court or tribunal in the State of Tamil Nadu.

(iii) accept instructions to draw pleadings, affidavits, advise on evidence or to do any drafting work of an analogous kind in any court or tribunal in the State of Tamil Nadu or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to setting any such matter as aforesaid in consultation with an advocate other than a Senior Advocate.

(iv) accept directly from a client any brief or instructions to appear in any court or tribunal in the State of Tamil Nadu.

(v) file a fees certificate except through an advocate on record or pleader.

*Explanations :*

(1) "Advocate on record" or "Pleader" means one who is entitled to act as well as to plead for a party in the court.

(2) "Acting" means to file an appearance or any pleadings or applications in any court or tribunal in the State of Tamil Nadu or to do any act (other than pleading) required or authorised by law to be done by a party in such court or tribunal either in person or by his recognised agent or by an Advocate, attorney or pleader on his behalf.

(3) "Tribunal" includes any authority or person legally authorised to take evidence and before whom advocates or pleaders by or under any law for the time being in force are entitled to practice;

(4) Where a Senior Advocate appears, the fact will be intimated in writing to the court by the Advocate on record or Pleader.

19. *Form of Vakalat*—Every vakalat shall, unless otherwise ordered by the Court be in form No. 12 and shall authorise the Pleader to appear in all execution and miscellaneous proceedings in the suit or matter subsequent to the final decree or order passed therein'

*Note. I.—Vakalatnamas :—*

(1) Every vakalatnamas must be dated at the time of its execution and its acceptance. (H.C. Rule dated 27th July 1896).

(2) No vakalatnama is to be authenticated unless the Pleader's name be inserted therein previous to its execution.

(Pro. dated 1st December 1858).

(3) It is not necessary for the authenticating officer to see that Vakalatnama are stamped at the time of attestation or execution.

G.O. No. 1214, dated 4th September 1909, H.C. Dis. No. 1290 of 1909.

(4) No vakalatnama will be filed unless it be noted thereon in the handwriting of the pleader to whom it is executed, that it has been "accepted" by him.

(5) Where a person is a party in two or more connected suits, he must execute a separate vakalatnama in each case, notwithstanding that he may retain the same pleader in all.

(6) Where the party afterwards retains additional pleader he may either execute a fresh vakalatnama to be signed by all the Pleader by whom it is accepted and to be substituted for the original vakalatnama, or he may execute a separate Vakalatnama to the additional pleader.

(Pro. dated 24th July 1851):

(7) Whenever a vakalat in the names of more than one pleader is presented, it should be rejected unless it has been accepted by all the Pleaders who are named in it.

(H.C. Cir. 2074, dated 26th August 1889.)

(8) A party who has retained a pleader to appear for him cannot be heard in person unless he first withdraws the vakalatnama.

(Pro. dated 15th March 1821.)

(9) The Government Pleader need not file a written authority in each case. (H.C. Cir. 739, dated 12th August 1903).

(10) A fresh vakalat should be filed for appearing on behalf of an appellant or respondent in an appeal even in cases where the pleader concerned had been retained to appear in the trial court.

Note :—II.—*Termination of Pleaders's Authority.*—

(1) A pleader retained in any case will be deemed to have discharged his duty to his client on the decree being made, and is not bound to appear on any application for review of judgment without further instructions. But, if he is prepared to appear he may do so without a fresh vakalat-nama provided that if any such pleader takes any step in the review, it will be incumbent upon him to appear at the hearing.

(2) A pleader retained in a suit cannot afterwards appear for the same client in an appeal from an order passed in execution of the decree in such suit unless he puts in a fresh vakalat-nama.

(Pro. dated 17th August 1860.)

20. *Pleader not to Act in opposing interest.*—Except when specially authorised by the court, or by consent of the party, a pleader who has advised in connection with the institution of a suit, appeal or other proceeding, or has drawn pleadings, in connection with any such matter, or has during the progress of any such suit appeal or other proceedings, acted for a party, shall not, unless he first gives the party for whom he has advised, drawn pleadings or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceedings, or in any appeal, or application for revision arising therefrom or in any matter connected therewith for any person whose interest is opposed to that of his former client :

Provided that the consent of the party shall be presumed if he engages another pleader to appear for him in such suit, appeal or other proceeding without offering an engagement to the pleader whose services be originally engaged.

*Explanation.*—Notwithstanding anything herein before contained, a practitioner who discloses to one client the information confided to him in his capacity as the legal practitioner of another client without the latter's consent, shall not be protected merely by reason of his being permitted to appear for the other client under this rule.

(P. Dis. No. 48/49)

NOTE :—(9) When a suit is remitted by order of an appellate court for a re-hearing or finding on an issue, the proceeding on such order must be regarded as a further proceeding in the trial of the suit, and consequently a pleader cannot change sides and hold a vakalatnama for the party opponent to the one for whom he appeared at the first hearing.

(2) A pleader retained by one party in a suit is not precluded from afterwards accepting a vakalatnama from the other party, if the same cause or interest again comes under adjudication in another suit.

(H.C. Cir. 679, dated 8th April 1869).

20-A. *Additional Counsel.*—An advocate or Pleader proposing to file an appearance in a suit, appeal or other proceedings in which there is already an advocate or pleader on record, may not do so unless he produces the written consent of such advocate or pleader or where the consent of such advocate or pleader is refused, unless he obtained the Special permission of the court.

B. PRESENTATION OF PROCEEDING TO THE COURT.

21. *Presentation of proceedings and documents.*—All plaints written statements, applications and other proceedings and documents, may be presented to or filed in court by delivering the same personally to the Chief Ministerial Officer of the Court at any time during office hours the said Officer shall at once endorse on the document the date of presentation, and if proceedings are thereby instituted, shall insert the serial Number.

In the case of papers bearing court-fee stamps, he shall, if required issue a receipt in Form No. 17.

(P.Dis. No. 195 of 1948.)

**22. Documents or proceedings not to be sent by post or telegraphs.**—No document or proceeding required to be presented to or filed in court, which is sent by post or telegraph, shall be received or filed in court :

Provided that in cases where the Official Assignee or an official Receiver does not intend to defend or contest any proceeding before court in which he is impleaded as party, he may inform the court accordingly by a statement in writing in the form appropriate to the proceeding, and send it to the court by post or personal messenger. Such statement shall form part of the record of the proceedings.

(P.Dis. No. 202 of 1942).

**NOTE.—(1)** No pleading will be entertained which is vouched in language disrespectful to the court, or to the judge of any other court or to any other Public Officer or which contains terms of reproach against the other party.

**(2)** Verbal corrections may at any time be made in pleadings with the permission of the court.

**(3)** Where two or more pleadings are in any way connected with each other a note is to be made by the party or his Pleader on each of such petitions, describing the others with which it is connected.

(H.C.P. Dis. 734 of 1933.)

#### C. POSTING OF CASES.

**23. Posting of suits, etc.**—**(1)** On the last working day in every week a list of the suits, petitions applications, appeals and other cases appointed to be heard on each day of the next week but one shall be posted on a notice board of the court. The list shall set out the serial number and short cause title of each case, and the names of the pleaders appearing therein.

**(2)** Unless the Judge otherwise orders, the case shall be called on the day and in the order in which they stand in the list.

**Cause List.**—It has been observed that many of the courts do not posts cause list showing the work to be done each day, but merely exhibit on the notice board what is practically a copy of the A Diary (vide Civil Register No. 18, Appendix II, Volume II) showing the dates to which cases dealt with on a given day are adjourned. For the convenience of the practitioners and parties, the High Court Considers that a cause list (vide Civil Mis. Form No. 50, Appendix III L, Volume II) should be posted daily on the notice board of each District and Subordinate Court, showing the cases which will be heard in the succeeding day.

(H. C. Dis. 2319 of 1915).

**24. Cases ready to be posted according to their order.**—Unless the Judge otherwise orders every case ready for disposal shall be posted and taken up according to its order on the file of the court.

**24-A. Exceptions.**—**(1)** Any suit or proceeding for the prosecution of defence of which a person in the service of the Government of the Union, or of any State, including a person subject to the Air Force Act, 1950 or the Army Act, 1950 or the Indian Navy (Discipline) Act, 1934 has obtained leave of absence shall be taken up and disposed of as far as possible within the period of such leave and;

**(2)** In order to clear off arrears and to save the time of the courts by reducing the number of applications to bring in the representatives of deceased parties etc. batches of suits and appeals pending in Civil Courts should be heard in future as soon as possible after they are filed, being posted before other suits and appeals which are ready for hearing. This instructions should to be treated as an exception to rule 24 above Which should be followed in other cases.

For this purpose batch, means five or more suits or appeals which will be governed by a single decision.

(H.C. Dis. 84 of 1913).

**24-B. Trial Court to fix the date of hearing of remand cases.**—The court to which a case is remanded under rule 23 or is referred for trial under rule 25 or for taking additional evidence under rule 28 of Order XLI of the Code shall, as soon as the records of the case have been received: from the Appellate Court fix a day for the hearing of the case and give notice thereof to the parties.

NOTE : In case where the appellate court remands any case to the trial court the records should be sent by the Appellate Court to the trial court within four weeks from the date of the order of remand.

#### D. ADJOURNMENT.

**25. Adjournment to be a day certain.**—All adjournments should be to a day certain, if possible and the day shall be fixed with regard to the convenience of the parties and the business of the court. Upon an application for an adjournment, the court shall consider the interest of all parties and the particular circumstances of the case. The absence of the Pleader of a party or want of preparation on his part, whether arising from insufficient instructions, or otherwise, shall not of itself be a sufficient ground for an adjournment.

**26. Proceedings not to be adjourned sine die or struck off the file.**—No suit, appeal matter or proceedings shall under any circumstances whatever, or be adjourned sine die or struck off other file if, by inadvertance, a day certain for the further hearing is not fixed by the court, or a case is ordered to be struck off the file, the case shall be posted one month from the day on which it was before the court and taken up for hearing after notice to the parties:

Provided that in a suit for partition in which a preliminary decree has been passed and the parties do not take proper proceedings on the date fixed for the hearing after the passing of the Preliminary decree, the court may adjourn the proceedings, sine die, with liberty to any the passing of a final decree.

**27. Costs of adjournment.**—Except where an adjournment is granted with the consent of all parties, or it is necessitated by the business of the court or by the act or default of any other party the party desiring an adjournment may be ordered to pay the costs thereof, including the expenses of resummoning the witnesses, if any, and the fee of the pleader of the other party.

**28. (1) Notice.**—Any party desiring an adjournment may give notice in writing to the other party, or his pleader of his intention to apply therefor on the day fixed for the hearing and it shall not be necessary for such party to file a petition.

**(2) Advancement of hearing.**—Any party who desire that the hearing may be advanced may apply therefor by interlocutory application of which notice shall be given to the other party.

**(3) Notice of consent.**—The party served with notice may give to the other party, or his pleader, notice in writing that he consents to, or will oppose, such adjournment or advancement.

#### E. INTERLOCUTORY PROCEEDINGS.

**29. Forms of interlocutory application.**—Interlocutory applications shall be headed with the cause title of the plaint, original petition, or appeal as in Form No. 13.

**30. Contents thereof.**—Except where otherwise provided by these rules or by any law for the time being in force, an interlocutory application shall state only the order Prayed for and shall not contain any statement of facts or arguments matter. Every application in contravention of this rule shall be returned for amendment or rejected.

**31. Notice.**—(1) Unless the court otherwise orders notice of an interlocutory Application shall be given to the other parties to the suit, matter or proceeding or their pleader not less than three days before the day appointed for the hearing of the application.

(2) such notice shall be served on the pleader whenever the party appears by such pleader

(3) Notice of the application may be served on a party not appearing by pleader by registered post, acknowledgement prepaid, to the address given in the pleading and in the event of its non-service on the party or of the party not appearing on the day fixed in the notice, the court may direct that the notice shall be delivered or sent to the proper officer to be served by him or by one of his subordinates on the party. If the party be absent or refuses to receive the notice the procedure prescribed in rule 15 or rule 17 of Order V of the Code, as the case may be shall be followed.

32. *Proof of facts by affidavits.*—Any fact required to be proved upon an interlocutory proceedings shall, unless otherwise provided by these rules, or ordered by the Court, be proved by affidavit but the Judge may, in any case, direct evidence to be given orally; and thereupon the evidence shall be recorded and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgement.

#### F. AFFIDAVIT.

33. *Before whom may be sworn.*—Affidavit intended for use in Judicial proceedings may be sworn before any of the following persons :—

- (i) any Magistrate including a Village Magistrate or a Member of a Panchayat Court;
- (ii) an Advocate or Pleader other than the Advocate or Pleader who has been engaged in the proceedings;
- (iii) a Notary appointed under the Notaries Act, 1952 or a Commissioner of oaths;
- (iv) a Gazetted Officer or an Officer belonging to Group A or Group B of the Government of Tamil Nadu as provided in G.O. Ms. No. 843, Personnel and Administration Reforms (Personnel-M) Department, dated 11th July 1977, as amended by G.O. Ms. No. 577, Personnel and Administrative Reforms (Personnel-M) Department, dated 11th May 1979.
- (v) a retired Gazetted Officer receiving pension from the Government or a retired Officer belonging to Group A or Group B of the Government of Tamil Nadu, as mentioned in Clause (IV) supra.
- (vi) a member of the Legislative council or the Legislative Assembly of any State or a Member of Parliament.
- (vii) a Municipal Councillor;
- (viii) a Member of a Panchayat or a Panchayat Union constituted under the enactments in force ;
- (ix) a Nazir, Deputy Nazir or Assistant Nazir ;
- (x) a Village Administrative Officer ;
- (xi) the Manager of the Office of the Board of Commissioner for the Hindu Religious and Charitable Endowments, or any Superintendent or Inspector Working under the Board ; and
- (xii) a Sub-Registrar.

34. *Filing.*—Before any affidavit is used, it shall be filed in court but the Judge may, with the consent of both parties or in case of urgency, allow any affidavit to be presented to the court and read on the hearing of an application.

35. *Notice on filing.*—The party filing an affidavit intended to be read in support of an application shall give not less than two days notice thereof to the other parties who shall be entitled to inspect and obtain copies of the same and file affidavits in reply; but, except with the leave of the court, no further affidavit shall be filed or read. If any party fails to give notice of filing an affidavit the court may grant an adjournment of the hearing and order the party in default to pay the cost thereof.

36. *Form.*—Every affidavit shall be drawn up in the first person, and divided into paragraphs numbered consecutively and each paragraph as nearly as may be, shall be confined to a distinct portion of the subject.

37. *Description of deponent.*—Every affidavit shall state the full name, father's name, sex, age, occupation, and residence of the deponent and shall either be subscribed with his signature in his own hand or marked by him.

38. *Alterations, interlineations and erasures.*—Any alteration or interlineation or erasures shall, before an affidavit is sworn or affirmed be authenticated by the initials of the person before whom the affidavit is taken, and no affidavit having therein any alteration or interlineration or erasure not so authenticated shall except with the leave of the court, be filed or made use of in any matter.

39. *Statement of persons before whom affidavit sworn.*—The person before whom an affidavit is taken shall state the date on which and the place where the same is taken and sign his name and description at the end, as in Form No. 14 otherwise the same shall not be filed or read in any matter without the leave of the court.

40. *Blind or illiterate deponent.*—When an affidavit is sworn or affirmed by any person who appears to the person taking the affidavit to be illiterate, blind, or unacquainted with the language in which the affidavit is written that person shall certified that the affidavit was read, translated or explained in his presence the deponent and that the deponent seemed to understand it, and made his signature or mark in his presence, as in Form No. 15 otherwise the affidavit shall not be used in evidence.

41. *Endorsement should state on whose behalf filed.*—Every affidavit shall been on endorsement stating in whose behalf it is filed.

42. *Affidavit stating matter of opinion.*—Every affidavit stating any matter or opinion shall show the qualification of the deponent to express such opinion by reference to the length of experience acquaintance with the person or matter as to which the opinion is expressed or other means of knowledge of the deponent.

43. *Affidavit on information and belief.*—Every affidavit containing statements made on the information or belief of the deponent shall state the source or ground of the information or belief.

44. *Documents referred to in affidavit.*—Documents referred to in affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the Court ; and shall bear the certificate in Form No. 16 which shall be signed by the person before whom the affidavit is taken.

#### G. ORIGINAL PETITION.

45. (1) *Original petition should state Act or authority under which it is presented.*—An original petition shall in addition to the particulars required by rules 7 and 8 also state the act or other authority under which it is presented as in Form Nos. 5 and 6. If it is not intended to serve any person with notice of the petitions it shall be so stated and the petition shall be headed as in Form No. 6 ; but if the court directs any persons to be made a party the cause title shall be amended and shall be in Form No. 1.

(2) *Hearing.*—Original petitions shall be heard and determined in the same manner as original suits.

46. *Application for transfer.*—(1) An application for the transfer of a suit from one court to another shall be made by original petition entitled in the matter of the pending suit as in Form No. 17. Notice of the application in Form No. 18 shall be issued and served on the other parties to the suit.

(2) *Affidavit in support.*—The application shall be supported by affidavit stating the respective residence of the several parties to the suit the places in which the several portions of the subject matter of the suit are respectively situate and the several jurisdiction within which the said residences and places are respectively situate and any other facts of which the application is based.

(3) *Separate application.*—A separate application shall be presented in respect of each suit of which a transfer is sought and the court shall in each case record in writing its reasons for its order.

NOTE.—(1) *Contents of transfer application.*—Whenever an application is made to the High Court (Section 23 clause 2 of the Code) for permission to transfer a case from one District Court to another to hear in one District Court, a case in which a portion of the subject matter is within the jurisdiction of another District Court the application should clearly state the proportion of the subject matter situate within each district Court. Where the application is made on account of the residences of some of the defendants out of jurisdiction the defendants so resident should be distinctly indicated. Otherwise it is impossible for the High Court to determine upon the expediency or inexpediency of the person asked.

The same course shall be observed where the application is for permission to a Munsiff to hear a case in which a portion of the subject matter is situate or some of the defendants are resident within the jurisdiction of another Munsif.

(H.C.Cir. 21st December 1863)

(2) (a) *Registering suits received by transfer.*—The Courts to which suits are transferred should note the old numbers and the dates of institution in the suit Register within brackets and when acknowledging the receipt of the records should intimate to the courts in which the suit were originally instituted the new numbers given to the suits.

(H.C. Dis. 707 of 1914)

(b) *Calculation of duration of transferred suit.*—In calculating the duration, of cases the time that the suit has actually been pending in a particular court should alone be calculated. As case should be considered to begin to be pending when it is received in the court whether by institution or by transfer and to cease to be pending when it is no longer before the court whether as the result of disposal or of transfer to another court.

(H.C.P. Dis. 717 of 1934)

(3) *No fresh vakalat necessary after transfer.*—It has been brought to the notice of the High Court that some of the subordinate courts are insisting on execution of fresh vakalats when original suit are transferred from one court to another for disposal. The High Court considers that such a procedure is unwarranted and that fresh vakalats should not be insisted on, if the pleader originally engaged is willing to act the court to which the suit is transferred.

(4) Where allegations are made against a Judicial Officer for transfer of a suit or other proceeding from his file an extra copy of the petition as well as an affidavit shall be filed along with the application for transfer.

## CHAPTER II.

### PROCESSES.

#### *Issue of Summons or Notice.*

47. *Issue of summons or Notice.*—In any proceeding in which summons or notice is to be issued by the court to any person, the party presenting the plaint, memorandum of appeal, cross objection or application shall also bring into court along with it a duly stamped application for service together with a sufficient number of copies of the plaint, concise statement, memorandum of appeal, cross objections or application and affidavit in support thereof for service on the party concerned along with the summons or notice.

The copies above referred to shall show the date of presentation of the original and the name of pleader, if any, who presented the same.

48. *Parties to file process forms duly filled up.*—(1) In all cases where processes of the nature of summons or notices have to be issued the parties or their pleaders on whose behalf, such summons or notices are issued, shall file with their application for the issue of processes, printed form or process in duplicate legibly filled up. The date of appearance and the date of the process will be left blank, where the processes are to be sent by Registered post, the cover together with the acknowledgement form with the name and address of defendant or respondent duly filled in shall also be filed.

(2) In the case of a summon the combined form as in Form No. 19 shall be used and the party or his pleader shall leave the portion relating to the purpose of the summons intact leaving it to the court after it has determined the purpose or which the summons is to issue, to strike out the portions of the form which do not apply and thus convert summons into one as per Form No. 1 or 1-A or 2 of Appendix B to the First schedule to the code.

(3) The parties or their pleaders shall sign the forms in the left bottom corner, and will be responsible for the accuracy of the entries.

(4) Where orders for the issue of process are passed by the court the date fixed for appearance will be inserted in the forms and the processes will be dated and signed by an officer of the court duly authorised.

(5) The necessary number of printed forms of process will be supplied to the parties or their pleaders at such rates as may be prescribed from time to time on application such Officer of the court as the Presiding Judge shall direct. The cost so incurred shall be allowed to the parties as part of the cost for the preparation of process under rule 96 of the Civil Rules of Practice and circular Orders.

(6) The Presiding Officer may, in his discretion, direct in any particular case, that the forms of process be entirely filled up in the office of the court.

**48 A. Process fees to be paid to the Registering Officer:**—In cases of attachment of immovable property, process fee shall be paid both for communicating the order of attachment and order raising attachment to the registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situate at the time of paying batta in pursuance of the order of attachment.

**49 Summons to Witness:**—(1) A Party who desire the attendance of witnesses before the court, or before a Commissioner appointed to take evidence, shall bring into the court, a list in Form No. 20 of the persons whose attendance he requires, stating the full name, residence and description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document. In the later case, the party shall specify the date, if any, which the document bears and also give a description of the document sufficient to enable it to be identified. The party shall along with such list deposit into court the prescribed fees for service of summons whether the summons is sought to be served by the party himself or through an officer of court and in the latter case also deposit the total amount of allowances to which the said persons are entitled for the travelling and attendance at the court, and in the case of an expert or scientific witness, also the allowances for qualifying to give evidence ;

Provided that where a party undertakes to effect services on the witnesses he need not deposit any money into the court but shall indicate the amount of allowance payable to those witnesses in the summons and the original summons duly endorsed into the court before the hearing date. In all such cases travelling allowances not exceeding those specified in sub rule (2) shall be taxed by an officer of the court at the time of drafting the decree. In all these cases, the amount of allowances shall be paid to the witnesses by the parties themselves at the time of serving the summons.

(2) Allowances : The said allowances shall be calculated according to the scale set out below :

<i>Class of Witnesses.</i>	<i>By Rail</i>	<i>By public Motor Service.</i>	<i>By Road.</i>	<i>By Sea or canal.</i>	<i>Maximum allowance for subsis- tence and other expenses per day .</i>
(1)	(2)	(3)	(4)	(5)	(6) Rs.
I Class	First Class fare.	Actual fare.	40 paise per Kilometre.	Actual expenses.	6 ✓

II Class	..	IIInd Class fare.	Actual fare.	20 paise per k.m.	Do.
III Class	..	IIIRD Class fare.	Do.	10 paise per k.m.	Do.

Provided that the court may, in exceptional cases and for special reasons to be recorded in writing, direct payment of travelling and subsistence allowances, to any witness, at special rates, which may be in excess of the above scale:

Provided further that the travelling and subsistence allowance directed to be paid to a witness who travels by air, under this provision, shall be admissible only (1) if the party obtains in advance an order of court permitting the witness to travel by air; and (2) if the witness certifies that he actually travelled by air:

(3) The classification of witnesses for the purpose of this rule shall be on the following basis ;

- (a) Persons with annual income exceeding Rs. 6,000 are I Class witness.
- (b) Persons with annual income exceeding Rs. 3,000 but not exceeding Rs. 6,000 are II Class witnesses ; and
- (c) Persons with annual income not exceeding Rs. 3,000 are III Class witness ;

Provided also that for special reasons to be specified in writing the Presiding Officer of a court may in exceptional cases place a witness in any class other than the one to which he is entitled to be placed under this sub-rule.

(4) *Scale of allowances to expert or scientific Witnesses*—(a) There shall be allowed such fees being not less than Rs. 25, or more than Rs. 150 as the court may fix for experts or scientific witnesses and such fees being not less than Rs. 25 or more than Rs. 50 per day as the court may fix for attending the trial or hearing. The witness shall in addition be entitled to the travelling allowances admissible for ordinary witnesses of his class.

(b) In cases where a public servant is summoned as a witness in a suit to which the Government are a party, the total amount of allowances to be deposited by the party (other than Government) applying for summons shall be in accordance with Order XVI, rule 4-A (2) of the Code.

(c) In cases where a servant of the Central Government or a Railway employee is summoned in his Official capacity as a witness in a suit to which the Government are not a party, the total amount of allowances to be deposited by the party applying for summons shall be in accordance with Order XVI, rule 4-B of the said Code.

50. *Summons to an officer of the Secretariat or the houses of Parliament of the State Legislatures*.—Not with standing anything contained in any other rules, where the witness whose presence is required for being examined is an officer in the Secretariat of the House of the People/Council of States Legislative Assembly/Legislative Council (or any duly informed in the Secretariat of the House,) no summons shall be issued for his attendance but a letter of request shall be addressed to the

Speaker of the House of the People;

Chairman of the Council of States.

Legislative Assembly

in the form set out below:

Legislative Council.

To

*The Speaker of the House of the People/Legislative Assembly.*

*The Chairman of the Council of States/Legislative Council.*

Parliament House, New Delhi, Fort St. George, Madras.

Dated :

Sir,

*Sub: Description of the Proceeding.*

In the above proceeding, the Plaintiff/defendant proposed to examine an officer in the Secretariat of the

*House of the People/Council of States.*

Legislative Assembly/Legislative Council (or any duly informed officer) as a witness in regard to the matters specified in the annexure. I have to request you to move the House, if you have no objection, to grant leave for the examination of the said officer in my court, and if such leave is granted to direct the officer to appear in my court at 11 a.m. on

Yours faithfully,

*Return of Service of Process.*

51. *Return of Service.*—(1) The return of the serving officer shall state the manner in which the process was served and the place and day and month of service, and also whether he is personally acquainted with the person served, and if not, by whom such person was identified.

(2) If the person to be served refuses to sign the acknowledgement of service the return shall state that he was informed of the nature and contents of the process, and in the case of a plain that upon applying to the officer of the court, he could obtain a copy or concise statement of the contents of the plaint.

52. *Verification of return.*—(1) The return of service shall be verified by the affidavit of the serving officer; and all Nazirs, Deputy Nazirs and Assistant Nazirs are hereby empowered to administer the oath to, and to take the affirmation of any process server.

(2) If the Process-server is not personally acquainted with the person to be served the return shall be supported by a verification at the foot thereof made and signed either by a village administrative officer or by a respectable person who identifies him and in the latter case the full name and address of such person shall be set out in the verification.

53. *Service by affixing to outer door*—If a process is affixed to the outer door of a house in the absence of the person to be served, the serving officer shall make an affidavit as to the following matters:—

(1) The number of times and the dates and hours at which he went to the house;

(2) the attempts made by him to find the person to be served;

(3) Whether he had any, and what, reason to suppose that such person was within the house or its neighbourhood, or endeavouring to evade service, and

(4) Whether any adult male member of the family of the person to be served was residing with him.

Note. *Procedure when defendant cannot be found at once.*—It is intended that there should be a bona fide attempt, not necessarily confined to a single effort, to find the defendant before service is held sufficient by affixing process to the outer door of his house.

If the process server obtains apparently reliable information that the defendant is within the jurisdiction, he should go a reasonable distance in search of him, if the information be that the defendant will return in a short time he should await his return; if the information be that defendant is not within the jurisdiction or if the process server can get no information as to the whereabouts defendant, the condition is satisfied.

The code prescribes that the court shall examine the serving officer. This examination should not then be delegated to a ministerial officer, and it should be conducted with the same formality and completeness as the examination of a witness in the cause. The court has to determine from the evidence so taken whether it is justified in pronouncing the service sufficient. It will be convenient that this examination should take place immediately on the return of the process to the court, so that the event of its being held that the service was insufficient an application may be made for the re-issue of the process.

(H.C. Cir. 236 of 1881.)

**54. Notice Where summons is affixed to outer-door**—If a summons to a plaint is affixed to the outer door of the house, the serving officer shall affix therewith a notice that the defendant can upon application to the officer of the court obtain a copy or a concise statement of the contents of the plaint, and shall in his return state that he has done so and shall return the plaint or concise statement to the court. If the summons has been sent by another court for service and the defendant does not, within fourteen days from the affixing of the summons, apply for the said copy it shall be returned to the said courts.

**55. Translation of Process**.—When a process is written in a language different from that of the area in which it is to be served, the court transmitting it for service shall also send a translation thereof in English and in cases in which the process has to be returned to any court outside the State of Tamil Nadu and the return is not in English or in the language of that court, the proceedings in Form 10, Appendix B Schedule I to the Code with which it is sent back to that court shall be accompanied by a translation of the return in English.

#### *Address for Service.*

**56. (1) Address for service of the defendant or respondent**.—Every party who intends to appear and defend any suit, appeal or original petition shall, before the date fixed in the summons or notice served on him as the date of hearing, file in court a proceeding stating his address for service.

**(2) Address should be within the local limits of the Court**—Such address for service shall shall be within the local limits of the court in which the suit, appeal or petition is filed or the District Court in which the party ordinarily resides.

**(3) Procedure where party is not found at the address given**.—Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served is present a copy of the notice or process shall be affixed to the outer door of the house and followed up by an affidavit or a verified petition filed by the Serving Officer, in support of such affixing of the notice and such service shall be deemed to be as effectual as if the notice or process had been personally served.

**(4)** Where a party engages a pleader, notices or processes for service on him, shall be served in the manner prescribed by rule 5 of Order III of the Code unless the court directs service at the address for service given by the party..

**(5) Change of address to be by verified petition**.—A party who desires to change the address for service given by him as aforesaid shall file a verified petition and the court may direct the amendment of the record accordingly. Notice of every such petition shall be given to all the other parties to the suit.

**(6)** Nothing in this rule shall prevent the court from directing the service of a notice or process in any other Manner if for any reasons, it thinks fit to do so.

**(7)** Nothing contained in this rule shall apply to the notice prescribed by rule 22 of Order XXI of the Code.

## CHAPTER III.

## TRIAL OF SUITS.

*The First Hearing.*

57. *Application for directions* :—Any party may, at the first hearing, apply to the court for directions as to any of the following matters :—

- (1) The filing of a written statement by any party, stating the pleas raise by him or further and better particulars thereof ;
- (2) Adding or striking out parties.
- (3) Discovery of documents and interrogatories ;
- (4) Inspection or production of any document or public record
- (5) Issue of a commission to examine witnesses or for any other purpose.
- (6) Reference to an arbitrator ;
- (7) Any other matter or proceeding necessary to be considered or taken previously to the trial of the suit.

Unless the court otherwise orders, not less than three days notice of such application, and of any affidavit filed in support thereof, shall be given by the applicant to the other parties to the suit.

*Interrogatories.*

58. *Interrogatories*.—(1) A party who desires to administer interrogatories to any other party, shall, on presenting or making his application for leave to deliver the same, bring into court two copies of the proposed interrogatories, and the fees prescribed for service of process. If leave is granted, one of the said copies shall be filed on record, and the other copy shall be served by the officer of the court.

(2) If a party objects to answer any interrogatory, he shall state shortly the grounds of his objection in this affidavit in answer to the interrogatories.

59. *Adjournment in consequence of application for Commission*.—If an application for the issue of a commission to examine a witness or with respect to any other matter mentioned in rule 57 is made subsequently to the first hearing, and an adjournment of the final hearing is prayed, the adjournment shall not be allowed unless the court is satisfied that the application could not have been made at the first hearing.

*Issues.*

60. *Form of Issues*.—The issues framed by the court and any order passed upon any application under rule 57, shall be drawn up in form No. 21 and shall form part of the record in the suit, and all parties shall be entitled to inspect the same and obtain copies thereof.

61. *Procedure in regard to the framing of issues*.—In framing issues, the court shall proceed as follows :—

- (1) Every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other shall be made the subject of a separate issue.
- (2) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.
- (3) Every issue of law shall be so framed as to indicate, either by a statement of admitted or alleged facts, or by reference to the pleadings of some document mentioned therein, the precise question of law to be decided.

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

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

62. *Inspection of Documents.*—A party shall be at liberty to inspect and obtain a copy of any document recited or referred to in a plaint or written statement and filed in court therewith or thereafter.

63. *Inspection of proceedings by party.*—Every party and his pleader desiring to inspect any proceeding filed in court by him or any other party, or a Commissioner or Officer of court, in the suit, appeal or matter, to which he, or his client is a party, shall present a memorandum to the chief ministerial officer specifying the proceeding of which inspection is required and inspection will be allowed without the payment of any fee, during the pendency of such suit, appeal or matter.

#### INSPECTION OF DOCUMENTS BY A STRANGER.

64. *Inspection of documents by stranger.*—An application for inspection, or copies of record or documents of, or in the custody of a court, other than records or documents filed in a suit, appeal or a matter, to which the applicant is a party shall be made to the said court by an application entitled in the suit appeal, or matter in which the records or documents are filed specifying the particular records or documents, of which inspection, is or copies are required, by references as far as possible to the nature date, and the date, of filing of and the parties to each record or document. The application shall be supported by affidavit stating whether the applicant has any, and what, interest in the subject-matter of the document, or of the proceeding in which the record or documents is filed, the purpose for which inspection of a copy is required, and if the same is required for the purpose of an intended or pending proceeding the nature of the said proceeding, and the relevancy of the record or document to the case of the applicant.

65. *Notice of application for inspection.*—The court may in its discretion cause notice of the application to be given to the parties to the said proceedings, and where such notice is given the provisions of the Code and of these rules with respect to a summons to a defendant shall apply to the said notice.

66. *Consent to inspect or obtain copy.*—The Court shall not grant leave to inspect or to obtain a copy of any record or document produced by a person, not a party to the proceedings in which the same is filed, or to the discovery of which any person is entitled to object except in either case with the written consent of such person.

67. *Inspection to be made before officer and fee for the same.*—If leave to inspect is granted the inspection of the record shall be made in the presence of the Record keeper or his Deputy and the fee for inspection, except where inspection without payment is permitted under rule 63 shall be 75 paise for every hour or part of an hour during which the Record keeper or his deputy shall be engaged and shall be paid by court-fee stamps affixed to the application.

68. *Copies or extracts not to be taken.*—The payment of the inspection fee shall entitle the applicant to read any document or record specified in his application and the inspection of which has been allowed by the court. He may make a short memorandum of the date and nature of any document in the record so as to enable him to describe it sufficiently in case a copy is required but he shall not be entitled to make a copy of the document or part of the document or make extracts therefrom.

69. *Fee.*—On every application for inspection or for copy of any document or record, there shall be paid (in court fee stamps) in addition to the usual fee on such application and additional fee of one rupee for search of the document or record;

Provided that no such fee need be paid by a party to the suit or proceeding where the application for inspection or for copy is made in a suit or proceeding which is pending disposal on the date of the application or which has been disposed of within one year prior to the date of the application.

*Explanation.*—For the purpose of this rule, a suit shall be treated as pending till a final decree, if any is passed thereon and an appeal shall be deemed to be a continuation of the suit. For the purpose of this rule, only one search fee need be paid for all documents that have come

into the custody of the court relating to the same suit or proceeding, whether exhibited or not and a document shall be deemed to be of the date of the institution of the suit or proceeding of which it forms part of the record ;

Enclosure or annexures to a proceeding or document and the vouchers appertaining to an account shall be reckoned as part of the proceedings or documents to which they relate ; if the proceeding or document is not found on record, the applicant shall be entitled to a certificate to that effect free of cost.

**70. Search of records.**—When a person is entitled to inspect a proceeding or document, the search therefor shall be made by the officer of the court ; and such person shall be allowed to read the proceeding or document which he is entitled to inspect or to have it read to him, and to make a short memorandum of the date and nature thereof so as to enable him to describe it sufficiently, in case a copy is required, but except where otherwise expressly provided by these rules, he shall not be entitled to take a copy of the proceeding or document, or any part thereof or to make extracts therefrom. On every such search, fee shall be levied in court fee stamps as in the case of a search under rule 69.

*Copies of proceedings to be furnished by Parties to each other :*

**71. Party filing any proceeding to furnish the other side with a copy.**—A party, or pleader, filing any proceeding, shall on demand in writing furnish to any other party a copy of the proceeding upon payment therefor at the rate of ten paise for every hundred words if in manuscript, or at double this rate if the copy is typed or printed, four figures being calculated as one word. Provided that one copy of a written statement, and of a memorandum of appeal or of objections, and when a concise statement of a claim has been presented for service with a summons one copy of the plaint, shall on the like demand, be furnished free of charge to each party appearing by a separate pleader.

**72. Name and address for service to be endorsed on copy.**—The name and address for service of the party or pleader by whom any copy is furnished shall be endorsed thereon, and the party or pleader shall be answerable for the same being a true copy of the original or of a certified copy of the original, of which it purports to be a copy as the case may be.

**73. Refusal or neglect to furnish copy.**—In case any party or pleader, who has been required to furnish any such copy as aforesaid, either refuses, or for two days, from the time when the application for the copy was made neglects to furnish the same, the person by whom the application has been made, shall be at liberty to procure a certified copy from the court, and in such case the party in default, shall, unless the Judge otherwise orders, be liable for the costs of procuring the same.

*Production of Records :*

**74. Production of records in the custody of a court.**—(1) An application for the production of records in the custody of a court, shall specify the particular documents required to be produced. Unless it is made to appear to the court that the production of the original documents is necessary, the party shall be required to obtain and file copies thereof and the original shall not be sent for. If the court dispenses with the affidavit mentioned in rule 10(2) of Order XIII of the Code it shall record in writing the reasons for so doing.

(2) When a court finds it necessary to require the production of the records of another court it shall address a letter of request as in Form No. 22 to the Presiding Judge of that court.

(3) Where the document to be sent for by a court either from its own records or from those of another court under rule 10 of Order XIII of the Code is an account book or other document not being a record (e.g. Judgement, decree, written statements, etc.) which has to be in the custody of a court and belongs to a person other than a party at whose instance it is sent for the court may require the party to deposit in court before the letter of request is issued, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.

(4) When the letter of request is to be issued by the court itself acting on its own motion it shall be open to the court to call upon either party to make the deposit as aforesaid.

(5) On the production of the document in compliance with the letter of request the court shall cause a notice to be affixed to the notice board that the document has been received and that the parties may apply to the court for inspection of the same. The court shall not grant inspection to either party, unless it is satisfied that the application is made with the consent of the person to whom the document belongs. After the document has been admitted in evidence the court shall unless it considers it necessary to retain the original, direct the parties to specify the portion or portions thereof on which they respectively rely, and require a copy to be made of the same at the expense of the party requiring such portion and shall thereafter with all convenient speed, return the original to the court from which it was received, retaining the copies as part of the record.

NOTE.—Rule 10 of Order XIII of the Code allows a court, of its own accord or on application, to send for records, but requires that every application be supported by an affidavit showing that the record is material and that copies cannot be obtained. The court should bear in mind the labour which such calls entile and should only makes them when satisfied that the records are really needed. (H.C.Cir. 2514 of 1885).

*75. Production of records in the custody of a public officer other than a court.*—(1) A summons for the production or records in the custody of a public officer other than a court shall be in Form No. 23 and shall be addressed to the Head of the Department concerned and in the case of summons to a District Registrar or a Sub-Registrar of Assurances, it shall be addressed to the Registrar or Sub-Registrar in whose office or sub-office, as the case may be the required records are kept. A summons for the production of revenue paper kept in any office in a district shall in all cases be directed to the Collector of the district :

Provided that where the summons is for the production of village accounts, including field measurement books, such summons shall be addressed to the Tahsildar or to the Deputy Tahsildar in independent charge, as the case may be.

(2) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required; (ii) the relevancy of the document or documents; and (iii) in cases where the production of a certified copy would answer the purpose whether application was made to the proper officer for a certified copy of copies and the result of such application.

(3) No court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a Certified Copy has been duly made and has not been granted. The Court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summons is issued to abide the order of the court, such sum as it may consider necessary, to meet the estimated cost of making a copy of the document when produced.

(4) On production of the documents in obedience to the summons the court unless it thinks it necessary to retain the original shall direct a copy to be made at the expense of the applicant, and shall with all convenient speed return the original retaining the copy.

(5) Unless the court requires the production of the original every such summons, to a public officer shall state that he is at liberty to produce instead of the original a copy certified in the manner prescribed by section 76 of the Indian Evidence Act, 1872.

(6) Nothing in the above rules shall prevent a court of its own motion from issuing a summons for the production of public records or other documents in the custody of a public officer if it thinks it necessary for the ends of justice to do so. The court shall in every case records its reasons in writing.

*76. Copies of public documents.*—When a party to suit or proceeding seeks to obtain a certified copy of public document for being filed into court in that suit or proceeding, he may apply to the court wherein the suit or proceeding is pending for the issue of a certificate to enable him to obtain such copy from the appropriate authority and the court shall on being prima facie satisfied that the production of the certified copy in the suit or proceeding is necessary issue to the applicant a Certificate to that effect.

**76-A. Production of documents in the custody of the Houses of Parliament or of the State Legislatures.**—Notwithstanding anything contained in rule 75 where the documents which are

of the House of the People/Council of States.

required to be produced are in the custody

Legislative Assembly/Legislative Council.

no summons shall be issued but only a letter of request addressed to the Speaker of the House of the People/Legislative Assembly

in the form set out below :

Chairman of the Council of State/Legislative Council.

To

The Speaker of the House of the People/Legislative Assembly

Parliament House

The Chairman of the Council of States/Legislative Councils  
New Delhi/Fort St. George, Madras.

Dated :

Sub.—Description of the Proceeding.

Sir,

In the above proceeding, the plaintiff/defendant proposes to rely upon the documents of specified in the annexure which are in the custody of the House of the People/The Council of

States Legislative Assembly/Legislative Council I have to request you to move the House, if you have no objection to grant leave for the production of documents in my court, and if such leave is granted to arrange to send the documents/Certificate copies of the documents so as to reach me on or before..... by Registered post (Acknowledgement Due) or through an Officer in the Secretariat of the house.

Yours faithfully,

(P. Ds. No. 96/67.)

**77. Return of Original Document to the custody from which it was produced.**—Whenever an original document has been produced under rule 74 or rules 75 to 76-A the court, shall, unless it sees fit to proceed under rule 8 of Order XIII of the Code return it to the custody from which it was produced, without any application under the provision of rule 7(2) or 9 of Order XIII of the Code for its return. The provisions of Act V of 1917, the Destruction of Records Act and the rules framed thereunder shall not apply to such a document until it has been returned to the court or the public Officer by whom it was produced.

**78. Deposit for postage costs.**—If a record (not falling within the provision of Article 11C of the schedule II of the Tamil Nadu Court Fees and Suits Valuation Act, 1955) or document is required to be sent by post, the court may direct the applicant to deposit in court a sum sufficient to defray the postage of the same to and from the court. Unless the court otherwise order costs, of, and incidental to, an application for production of records which are material relevant to the case or which are sent for by the court of its own accord, shall be costs in the case.

#### EXHIBITS.

**79. Marking Exhibits.**— (1) Exhibits admitted in evidence shall be marked as follows :—

(i) if filed by the plaintiff or one of several plaintiffs with the capital letter A followed by a numeral A-1, A-2, A-3, etc.

(ii) if filed by the defendant or one of several defendants, with the capital letter B followed by a numeral B-1, B-2, B-3, etc.

(iii) if court exhibits with the capital letter C followed by a numeral C-1, C-2, C-3, etc.

(iv) if third party exhibits with the capital letter X followed by a numeral X-1, X-2, X-3 etc.

(2) *Consecutive Marking.*—The exhibits fixed by the several plaintiffs or defendants shall be marked consecutively.

(3) *Marking in subsequent proceeding.*—If in a proceeding subsequent to the trial of a suit or matter, further exhibits are admitted in evidence, they shall be marked in accordance with the above scheme with numbers consecutive to the numbers on the last exhibit previously filed.

80. *Inspection of Exhibits.*—If any party or his Pleader desires to inspect any exhibit, he shall do so in open court, at the hearing of the suit or matter provided that, with the leave of the Judge, such inspection may be had in the presence of an officer of the court to be named by the Judge.

#### RETURN OF DOCUMENTS

81. *Return of documents.*—Applicatons for the return of documents filed in court shall be made to the court in which they were originally filed. If any document has been transmitted to any other court, the former court shall itself apply to such court for the transmission of the document and shall return it to the appellants.

### CHAPTER IV

#### INCIDENTAL PROCEEDINGS

##### *Commissions.*



82. *Application for commission*—(1) Every application for the issue of a commission shall be supported by an affidavit setting forth the estimated expenses of the commission, and the remuneration, if any, of the proposed commissioner.

(2) *Commissioner fees*—The court shall thereupon fix the amount of the Commissioner's fees and direct payment thereof into Court or to the Commissioner direct on a day to be fixed by the court, and the commission shall not be issued unless the sum fixed by the court for the purpose aforesaid is paid into court or the Commissioner direct within the period limited therefor, provided that the court may from time to time on the application of any party direct that any further sum be brought into court by any party or direct payment thereof to the Commissioner.

83. *Return of Commission.*—Every order for the issue of a Commission shall appoint a period within which the return of the Commissioner is to be filed in court. An application by any party for the extension of the said period may be made by inter locutory application upon notice to the other parties to the suit or matter and shall be supported by affidavit setting forth the grounds on which the extension is prayed.

### CHAPTER V

#### JUDGEMENT, DECREE AND ORDER,

84. *Form of decree and Judgement.*—Every decree shall be headed with the full cause title of the suit, appeal or matter, the name of the Judge and the date on which it was passed, and shall state the names of the parties or their pleader, who appeared at the hearing and shall be drawn up in consecutive numbered paragraphs. The judgement of the court shall be headed in the same manner and shall also state the dates on which the case was heard as in Form No. 24 and a list of the exhibits filed and witnesses examined shall be annexed thereto.

85. *Form of particulars of claim.*—The particluars of the claim to be inserted in the Register of civil suits, and in the decree or order, shall follow as far as possible the forms of concise statement given in Form No. 25 and shall contain the amount or value of the claim, and the date, when the cause of action accrued.

86. *Specification of periodical payments.*—Where periodical payments are directed the decree or order shall specify the date of the first payment, and the day of each month or year, on which the subsequent payments are to be made, as in paragraph 5 of Form No. 2 of Appendix III D.

87. *Statement of registration district in decree as to immovable property*.—Every decree with respect to immovable property shall state, as part of the description thereof, the Registration district or sub-district in which the same is situate and in cases where the value of the property is required to be estimated for the purposes of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955). There shall be annexed to the decree, a statement of the particulars mentioned in Form No. 8 certified by the Officer of the Court; and a copy thereof shall be furnished to every party applying for a copy of the decree.

88. *Form of decree when application is under Order XXI rule 11(1) of the code*.—When, after passing the of a decree for money an applications is made under rule 11(1) of Order XXI of the Code, the decree shall be made in Form No. 26

89. *Where any instrument affecting immovable property registered under the Indian Registration Act, 1908, is set aside, discharged or cancelled by an order or decree of a Civil Court, the court shall forthwith cause a copy of the decree or order drawn upon plain paper to be forwarded to the Registering Officer; provided where such order or decree is modified, set aside or reversed, copies of further orders and decrees shall also be forwarded to the Registering Officer.*

(P. Dis. No. 96 of 1963.)

90. *Judgement in matter other than suits*.—The Judgement and final Order in Matters Other than suits or appeal including contested interlocutory applications execution petitions and execution applications shall be in the same and Manners as the Judgment and Decree in a suit.

91. *Setting aside exparte decree where money or property recovered under the same*.—An order setting aside an exparte decree or order under which a party has recovered any money or property shall ordinarily direct the same to be brought into court or possession thereof to be delivered to a receiver pending the final disposal of the suit or matter as in Form No. 27.

92. *Appellate decree reversing decree where money or property recovered*.—The decree of an appellate court reversing the decree of a lower court under which money or property has been recovered shall direct the repayment of the amount or delivery of possession of the property recovered as in Form Nos. 29 and 30.

93. *Several appeals against same decree*.—If more than one appeal is made against the same decree the appeals shall if possible be heard together and one decree only shall be drawn up which shall be headed with the cause title of the several appeals.

94. *Reference to High Court*.—When a case is referred under rule 1 of Order XLVI of the Code the court shall require the applicant to bring into court stamps requisite for service of notice on himself and all other parties to the suit or appeal or if the reference is made on the motion of the court the court shall require each party to bring into court stamps required for service on himself and shall transmit such court fee stamps with the statement of the case.

95. *Production of certificate of receipt for fee except in certain cases*.—Unless the court otherwise orders and except in the case of an advocate or pleader appearing on behalf of the Government or if a public servant whose defence is undertaken by the Government or of the Agent of the Court of wards no fee shall in any case be entered as recoverable in a decree or order except on production of a certificate signed by the advocate or pleader that he has received such fee.

*Explanation*.—The fact of a promissory note or other agreement to pay the fee having been given or made by the client does not entitle the advocate or pleader to certify that he has received the fee.

NOTE.—The explanation was added by G.O. 1720 (H) J., dated 31st July 1918 (H.C. Dis. 1410 of 1918).

96. (1) *Statement of costs*.—Each party shall within ten days from the date of judgment or order or such further period as may be allowed by court bring into court the certificate mentioned in the preceding rule and a statement in the forms contained in Appendix D forms Nos. 1 and 2 and Appendix 'G' Form No. 9 to the first schedule to the Code and signed by him or his pleader if any of the costs and expenses incurred by him and may include therein the costs of—

- (i) Pre-suit notice; whether such notice is obligatory under any law or rule or not;
- (ii) Preparations of process;
- (iii) Making or getting copies of pleadings applications or affidavits which by the rules are required to be served on the opposite party;
- (iv) Travelling allowance and batta at the prescribed scale to witnesses (whether summoned through court or not) who have attended the court and given evidence or produced a document;
- (v) Obtaining a copy including search fee of a public document including an encumbrance certificate where such copy or certificate is relevant and marked as an exhibit or has been filed into court in compliance with any rule.
- (vi) Any adjournment or interlocutory application allowed to him; and shall give credit for any costs allowed to his opponent and shall state the total amount claimed by him;
- (vii) Charges paid by a party for inspection of the records in the court for the purpose of the suit.

The said statement shall be checked by the officer of the court who shall note thereon the sums if any disallowed and the total amount allowed by him and shall sign the name. If any party makes default in filing the statement the Officer of the court shall prepare and sign a statement of the amount of the institution fee if any and the Pleader's fee as fixed by the Judge allowable to the said party. Each party shall be entitled to inspect and take a copy of the said statement.

Unless the court otherwise orders no allowance shall be made for the cost of or occasioned to any party by the amendment of any pleading.

The costs of preparations of process shall be calculated at the following rates:—

For preparation of Original Process—25 paise each.

For preparation of each duplicate process—5 paise each.

Subject to a minimum of 75 paise in each suit.

For the price of process forms—Amount paid under rule 48 (5).

The cost of the suit notice shall be Rs. 10 in suits of a small cause nature not more than Rs. 25 in original suits in District Munsif Courts and not more than Rs. 100 in Original Suits in Sub-Courts and District Courts.

In appeals the costs of the certified copies of the judgement and the decree of the lower courts filed with memorandum of appeal in compliance with the rule shall be included in the statement of costs.

(2) The statement referred to in sub-rule (1) shall be signed by the judge and shall form part of the record of the case and the total amount of costs allowed to the parties shall be inserted in the decree or order before the same is signed by the Judge.

(P. Dis. No. 61/66).

**97 A** (98) A. In cases in which the court direct that the plaintiff and defendant and do pay—  
appellant or respondent or receive proportionate costs, the whole costs incurred by each party, including court-fee, pleader's fees, batta, etc., shall unless the court otherwise directs be ordered to be paid and/or received in the proportion in which the parties have respectively failed or succeeded.

(P. Dis. No. 339 of 1941.)

98. *Withdrawal of a suit or appeal.*—Notice of application for leave to withdraw from suit, matter or appeal shall be given to all parties on record in the suit, matter or appeal as the case may be, provided that if the application is made before the issue of notice to any party, no notice is necessary to such party.

99. *Order on application for leave to withdraw.*—Unless the court otherwise orders, an order under rule 1 of Order XXIII, of the Code permitting a party to withdraw from a suit, matter or appeal, shall be made conditional upon payment of the costs of the defendant or respondent, as in form No. 32.

#### TAKING ACCOUNTS.

100. *Direction as to taking accounts.*—If, in any suit or matter, it is necessary to take an account, the Preliminary decree shall specify the nature of the account and the date from which it is to be taken, and if the account is to be taken by the Court shall direct by whom a statement of account is to be filed and limit the period within which statements of account, objection and surcharge, shall respectively, be filed in court, as in Form No. 40. The suit or matter shall then be adjourned to a fixed day.

101. *Form of statement of account.*—(1) A statement of account shall be in the form of a debtor and creditor account and shall be verified by the affidavit of the accounting party or his agent. The items on each side of the account shall be numbered consecutively, and a balance shall be shown.

(2) A statement of objection to an account or to the report of a Commissioner shall specify the items to which objection is taken, by reference to their number in the account or report, or the date of the item and page of a particular book of account or otherwise as in Form No. 33.

(3) A statement of surcharge shall specify the amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which the same was received by him, as in Form No. 33.

(4) A statement of objection or surcharge shall also state shortly and concisely the grounds of the objection or surcharge; and shall also state the balance, if any, admitted or claimed to be due, as in Form No. 33.

102. *Inspection by parties.*—Every party to the suit or matter shall be at liberty to inspect and take notes of statement of account balance sheet statement of objection and surcharge, or report or proceeding of a commissioner when filed in court.

103. *Passing of accounts by court.*—On the adjourned hearing the court shall consider the objections and surcharge made, and determine the amount due.

104. *Extension of time to file statement of account.*—If any party has not filed his statement of account or of objection and surcharge, within the period limited, the court may from time to time extend such period or direct any other party to file a statement of account, or proceed to decide the suit forthwith on the evidence before it. Unless the court otherwise orders, evidence shall not be admitted with respect to any objection or surcharge not included in a statement of objection or surcharge.

105. *Periodical filing.*—When a person is directed to file his account periodically the court shall fix the dates in each year before which his statement of account and balance sheet are to be filed and on which the same will be considered by the court.

#### REFERENCE TO A COMMISSIONER TO VOUCH OR TAKE ACCOUNT

106. *Appointment of Commissioner.*—If a Commissioner is appointed, the order appointing him shall specify the several dates before which his report and the objections of the several parties thereto, shall respectively be filed in court and the suit or matter shall be adjourned to a fixed day.

107. *Appointment to audit.*—If the court finds that the books of account have been regularly and properly kept, and correctly represent all the dealings and transactions in question, the court may appoint a commissioner to audit the accounts and vouch the items thereof and to prepare a statement of account and balance sheet as in Form No. 34.

108. *Declaration by Court.*—If the court finds that any items have been included in the books of account which do not form part of the transactions in question, or are not properly chargeable to any party, or that any transactions have not been included in the said books, it shall declare generally the nature of the transactions or items to be excluded or included in taking the accounts as in Form No. 35 and the Commissioner shall be empowered to state what in his opinion, should be allowed or disallowed in these respects as in Form No. 36.

109. *Report of Commissioner.*—The Commissioner shall make his report in the manner prescribed by Form No. 37, and shall annex thereto a statement of the proceedings had before him, together with lists of the witnesses examined and exhibits marked by him. If he is empowered to state his opinion on the matter referred to him he shall append to his report schedules setting out the several contested items allowed or disallowed by him, and stating shortly his reasons for so doing as in the said form.

110. *Consideration by Court.*—At the adjourned hearing of the suit the court shall consider the objections, if any of the several parties to the statement of account and balance sheet or to the report of the Commissioner and may, if necessary, direct any party to bring in a fresh account and balance sheet or refer to the Commissioner with fresh directions, as to the manner of vouching or taking the accounts.

## CHAPTER VI

### SPECIAL PROCEDURE IN PARTICULAR CASES

#### A. Minors and persons under disability.

111. *Plaint or original petition on behalf of Minor.*—When a Plaintiff or original petition is presented by a person as the next friend of a plaintiff who is a minor or under disability he shall at the same time file an affidavit by some disinterested person that he has no interest, direct or indirect, in the subject matter of the suit or matter adverse to that of the plaintiff that he is not a defendant or respondent in the suit or matter and that he is a fit and proper person to act as next friend.

112. *Appointment of guardian adlitem.*—If the plaintiff applies for appointment of a guardian adlitem of a minor defendant, he shall give not less than six days' Notice of the application to the father, or guardian or custodian of the minor.

113. *Placing guardian in funds.*—When a guardian adlitem of a defendant who is a minor or a person under disability is appointed and it is made to appear to the court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the said defendant, and that the defendant will be prejudiced in his defence thereby, the court may, from time to time, order the plaintiff to pay through or in the presence of the court moneys to the guardian for the purpose of his defence, and all monies so paid shall form part of the costs of the plaintiff in the suit. The order may be made conditional upon the guardian filing court his accounts of the money so received by him.

#### B. PARTNERSHIP SUITS

114. *Parties.*—In a suit for dissolution of partnership, or for an account of partnership dealings, all the partners, and all persons entitled to share in the profits of the partnership business shall be made parties. The Plaintiff may be as in Form No. 38.

115. *Inspection of books of Account by parties.*—If at any time it appears to the court that any party has not had inspection of the books of account or papers of the partnership, either through his own neglect or the default of any other party, the court may order the same to be produced for his inspection at the court house or other convenient place; and if any party alleges that the books of the partnership do not correctly set forth all the dealings and transactions of the firms or contain items of transactions not proper to be included therein the court shall direct such party to furnish particulars of the errors or irregularities complained of as in Form No. 39. The hearing of the suit shall then be adjourned and the party in default may be ordered to pay the costs of the adjournment.

116. *Impeachment of settled account.*—If any party desires to impeach a settled account on the ground of error he shall in his plaint or written statement set out the specific errors or irregularities alleged by him if on the ground of fraud or a mistake affecting the whole account, he shall in his plaint or written statement set out full particulars of fraud or mistake alleged by him.

117. *Preliminary decree where partnership and books admitted.*—If at the first hearing of the suit, the partnership and the terms thereof, and the correctness of the books of account are admitted and it is only necessary to take an account, the court may at once pass a preliminary decree specifying the account to be taken and the manner of taking the same.

118. *Matters to be determined at hearing.*—At the hearing of the suit, the court shall determine the persons who are partners of the firm, and who are entitled to share the profits thereof and the proportions in which they are entitled to share profits and are liable for losses and also whether the books of the partnership have been regularly and properly kept and correctly represent the transactions and dealings of the partnership, or if any allegations have been made in this behalf by any party, whether there are any errors or irregularities therein, or any Party has been guilty of fraud in respect thereof. If the court finds that there are errors or irregularities in the accounts or that fraud has been committed, it shall declare generally the nature of the said errors, or irregularities, or fraud or the particular transaction in respect of which the same has been committed as in Form No. 35.

119. *Court to give directions as to taking accounts.*—At the hearing of the suit, the court shall also determine what accounts are to be taken and from what date and give such directions as such may be necessary for taking the same in the manner prescribed by rules 100—110 and shall direct what notice, if any, is to be given, by advertisements in the local newspapers or otherwise of the dissolution of the partnership. The court may if a receiver has not been previously appointed, appoint a receiver for the assets of the partnership. The court shall then pass a preliminary decree in Form No. 40 or Form No. 41 and shall adjourn the further hearing of the suit to a fixed day.

120. *Error in settled account.*—In the case of a settled account, if errors or irregularities are proved, the court may either rectify particular items, or give liberty to any party to file a statement of objection and surcharge if fraud or a mistake affecting the whole account is proved, the court may, direct an account to be taken from the date of the settlement of accounts, if any, proceeding the fraud or mistake.

121. *Commission to take account.*—If Commissioner is appointed to take an account he shall take the same in accordance with the directions and finding of the court as contained in the preliminary decree or in a subsequent order, if any, made under the provisions of Rule 17 of Order XX of the Code. Except as aforesaid, none of the matters mentioned in rules 118 and 119 shall be referred to or dealt with by a Commissioner.

122. *Order for discharge of debts and liabilities.*—When the accounts of the firm have been duly taken and approved by the court, it shall pass an order providing for the discharge of the debts and liabilities of the firm, and for the retention in court of a sum sufficient for payment of any costs, charges, and expenses of the suit properly payable out of assets, and adjourn the suit to a fixed day.

123. *Distribution of assets where they exceed the liability.*—(1) If the assets exceed the debts and liabilities of the firm and if the parties agree to retain the assets in their hands respectively on account of their respective shares in the firm, the order in rule 122 mentioned may also provide for the payment of any balance which may be due by the firm to any of the parties, after debiting them with the estimated value of the assets in their hands. The order may be in Form No. 42, or if a Commissioner has been appointed to take the accounts or a receiver has been appointed in Form No. 43. If the parties apply for the distribution of assets in any other manner, the order may direct the realization of sufficient assets to discharge the debts and liabilities of the firm, and to provide for equality of partition, as in Form No. 44. At the adjourned hearing, the court may, if the terms of the said order have been complied with, pass a final decree in Form Nos. 45, 46 and 47 according to the circumstances of the case.

(2) A final decree effecting a partition of partnership assets shall be engrossed on Non-judicial stamp paper of the same value as that required for an instrument of partition.

(P. Dis. No. 416/46.)

124. *Procedure where liabilities exceed the assets or where parties do not consent to a distribution of assets.*—If the debts and liabilities exceed the assets of the partnership or the parties do not consent to a distribution of the assets the court shall direct the balances due from the several partners to be paid into court and the assets to be realised as in Form No. 44 and if, at the adjourned hearing, it appears that the debts and liabilities have been fully discharged the court may pass final decree in Form No. 46 omitting paragraph 4 thereof.

125. *Apnointment of receiver on default of party.*—If any party ordered to make any payment or to do any other act, fails to comply with the order of the court any other party may apply that a receiver may be appointed to collect and realise the assets of the firms and for an injunction to restrain the party in default from retaining of parting or dealing in any manner with the said assets.

126. *Form of Orders.*—An order for an injunction in a partnership suit order on appeal varying the preliminary decree and an order on appeal from the final decree reversing the same and appointing a receiver may be as in Form Nos. 48, 49 and 50 respectively.

## CHAPTER VII.

### COPIES AND COPYIST ESTABLISHMENT

#### A. Certified Copies.

127. (1) *Application for certified copy.*—When a person is entitled to obtain a copy of a proceeding or document filed in or in the custody of the court he may present an application therefor to the superintendent of copyists or where there is no such officer to the Chief Ministerial Officer in person or by his pleader or the latter's authorised clerk between the hours of 11-30 a.m. and 3 p.m. If the proceeding or document has been sent to another court the application may at the option of the applicant be forwarded to the said court for compliance or be returned to him for presentation to the said Court :

Provided that if an application is made by any party for a copy of the evidence recorded in accordance with clause (ii) of sub-rule (a) of rule 5 of Order XVIII of the code before the commencement of the recording of the evidence the charges for the supply of the copy will be forty paise for every 175 words.

(2) Any person who is entitled to obtain a certified copy of a judgement or order of the court may immediately after the judgment or order is pronounced apply in writing to the court for a typewritten (carbon) copy thereof stating the reasons for the urgency. If the court is satisfied of the urgency such a copy shall be issued on plain paper. The charge for such a copy shall be what would have been payable if the copy had been issued on copy stamp papers. The copy so issued shall contain all the entries specified in the rules hereinafter provided and shall have the same force and effect as a certified copy :

Provided that the charges due under this rule shall be pre-paid in the form of courtfee within three days of the same being called for as per the list published in the notice Board.

Provided further that such charges may be directed to be recovered from the parties concerned under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act 1 of 1864).

(3) *Copies of proceeding of the High Court.*—An application for copy of a plaint written statement memorandum of appeal judgement decree or other proceeding of, or in the custody of the High Court may be made by any party to such proceeding to the Court of first instance, or to the lower appellate court and shall be transmitted by the said court to the High Court for disposal. The copy if granted shall be transmitted by the High Court to the former court and on payment of the prescribed fees, shall be delivered to the applicant. No copy of any proceeding of the High Court shall be granted by a subordinate court. An application by a person not a party to the proceeding shall be made directly to the High Court.

NOTE.—(1) *Application for copies of Judgement of the High Court.*—(a) *Applications by persons not Parties.*—District Judges have no authority to grant sanction to persons not parties to the proceedings to take copies of the judgements or orders of the High Court. Applications should be made to the High Court under rules 8 and 13 of the consolidated copyist rules.

(H.C. Cir. 737 of 1907.)

(b) *Powers of the Registrar High Court to deal with such Applications.*—The disposal of all applications for copies of Judicial records of or in the custody of the High Court Appellate Side presented by persons who are not parties to the proceedings to which such records relate shall be deemed to be a quasi-judicial act which may be performed by the Registrar.

The rule, dated 13th August 1902, Dis. No. 640 of 1902, on the subject is hereby cancelled.

(2) *Authority of first Grade pleaders to file applications.*—A firstgrade Pleader who appeared for a party in the District Court can apply for copies of the Judgments, Decrees and Orders, passed by the High Court in appeals and other proceedings on its file preferred from the decrees and orders of the District Court. A Court fee stamp of Rs. 1.50 should be affixed to the vakalat presented with such applications.

(H.C. Dis. No. 2189 of 1918, as amended by Dis. 1674 of 1922.)

128. *Form of Application.*—(1) The applications shall be in Form No. 51 and shall set out the name of the applicant and his position in the suit or proceeding and a description of the documents of which a copy is required and an application which is not in proper form shall be returned for amendment.

Note I—*Procedure in Applying for copies.*—Every application for a copy shall be addressed to the judge of the court in which the document if for the time being retained but where an application is made in any court for copies of record or of any portion of a record which has in due course been forwarded to the District Court the application may be forwarded to the District Court and it shall thereupon be the duty of the proper officer of the District Court to inform the total local court of the number of one rupee papers required for the copy. When the required number of stamp papers has been forwarded to the District Court, the copy shall be made in due course as provided in these rules and shall be forwarded by post to the local court for delivery to the applicant. But where this procedure would entail delay and where the applicant prefers to apply for the District Court direct the applications presentation may be endorsed and returned to the applicant for presentation in the District Court.

The cost of the transmission of applications and stamps for copies under the preceding paragraph shall be met out of the contingent grant.

(Rule 8 of the Consolidated Copyist Rules, 1917.)

Note II—*Defective applications.*—(a) Applications not complying with the requirements of the rule are not to be received until amended in respect of the matters in which they are defective.

(Rule 10 of the consolidated Copyist Rules, 1917).

(b) All other applications shall be received and at once entered in Register-A (Civil Register No. 26) Applications found defective after being entered in Register-A shall be returned for amendment.

Note III—*Court fee on application for copies.*—(a) The instructions that applications for copies of records by persons who are not parties to the proceedings concerned should be included in Statement No. IX Part-2, are not affected by the ruling in High Court Circular Dis. No. 105 of 1908 which refers only to the stamp fee leviable on such applications.

(b) Superintendent's responsibility regarding entries of court-fee on copy applications and vakalat. As regards copy applications and other papers received by the superintendent of Central Copyist establishment under rule 127 (1) supra the responsibility for the receipt of any stamp previously used and for carrying out the instructions as to the punching of stamps shall rest upon the Superintendent and not upon the Chief Ministerial Officer.

(c) The total amount of court fees on all applications for copies received by the superintendent shall be intimated by him to the Chief Ministerial Officer who shall enter it in Civil Register No. 20 of the court to which the Central Copyist Establishment is attached.

(d) Vakalats accompanying copy application and the court fees thereon shall be entered in Registers Nos. 19 and 20 of the Court to which the Central Copyist establishment is attached instead of in the registers of the Courts to proceedings in which such vakalats relate.

(H.C. Dis. 481 of 1919).✓

(N.B.) For instructions regarding entries to be made in Civil Register Nos. 26 and 27 vide appendix II, Part II Volume II.

*Note IV—Levy of Stamp Duty under Article 24, Schedule I of the Indian Stamp Act, 1899 on certified copies granted by Courts.*—Certified copies of all documents other than those coming under Article 9 of Schedule II of the Tamil Nadu Court fee Act are chargeable with stamp duty under

article 24 of schedule I of the Indian Stamp Act, 1899, I.E., they should be granted by courts only on production of the requisite non-judicial stamp paper together with the copy stamp papers required under the Copyists rules.

(2) A party may file along with his application such number of stamp papers as are in his opinion sufficient for the purpose:

(3) When applications are returned for rectification of defects a limit of seven days shall be fixed for their representation. Defective applications which are not taken back by the parties or not represented within the period specified above shall be struck off by the Superintendent of Copyists or where there is no such officer, by the Chief Ministerial Officer.

(4) Copies of the Judges' minutes or correspondence not strictly judicial or generally of any confidential proceedings will not be granted.

(5) In cases where it is doubtful whether the document of which a copy is applied for is one for which a copy can or ought to be granted and in all cases, where the applicant is not a party to the suit or proceeding, the application shall be placed before the Judge who shall decide whether it should be granted or refused. If the application is refused by the Judge, it shall be returned to the applicant with the order of the Judge endorsed thereon.

129. (1) *Notice as to stamp papers.*—Every day between the hours of 3 and 5 p.m. a list showing the applications, in which the records have been received and the number of stamp papers required shall be prepared and affixed to the Court's notice board. Such list shall remain suspended for three working days. If the required stamp papers have not been deposited by 3 p.m. on the next (fourth) working day, the application shall be struck off. Between the hours of 3 and 5 p.m. on each of the intermediate days, the application upon which the requisite deposits have been made shall be struck off the list. The procedure above prescribed shall apply also to calls for additional stamp papers when the number first supplied has been found to be insufficient. Provided that, where the additional stamp papers called for are not deposited, but the stamp papers originally deposited are sufficient for the preparation of complete copies of one or more documents applied for the application shall be struck off only as regards the documents which cannot be prepared by reason of the insufficiency of the stamp paper supplied; but it shall be complied with by delivery of such of the completed copies as can be prepared on the stamp papers supplied. The decision of the Superintendent as to the documents to be selected for copying shall be final :

Provided further that it shall be open to the parties, after obtaining the previous order of the Chief Ministerial Officer of the court or such other person as the court may appoint for the purpose to furnish white foolscap paper of durable quality with the requisite court fee stamp affixed on each sheet in the place of the stamp papers called for, and the rules applicable to the preparation of copies on stamp papers shall apply to the copies so prepared.

(2) Any application for copies struck off under the above rule, may be restored by the court on a petition supported by an affidavit preferred for that purpose. The petitioner may deposit the required copy stamps along with the petition for restoration of the application for copies. If he does not do so, the required stamps should be called for in the usual course, after the application is ordered to be restored.

Every certified copy furnished after such restoration of the application for copies shall bear an endorsement showing in addition to the details specified in rule 133 infra, the following namely.—

- (1) the date on which the application was struck off;
- (2) the date on which petition was filed to restore the application; and
- (3) the date on which the application restored to file.

Note (1)—It is open to the applicant to furnish the necessary stamp papers as soon as their probable number is known. The three working days are allowed to give him reasonable time but all delay must count against him.

(2) List so put up shall remain filed in the copyist Department for six months and shall then be destroyed.

(3) When an application is struck off in whole or in part, the incomplete copy in every case shall be destroyed after 12 months from the date on which the application was struck off unless such copy is completed before the expiration of the period in the manner provided in rule 130 below.

*129-A. Order in which applications should be complied with.*—The preparation of the copies of all documents applied for or such of them as admit of being copies in full on the stamp papers deposited shall (as far as possible) be undertaken in accordance with the serial order of applications except when the presiding officer of the Court or in case the applicant is to a District Court or Subordinate Judge's Court, the Judge or the Chief Ministerial Officer of such court makes a special order for precedence as regards any particular application provided that in complying with an application for copies, copies of decrees and judgements, if any, comprised in the application shall have precedence over copies of other documents applied for. A special order for precedence as regards any particular application shall be made only on a separate application duly stamped under the court fees Act and praying for such order.

*130. Posting of list of copies ready for delivery.*—A list of copies ready for delivery shall be posted on the notice board of the court, and shall remain thereon for three clear days other than holidays. The copy and any unused stamp papers shall be delivered to the applicant between the hours of 10.30 and 11.30 in the morning and 3 and 5 in the afternoon and if the copy is not claimed by the applicant within twelve months from the date of posting the said list, it shall be destroyed.

NOTE.—The list shall be prepared in the prescribed form (*Vide* C.M.F. No. 45 in Appendix III-L. Part II, Volume II) between 3 p.m. and 5 p.m. each day and affixed to the courts notice board at 10.30 a.m. the following morning.

As copies are delivered to the applicants concerned, the appropriate entries shall be struck out of the list. After the expiry of the three working days, the list shall be taken down and filed in the Copyist Department for 12 months and shall then be destroyed.

*130-A. Disposal of incomplete copies and unused stamp papers.*—(1) Where an application is struck off in whole or in part under rule 129 (1) the incomplete copy of every case shall be destroyed after twelve months from the date on which the application was struck off but may be completed if the necessary additional stamp papers are deposited under the orders of the presiding officer of the court within six months from the date of striking off and may then be delivered in the usual manner. No party shall be entitled to a return of stamp papers which are used but on which an incomplete copy is written.

(2) Where parties have furnished the required number of stamp papers; but some remain unused owing to the copyists writing too closely, the presiding officer of the court shall forward the unused stamp papers to the local or the nearest treasury officer.

(3) Where however stamp papers have been furnished in excess of required or where an insufficient number of stamp papers has been furnished and the applicants fail to furnish the additional number of stamp papers within the given period notice shall be given to the parties that the unused stamp papers will be held at their disposal for a month from the date of notice and will be sent to them by registered post if within the above period they remit the cost of despatch which should be stated in each case. If the amount be not remitted and no arrangements made to take delivery in person within the period fixed the unused stamps shall be sent to the local or nearest treasury officer. All stamps so sent to the treasury officer will be treated as cancelled.

The unused copy stamps referred to in this sub-rule may be returned to the pleader who puts in the application for certified copy or to his registered clerk or to the party if he puts in the application in person.

(P. Dis. No. 253 of 1948).

131. *Delivery by post.*—The applicant may in his application for a certified copy apply that the same may be delivered to him through post registered or otherwise at his cost and the copy of shall be forwarded accordingly.

**NOTE.**—A note of this request shall be made against the entry of the application in the Register A Civil Register No. 26) and it shall be the duty of the Superintendent when the copies referred to are ready to despatch them by post "bearing" to the address given in every such case the fifth head of the form of endorsement prescribed by rule 25 (Rule 133 infra) of the consolidated copyist rules shall be modified "copy posted" being substituted for "copy delivered" and in column (19) and (20) of 'Register 'A' instead of "the date of delivery" and "the initials of the applicant" "the date of posting" and the initials of the head of the Copyist Department shall be entered.

132. *Sealing and Certificate.*—All copies furnished by the court shall be certified to be true copies and shall be sealed with the seal of the court. The Superintendent of Copyists or other officer appointed by the Judge shall initial every alteration and interlineation in the copy and shall sign a certificate at the foot thereof that the same is a true copy and shall also state the number of alteration and interlineations made therein.

133. *Endorsement as to dates.*—Every copy shall bear endorsement showing the following dates:—

- (1) Applications made ;
- (2) Stamp papers (or charges) called for ;
- (3) Stamp papers (or charges) deposited ;
- (4) Copy ready ; and
- (5) Copy delivered (or posted).

(Vide also rule 25 of the consolidated Copyist Rules, 1917.)

134. *Copying charges.*—(1) In the case of a copy for which article 24 of schedule I of the Indian Stamp Act 1899 and the Indian Stamp Rules 1925 require the production of non-Judicial stamp paper of a particular value the stamp paper or paper supplied for the purpose shall be used for copying and shall be written on in the same manner as stamp papers. Copy stamp papers shall be furnished to make up any deficiency in the paper required to complete the copying.

(2) Not more than 175 words shall be written on a page.

(3) The copying charges for each page shall be one rupee. Where the value of the stamp paper is less than one rupee the deficiency shall be made good in the shape of adhesive court fee stamps. When the copy is written on non-judicial stamp papers of adhesive court fee stamp or stamps of the value of one rupee shall be affixed to each page on which the copy has been made.

(4) Four figures shall be taken as equivalent to one word and words in the Indian languages with short suffixes and inflexion shall be counted as single word.

(5) The cost of copying maps or other matter requiring skilled labour, shall be fixed by the Judge and deposited in court in cash. Notice of the amount so fixed shall be posted on the notice board of the court and the provision of rule 129 (1) shall apply with respect to payment of such amount.

(6) Except in any case requiring skilled labour, copying charges for the preparation of execution petitions, digitot registers, sale proclamations, books of account or other matters, including lines and columns shall be levied with reference to the space occupied provided that not more than 175 words shall be copied on or computed as the equivalent of one page.

Note.—Fees shall not be paid in cash by applicants for copies except in the cases provided for in sub-rule (5) above.

(Rule 1 of the Consolidated Copyist Rules, 1917).

II. *Estimate of stamp papers required.*—(a) For the purposes of this rule, it shall not be necessary for such officer to count all the words to be copied. It will be sufficient for him to make the nearest computation possible of their number and he may afterwards call for additional stamp papers, if required under the procedure of rule 16, or return any that have been supplied in excess of actual requirement.

(b) Where the copies applied for are of maps, plans, genealogical trees, and tabular matter, they shall be prepared by skilled labour. A reasonable fee (Proportionate to the skill labour and time occupied in preparing the copy) shall in each case be fixed by the court and deposited in cash by the party applying in the same manner, as for a commissioner under the code of Civil Procedure, and the whole of such fee shall be paid to the person employed in preparing the copy who shall supply his own materials. When an enrolled copyist is appointed to prepare the copy he shall do the work out of office hours or take leave without pay to do it.

No. SRO-C-3/92.

#### B. RULES RELATING TO COPYISTS ESTABLISHMENT.

1. (2) *Copyists to be enrolled.*—A fixed number of copyists shall be enrolled for each Court of Civil Jurisdiction. But, where two or more Courts are situated at the same station (as for instance, a District and District, Munsif's Court, a District Subordinate and District Munsif's Court, or a Subordinate and District Munsif's Court), and where the High Court considers it desirable, fixed number of copyists shall be enrolled in a central office attached to one of such Courts for the preparation of copies for all such Courts at that station.

2. (3) *Seale of establishment to be fixed.*—The copyist establishment, inclusive of examiners, readers, superintendent, assistant superintendent, if any, and attender or superior peon, if any, to be entertained for each office together with a provision for contingencies shall be fixed by the District Judge, subject to the orders of the High Court.

3. (4) *Temporary establishments.*—It shall be competent for District Judges, the Principal Judge, City Civil Court, Madras and the Chief Judge, Court of Small Causes, Madras to employ without the previous sanction of the High Court, temporary copyists, examiners and readers when circumstances of special emergency render such a course necessary. Such temporary appointments shall be, however, of short duration not exceeding three months or the period required to meet the special emergency whichever is shorter.

(P. Dis. No. 151 of 1963.)

4. (4-a) *Remuneration to copyists, examiners and readers.*—Copyists employed under this rule shall be paid at the rate of 70 paise for every 175 words or a fraction of 175 words copied by them; examiners at such a rate as may be fixed by the District Judge not exceeding the salary allowed by rule 13 (a); and readers at the rate of salary fixed by rule 13 (c) infra.

5. (5) *Qualification for appointment as copyists.*—Enrolled and temporary copyists are ministerial officers and shall be appointed in accordance with the special rules for the Madras Judicial Subordinate Service.

Subsd  
SAC  
16/94

~~Substituted~~ vide ROC No.666/80/RR - No.SRO C-16/94 dt.11.8.94).

In the Civil Rules of Practice and Circular Orders, Volume I, in the Copyist Establishment Rules, for Rule 3(4) the following Rule shall be substituted, namely:-

"3. (4) TEMPORARY ESTABLISHMENT:-

It shall be competent for the District Judges, the Principal Judge, City Civil Court, Madras, and the Chief Judge, Court of Small Causes, Madras to employ without the previous sanction of the High Court, temporary Copyists, Readers and Examiners for a period of six months or till the need for them ceases whichever be earlier when circumstances of Special emergency render such a course necessary."

High Court of Judicature at Madras,  
11th August, 1994.

A. RAMAMURTHI  
Registrar.

6. (6) Superintendents, examiners and readers to be entertained.—Where a central office has been established and where the funds allow, a superintendent, assistant superintendent and one or more examiners and readers will be appointed. Where the District Judge thinks it necessary, and the funds, allow of the expenditure, an attender or superior peon may also be appointed.

6-A. Where no central office has been established and where the copyists are two or more in number, an examiner and a reader may also be appointed.

7. (7) Registers to be kept.—Registers in the forms given in the appendix (vide Civil Register Nos. 25-29 Appr. II Part II of Volume II), shall be opened and regularly kept in the case of central office by the superintendent and in any other case by the examiner, or where there is no examiner, by such officer as the Court shall direct. These registers shall be examined once every week, in a central office, by such officer as the District Judge shall direct, and in any other case by the head ministerial officer of the Court.

8. (14) Collection of records for copying.—In the case of every application (which is not defective) and of every application allowed by the judge under rule 19 of the Consolidated Copyist rules, 1917, it shall be the duty of the superintendent, examiner or such other officer as the Court may direct, forthwith to forward the application with Register B (Civil Register No. 26), to the clerk in charge of the records of which copies are applied for, who shall affix his initials in acknowledgement of receipt in the appropriate column of that register. The original records shall thereupon be at once put up with the application and sent to the superintendent, examiner or other officer, as the case may be. In no case is such application to be returned to the copyists department without the records, unless the originals are not forthcoming or unless the application is defective, in either of which events the applications will be returned to the superintendent, examiner or other officer, as the case may be, with an appropriate certificate endorsed thereon, attested by the returning clerk's initial. This certificate shall thereupon be signed by the superintendent, examiner or other officer, as the case may be and the application returned to the applicant, a note of the same being made in Register A (Civil Register No 25.)

9. (17) Order in which application should be complied with.—All stamp papers deposited shall at once be entered in Register A and the preparation of the copies of all documents applied for or such of them as admit of being copied in full on the stamp papers deposited shall (as far as possible) be undertaken in accordance with the serial order of applications except when the Presiding Officer of the Court, or, in case the application is to a District Court or a Subordinate judges' Court, the judge or chief ministerial officer of such court makes a special order for precedence as regards any particular application. Provided always that in complying with an application for copies, copies of decrees and judgements, if any, comprised in the application shall have precedence over copies of other documents applied for.

10. (19) Examination of copies.—When the copy applied for has been transcribed (by the copyists, it shall be compared by the examiner or, where there is no examiner, by such officer as the court shall direct; aided by the reader or by some one of the copyists; but in no case shall a copy be read to the examiner, or the examination in any way assisted in by the copyist who prepared the copy. Each page must be initialed at foot by the examiner or other officer aforesaid.

11. (20) Superintendent's responsibilities as to work.—The Superintendent, Examiner or such other officer as the Court may direct shall be responsible for seeing that the work (copying and reading) is distributed equally among the enrolled copyists each morning. When however, there is plenty of work available, there is no objection to extra work being given later in the day to efficient and faster copyists after they have completed the daily quota distributed to them. To ensure copies being fully and legibly written, as many sheets as the presiding officer from time to time fixes according to the congestion of work may be given to each copyist per day. At the close of each day, all original papers and all copies not delivered to the parties, as well as all stamp papers not yet used for copies, shall be taken back from the copies and secured for the night by the Superintendent, Examiner or such other officer as the Court may direct.

NOTE.—There is no objection to allowing typist-copyists earn twice as much as the ordinary copyist in the office. (H.C. Dis. 211 of 1904).

12. (22) Return of records after copying.—When the copies are ready for delivery, the original shall be returned to the record-keeper or the clerk from whom they were obtained, and his initials taken in the appropriate columns of Register B.

13. (27). *Gate of salaries.*—(a) The salary of an examiner shall be Rs. 555—15—615—20—795—25—970 (4th Pay Commission), per mensem.

(b) The salary of a Superintendent shall be as follows :—

(i) Rs. 786—35—1,025—40—1,385 per mensem (4th Pay Commission) where the Copyists of two courts are amalgamated in one office ;

(ii) Rs. 555—15—615—20—795—25—970 per mensem where the copyists of more than two courts are amalgamated in one Office (IVth Pay Commission) ;

Provided that Superintendents of Copyists not possessing the minimum general educational qualifications shall be admitted only to the lower scale ;

(iii) In any case in which the High Court may sanction the appointment of an assistant Superintendent, his salary shall be Rs. 610—20—730—25—955—30—1,075 per mensem (4th Pay Commission.)

(c) In any case in which the High Court may sanction the appointment of a reader his salary shall be Rs. 555—15—615—20—795—25—970 per mensem. (4th Pay Commission).

(d) The salary of an enrolled copyist shall be proportioned to the amount of work done by him, provided that no enrolled copyist shall receive less than Rs. 20 per mensem. It will be open to all copyists to earn, as provided in rule 16, without limitation of amount, allowances in excess of Rs. 20.

(e) The salary of an attender, where appointed, shall not exceed Rs. 475—10—555—15—615—20—775 (4th Pay Commission).

The increments to the salaries of examiner, superintendent, assistant superintendent and reader shall be annual.

**NOTE.**—(1) The practice of paying temporary copyists during the vacation may continue in cases in which their temporary appointments have not ceased when the vacation begins (H.C. Dis. 725 of 1907).

(2) Every Examiner, Superintendent, Assistant Superintendent, Reader, Copyist or Attender who was in the service of the Government before 15th August 1931 in a substantive, officiating or temporary capacity, shall be entitled to the existing scale of pay mentioned in this rule in respect of any post which he holds or may hold, if he had held such post in a substantive, officiating or temporary capacity or had been a probationer therefore, at any time before the 4th October 1933, irrespective of any break in his tenure of such post.

**13-A. New scale of pay.**—Every Examiner, Superintendent, Assistant Superintendent, Reader, Copyist or Attender who was not in the service of the Government before the 15th August 1931, whether in a substantive, officiating or temporary capacity but who has before the 4th October 1933, held any post on the existing scale of pay mentioned in rule 13, shall be entitled only to the following new scale of pay in respect of such post :—

(Based on IV Pay Commission).

(a) Examiner—Rs. 555—15—615—20—795—25—970.

(1) Where the copyists of two courts are amalgamated in one office ;

(2) Rs. 555—15—615—20—795—25—970 where the copyists of more than two courts are amalgamated in one office ;

(b) Superintendent—

Provided that Superintendents of Copyists not possessing minimum general educational qualifications shall be admitted only to the lower scale.

(c) Assistant Superintendent—

Rs. 610—20—730—25—955—30—1,075.

(l) Reader—

Rs. 555—15—615—20—795—25—970.

(e) Copyist—

Rs. 555—15—615—20—795—25—970.

(f) Attender—

Not exceeding Rs. 475—10—555—15—615—20—775.

Provided that all service rendered by any such officer, in such post before the 4th October 1933 shall count for increments in the new scale of pay:

Provided further than unless the Provincial Government otherwise direct, in any class of cases, a personal pay shall be granted to such officer equivalent to the difference between (a) the pay last drawn by him in the existing scale of pay and (b) the pay to which he would be entitled in the new scale under this rule, and any special pay, Presidency allowance or Madras hot seat allowance granted in lieu of any portion of the pay in the existing scale. Such personal pay shall be absorbed in future increments in the manner specified in Fundamental Rule 37. [REDACTED]

14. (28). *Salaries how to be drawn and disbursed.*—The salaries of the copyists establishment shall be drawn of cada month by a bill, in the same form as that used for the regular establishment's pay, on the nearest Government Treasury and the amount so drawn shall be distributed by the head ministerial officer of the court to which the copyist establishment is attached, and the signature of the payees taken in the same manner as those of the payees of the regular establishment.

15. (29). *Items of expenditure covered by the stamp paper.*—The present 70 paise stamp paper is for copying 175 words. This charge includes, besides the cost of the paper in which the stamp is impressed, the cost of copying examining and certifying to the correctness of their copy.

16. (30). *Copyists allowances—How to be calculated.*—The amount of allowances, if any, due to each copyist in excess of the minimum prescribed by rule 13 (d) supra shall for each month be ascertained from and accounted for in Register D (Civil Register No. 28). For the purpose of calculating such extra payments, if any, the hire debitable in Register D on account of the copyists work shall be at the rate of 70 paise for 175 words or a fraction of 175 words. But extra allowances under this rule shall always be subject to a recovery being made up to the amount of any excess paid to the copyists in either or both of the two last working months in order to make up this minimum salary.

Every calendar month in the year, except the two months in which some part of the annual recess falls, shall be treated as a working month for the purposes of this rule. If the recess of a court extends into three months, the two months in which there is the smallest number of working days shall alone be reckoned as the two non-working months for that court.

17 (31). *Supply of stationery articles.*—Stationery including pens, ink, pencils, blotting paper, rulers, etc., will be furnished to the copyist establishment from the supply received by the court on indent from the Superintendent of Stationery. The estimated cost of such stationery will be debited monthly in Register E (Civil Register No. 29) to the copyist establishment.

18 (32). *Post declared pensionable.*—Service on the copyist establishment as superintendent, examiner, reader or attender shall qualify for pension, but not service as a copyist.

Examiner—Rs. 555—15—615—20—795—25—970.

Reader—Rs. 555—15—615—20—795—25—970.

Attender—Rs. 475—10—555—15—615—20—775.

Copyist—Rs. 555—15—615—20—795—275—970.

The increments to the salaries of examiner and reader shall be annual as stated above :

**Note.**— Every examiner reader copyist or attender who was in the service of the Government before the 15th August 1931 in a substantive officiating or temporary capacity shall be entitled to the existing scale of pay mentioned in this rule in respect of any post which he holds or may hold if he had held such post in a substantive, officiating or temporary capacity or had been a probationer therefore at any time before the 13th April 1933 in the case of Small Causes Court, Madras, or before the 4th October 1933 in the case of City Civil Court, Madras, irrespective of any break in his tenure of such post.

(ii) **New scale of pay.**— Every examiner ,reader, copyist or attender who was not in the service of the Government before the 15th August 1931 whether in a substantive officiating or but who has, before the 19th April 1933 in the case of the Small Causes Court Madras, or before the 4th October 1933 in the case of City Civil Court, Madras held any post or the existing scale of pay mentioned in rule 20 (b) (i) shall be entitled only to the following new scale of pay in respect of such post :—

(Based on IV Pay Commission.)

- (1) Examiner— Rs. 555—15—615—20—795—25—970.
- (2) Reader— Rs. 555—15—615—20—795—25—970.
- (3) Copyist— Rs. 555—15—615—20—795—25—970.
- (4) Attender— Rs. 475—10—555—15—615—20—775.

Provided that all service rendered by any such officer in such post before the 13th April 1933 in the case of the Small Cause Court, Madras, or before the 4th October 1933 in the case of the City Civil Court, Madras shall count for increments in the new scale of pay :

Provided further that unless the Provincial Government otherwise direct, in any class of cases a personal pay shall be granted to such officer equivalent to the difference between (a) the pay last drawn by him in the existing scale of pay, and (d) the pay to which he would be entitled in the new scale under this rule and any special pay, presidency allowance or Madras house allowance granted in lieu of any portion of the pay in the existing scale. Such personal pay shall be absorbed in future increments in the manner specified in Fundamental Rule 37.

21. (36). (1) (a) *Application of the rules to the copyist establishment of the High Court*  
The above rules apply, *mutatis mutandis*, to the copyist establishment of the High Court, Appellate Side, provided that there shall be—

(Based on IV Pay Commission.)

- One Superintendent on Rs. 780—35—1,025—40—1,385.
- One Assistant Superintendent on Rs. 610—20—780—25—955—30—1,075.
- One or more Examiners on Rs. 555—15—615—20—795—25—970.
- One or more Readers on Rs. 555—15—615—20—795—25—970.
- One or more attenders on Rs. 475—10—555—15—615—20—775.

and such number of copyists as may be required on Rs. 30 each with power to earn more at rate of 70 paise per 175 words provided also, that the Registrar shall perform the acts and exercise the powers conferred on District Judges in rules 2, 3, 6, 7, 10, 11 and 19 supra, and rule 8 of— the consolidated Copyist Rules, 1917.

**Note.**— Every Superintendent, assistant superintendent, examiner, reader, attender or copyist who was in the service of the Government before the 15th August 1931, in a substantive officiating or temporary capacity shall be entitled to the existing scale of pay mentioned in this rule in respect of any post which he holds or may hold, if he had held such post in a substantive, officiating or temporary capacity or had been a probationer therefor at any time before the 14th July 1934, irrespective of any break in his tenure of such post.

(b) *New scale of pay.*— Every superintendent, assistant superintendent, examiner, reader, attender or copyist who was not in the service of the Government before the 15th August 1931 whether in a substantive, officiating or temporary capacity, but who has before the 14th July 1934 held any post on the existing scale of pay mentioned in rule 21 (1) (a) shall be entitled only to the following new scale of pay in respect of such post :—

(Based on IV Pay Commission.)

- (1) Superintendent— Rs. 780— 35— 1,025— 40— 1,385.
- (2) Assistant Superintendent— Rs. 610— 20— 730— 25— 955— 30— 1,075.
- (3) Examiner— Rs. 555— 15— 615— 20— 795— 25— 970.
- (4) Reader— Rs. 555— 15— 615— 20— 795— 25— 970.
- (5) Attender— Rs. 425— 10— 555— 15— 615— 30— 775.
- (6) Copyist— Rs. 555— 15— 615— 20— 795— 25— 970.

Provided that all service rendered by any such officer in such post before the 14th July 1934 shall count for increments in the new scale of pay :

Provided further that unless the Provincial Government otherwise direct in any class of cases, a personal pay shall be granted to such officer equivalent to the difference between (a) the pay last drawn by him in the existing scale of pay and (d) the pay to which he would be entitled in the new scale under this rule, and any special pay, Presidency allowance or Madras house allowance granted in lieu of any portion of the pay in the existing scale. Such personal pay shall be absorbed in future increments in the manner specified in Fundamental Rule 37.

(2) Copies of judgments required for the use of the Law Reporter in the preparation of the Madras series of the Indian Law Reports should be granted free of cost.

22. (37). *Exceptions.*—Nothing contained in the above rules shall apply to printed copies or to the copies which, under any provision of law for the time being in force, the courts are required to grant free of cost. As to printed copies separate rules have been made. Copies required to be granted free of cost shall be made by the regular establishments of the courts.

*vide* note 1 to rule 128 supra inserted by I.I.C. P.Dis. 666 of 1934 inserted by H.C. Dis.— 94 of 1920.

## CHAPTER VIII;

### PROCEEDINGS IN EXECUTION.

135. *Rules applicable to all proceedings in execution.*—The following rules shall apply to all proceedings in executions, as well as of decrees as of orders, and in this chapter the word “decree” includes “Order”.

#### A. Application for transmission.

136. *Transmission of decree for execution.*—(1) An application for the transmission of a decree to another court for execution shall be made by a verified execution petition headed with the cause title of the suit, and the serial number of the execution petition in the suit, and shall state, in addition to the particulars set out in clauses (a) to (i) inclusive of rule 11(2) of Order XXI of the Code, any fact relied on by the applicant to bring the case within the terms of section 39 and rules 4 and 5 of Order XXI of the Code, and shall specify the court to which transmission of the decree is sought as in Form No. 52.

(2) If the application is admitted the applicant shall within seven days thereafter deposit in court the expenses other than postage charges for transmitting the same.

137. *When sent to District Court of another District.*—If the decree is sent to the District Court of another district for execution by a court subordinate thereto the District Court shall at once transmit it to the subordinate court and no application shall be made by the party to the District Court. No charges for transmitting the decree to such Subordinate Court shall be levied by the District Court.

138. *Return of Decree to the Transmitting Court.*—If, after a decree has been sent to another court for execution, the decree holder does not within a year from the date of receipt of the decree on such transfer, apply for the execution thereof, the court to which the decree has been sent shall certify the fact that no application for execution has been made to the court which passed the decree and shall return the decree to the court.

*B. Application for Execution.*

139. *Application for Execution.*—(1) Except when made under rule 11(1) of Order XXI of the Code, an application for execution of a decree shall be by petition and in addition to the particulars set forth in rule 11(2) of Order XXI of the Code, shall be headed with the cause-title of the suit and separately numbered in each suit.

(2) The petition shall if it relates to any property of the judgement debtors, pray for the realization thereof in the manner appropriate to the nature of the property as in Form No. 53 and shall also set out the whole of the relief which the applicant requires at the time of presenting the same. The court shall not grant any relief not claimed by execution petition.

140. *Certified copy of decree to be filed.*—The judgement - Creditor shall together with the first petition for execution or transmission of a decree file in court a certified copy of the decree sought to be executed and shall not be required upon any subsequent application, file a further copy of the same decree, unless the copy already filed has been sent to another court under rule 6 of Order XXI of the Code and has not been returned and application is made to the court which passed the decree for concurrent execution,

141. *Non-compliance with rules.*—A petition not complying with the provisions of the code or these rules, or not claiming any substantial relief, shall be returned for amendment or rejected.

142. *Procedure on and after on hearing of petition.*—Upon the hearing of the petition, the court shall ascertain whether the provisions of the code and these rules have been complied with and shall determine whether notice thereof is to be served on any person. If the petition is admitted the court shall adjourn the further hearing to a fixed day and the applicant shall within two days or such other period as may be fixed by the Judge, bring into court the fees prescribed for issue of process, and if, the application is for arrest of the debtor, the subsistence moneys fixed by the Judge under rule 39 (1) of Order XXI of the Code. At the adjourned hearing the court may, if the prescribed fees and subsistence and conveyance charges have been paid, order process to issue or in case of default, may extend the time for payment, or dismiss the petition. Provided that the court may, if it thinks fit on admitting the petition, in any case in which the prescribed fees and subsistence moneys have been paid order process to issue forthwith.

143. *Determination of question arising in execution of decree.*—If any question arises for the determination of the court executing a decree, the same shall be heard and determined upon the hearing of the petition, or an application made therein and if evidence is taken orally, the court shall record the evidence of the witness and mark all exhibits admitted in evidence in accordance with rule 4 and 9 of Order XVIII of the Code. The court shall, in any case, record its judgement and draw up its order, in the same manner as upon the hearing of a suit.

144. *Order to appoint day for sale.*—In the case of an application for the attachment and sale of any property, unless the court otherwise orders, the order for attachment shall appoint a day for the sale of the attached property, which shall be not more than three months from the date of the order and shall adjourn the hearing of the petition to a fixed date.

145. *Joint decree-holders.*—When an application is made by one or more of several joint decree-holders, unless a written authority signed by the other decree-holders for the applicant to execute the decree and to receive the money or property recovered is filed in court, the court shall give notice of the order, if any, passed for the execution of the decree to all the decree-holders, who have not joined in the application and may also in its discretion given notice of any application for payment out of court or delivery to the applicant, of any money or property recovered for execution.

*Execution applications.*

146. *Application in pending petition.*—If it is necessary to make an application in connection with a pending execution petition, otherwise than at the hearing or any adjourned hearing thereof, the application shall be headed with the cause title of the suit and the serial number of the execution petition and shall also be separately numbered in each execution petition.

147. *Application of rules.*—Rules 29 to 31 and 143 supra, shall apply to all applications by a party to the suit or matter made in or with respect to a pending execution petition.

### C. MODE OF EXECUTION.

#### i. Execution of Documents by the Judge

148. *Procedure in case of execution of documents by Court.*—The procedure prescribed by rule 34 (1) to 34 (4) of Order XXI of the Code shall apply to all documents whereof the execution by any party has been directed by the court.

149. *Decree holder to bring into court the draft and fees for service of notice.*—The decreeholder shall, together with the draft mentioned in rule 34(1) of Order XXI of the Code bring into Court duplicate thereof and two copies of a notice in Form No. 54 and the prescribed court fee stamps for service thereof. One of the said copies shall be annexed to the draft and shall be served on the person directed to execute the document in the manner prescribed for service of summons on a defendant to a suit.

150. *Form of deed and of endorsement of negotiable instrument.*—In the case of a deed the concluding portion shall be in Form No. 55, and in the case of a negotiable instrument, the endorsement shall be in Form No. 56 and the Judges shall sign on behalf of the party directed to execute the document as in the said forms and shall affix the seal of his court thereto.

#### II. Payment and Satisfaction.

151. *Amount realised in execution to be paid into court.*—Except when payment is made to the decree holder under rule 159 all moneys recovered by an officer of the court, or received by an auctioneer, shall be paid into court in the manner prescribed below for payment of moneys into court and notice of the payment shall be posted on a notice board of the court and a certificate thereof shall be endorsed on the lodgment schedule. [§]

152. *Payment into court in satisfaction of decree.*—Except when payment is made to the decree holder under rule 159, a person paying money or bringing property into court in satisfaction of a decree shall give notice of such payment or deposit to the judgment creditor.

153. *Application to certify payment or adjustment.*—An application under rule 2 of Order XXI of the Code, shall be by petition or if an execution petition is then pending, by an application at the hearing thereof or an execution application made in the said petition.

#### III. Payment into and out of court.—Procedure to be observed.

##### (a) Payment into Court.

154. *Lodgment schedule to be brought in.*—A person desirous of paying money into court, hereinafter called the payer, shall bring into court, a lodgment schedule in Form No. 57 headed with the cause title of the suit, appeal, or matter, and the particular account therein, if any, to which the money is to be credited and stating the decree or order, if any, in pursuance of which the payment is made, or the reason for the payment and the several sums and the total amount to be paid into court. An order for lodgment and counterfoil receipt, in Form No. 58, stating the date of issue and bearing a serial number, shall then be filled in, except as to the date of payment and the signature of the receiving officer by the officer of the court and issued to the payer.

The particulars of currency notes, coins and cheques shall be noted on the reverse side of the form of the chalan accompanying each remittance.

155. The payer shall note the particulars of currency notes, coins and cheques on the reverse side of the form of the chalan accompanying each remittance and deliver the money and or the cheques on the order and counter foil receipt to the Bank or Treasury Officer mentioned therein who shall retain the order and return the receipt duly signed and dated to the payer who shall return the said receipt to the court.

(H.C.P. Dis. 825 of 1940.)

156. *When Bank or treasury is closed.*—If the bank or the treasury is closed, the money may, with the leave of the Judge, be paid to the Officer of the courts. In such case, the lodgment schedule shall be endorsed with a receipt to be signed by the judge and the amount shall on the next day on which the bank or treasury is open, be sent together with an order and counterfoil receipt, by the officer of the court to the bank or treasury officer, who shall return the said receipt to the court.

In the case of deposits by purchasers in court auctions when the deposit is made when the bank or the treasury is closed, the payment should be made to the officer conducting the sale. The payment shall be entered forth with in the cash book and the ledger and in the case of courts dealing with the branches of the State Bank of India, in Civil Register No. 36, also and the money sent for safe custody with the Head Clerk until the next day on which the bank or treasury is open. The lodgment schedule shall be endorsed with a receipt to be signed by the Judge and shall also be signed by the Head Clerk in token of this having received the money. A lodgment order shall also be issued on the same day.

On the next day on which the bank or treasury is open, the officer of the court to whom the money was originally paid, shall receive it back from the Head Clerk and shall in token of having done so sign the lodgment. Schedule and he shall with all convenient speed send the money together with an order and counterfoil receipt to the bank or treasury officer who shall return the said receipt to the court. On receipt of the counter foil receipt from the treasury or bank, an entry shall forthwith be made on the disbursements side of the cash book in the column under the heading "Cash" and another on the receipt side of the book in the column under the heading "Bank or Treasury". No separate entry shall be made in the ledger in respect of the remittances into the bank or treasury, but the number of the bank or treasury receipt shall be entered in it in the form of an inset entry against the original entry. The same procedure shall apply, as far as may be, to amounts collected by amans and Process Servers on warrants of attachment or warrants of arrest when the money is brought into court when the bank or treasury is closed.

**NOTE.**—Money paid into court under this rule must be remitted to the treasury or bank with the least possible delay and in no instance should an interval of more than 24 hours be allowed to occur if the treasury or bank be open. But where there is no sub-treasury or bank in the station, daily remittances of petty amounts of less than Rs. 25 to the treasury or bank which involve expenditure on travelling allowance out of proportion to the amounts remitted, should be avoided.

(Rule 156 amended by R.O.C. No. 6740/41-B and P. Dis. 571/55.)

**157. Receipt.**—Upon the return of the said receipt to the court by the payer, or by to the bank or treasury officer under the proceeding rule, a receipt duly signed by the Chief Ministerial Officer of the court authorised in this behalf by the Judge shall be used to the payer and the amount paid shall be entered to the credit of the account in respect of which payment is made.

**158. Transmission of money payable in satisfaction of a Decree.**—Unless it appear to the court that the personal attendance of the party is necessary, money payable in satisfaction of a decree or order may be transmitted to the court by postal money order with such particulars as may be necessary for a lodgment schedule.

*(d) Payment out of court.*

**159. Cash Payment.**—If the person entitled to immediate receipt of the amount or his duly authorised agent is present at the court with the payer, the money may, with the leave of the judge, be paid at once to the person so entitled or the said agent. In such case, the lodgment schedule shall be endorsed with an order for payment to the person so entitled, signed by the Judge, and with an acknowledgement of receipt, signed by the payee and the satisfaction pro tanto of the decree or order, if any, in pursuance of which the money is paid shall be entered up.

**160. Application for payment out in other cases.**—Except as provided by rules 159 and 169 payment of money out of court shall be made only upon the order of the Judge, made at hearing of a suit, appeal or matter or upon an interlocutory or execution application, supported by affidavit showing how the applicant is entitled to receive payment.

**161.** The order may be for payment to the applicant or his duly authorised agent, provided that no order for payment of money shall be made to the pleader of the applicant, unless specifically authorised by the applicant by an affidavit and if such payment is directed the full name of the pleader shall be inserted in the order of the Judge.

(P. Dis. No. 327/72.)

**162. Payment schedule to be brought in.**—A person desirous of obtaining payment of money out of court herein after called the payee, shall bring into court a payment schedule in Form No. 59, headed with the cause title of the suit, appeal, or matter, and the particular account, if any, to which the payment is to be debited and stating the decree or order authorising the payment.

and the several sums and the total amount to be paid out of court, and also a receipt for the said amount signed by the payee. If the payee is the agent of the person entitled to receive the money he shall also file power of attorney duly stamped authorising him to receive payment. The court shall before making an order for payment out, verify from the weekly statements received from the Treasury that the amount of which payment is sought is supported by the necessary credit in the account and is available for payment out. An order for payment and counterfoil receipt in Form No. 60, stating the date of issue, the amount to be paid and the account to which the payment is to be debited shall then be issued to the payee.

163. *Presentation of order.*—The order shall be presented for payment within the account month in which it is issued and if not presented within the period, shall be returned to the court and may then, after being re-dated and initialled by the Judge, be re-issued to the payee.

NOTE.—Where a payment order is re-dated and re-issued the further date should be entered in the office counterfoil or the original order book.

(H.C. Dis. No. 727 of 1906)

164. *Receipt by payee.*—On payment of the amount of the Order, the payee shall sign a receipt therefore endorsed on the order.

165. *Order not to issue after 25th of the month except in cases of urgency.*—Except in cases of urgency, no order for payment of money out of court shall be issued after the 25th day of each calendar month.

#### (c) DELIVERY OF SECURITIES OR OTHER VALUABLES INTO AND OUT OF COURT.

166. *Rules as to delivery of securities, jewellery or other valuables into and out of court.*—The foregoing rules shall apply to the delivery of securities, jewellery or other valuables into and out of court, with the following modifications: (1) Government promissory notes and other negotiable securities, shall be endorsed "the judge of the court of".

(2) When jewellery or other valuables are to be brought into court, two copies of a descriptive list thereof shall be presented with the lodgment schedule and shall be checked and signed by the Judge in the presence of the depositor. The jewellery or other valuable shall be placed in a box furnished with a lock and key to be provided by the depositor. The box shall be then be locked and sealed in the presence of the Judge with the special seal supplied for this purpose and forwarded by the court to the bank or treasury officer together with one of the copies of the said list and the key shall be retained by the Judge. The remaining copy of the said list shall be returned to the depositor and on the retain of the counterfoil receipt by the bank or treasury officer, a receipt signed by the Judge shall be given to the depositor in exchange for the said descriptive list.

The court may call upon the party at whose instance the deposit is made to pay into the court such sum of money as may be necessary to meet the expenses chargeable payable to the bank in the first instance or from time to time. In default of payment the court may refuse to make the deposit in the bank or withdraw the property from the bank or may pass such orders as may be necessary for recovering any dues payable to the bank from the party liable to pay the same.

Clause (2) of rule 166 substituted and further amended by P. Dts. Nos. 677/41 and 11/48.

NOTE.—(1) Deposit receipts of moneys belonging to minors or concerned in land acquisition cases, should be treated as "valuables" and sent to the treasury for safe custody.

(2) Post Office cash certificate should be treated as "valuables" and kept in the treasury for safe custody.

#### (d) CASH DEPOSITS.

167. *Cases where payment may be made in cash to Officer of Court.*—Notwithstanding anything contained in this chapter, moneys for any of the purposes hereunder mentioned may be paid in cash to an officer of the court, to be appointed by the Judge.

(1) Service of summons in respect of which the fees cannot be paid in stamps.

(2) Allowance to witnesses:

(3) Commission fees;

(4) Money order commission for transmission of commissioner's fees;

- (5) Judgement-debtors subsistence moneys and conveyance charges;
- (6) Tom-Tom charges;
- (7) Charges for the conveyance of attached property, and for feeding attached cattle;
- (8) Postage and other charges for calling for records for reference or for transmission of decrees to other courts for execution;
- (9) Moneys representing the value of non-judicial stamps for sale certificate when the amount does not exceed Rs. 5;
- (10) Safe custody charges payable under rule 166 :

Provided that if in the opinion of the said officer, disbursement of the said money is not likely to be made within a month, the procedure prescribed by rules 154 to 165 inclusive shall be followed :

Provided further that if any cash deposit or any part thereof, is not expended and if it is not probable that the same will be refunded to the depositor within a month from the date on which it became available for refund, it shall be forthwith remitted to the bank or Treasury Officer :

Provided also that where the amount paid under item (9) above is less than Re. 1, the court may retain it for a period not exceeding three months after which if it is not disbursed it shall be credited direct to the Government revenue subject to its being refunded to the party entitled to it if and when claimed provided also that in cases where the amount paid under item (9) above does not exceed Rs. 5 and the said amount is not likely to be disbursed within a period of three months it shall subject to the provisions of the previous proviso, be remitted to the Bank or Treasury Officer.

(P. Dis. No. 641 of 1944).

168. *Presentation of receipt.*—The person making any such deposit as aforesaid shall present therewith a memorandum in Form No. 61 headed with the cause title of the suit, appeal or matter and specifying the purpose for which the deposit is made, and a receipt shall be granted to the depositor.

169. *Re-Payment.*—(1) The repayment of any cash, which has not been expended for the purpose for which the same was deposited shall be made upon the production of the said receipt and under the immediate superintendence of the Judge who shall satisfy himself as to the identity of the person to whom such repayment is made and of his authority to receive it:

(2) Provided that if the amount so deposited or the unexpended portion thereof has been sent by the court to a bank or treasury officer rules 160 to 165 inclusive shall apply to an application for repayment.

(3) If the applicant is unable to produce the said receipt, he shall file an affidavit accounting for its non-production.

#### V. Attachment

##### (a) Attachment of property in custody of Public Officer:

170. *Attachment of property in custody of Public Officer.*—If the property sought to be attached is in the custody of a public officer, the execution petition shall ask that the property may be brought into court, and realised and the notice of attachment shall request that the money or property may be brought into court, or that such officer will state whether he has any and that objection to so doing. If any objection is raised by such officer, notice may be issued in the manner provided by order XXVII of the code for issue of summons for the determination of such objection.

171. *Form to be used.*—Form No. 62 of Appendix III-A part II of Volume II here to shall be used in the place of form No. 21 of Appendix F of the First schedule of the code.

*(a) Mode of issuing Notice.*

*Note.—Courts are authorised to send notices of attachment under rule 52 of order XXI of the Code to other courts but not to other Officers. The receipt of the notice must, however invariably be acknowledged by post or otherwise by the courts to which it is addressed.*

*(b) Attachment of Decrees.*

172. *Attachment of a Decree :* An application for the attachment of a decree shall also pray that the applicant may be at liberty to apply for execution thereof. If an order of attachment is made, it may be as in Form No. 63 or 64 and the application shall be adjourned to a fixed day for the applicant to apply to the court, or if the decree of the another court is attached to that court for the execution of the attached decree and notice may, if the court thinks fit, be given to the holder of the decree. The application shall be made by execution petition, entitled in the suit or matter in which the attached decree was made, and shall be accompanied by certified copies of the order of attachment, and of the decree sought to be executed, provided that if the attached decree is the decree of another court other than a decree for money the applicant shall also pray for the transmission of the decree sought to be executed to that court, and the court may transmit the same accordingly, together with a notice if Form No.65. The applicant may then apply to the former court by execution petition entitled in the suit or matter in whcih the attached decree was made for execution of its decree.

173. *Decree not to be sold in execution of another decree,—* No decree shall be ordered to be sold in execution of another decree.

174. *Attachment of decree by several decree holders.*—If a decree is attached by more than one decree holder, liberty to execute the same shall be given to the decree holder whose attachment is first in date, and the court shall direct rateable any money or property recovered by the said decree holder to be brought into court for distribution. Provided that if the decree holder to whom liberty is given as aforesaid does not show, due diligence in executing the attached decree or for any other sufficient reason, the court may give to any other decree holder liberty to execute the attached decree in the place of the former decree holder.

*(c) Claims to attached property.*

175. *Claim to attached property.*—An application by a claimant or objector, under rule 58 of Order XXI, of the Code shall be made by a verified execution application entitled in the execution petition under which the property in question has been attached and shall set forth the particulars of the claim in the manner prescribed for the plaint in a suit as in Form No. 66.

176. *Procedure when application admitted;*—If the application is admitted the claimant or objector shall, within seven days thereafter or such other period as may be allowed by the Judge, bring into court the prescribed fees for service of notice on the attaching creditor, and the same shall be served in the Manner prescribed for service of summons on a defendant to a suit.

177. *Hearing of application.*—At the hearing of the application the court shall record the evidence and mark all exhibits admitted in evidence and shall draw up its order thereon.

*(d) Realization of attached property.*

178. *Realization of attached debts by the appointment of a Receiver:*—(1) Unless it is made to appear to the court that from the smallness of the amount of the debt attached, or otherwise the appointment of a Receiver to collect the same would be worthless or vexatious, no debt or right to any periodical payment shall be realized by sale.

(2) If a receiver is appointed, he shall be empowered to sue in the name of the judgment debtor to grant receipt for any moneys or property recovered by him and order appointing him may be on the form prescribed by paragraph 7 of Form No. 5 Appendix III-D so far as it may be applicable.

179. *Realization of property attached by seizure.*—When an attachment of property is made by actual seizure, the court shall if within one month from the date of the attachment the property has not been sold or the attachment has not been removed of its own motion after giving notice to the directed parties the property to be sold by the officer of the courts and the proceeds of the sale after payment of the expenses, of the sale, and the prescribed fees shall be brought in to court to the credit of the suit or matter in which the attachment was made.

*V. A Application under order XXI, rules 97 and 100 of the code.*

180. The provisions in rules 175 to 177 shall apply so far as they may be to applications under rules 97 and 100 of Order XXI of the Code.

*VI. Sale of attached property.*

181. *Application for sale of attached property.*—The decree-holder may apply at an adjourned hearing of the execution petition, orally, and at any other time, by written application in Form No. 67 for sale of any attached property.

182. *Affidavits and in the case of immovable property certificates to be filed by the applicant.*—The applicant shall, not less than five days before the adjourned hearing or together with his written application, file in court an affidavit or affidavits as prescribed by rule 190 infra which shall also state the interest of the judgement-debtor in the attached property and whether any person other than the judgement debtor has any and what interest therein and in the case of immovable property that a search has been made in the Office of the Registrar of Assurances of the district or sub-district, in which the property is situate, for not less than 12 years prior to the date of the attachement as in Form No. 68. A Certificate of the result of such search shall be filed with the said affidavits.

In the case of immovable property situated within the limits of a municipality, a certificate from the municipality showing the particulars of municipal tax due on the property shall also be filed.

183. *Order for sale.*—If the provisions of the code and these rules have been complied with and the proclamation of sale is approved by the judge, the application shall then be adjourned to a fixed day and the applicant shall within two days or such other period as may be fixed by the judge, bring into Court the prescribed fees for proclamation. An order for sale shall then be made. The batta for the sale warrant shall be paid a week before the date fixed for sale and the warrant of sale shall then issue in case of default the court may adjourn the application to a fixed day, or may dismiss the execution petition.

184. *Date and place for sale.*—The District Judge shall fix a particular place and a particular day in the week for the sale of such movable properties as may be brought to court. When there are more courts than one in the same Station the sales for all such courts shall be held on the same day and in the same place, in such sequence as the District Judge may, by general or special order determine. All sales at court shall begin at noon and the sale of any lots, not put up before 5 p.m. shall be adjourned to noon on the next court day.

185. *Sale of livestock, etc.*—Unless the court otherwise orders all sales of livestock, agricultural produce, articles of local manufacture, and other things commonly sold at country markets which have not been brought to court shall be held at such market in the neighbourhood of the place where the goods were attached as may appear to be for the greatest advantage of the debtor regard being had to the prospect of good prices and to the saving of expenses in conveyance and carriage. A list of all property to be sold at a weekly market shall be forwarded to the Administrative Officer of the village in which the market is held be posted in a conspicuous part of the market, atlest eight days before the day fixed for the sale.

186. *When movable property is in custody of Nazir or Curator.*—If movable property is in the custody of Nazir or curator and it appears to the court that an immediate sale is necessary the court may authorise him to sell the same by public action and may give such directions as to the date and place of sale and the manner of publishing the same as the circumstances of the particular case admit.

187. *Sale by public auction.*—If the officer attaching movable property is under rule 43 of Order XXI of the Code authorized to sell it at once, the sale shall be made by public auction and after such publication and notice as the circumstances of the particulars case admit and the Officer shall not more than two days after the sale bring into court his report of the sale in the manner prescribed by rule 196.

*NOTE.—Sale of guns or other arms by public auction in execution.*—Whenever guns or other arms in respect of which licences have to be taken by purchasers under the Indian Arms Act, 1878 (Central Act XI of 1878) 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 Indian Arms Act, 1878 (H.C. Dis. 297 of 1900).

188. *Applicability of general rules about sale of property infra.*—Subject to the foregoing rules, the provisions of rules 189 to 201 relating to sale of property under order of court shall apply to all sales in execution of a decrees.

#### VII. *General Rules about sale of property under order of court.*

189. *Conduct of sale under order of court.*—Subject to the provisions of rules 181 to 187 (both inclusive) with respect to the sale of attached property, a sale by public auction of any property when directed in any suit or matter, shall be conducted in the manner prescribed hereunder.

190. The order for sale shall direct the party applying for the sale (hereinafter called "the applicant" to bring into court.)

(1) *Affidavits.*—An affidavit or affidavits by himself or some other person acquainted with the property, giving the particulars prescribed by rule 66 of Order XXI of the Code, and also stating what in his opinion is the best time and place of sale and method of advertising the same and the lots if any, into which the property should be divided;

(2) *Affidavit of fitness.*—If an officer of the court is not to be appointed, an affidavit as to the fitness of the proposed auctioneer or

(3) Where the property is immovable property situated within the limits of panchayat municipality or corporation an affidavit stating the taxes or other public dues if any due on the property sought to be sold; shall ordinarily be accompanied by a certificate from the panchayat municipality or corporation showing the particulars of such taxes or other public dues payable thereon unless ordered otherwise by the court.

(4) *Certificate of search.*—In the case of immovable property when search has been made under rule 191 certificate of the result of the search.

191. *Search of encumbrances.*—In the case of sale of immovable property the applicant shall cause a search to be made in the office of the Registrar of Assuarnces of the district on sub-district in which the property is situate. If a previous search has been made in the suit or matter the search shall be made from the date on which the previous search was made so that the whole period shall be not less than 12 years or if no search has been made then for a period of not less than 12 years (prior to the date of the execution application on which the sale is ordered)

NOTE.—In connection with a proposal of the High Court to amend rule 140 now rule 191 of the Civil Rules of Practice with regard to the period which should be covered by the encumbrance certificate by substituting the words "prior to the date of the execution application on which the sale is ordered" for the words "prior to the date of the order for sale" an objection has been raised that the amendment will be a source pf hardship and will also be impracticable in as much as Sub-Registrar's Offices which are generally situated far away from the court-house take nearly a month after the date of application to issue an encumbrance certificate and the certificate is issued only up to the date of the application for the certificate. It has been represented that it will be sufficient. If the certificate relates to the period upto the date of suit since all alienations subsequent to that date are pendente lite and will not be binding on the property as well as the auction purchaser. The Hon'ble the Judges however are of opinion that any rule requiring the production of encumbrance certificate must in order to comply with the provisions of the code be upto the date of the application for execution as clause (3) of rule 66 of Order XXI requires the application for execution to be accompanied with the necessary information as to encumbrances in the form of a verified statement. It is therefore obviously impossible to accept the view that the certificate need only be produced upto the date of the suit as it will contravene the provisions of the code.

There is nothing in the rules which required the production of the encumbfance certificate along with the execution application. The sale proclamation is settled some days after the application and it is always open to the party to file it before the date fixed for settling proclamation. The Subordinate Courts are therefore requested to fix the date for settling the sale proclamation with due regard to the time which will be required to produce the encumbrance certificate distance of the registration office and other circumstances. The Hon'ble the judges also observe that there is no prohibition against an encumbrance certificate being obtained until the date of the decree as soon it is passed and a supplemental certificate being obtained between the date of the decree and the date of the application for execution.

The subordinate courts are therefore requested to see to the strict observance of the instructions issued above with regard to the fixing of the date of sale proclamation.

192. *Matters to be determined by Court*—The court shall determine the lots, if any, in which the property shall be sold, the upset price of the property or of each lot in cases falling within the third proviso to Order XXI, Rule 66 (2) with reference to the probable market value thereof, the manner of advertising the sale ; and the probable expenses thereof and shall fix the date and place of sale and after giving notice to the judgement-debtor or other party to the suit or matter whose property is to be sold and hearing his objections if any, settle the proclamation of sale, as in Form No. 69 of the Forms and in Form No. 29 of Appendix "E" to the First schedule of the Code.

193. *Appointment of person to sell*—The Court may, if it is made to appear that a more advantageous sale can be had thereby or for other sufficient reason appoint a fit person, other than an officer of the court or a pleader, to sell the property ; and may fix as his remuneration a sum certain, or a percentage on the net sale proceeds. Such remuneration shall include all personal and travelling expenses but not the expenses of the sale.

**NOTE—Sale by Officers of court till Collectors are authorised**—Until the Government vests collectors generally or any Collector particularly, with the power of selling revenue paying land in execution of decrees, the court are to effect such sales by means of their own officers.

194. *Proclamation of sale*—The proclamation of sale, when settled by the judge, shall be signed by him and an order for sale shall then be made and the further hearing of the suit or matter shall be adjourned to a day not more than thirty-one days from the day fixed by the court for the sale.

195. *Leave to bid*—An application for leave to bid at the sale shall be supported by an affidavit setting forth any facts showing that an advantageous sale cannot otherwise be had and an undertaking shall be given by or on behalf of the applicant that in the event of his being declared the purchaser of the property, or of any lot or lots he will give credit, or will enter up satisfaction of the decree or order under which the sale is made, for the purchase money. Provided that if there are several decree holders entitled to ratable distribution the purchase money shall be paid into court.

196. *Conduct of Sale*—(1) The person appointed to sell the property shall conduct the sale in the manner prescribed by the code for the sale of attached property, and shall out of the deposit of sale moneys, as soon as the same are received by him purchase court-fee stamps to the amount of the poundage, if any, payable on the sale and shall bring the same into court, forthwith together with the balance of the deposit or sale moneys. If the applicant purchased the property with the leave of the court and is allowed to set-off the purchase money against any sum due to him, he shall pay the amount chargeable for poundage to the person appointed to sell the property as soon as he is declared to be the purchaser. The amount deducted or paid on account of poundage shall form part of the costs and expenses of the sale.

(2) Upon the completion of the sale, the person appointed to sell the property shall file in court his report of the sale as in Form No. 71.

**NOTE.—Members of Process Service Establishments not to attend sale except on duty :**

No member of the process Service Establishment of a district shall attend any sale held under the orders of a Civil Court in that district unless he has some duty to perform in connection with the sale ; nor shall he purchase or bid for any property directly or indirectly at a sale held under orders of a Civil Court of that district nor shall the officer conducting such a sale accept any bid by or on behalf of any member of the Process Service Establishment of the district

(H.C. Dis- 970 of 1907.)

197. An application under rule 89 of Order XXI of the Code shall be as in Form No. 72.

198. *Costs*—At the adjourned hearing, the court may make an order directing the payment to the applicant of the costs and expenses of the sale and to the person appointed to sell the property of his commission, if any, and providing for the application of the balance of the sale proceeds if under rule 81 of Order XXI, of the Code, a vesting order is required, the order shall also direct that the property sold shall vest in the purchaser.

199. *Payment of poundage etc , when sale set aside*—(1) If the sale is set aside under rule 89 of Order XXI of the Code, the court may make an order for payment by the judgement debtor of the poundage and other costs and interest, if any, not covered by the proclamation of sale.

(2) If the sale is set aside under rule 90 of Order XXI of the Code, the court shall determine whether any and what party is responsible therefor, and may order such party to pay the costs and expenses of the sale, and may make an order that any other party entitled to have the property sold may have the conduct of the sale and may make an order for the re-sale of the property.

(3) If the sale is set aside under rule 91 of Order XXI of the Code, the court may make an order for payment by the execution creditor of the poundage and other costs of the sale.

**NOTE**—The auction purchaser is entitled to the refund of the purchase money paid by him without any deductions on account of poundage in all the cases in which the sale is set aside for no fault of his.

(H.C. Roc. No. 6365/54-Bi., dated 26th March 1955.)

**200. Order of attachment or Certificate of sale to specify description of property.**—Any order effecting or raising an attachment of immovable property or a certificate of sale of immovable property passed or issued under the provisions of the Code shall specify as part of the description of the property, the survey number, if any, and the registration district or sub-district in which the same is situate.

**Note.—Copies of certificates to Registering Officers.**—(1) Section 89 (2) of the Indian Registration Act, 1908 (Central Act XVI of 1908) provides that every court granting a certificate under rule 94 of Order XXI of the Code, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate and such officer shall file the copy in his Book No. 1. The law, therefore, now provides, through the direct action of the Civil Court and of the registering Officer for the registration of a copy of the certificate of sale. It is no longer necessary to register the certificate itself. Such certificates do not operate as a conveyance of the property to which they relate.

(H.C. Cir. 66 of 1882.)

(2) It has been brought to the notice of the High Court that civil courts frequently allow great delay to occur before sending copies of sale certificates, to registering officers as required by section 89 (2) of the Indian Registration Act, 1908 (Central Act XVI of 1908). The attention of all District Judges, Subordinate Judges and District Munsifs is called to High Court Circular No. 66, dated 18th January 1882 and they are directed to see that copies of sale certificates are transmitted to the registering Officers with promptitude.

(H.C. Dis. 674 of 1904.)

(3) Where a court sale is finally set aside, the court setting it aside shall send a copy of the order to the officer in whose office the sale certificate has been filed to enable him to note on the copy of the instrument in his books the fact of such setting aside.

(H.C.P. Dis. 868 of 1938.)

**201. Default by applicant.**—If at any time, it is made to appear to the court that the applicant has failed to comply with any order of the court, or any of the provisions of the Code or these rules, or is not proceeding with due diligence, the court may make such order as to the application for sale for the suit or matter and the costs thereof as it thinks fit.

#### **VIII. Acceptance of Guarantee Societies as sureties :**

**202. (1)** Notwithstanding anything contained in the foregoing rules, in all cases, in which a court requires a party to a proceeding to execute a bond with one or more sureties a guarantee society duly approved by the High Court may be accepted as surety upon its joining in a bond with the person ordered to give security.

**Note.**—In cases where specific forms of surety bonds are not prescribed, courts are at liberty to adopt form Nos. 8 and 5 in Appendix III, E and F respectively of Part II, Volume II with such variations as will suit the circumstances of the case.

(H.C. Dis. 48 of 1927.)

(2) The High Court may, from time to time, after such inquiry as it deems sufficient and subject to such conditions as it may seem fit to impose by a notification in the Gazette declare the names of the guarantee societies together with the names of their duly authorised agents, if any, qualified to join in a bond within the meaning of the above sub-rule. The High Court may also for sufficient cause remove from the approved list the name of any such guarantee society or of any agent of any such guarantee society.

(3) *Procedure relating to execution and acceptance of bonds.*—The following procedure will be observed in the execution and acceptance of such bonds. In all cases the petitioner himself must nominate the guarantee Society which will stand surety for him and the bond should be executed by the petitioner and the accredited agent, if any, of the guarantee society before the officer concerned.

If the society has no such agent in the place where the bond would normally be executed, the petitioner should file a petition in court with a prayer for an order that the necessary bond be executed by that society before an Officer of the High Court. The mafussal court will then issue the bond for signature of the person to be guaranteed and afterwards transmit the bond to the High Court for the purpose of having it executed by the Guarantee Society.

(H.C. Dis. 68 and 1057 of 1927.)

#### **X. Notice to Surety.**

203. In any enquiry for the determination of the liability which has been guaranteed by a surety, the court shall give notice of enquiry to the surety by registered post. But the cost of his appearance shall be borne by the surety him himself unless the court otherwise directs.

### **CHAPTER X.**

#### **RECEIVERS.**

204. There shall be maintained for each district a panel of legal practitioners and other persons with suitable qualifications from among whom receivers shall be ordinarily be appointed by all courts within the district. The panel shall be maintained by the District Court.

205. The strength of the panel shall be fixed by the District Judge who may vary it from time to time at his discretion.

206. The panel shall as far as possible include at least one practitioner representation from each court in the District. Appointment to and removal from the panel shall be by the District Judge in consultation with the Subordinate Judge of the District Munsif of the court which is represented by the practitioner.

207. Every person recommended to the panel shall on such appointments furnish security for the sum of Rs. 2,000 in favour of the District court to secure his liability in respect of all receivership to which he may be appointed. He shall furnish one or other of the following kinds of security: (a) immovable property; (b) a fidelity bond by a guarantee society duly approved by the High Court; (c) cash; (d) a Government security; (e) fixed deposit or cash deposit in the post Office Savings Bank; (f) Post Office cash-certificate; (g) National Savings Certificate; (h) Bonds of the Government of Karnataka, Travancore, Cochin of the State of Travancore-Cochin; (i) Bonds or Debentures issued by Local authorities in India as defined in section 3 (31) of the General Clauses Act, 1897 (Central Act X of 1897) (Local authorities include Port Trusts). The Security bond shall be in one of the form Nos 75, 76. and 77. On such security being furnished his name shall be entered in the panel. Such security shall be irrespective of the security if any that may be required of the receiver by the court under rule 3 (a) of Order XI.

208. Unless otherwise ordered, a receiver shall file his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months from such date, shall be filed within ten days after the expiry of the said period of three months and subsequent accounts brought down to the end of three months period for which they are filed shall be filed within ten days after the expiry of the said period of three months.

209. The accounts of the receiver shall be in the form prescribed and shall be verified by the affidavit in the form prescribed. Items shall be numbered consecutively.

210. Where a receiver has not since the date of his appointment or since the date of his last account as the case may be received or paid any money he shall file an affidavit to that effect on or before the date on which he has to file accounts.

211. The receiver shall maintain true and regular accounts of the receivership and shall in particular maintain a cash book in which shall be entered from day-to-day all receipts and payments and also a ledger. He shall also maintain a counterfoil receipt book with the leaves numbered serially in print form which shall be given as far as possible all receipts for payments made to the receiver.

212. Unless the court otherwise orders the receiver shall as soon as may be after his appointment open an account in the name of the receivership in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act 1934 as the court may direct and shall deposit into it all monies received in the course of the receivership immediately on receipts thereof save any sum that may be required for current expenses. All payments by the receiver shall as far as possible, be made by cheques drawn on the account.

213. If a receiver fails to maintain true and regular accounts or fails to file his accounts into court on the due date without proper cause or unduly delay the passing of his account by failing to appear before the Passing Officer or improperly retain any cash in his hands the court may disallow the whole or any portion of the remuneration due to him for the period of the account with reference to which default is committed and may also charge interest at 12 per cent per annum on the monies improperly retained by him for the period of such retention without prejudice to any other proceedings which might be taken against the receiver.

(P. Dis. No. 577 of 1944.)

(True copy).

High Court of Judicature, Madras,  
1987.

S. JANARTHANAM,  
*Registrar.*