

THE INDIAN PENAL CODE

ARRANGEMENT OF SECTIONS

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- 410. Stolen property.
- 411. Dishonestly receiving stolen property.
- 412. Dishonestly receiving property stolen in the commission of a dacoity.
- 413. Habitually dealing in stolen property.
- 414. Assisting in concealment of stolen property.

Of Cheating

- 415. Cheating.
- 416. Cheating by personation.
- 417. Punishment for cheating.
- 418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- 419. Punishment for cheating by personation.
- 420. Cheating and dishonestly inducing delivery of property.

Of Fraudulent Deeds and Dispositions of Property

- 421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditor.
- 422. Dishonestly or fraudulently preventing debt being available for creditors.
- 423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
- 424. Dishonest or fraudulent removal or concealment of property.

Of Mischief

- 425. Mischief.
- 426. Punishment for mischief.
- 427. Mischief causing damage to the amount of fifty rupees.
- 428. Mischief by killing or maiming animal of the value of ten rupees.
- 429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.
- 430. Mischief by injury to works of irrigation or by wrongfully diverting water.
- 431. Mischief by injury to public road, bridge, river or channel.
- 432. Mischief by causing inundation or obstruction to public drainage attended with damage.
- 433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.
- 434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.
- 435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.
- 436. Mischief by fire or explosive substance with intent to destroy house, etc.
- 437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.
- 438. Punishment for the mischief described in section 437 committed by fire or explosive substance.
- 439. Punishment for intentionally running vessel aground, or ashore with intent to commit theft, etc.
- 440. Mischief committed after preparation made for causing death or hurt.

SECTIONS

- 441. Criminal trespass.
- 442. House-trespass.
- 443. Lurking house-trespass.
- 444. Lurking house-trespass by night.
- 445. House-breaking.
- 446. House-breaking by night.
- 447. Punishment for criminal trespass.
- 448. Punishment for house-trespass.
- 449. House-trespass in order to commit offence punishable with death.
- 450. House-trespass in order to commit offence punishable with imprisonment for life.
- 451. House-trespass in order to commit offence punishable with imprisonment.
- 452. House-trespass after preparation for hurt, assault or wrongful restraint.
- 453. Punishment for lurking house-trespass or house-breaking.
- 454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.
- 455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.
- 456. Punishment for lurking house-trespass or house-breaking by night.
- 457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.
- 458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.
- 459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
- 460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.
- 461. Dishonestly breaking open receptacle containing property.
- 462. Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

- 463. Forgery.
- 464. Making a false document.
- 465. Punishment for forgery.
- 466. Forgery of record of Court or of public register, etc.
- 467. Forgery of valuable security, will, etc.
- 468. Forgery for purpose of cheating.
- 469. Forgery for purpose of harming reputation.
- 470. Forged document.
- 471. Using as genuine a forged document or electronic record.
- 472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.
- 473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.
- 474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.
- 475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.
- 476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.
- 477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.
- 477A. Falsification of accounts.

Of Property and Other Marks

- 478. *[Repealed.]*
- 479. Property mark.
- 480. *[Repealed.]*
- 481. Using a false property mark.
- 482. Punishment for using a false property mark.
- 483. Counterfeiting a property mark used by another.
- 484. Counterfeiting a mark used by a public servant.
- 485. Making or possession of any instrument for counterfeiting a property mark.
- 486. Selling goods marked with a counterfeit property mark.
- 487. Making a false mark upon any receptacle containing goods.
- 488. Punishment for making use of any such false mark.
- 489. Tampering with property mark with intent to cause injury.

SECTIONS

- 489A. Counterfeiting currency-notes or bank-notes.
- 489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.
- 489C. Possession of forged or counterfeit currency notes or bank-notes.
- 489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.
- 489E. Making or using documents resembling currency-notes or bank-notes.

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

- 490. *[Repealed.]*
- 491. Breach of contract to attend on and supply wants of helpless person.
- 492. *[Repealed.]*

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

- 493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
- 494. Marrying again during life-time of husband or wife.
- 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.
- 496. Marriage ceremony fraudulently gone through without lawful marriage.
- 497. Adultery.
- 498. Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXA OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

- 498A. Husband or relative of husband of a woman subjecting her to cruelty.

CHAPTER XXI OF DEFAMATION

- 499. Defamation.
 - Imputation of truth which public good requires to be made or published.
 - Public conduct of public servants.
 - Conduct of any person touching any public question.
 - Publication of reports of proceedings of Courts.
 - Merits of case decided in Court or conduct of witnesses and others concerned.
 - Merits of public performance.
 - Censure passed in good faith by person having lawful authority over another.
 - Accusation preferred in good faith to authorised person.
 - Imputation made in good faith by person for protection of his or other's interests.
 - Caution intended for good of person to whom conveyed or for public good.
- 500. Punishment for defamation.
- 501. Printing or engraving matter known to be defamatory.
- 502. Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII OR CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

- 503. Criminal intimidation.
- 504. Intentional insult with intent to provoke breach of the peace.
- 505. Statements conducing to public mischief.
 - Statements creating or promoting enmity, hatred or ill-will between classes.
 - Offence under sub-section (2) committed in place of worship, etc.

SECTIONS

506. Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, etc.

507. Criminal intimidation by an anonymous communication.

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

509. Word, gesture or act intended to insult the modesty of a woman.

510. Misconduct in public by a drunken person.

CHAPTER XXIII OF ATTEMPTS OF COMMIT OFFENCES

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

THE INDIAN PENAL CODE

ACT NO. 45 OF 1860¹

[6th October, 1860.]

CHAPTER I

INTRODUCTION

Preamble.—WHEREAS it is expedient to provide a general Penal Code for ²[India]; It is enacted as follows:—

1. Title and extent of operation of the Code.—This Act shall be called the Indian Penal Code, and shall ³[extend to the whole of India ⁴[except the State of Jammu and Kashmir]].

2. Punishment of offences committed within India.—Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within ⁵[India] ⁶****.

3. Punishment of offences committed beyond, but which by law may be tried within, India.—Any person liable, by any ⁷[Indian law], to be tried for an offence committed beyond ⁸[India] shall be dealt with according to the provisions of this Code for any act committed beyond ⁸[India] in the same manner as if such act had been committed within ⁵[India].

⁹**[4. Extension of Code to extra-territorial offences.**—The provisions of this Code apply also to any offence committed by—

¹⁰[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.]

¹¹[(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

¹²[*Explanation.*—In this section—

(a) the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code;

1. The Indian Penal Code has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared in force in—

Sonthal Parganas, by the Sonthal Parganas Settlement Regulation 1872 (3 of 1872) s. 2;
Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2 and the Sch.;
Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and the Sch; and
Angul District, by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and the Sch.

It has been declared under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely: the United Provinces Tarai Districts, *see* Gazette of India, 1876, Pt. I, p. 505; the Districts of Hazaribagh, Lohardaga [now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1881, Pt. I, p. 504.

It has been extended under s. 5 of the same Act to the Lushai Hills—*see* Gazette of India, 1898, Pt. II, p. 345.

The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I.; to Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I and to Lakshadweep by Reg. 8 of 1965, s. 3 and Sch.

2. The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. The Original words have successively been amended by Act 12 of 1891, s. 2 and Sch. I, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.

4. Subs. by Act 3 of 1951, s. 3 and the Sch., for “except Part B States”.

5. The original words “the said territories” have successively been amended by the A.O. 1937, the A.O. 1948, the A.O 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

6. The words and figures “on or after the said first day of May, 1861” rep. by Act 12 of 1891, s. 2 and the First Sch.

7. Subs. by the A.O. 1937, for “law passed by the Governor General of India in Council”.

8. The Original words “the limits of the said territories” have successively been amended by the A.O. 1937, the A.O.1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

9. Subs. by Act 4 of 1898, s. 2, for section 4.

10. Subs. by the A.O. 1950, for cls. (1) to (4).

11. Ins. by Act 10 of 2009, s. 51 (w.e.f. 27-10-2009).

12. Subs. by s. 51, *ibid.*, for the *Explanation* (w.e.f. 27-10-2009).

(b) the expression “computer resource” shall have the meaning assigned to it in clause (k) of sub-section (I) of section 2 of the Information Technology Act, 2000 (21 of 2000);]

¹[*Illustration*]

²***A, ³[who is ⁴[a citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in ⁵[India] in which he may be found.

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⁷[**5. Certain laws not to be affected by this Act.**—Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.]

CHAPTER II

GENERAL EXPLANATIONS

6. Definitions in the Code to be understood subject to exceptions.—Throughout this Code every definition of an offence, every penal provision, and every *illustration* of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled “General Exceptions”, though those exceptions are not repeated in such definition, penal provision, or *illustration*.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it”.

7. Sense of expression once explained.—Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

8. Gender.—The pronoun “he” and its derivatives are used of any person, whether male or female.

9. Number.—Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. “Man”. “Woman”.—The word “man” denotes a male human being of any age; the word “woman” denotes a female human being of any age.

11. “Person”.—The word “person” includes any Company or Association or body of persons, whether incorporated or not.

12. “Public”.—The word “public” includes any class of the public or any community.

13. [*Definition of “Queen”.*] Omitted by the A. O. 1950.

⁸[**14. “Servant of Government”.**—The words “servant of Government” denote any officer or servant servant continued, appointed or employed in India by or under the authority of Government.]

15. [*Definition of “British India”.*] Rep. by the A. O. 1937.

16. [*Definition of “Government of India”.*] Rep., *ibid*.

1. Subs. by Act 36 of 1957, s. 3 and Sch, II, for “*Illustrations*”

2. The brackets and letter “(a)” omitted by s. 3 and the Second Sch., *ibid*.

3. Subs. by the A.O. 1948, for “a coolie, who is a Native Indian subject”

4. Subs. by the A.O. 1950, for “a British subject of Indian domicile”.

5. The words “British India” have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

6. *Illustrations* (b), (c) and (d) omitted by the A.O. 1950.

7. Subs., *ibid*., for section 5.

8. Subs., *ibid*., for section 14.

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Ninth.—Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of ¹[the Government], or to make any survey, assessment or contract on behalf of ¹[the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of ¹[the Government], or to make, authenticate or keep any document relating to the pecuniary interests of ¹[the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of ¹[the Government] ^{2***}.

³[*Eleventh*.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

Illustration

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

³[*Explanation 3.*—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

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23. “Wrongful gain”.—“Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss”.—“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

1. Subs. by the A.O. 1950, for "the Crown" which had been subs. by the A.O. 1937, for "Government".

2. Certain words omitted by Act 40 of 1964, s. 2.

3. Ins. by Act 39 of 1920, s. 2.

4. Subs. by Act 40 of 1964, s. 2, for Cl. Twelfth.

5. *Explanation* 4 omitted by Act 39 of 1920, s. 2.

Gaining wrongfully/Losing wrongfully.—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. “Dishonestly”.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

25. “Fraudulently”.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. “Reason to believe”.—A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

27. “Property in possession of wife, clerk or servant”.—When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. “Counterfeit”.—A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

¹[*Explanation 1.*—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

29. “Document”.—The word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words “pay to the holder” or words to that effect had been written over the signature.

²[**29A. “Electronic record”.**—The words “electronic record” shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

30. “Valuable security”.—The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or

1. Subs. by Act 1 of 1889, s. 9, for the *Explanation*.

2. Ins. by Act 21 of 2000, s. 91 and the First Sch. (w.e.f. 17-10-2000).

released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the unlawful holder of it, the endorsement is a “valuable security”.

31. “A will”.—The words “a will” denote any testamentary document.

32. Words referring to acts include illegal omissions.—In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. “Act”. “Omission”.—The word “act” denotes as well as series of acts as a single act: the word “omission” denotes as well a series of omissions as a single omission.

¹**[34. Acts done by several persons in furtherance of common intention.**—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.—Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission.—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence.—When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects the several doses of poison so administered to him. Here A and B intentionally cooperate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

38. Persons concerned in criminal act may be guilty of different offences.—Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

1. Subs. by Act 27 of 1870, s. 1, for s. 34.

39. “Voluntarily”.—A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

¹**[40. “Offence”.**—Except in the ²[Chapters] and sections mentioned in clauses 2 and 3 of this section, the word “offence” denotes a thing made punishable by this Code.

In Chapter IV, ³[Chapter VA] and in the following sections, namely, sections ⁴[64, 65, 66, ⁵[67], 71], 109, 110, 112, 114, 115, 116, 117,⁶[118, 119 and 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word “offence” denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

41. “Special law”.—A “special law” is a law applicable to a particular subject.

42. “Local law”.—A “local law” is a law applicable only to a particular part of ⁷[⁸***⁹[India]].

43. “Illegal”. “Legally bound to do”.—The word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be “legally bound to do” whatever it is illegal in him to omit.

44. “Injury”.—The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. “Life”.—The word “life” denotes the life of a human being, unless the contrary appears from the context.

46. “Death”.—The word “death” denotes the death of a human being unless the contrary appears from the context.

47. “Animal”.—The word “animal” denotes any living creature, other than a human being.

48. “Vessel”.—The word “vessel” denotes anything made for the conveyance by water of human beings or of property.

49. “Year”. “Month”.—Wherever the word “year” or the word “month” is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. “Section”.—The word “section” denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51. “Oath”.—The word “oath” includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. “Good faith”.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

1. Subs. by Act 27 of 1870, s. 2, for section 40.

2. Subs. by Act 8 of 1930, s. 2 and the First Sch., for “Chapter”.

3. Ins. by Act 8 of 1913, s. 2.

4. Ins. by Act 8 of 1882, s. 1.

5. Ins. by Act 10 of 1886, s. 21 (I).

6. Ins. by Act 10 of 2009, s. 51 (w.e.f. 27-10-2009).

7. Subs. by the A.O. 1948, for “British India”.

8. The words “the territories comprised in” omitted by Act 48 of 1952, s. 3 and the Second Sch.

9. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the States” which had been subs. by the A.O. 1950, for “the Provinces”.

¹[**52A. “Harbour”**.—Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

CHAPTER III
OF PUNISHMENTS

53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are—

First.—Death;

²[*Secondly*.—Imprisonment for life;]

$$3_* \quad \quad \quad * \quad \quad \quad * \quad \quad \quad * \quad \quad \quad *$$

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

4[53A. Construction of reference to transportation.—(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to “transportation for life” in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to “imprisonment for life”.

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, ⁵[1955 (26 of 1955)], the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to “transportation” in any other law for the time being in force shall,—

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

54. Commutation of sentence of death.—In every case in which sentence of death shall have been passed, ⁶[the appropriate Government] may, without the consent of the offender, commute the punishment punishment for any other punishment provided by this Code.

55. Commutation of sentence of imprisonment for life.—In every case in which sentence of ⁷[imprisonment] for life shall have been passed, ⁸[the appropriate Government] may, without the consent

1. Ins. by Act 8 of 1942, s. 2.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “*Secondly.—Transportation*” (w.e.f. 1-1-1956).

3. Cl. *Thirdly* omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

4. Ins. by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

5. Subs. by Act 36 of 1957, s. 3 and the Second Sch., for "1954".

6. Subs. by the A.O. 1950, for “the *Central Government or the Provincial Government of the Province* within which the offender shall have been sentenced”. The words in italics were subs. by the A.O. 1937, for “the Government of India or the Government of the place”.

7. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

8. Subs. by the A.O. 1950, for "*the Provincial Government of the Province* within which the offender shall have been sentenced".
The words in italics were subs. by the A.O. 1937, for "the Government of India or the Government of the place".

consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

¹**[55A. Definition of “appropriate Government”].**—In sections fifty-four and fifty-five the expression “appropriate Government” means,—

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]

56. [*Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.*] Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949) (w. e. f. 6-4-1949).

57. Fractions of terms of punishment.—In calculating fractions of terms of punishment, ²[imprisonment] for life shall be reckoned as equivalent to ²[imprisonment] for twenty years.

58. [*Offenders sentenced to transportation how dealt with until transported.*] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and the Sch. (w.e.f. 1-1-1956).

59. [*Transportation instead of imprisonment.*] Rep. by s.117 and the Sch., *ibid.* (w.e.f. 1-1-1956).

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.—In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. [*Sentence of forfeiture of property.*] Rep. by the Indian Penal Code (Amendment) Act, 1921 (16 of 1921), s. 4.

62. [*Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.*] Rep. by s. 4 *ibid.*

63. Amount of fine.—Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. Sentence of imprisonment for non-payment of fine.—³[In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable ⁴[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine.]

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.—The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. Description of imprisonment for non-payment of fine.—The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

1. Subs. by the A. O 1950. Earlier ins by the A. O. 1937.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation” (w.e.f. 1-1-1956).

3. Subs. by Act 8 of 1882, s. 2, for “In every case in which an offender is sentenced to a fine”.

4. Ins. by Act 10 of 1886, s. 21 (2).

67. Imprisonment for non-payment of fine, when offence punishable with fine only.—If the offence be punishable with fine only, ¹[the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68. Imprisonment to terminate on payment of fine.—The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine.—If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. Fine leviable within six years, of during imprisonment. Death not to discharge property from liability.—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

71. Limit of punishment of offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

²[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences].

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But, if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.—In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

1. Ins. by Act 8 of 1882, s. 3.

2. Added by s. 4, *ibid*.

73. Solitary confinement.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and¹[shall not exceed one] year

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

²[**75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.**—Whoever, having been convicted,—

(a) by a Court in ³[India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, ⁴***

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shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to ⁶[imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

CHAPTER IV

GENERAL EXCEPTIONS

76. Act done by a person bound, or by mistake of fact believing himself bound, by law.—Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Act of Judge when acting judicially.—Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Act done pursuant to the judgment or order of Court.—Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

1. Subs. by Act 8 of 1862, s. 5, for “be less than a”.

2. Subs. by Act 3 of 1910, s. 2, for section 75.

3. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. The word “or” omitted by Act 3 of 1951, s. 3 and the Sch.

5. Cl. (b) omitted by s. 3 and the Sch., *ibid*.

6. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

79. Act done by a person justified, or by mistake of fact believing himself, justified, by law.—Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Accident in doing a lawful act.—Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Act of a child under seven years of age.—Nothing is an offence which is done by a child under seven years of age.

83. Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Act of a person incapable of judgment by reason of intoxication caused against his will.—Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.—In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.—Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88. Act not intended to cause death, done by consent in good faith for person's benefit.—Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.—Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided—

Provisos. *First.*—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. Exclusion of acts which are offences independently of harm cause.—The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Act done in good faith for benefit of a person without consent.—Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Provisos. *First.*—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housestop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. Communication made in good faith.—No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Act to which a person is compelled by threats.—Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Act causing slight harm.—Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence

96. Things done in private defence.—Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.—Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. Right of private defence against the act of a person of unsound mind, etc.—When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. Acts against which there is no right of private defence.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100. When the right of private defence of the body extends to causing death.—The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

¹[*Seventhly.*—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.]

101. When such right extends to causing any harm other than death.—If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. Commencement and continuance of the right of private defence of the body.—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103. When the right of private defence of property extends to causing death.—The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. When such right extends to causing any harm other than death.—If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

105. Commencement and continuance of the right of private defence of property.—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

1. Ins. by Act 13 of 2013, s. 2 (w.e.f. 3-2-2013).

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. Right of private defence against deadly assault when there is risk of harm to innocent person.—If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V

OF ABETMENT

107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor.—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A consents with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

¹[108A. **Abetment in India of offences outside India.**—A person abets an offence within the meaning of this Code who, in ²[India], abets the commission of any act without and beyond ²[India] which would constitute an offence if committed in ²[India].

Illustration

A, in ²[India], instigates B, a foreigner in Goa, to commit a murder in Goa, A is guilty of abetting murder.]

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

1. Added by Act 4 of 1898, s. 3.

2. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Punishment of abetment if person abetted does act with different intention from that of abettor.—Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. Liability of abettor when one act abetted and different act done.—When an Act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. Abettor when liable to cumulative punishment for act abetted and for act done.—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitute a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.—When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Abettor present when offence is committed.—Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Abetment of offence punishable with death or imprisonment for life.—if offence not committed.—Whoever abets the commission of an offence punishable with death or ¹[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence.—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or ¹[imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Abetment of offence punishable with imprisonment—if offence be not committed.—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Abetting commission of offence by the public or by more than ten persons.—Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Concealing design to commit offence punishable with death or imprisonment for life.—Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or ¹[imprisonment for life],

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

¹[voluntarily conceals by any act or illegal omission, or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design,

if offence be committed; if offence be not committed.—shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Public servant concealing design to commit offence which it is his duty to prevent.—Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

¹[voluntarily conceals, by any act or illegal omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed.—shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc.—or, if the offence be punishable with death or ²[imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

if offence be not committed.—or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Concealing design to commit offence punishable with imprisonment.—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed; if offence be not committed.—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

³[CHAPTER VA

CRIMINAL CONSPIRACY

120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

1. Subs. by Act 10 of 2009, s. 51, for “voluntarily conceals, by any act or illegal omission, the existence of a design” (w.e.f. 27-10-2009).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

3. Ins. by Act 8 of 1913, s. 3.

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ¹[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

CHAPTER VI

OF OFFENCES AGAINST THE STATE

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.—Whoever wages war against the ²[Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or ³[imprisonment for life] ⁴[and shall also be liable to fine].

⁵[*Illustration*]

⁶***A joins an insurrection against the ²[Government of India]. A has committed the offence defined in this section.

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⁸[**121A. Conspiracy to commit offences punishable by section 121.**—Whoever within or without ⁹[India] conspires to commit any of the offences punishable by section 121, ¹⁰*** or conspires to overawe, by means of criminal force or the show of criminal force, ¹¹[the Central Government or any ¹²[State] Government ¹³***], shall be punished with ¹⁴[imprisonment for life], or with imprisonment of either description which may extend to ten years, ¹⁵[and shall also be liable to fine].

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

122. Collecting arms, etc., with intention of waging war against the Government of India.—Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the ²[Government of India], shall be punished with

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation” (w.e.f. 1-1-1956).

2. Subs. by the A. O. 1950, for “Queen”.

3. Subs. by 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

4. Subs. by Act 16 of 1921, s. 2, for “and shall forfeit all his property”.

5. Subs. by Act 36 of 1957, s. 3 and the Second Sch., for “*Illustrations*”

6. The brackets and letter “(a)” omitted by s. 3 and the Second Sch., *ibid*.

7. *Illustration (b)* omitted, by the A. O. 1950.

8. Ins. by Act 27 of 1870, s. 4.

9. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

10. The words “or to deprive the Queen of the sovereignty of the Provinces or of any part thereof” omitted by the A. O. 1950.

11. Subs. by the A. O. 1937, for “the G. of I. or any I. G”.

12. Subs. by the A. O. 1950, for “Provincial”.

13. The words “or the Government of Burma” omitted by the A. O. 1948.

14. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life or any shorter term” (w.e.f. 1-1-1956).

15. Ins. by Act 16 of 1921, s. 3.

¹[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, ²[and shall also be liable to fine].

123. Concealing with intent to facilitate design to wage war.—Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the ³[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.—Whoever, with the intention of inducing or compelling the ⁴[President] of India, or ⁵[Governor ^{6***}] of any ⁷[State], ^{8***} ^{9***} ^{10***} to exercise or refrain from exercising in any manner any any of the lawful powers of such ¹¹[President or ⁵[Governor ^{6***}]],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such ¹¹[President or ⁵[Governor ^{6***}]],

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹²[**124A. Sedition.**—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, ^{13***} the Government established by law in ¹⁴[India], ^{15***} shall be punished with ¹⁶[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

125. Waging war against any Asiatic Power in alliance with the Government of India.—Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the ³[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with ¹[imprisonment for life], to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Subs. by Act 16 of 1921, s. 2, for “and shall forfeit all his property”.

3. Subs. by the A. O. 1950, for “Queen”.

4. Subs. by the *ibid.*, for “Governor General”.

5. Subs. by Act 3 of 1951, s. 3 and the Sch., for “Governor”.

6. The words “or Rajpramukh” omitted by the A. O. 1956.

7. Subs. by the A. O. 1950, for “Province” which had been subs. by the A. O. 1937, for “Presidency”.

8. The words “or a Lieutenant-Governor” omitted by the A. O. 1937.

9. The words “or a Member of the Council of the Governor General of India” omitted by the A.O. 1948.

10. The words “or of the Council of any Presidency” omitted by the A. O. 1937.

11. The words “Governor General, Governor, Lieutenant-Governor or Member of Council” have successively been amended by the A.O. 1937, the A. O. 1948 and the A. O. 1950 to read as above.

12. Ins. by Act 27 of 1870, s. 5 and subs. by Act 4 of 1898, s. 4, for s. 124A.

13. The words “Her Majesty or” omitted by the A.O. 1950. The words “or the Crown Representative” ins. after the word “Majesty” by the A. O. 1937 were omitted by the A. O. 1948.

14. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

15. The words “or British Burma” ins. by the A. O. 1937 and omitted by the A. O. 1948.

16. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life or any shorter term” (w.e.f. 1-1-1956).

126. Committing depredation on territories of Power at peace with the Government of India.—Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the ¹[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127. Receiving property taken by war or depredation mentioned in sections 125 and 126.—Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Public servant voluntarily allowing prisoner of state or war to escape.—Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with ²[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Public servant negligently suffering such prisoner to escape.—Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Aiding escape of, rescuing or harbouring such prisoner.—Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in ³[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, ⁴[NAVY AND AIR FORCE]

131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.—Whoever abets the committing of mutiny by an officer, soldier, ⁵[sailor or airman], in the Army, ⁶[Navy or Air Force] of the ¹[Government of India] or attempts to seduce any such officer, soldier, ⁵[sailor or airman] from his allegiance or his duty, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁷[*Explanation.*—In this section the words “officer”, ⁸[“soldier”, ⁹[“sailor”] and “airman”] include any any

1. Subs. by the A. O. 1950, for “Queen”.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

3. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “and Navy”.

5. Subs. by s. 2 and the First Sch., *ibid.*, for “or sailor”.

6. Subs. by s. 2 and the First Sch., *ibid.*, for “or Navy”.

7. Ins. by Act 27 of 1870, s. 6.

8. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “and soldier”

9. Ins. by Act 35 of 1934, s. 2 and Sch.

person subject to the ¹[Army Act, ²[the Army Act, 1950 (46 of 1950)], ³[the Naval Discipline Act, ^{4***the}
^{4***the} ⁵Indian Navy (Discipline) Act, 1934 (34 of 1934)] ⁶[the Air Force Act or ⁷[the Air Force Act,
1950 (45 of 1950)]]], as the case may be].]

132. Abetment of mutiny, if mutiny is committed in consequence thereof.—Whoever abets the committing of mutiny by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with ¹¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.—Whoever abets an assault by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Abetment of such assault, if the assault committed.—Whoever abets an assault by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Abetment of desertion of soldier, sailor or airman.—Whoever, abets the desertion of any officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Harboursing deserter.—Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], has deserted, harbours such officer, soldier, ⁸[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Deserter concealed on board merchant vessel through negligence of master.—The master or person in charge of a merchant vessel, on board of which any deserter from the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Abetment of act of insubordination by soldier, sailor or airman.—Whoever abets what he knows to be an act of insubordination by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force], of the ¹⁰[Government of India], shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

1. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “Articles or War for the better government of Her Majesty’s Army, or to the Articles of War contained in Act No. 5 of 1869”.

2. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the Indian Army Act, 1911”.

3. Ins. by Act 35 of 1934, s. 2 and the Sch.

4. The words “or that Act as modified by” omitted by the A. O. 1950.

5. Now *see* the Navy Act, 1957 (62 of 1957).

6. Subs. by Act 14 of 1932, s. 130 and the Sch., for “or the Air Force Act”.

7. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the Indian Air Force Act, 1932”.

8. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “or sailor”.

9. Subs. by s. 2 and the First Sch., *ibid.*, for “or Navy”.

10. Subs. by the A. O. 1950, for “Queen”.

11. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

¹**138A.** [*Application of foregoing sections to the Indian Marine Service.*] Rep. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

139. Persons subject to certain Acts.—No person subject to ²[the Army Act, ³[the Army Act, 1950 (46 of 1950)], the Naval Discipline Act, ⁴[⁵*** ⁶[the Indian Navy (Discipline) Act, 1934 (34 of 1934)], ⁷[the Air Force Act or ⁸[the Air Force Act, 1950 (45 of 1950)]]], is subject to punishment under this Code for any of the offences defined in this Chapter.

140. Wearing garb or carrying token used by soldier, sailor or airman.—Whoever, not being a soldier, ⁹[sailor or airman] in the Military, ¹⁰[Naval or Air] service of the ¹¹[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, ⁹[sailor or airman] with the intention that it may be believed that he is such a soldier, ⁹[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII

OFFENCES AGAINST THE PUBLIC TRANQUILITY

141. Unlawful assembly.—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, ¹²[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Being member of unlawful assembly.—Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Punishment.—Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Joining unlawful assembly armed with deadly weapon.—Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 14 of 1887, s. 79.

2. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy”.

3. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the Indian Army Act, 1911”.

4. Ins. by Act 35 of 1934, s. 2 and the Sch.

5. The words “or that Act as modified by” omitted by the A. O. 1950.

6. Now see the Navy Act, 1957 (62 of 1957).

7. Subs. by Act 14 of 1932, s. 130 and Sch., for “or the Air Force Act”.

8. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the Indian Air Force Act, 1932”.

9. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “or sailor”.

10. Subs. by s. 2 and the First Sch., *ibid.*, for “or Naval”.

11. Subs. by the A. O. 1950, for “Queen”.

12. Subs. by the A. O. 1950, for “the Central or any Provincial Government or Legislature”.

145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.—Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Rioting, armed with deadly weapon.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Hiring, or conniving at hiring, of persons to join unlawful assembly.—Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.—Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Assaulting or obstructing public servant when suppressing riot, etc.—Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Wantonly giving provocation with intent to cause riot—if rioting be committed; if not committed.—Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

¹[**153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

1. Subs. by Act 35 of 1969, s. 2, for section 153A.

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, ¹[or]

¹[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) **Offence committed in place of worship, etc.**—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

²[**153AA. Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.**—Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation.—“Arms” means articles of any description designed or adapted as weapons for offence or defence and includes firearms, sharp edged weapons, lathis, *dandas* and sticks].

¹[**153B. Imputations, assertions prejudicial to national integration.**—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

154. Owner or occupier of land on which an unlawful assembly is held.—Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

1. Ins. by Act 31 of 1972, s. 2.

2. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Liability of person for whose benefit riot is committed.—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Liability of agent of owner or occupier for whose benefit riot is committed.—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Harboursing persons hired for an unlawful assembly.—Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Being hired to take part in an unlawful assembly or riot.—Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

or to go armed.—and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray”.

160. Punishment for committing affray.—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX

OFOFFENCES BY OR RELATING TO PUBLIC SERVANTS

161 to 165A. *Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), s. 31.*

166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

¹[**166A. Public servant disobeying direction under law.**—Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

166B. Punishment for non-treatment of victim.—Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as ²[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Public servant unlawfully engaging in trade.—Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Public servant unlawfully buying or bidding for property.—Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170. Personating a public servant.—Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

171. Wearing garb or carrying token used by public servant with fraudulent intent.—Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

³[CHAPTER IXA

OF OFFENCES RELATING TO ELECTIONS

171A. “Candidate”, “Electoral right” defined.—For the purposes of this Chapter—

⁴[(a) “candidate” means a person who has been nominated as a candidate at any election;]

1. Ins. by Act 13 of 2013, s. 3 (w.e.f. 03-02-2013).

2. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

3. Ins. by Act 39 of 1920, s. 2.

4. Subs. by Act 40 of 1975, s. 9, for cl. (a).

(b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B. Bribery.—(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171C. Undue influence at elections.—(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D. Personation at elections.—Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

¹[Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as a proxy for such elector.]

171E. Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F. Punishment for undue influence or personation at an election.—Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

1. The proviso ins. by Act 24 of 2003, s. 5 (w.e.f. 22-9-2003).

171G. False statement in connection with an election.—Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Failure to keep election accounts.—Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

CHAPTER X

OF CONTEMPTSOFTHE LAWFUL AUTHORITYOF PUBLIC SERVANTS

172. Absconding to avoid service of summons or other proceeding.—Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to ¹[produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Preventing service of summons or other proceeding, or preventing publication thereof.—Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or ²[to produce a document or electronic record in a Court of Justice] with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Non-attendance in obedience to an order from public servant.—Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

1. Subs. by Act 21 of 2000, s. 91 and the First Sch., for “produce a document in a Court of Justice” (w.e.f. 17-10-2000).

2. Subs. by s. 91 and the First Sch., *ibid.*, for “to produce a document in a Court of Justice” (w.e.f. 17-10-2000).

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the ¹[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a ²[District Judge], as a witness, in obedience to a summons issued by that ²[District Judge] intentionally omits to appear. A has committed the offence defined in this section.

³**[174A .Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—**Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

175. Omission to produce document to public servant by person legally bound to produce it.—Whoever, being legally bound to produce or deliver up any ⁴[document or electronic record] to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the ⁴[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a ⁵[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

176. Omission to give notice or information to public servant by person legally bound to give it.—Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

⁶[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

177. Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

1. Subs. by the A. O. 1950, for "Supreme Court".

2. Subs. *ibid.*, for "Zila Judge".

3. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

4. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "document" (w.e.f. 17-10-2000).

5. Subs. by the A.O. 1950, for "Zila Court".

6. Added by Act 22 of 1939, s. 2.

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, ¹Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

²[*Explanation.*—In section 176 and in this section the word “offence” includes any act committed at any place out of ³[India], which, if committed in ³[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.]

178. Refusing oath or affirmation when duly required by public servant to make it.—Whoever refuses to bind himself by an oath ⁴[or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Refusing to answer public servant authorised to question.—Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Refusing to sign statement.—Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.—Whoever, being legally bound by an oath ⁴[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath ⁴[or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

⁵[**182. False information, with intent to cause public servant to use his lawful power to the injury of another person.**—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

1. Rep. by Act 17 of 1862, s. VII and Sch.

2. Added by Act 3 of 1894, s. 5.

3. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. Ins. by Act 10 of 1873, s. 15.

5. Subs. by Act 3 of 1895, s. 1, for section 182.

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.]

183. Resistance to the taking of property by the lawful authority of a public servant.—Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Obstructing sale of property offered for sale by authority of public servant.—Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185. Illegal purchase or bid for property offered for sale by authority of public servant.—Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Omission to assist public servant when bound by law to give assistance.—Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Threat of injury to public servant.—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Threat of injury to induce person to refrain from applying for protection to public servant.—Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Fabricating false evidence.—Whoever causes any circumstance to exist or ¹[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement,] intending that such circumstance, false entry or false statement may appear in evidence

1. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said “to fabricate false evidence”.

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Punishment for false evidence.—Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial¹***is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence.—Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital ²[by the law for the time being in force in ³[India]] shall be punished with ⁴[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed.—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which ²[by the law for the time being in force in ³[India]] is not capital, but punishable with ⁴[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

1. The words “or before a Military Court of Request” rep. by Act 13 of 1889, s. 2 and Sch.

2. Subs. by the A.O. 1948, for “by the law of British India or England”.

3. Subs. by Act 3 of 1951, s. 3 and the Sch., for “the States”.

4. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is ¹[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to ²[imprisonment for life] or imprisonment, with or without fine.

³[195A. Threatening any person to give false evidence.]—Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]

196. Using evidence known to be false.—Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Issuing or signing false certificate.—Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false.—Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Subs. by s. 117 and the Sch., *ibid.*, for “such transportation” (w.e.f. 1-1-1956).

3. Ins. by Act 2 of 2006, s. 2 (w.e.f. 16-4-2006).

description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Intentional omission to give information of offence by person bound to inform.—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Giving false information respecting an offence committed.—Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[*Explanation.*—In sections 201 and 202 and in this section the word “offence” includes any act committed at any place out of ²[India], which, if committed in ²[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

204. Destruction of document to prevent its production as evidence.—Whoever secretes or destroys any ³[document and electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such ³[document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. False personation for purpose of act or proceeding in suit or prosecution.—Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.—Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.—Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Added by Act 3 of 1894, s. 6.

2. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for “document” (w.e.f. 17-10-2000).

208. Fraudulently suffering decree for sum not due.—Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Dishonesty making false claim in Court.—Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Fraudulently obtaining decree for sum not due.—Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, ¹[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Harboursing offender.—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

²["Offence" in this section includes any act committed at any place out of ³[India], which, if committed in ³[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ³[India].]

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 3 of 1894, s. 7.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951 s. 3 and the Sch., to read as above.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to ¹[imprisonment for life], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Taking gift, etc., to screen an offender from punishment.—Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Offering gift or restoration of property in consideration of screening offender.—Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or ²[restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with ¹[imprisonment for life] or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

³[*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.]

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215. Taking gift to help to recover stolen property, etc.—Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Harboursing offender who has escaped from custody or whose apprehension has been ordered.—Whenever any person convicted of a charged with an offence, being in lawful custody for that offence, escapes from such custody,

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for “to restore or cause the restoration of”.

3. Subs. by Act 8 of 1882, s. 6, for the original exception.

4. *Illustrations* rep. by Act 10 of 1882, s. 2 and the First Sch.

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence.—if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with ¹[imprisonment for life] or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

²["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of ³[India], which, if he had been guilty of it in ³[India], would have been punishable as an offence, and for which he is, under any law relating to extradition, ⁴*** or otherwise, liable to be apprehended or detained in custody in ³[India], and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ³[India].]

Exception.—The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

⁵[**216A. Penalty for harbouring robbers or dacoits.**—Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without ³[India].

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

⁵[**216B. Definition of "harbour" in sections 212, 216 and 216A.] Rep. by the Indian Penal Code (Amendment) Act, 1942 (8 of 1942), s. 3.**

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 10 of 1886, s. 23.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. The words "or under the Fugitive Offenders Act, 1881," omitted by Act 3 of 1951, s. 3 and the Sch.

5. Ins. by Act 3 of 1894, s. 8.

that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Intentional omission to apprehend on the part of public servant bound to apprehend.—Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with ¹[imprisonment for life] or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.—Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence ²[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with ¹[imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to ¹[imprisonment for life] ^{3*** 4*** 5*** 6***} or imprisonment for a term of ten years, or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years ²[or if the person was lawfully committed to custody].

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Ins. by Act 27 of 1870, s. 8.

3. The words “or penal servitude for life” omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

4. The words “or to” omitted by Act 36 of 1957, s. 3 and the Second Sch.

5. The word “transportation” omitted by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

6. The words “or penal servitude” omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

223. Escape from confinement or custody negligently suffered by public servant.—Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence ¹[or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Resistance or obstruction by a person to his lawful apprehension.—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Resistance or obstruction to lawful apprehension of another person.—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with ²[imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to ²[imprisonment for life], ^{3****}
^{4***} ^{5***} or imprisonment, for a term of ten years, or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with ²[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

⁶[**225A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.**—Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B. Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.—Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in

1. Ins. by Act 27 of 1870, s. 8.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

3. The words “or to” omitted by Act 36 of 1957, s. 3 and the Second Sch.

4. The word “transportation” omitted by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

5. The words “penal servitude” omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

6. Subs. by Act 10 of 1886, s. 24(I), for section 225A which had been ins. by Act 27 of 1870, s. 9.

which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

226. *[Unlawful return from transportation.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and the Sch (w.e.f. 1-1-1956).*

227. Violation of condition of remission of punishment.—Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Intentional insult or interruption to public servant sitting in judicial proceeding.—Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹**[228A. Disclosure of identity of the victim of certain offences, etc.]**—(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an ²[offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]

229. Personation of a juror or assessor.—Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 43 of 1983, s. 2.

2. Subs. by Act 13 of 2013, s. 4, for “offence under section 376, section 376A, section 376B, section 376C or section 376D” (w.e.f. 3-2-2013).

¹[**229A. Failure by person released on bail or bond to appear in court.**—Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.—The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.]

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

230. “Coin” defined.—²[Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

³[**Indian coin.**—Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

(d) The coin denominated as the Company's rupee is ⁴[Indian coin].

⁵[(e) The “Farukhabad rupee”, which was formerly used as money under the authority of the Government of India, is ⁶[Indian coin] although it is no longer so used.]

231. Counterfeiting coin.—Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Counterfeiting Indian coin.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting ⁴[Indian coin], shall be punished with ⁷[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Making or selling instrument for counterfeiting coin.—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Making or selling instrument for counterfeiting Indian coin.—Whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be

1. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

2. Subs. by Act 19 of 1872, s. 1, for the first paragraph.

3. Subs. by the A. O. 1950, for the second paragraph.

4. Subs., *ibid.*, for “the Queen’s coin”.

5. Added by Act 6 of 1896, s. 1(2).

6. Subs. by the A. O. 1950, for “Queen’s coin”

7. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

used, for the purpose of counterfeiting ¹[Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.—Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if Indian coin.—and if the coin to be counterfeited is ¹[Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Abetting in India the counterfeiting out of India of coin.—Whoever, being within ²[India] abets the counterfeiting of coin out of ²[India] shall be punished in the same manner as if he abetted the counterfeiting of such coin within ²[India].

237. Import or export of counterfeit coin.—Whoever imports into ²[India], or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Import or export of counterfeits of the Indian coin.—Whoever imports into ²[India], or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of ¹[Indian coin], shall be punished with ³[Imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Delivery of coin, possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any persons or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Delivery of Indian coin, possessed with knowledge that it is counterfeit.—Whoever, having any counterfeit coin which is a counterfeit of ¹[Indian coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of ¹[Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.—Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession

1. Subs. by the A. O. 1950, for “the Queen’s coin”.

2. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of ¹[Indian coin], having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.—Whoever, being employed in any mint lawfully established in ²[India], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Unlawfully taking coining instrument from mint.—Whoever, without lawful authority, takes out of any mint, lawfully established in ²[India], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Fraudulently or dishonestly diminishing weight or altering composition of coin.—Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of the coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.—Whoever fraudulently or dishonestly performs on ³[any Indian coin] any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Altering appearance of coin with intent that it shall pass as coin of different description.—Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Altering appearance of Indian coin with intent that it shall pass as coin of different description.—Whoever performs on ³[any Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Delivery of coin, possessed with knowledge that it is altered.—Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Delivery of Indian coin, possessed with knowledge that it is altered.—Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other

1. Subs. by the A. O. 1950, for “the Queen’s coin”.

2. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by the A. O. 1950, for “any of the Queen’s coin”.

person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Possession of coin by person who knew it to be altered when he became possessed thereof.—Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Possession of Indian coin by person who knew it to be altered when he became possessed thereof.—Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.—Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Counterfeiting Government stamp.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue shall be punished with ¹[imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamps of one denomination to appear like a genuine stamp of a different denomination.

256. Having possession of instrument or material for counterfeiting Government stamp.—Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Making or selling instrument for counterfeiting Government stamp.—Whoever makes or performs any part of the process of making, or buys, or sells, or disposes or, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Sale of counterfeit Government stamp.—Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Having possession of counterfeit Government stamp.—Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Using as genuine a Government stamp known to be counterfeit.—Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue,

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.—Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Using Government stamp known to have been before used.—Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Erasure of mark denoting that stamp has been used.—Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

¹[**263A. Prohibition of fictitious stamps.**—(1) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp ²[may be seized and, if seized] shall be forfeited.

(3) In this section “fictitious stamp” means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word “Government”, when used in connection with, or in reference to any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264. Fraudulent use of false instrument for weighing.—Whoever, fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Fraudulent use of false weight or measure.—Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Being in possession of false weight or measure.—Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false,

1. Added by Act 3 of 1895, s. 2.

2. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for “may be seized and”.

^{1***} intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Making or selling false weight or measure.—Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Disobedience to quarantine rule.—Whoever knowingly disobeys any rule made and promulgated ²[by the ^{3***} Government ^{4***}] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Adulteration of drugs.—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Sale of adulterated drugs.—Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells

1. The word “and” omitted by Act 42 of 1953, s. 4 and the Third Sch.

2. Subs. by the A. O. 1937, for “by the G. of I., or by any Government”.

3. The words “Central or any Provincial” omitted by the A. O. 1950.

4. The words “or the Crown Representative” omitted by the A. O. 1948.

the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Sale of drug as a different drug or preparation.—Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Fouling water of public spring or reservoir.—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health.—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Rash navigation of vessel.—Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Exhibition of false light, mark or buoy.—Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Conveying person by water for hire in unsafe or overloaded vessel.—Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Danger or obstruction in public way or line of navigation.—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees.

284. Negligent conduct with respect to poisonous substance.—Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Negligent conduct with respect to fire or combustible matter.—Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Negligent conduct with respect to explosive substance.—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Negligent conduct with respect to machinery.—Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Negligent conduct with respect to pulling down or repairing buildings.—Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Negligent conduct with respect to animal.—Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291. Continuance of nuisance after injunction to discontinue.—Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

¹**[292. Sale, etc., of obscene books, etc.]**²[(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]

³[(2)] Whoever—

(a) sells, lets to hire, distributes, publicity exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his

1. Subs. by Act 8 of 1925, s. 2, for s. 292.

2. Ins. by Act 36 of 1969, s. 2.

3. S. 292 renumbered as sub-section (2) thereof by s. 2, *ibid*.

possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished ¹[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

²[*Exception.*—This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used *bona fide* for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]

³[**293. Sale, etc., of obscene objects to young person.**—Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished ¹[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].]

⁴[**294. Obscene acts and songs.**—Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

⁵[**294A. Keeping lottery office.**—Whoever keeps any office or place for the purpose of drawing any lottery ⁶[not being ⁷[a State lottery] or a lottery authorised by the ⁸[State] Government], shall be punished

1. Subs. by Act 36 of 1969, s. 2, for certain words.

2. Subs. by s. 2, *ibid.*, for *Exception*.

3. Subs. by Act 8 of 1925, s. 2, for section 293.

4. Subs. by Act 3 of 1895, s. 3, for section 294.

5. Ins. by Act 27 of 1870, s. 10.

6. Subs. by the A. O. 1937, for “not authorized by Government”.

7. Subs. by Act 3 of 1951, s. 3 and the Sch., for “a lottery organized by the Central Government or the Government of a Part A State or a Part B State”.

8. Subs. by the A. O. 1950, for “Provincial”.

punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.]

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class.—Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[**295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.**—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of ²[citizens of India], ³[by words, either spoken or written, or or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ⁴[three years], or with fine, or with both.]

296. Disturbing religious assembly.—Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc.—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Uttering words, etc., with deliberate intent to wound religious feelings.—Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

1. Ins. by Act 25 of 1927, s. 2.

2. Subs. by the A. O. 1950, for “His Majesty’s subjects”.

3. Subs. by Act 41 of 1961, s. 3, for certain words.

4. Subs. by s. 3, *ibid.*, for “two years”.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—**When culpable homicide is not murder.**—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. Culpable homicide by causing death of person other than person whose death was intended.—If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Punishment for murder.—Whoever commits murder shall be punished with death or ¹[imprisonment for life], and shall also be liable to fine.

303. Punishment for murder by life-convict.—Whoever, being under sentence of ¹[imprisonment for life], commits murder, shall be punished with death.

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

²[**304A. Causing death by negligence.**—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

³[**304B. Dowry death.**—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or ¹[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to ¹[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—⁴[When any person offending under this section is under sentence of ¹[imprisonment for life], he may, if hurt is caused, be punished with death.]

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. Ins. by Act 27 of 1870, s. 12.

3. Ins. by Act 43 of 1986, s. 10 (w.e.f. 19-11-1986).

4. Added by Act 27 of 1870, s. 11.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of ¹[the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he there by caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year ²[or with fine, or with both.]

310. Thug.—Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Punishment.—Whoever is a thug, shall be punished with ³[imprisonment for life], and shall also be liable to fine.

*Of the causing of miscarriage, of injuries to unborn children, of the exposure
Of infants, and of the concealment of births.*

312. Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

313. Causing miscarriage without woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with ³[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Death caused by act done with intent to cause miscarriage.—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

if act done without woman's consent.—and if the act is done without the consent of the woman, shall be punished either with ³[imprisonment for life], or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being

1. Ins. by Act 12 of 1891, s. 2 and the Second Sch.

2. Subs. by Act 8 of 1882, s. 7, for “and shall also be liable to fine”.

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Causing death of quick unborn child by act amounting to culpable homicide.—Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Exposure and abandonment of child under twelve years, by parent or person having care of it.—Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Concealment of birth by secret disposal of dead body.—Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Hurt

319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

322. Voluntarily causing grievous hurt.—Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending of knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

²**326A. Voluntarily causing grievous hurt by use of acid, etc.**—Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily throwing or attempting to throw acid.—Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]

327. Voluntarily causing hurt to extort property, or to constrain to an illegal to an act.—Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 13 of 2013, s. 5 (w.e.f. 3-2-2013).

offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Causing hurt by means of poison, etc., with intent to commit and offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330. Voluntarily causing hurt to extort confession, or to compel restoration of property.—Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Voluntarily causing hurt to deter public servant from his duty.—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Voluntarily causing grievous hurt to deter public servant from his duty.—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

334. Voluntarily causing hurt on provocation.—Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Voluntarily causing grievous hurt on provocation.—Whoever ¹[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as *Exception 1*, section 300.

336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of wrongful restraint and wrongful confinement

339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Wrongful confinement.—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts leave the building. A wrongfully confines Z.

341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Punishment for wrongful confinement.—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

1. Ins. by Act 8 of 1882, s. 8.

343. Wrongful confinement for three or more days.—Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344. Wrongful confinement for ten or more days.—Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

345. Wrongful confinement of person for whose liberation writ has been issued.—Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

346. Wrongful confinement in secret.—Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347. Wrongful confinement to extort property, or constrain to illegal act.—Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Wrongful confinement to extort confession, or compel restoration of property.—Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault

349. Force.—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so

without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a Woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Punishment for assault or criminal force otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful

discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, ¹[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].

²[**354A. Sexual harassment and punishment for sexual harassment.**—(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354B. Assault or use of criminal force to woman with intent to disrobe.—Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

354C. Voyeurism.—Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. Stalking.—(1) Any man who—

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
 - (ii) monitors the use by a woman of the internet, email or any other form of electronic communication,
- commits the offence of stalking:

1. Subs. by Act 13 of 2013, s. 6, for “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both” (w.e.f. 3-2-2013).

2. Ins. by s. 7, *ibid.* (w.e.f. 3-2-2013).

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.]

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Assault or criminal force in attempt to commit theft of property carried by a person.—Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Assault or criminal force in attempt wrongfully to confine a person.—Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Assault or criminal force on grave provocation.—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same *Explanation* as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour

359. Kidnapping.—Kidnapping is of two kinds: kidnapping from ¹[India], and kidnapping from lawful guardianship.

360. Kidnapping from India.—Whoever conveys any person beyond the limits of ¹[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from ¹[India].

361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under ²[sixteen] years of age if a male, or under ³[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

1. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

2. Subs. by Act 42 of 1949, s. 2, for “fourteen”.

3. Subs. by s. 2, *ibid.*, for “sixteen”.

362. Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

363. Punishment for kidnapping.—Whoever kidnaps any person from ¹[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

²**[363A. Kidnapping or maiming a minor for purposes of begging.**—(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,—

(a) “begging” means—

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) “minor” means—

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.]

364. Kidnapping or abducting in order to murder.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with ³[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from ¹[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

⁴**[364A. Kidnapping for ransom, etc.**—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or ⁵[any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

1. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

2. Ins. by Act 52 of 1959, s. 2 (w.e.f. 15-1-1960).

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

4. Ins. by Act 42 of 1993, s. 2.

5. Subs. by Act 24 of 1995, s. 2, for “any other person”.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; ¹[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

²[**366A. Procurement of minor girl.**—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

366B. Importation of girl from foreign country.—Whoever imports into ³[India] from any country outside India ⁴[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, ⁵*** shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.—Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.—Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Kidnapping or abducting child under ten years with intent to steal from its person.—Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁶[**370. Trafficking of person.**—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or

Thirdly.—by abduction, or

1. Added by Act 20 of 1923, s. 2.

2. Ins. by s. 3, *ibid.*

3. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. Ins. by Act 3 of 1951, s. 3 and the Sch.

5. Certain words omitted by s. 3 and the Sch., *ibid.*

6. Subs. by Act 13 of 2013, s. 8, for section 370 (w.e.f. 3-2-2013).

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. Exploitation of a trafficked person.—(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]

371. Habitual dealing in slaves.—Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any ²[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life".

2. Subs. by Act 18 of 1924, s. 2, for certain words.

¹[*Explanation I.*—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi-marital* relation.]

373. Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any ²[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

³[*Explanation I.*—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—“Illicit intercourse” has the same meaning as in section 372.]

374. Unlawful compulsory labour.—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

⁴[*Sexual offences*

⁵[**375. Rape.**—A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

1. Added by Act 18 of 1924, s. 3

2. Subs. by s. 2, *ibid.*, for certain words.

3. Added by s. 4, *ibid.*

4. Subs. by Act 43 of 1983, s. 3, for the heading “*Of rape*” and ss. 375 and 376.

5. Subs. by Act 13 of 2013, s. 9, for sections 375, 376, 376A, 376B, 376C and 376D (w.e.f. 03-02-2013).

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);

(d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

376A. Punishment for causing death or resulting in persistent vegetative state of victim.—Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

376B. Sexual intercourse by husband upon his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Sexual intercourse by a person in authority.—Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

Explanation 3.—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand

home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

376D. Gang rape.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

376E. Punishment for repeat offenders.—Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]]

Of Unnatural Offences

377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of Theft

378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefor committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Theft in dwelling house, etc.—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Theft by clerk or servant of property in possession of master.—Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.—Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with ¹[imprisonment for life], or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with ¹[imprisonment for life].

389. Putting person in fear or accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with ¹[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with ¹[imprisonment for life].

Of Robbery and Dacoity

390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying “Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees”. This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Attempt to commit robbery.—Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. Voluntarily causing hurt in committing robbery.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Punishment for dacoity.—Whoever commits dacoity shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. Dacoity with murder.—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or ¹[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.—If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

399. Making preparation to commit dacoity.—Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400. Punishment for belonging to gang of dacoits.—Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Punishment for belonging to gang of thieves.—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Assembling for purpose of committing dacoity.—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property

403. Dishonest misappropriation of property.—Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Dishonest misappropriation of property possessed by deceased person at the time of his death.—Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

¹[*Explanation 1*].—A person, being an employer ³[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

⁴[*Explanation 2*.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

1. Ins. by Act 40 of 1973, s. 9 (w.e.f. 1-11-1973).

2. *Explanation* numbered as *Explanation 1* by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).

3. Ins. by Act 33 of 1988, s. 27 (w.e.f. 1-8-1988).

4. Ins. by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Criminal breach of trust by carrier, etc.—Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

408. Criminal breach of trust by clerk or servant.—Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property

410. Stolen property.—Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which ^{2*** 3***}criminal breach of trust has been committed, is designated as “stolen property”, ⁴[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without ⁵[India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Dishonestly receiving property stolen in the commission of a dacoity.—Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. The word “the” rep by Act 12 of 1891, s. 2 and the First Sch.

3. The words “offence of” rep by Act 8 of 1882, s. 9.

4. Ins. by s. 9, *ibid*.

5. The words “British India” have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

413. Habitually dealing in stolen property.—Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Assisting in concealment of stolen property.—Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. Cheating by personation.—A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.—Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Dishonestly or fraudulently preventing debt being available for creditors.—Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.—Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Dishonest or fraudulent removal or concealment of property.—Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief

425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Punishment for mischief.—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Mischief by killing or maiming animal of the value of ten rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Mischief by injury to works of irrigation or by wrongfully diverting water.—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Mischief by injury to public road, bridge, river or channel.—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Mischief by causing inundation or obstruction to public drainage attended with damage.—Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.—Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.—Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.—Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards ¹[or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc.—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.—Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Punishment for the mischief described in section 437 committed by fire or explosive substance.—Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with ²[imprisonment for life]. or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.—Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Mischief committed after preparation made for causing death or hurt.—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass

441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit “criminal trespass”.

442. House-trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

1. Ins. by Act 8 of 1882, s. 10

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation forlife” (w.e.f. 1-1-1956).

443. Lurking house-trespass.—Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit “lurking house-trespass”.

444. Lurking house-trespass by night.—Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit “lurking house-trespass by night”.

445. House-breaking.—A person is said to commit “house-breaking” who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. House-breaking by night.—Whoever commits house-breaking after sunset and before sunrise, is said to commit “house-breaking by night”.

447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Punishment for house-trespass.—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. House-trespass in order to commit offence punishable with death.—Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. House-trespass in order to commit offence punishable with imprisonment for life.—Whoever commits house-trespass in order to the committing of any offence punishable with ¹[imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. House-trespass in order to commit offence punishable with imprisonment.—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Punishment for lurking house-trespass or house-breaking.—Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.—Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.—Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

456. Punishment for lurking house-trespass or house-breaking by night.—Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.—Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.—Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.—If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Dishonestly breaking open receptacle containing property.—Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Punishment for same offence when committed by person entrusted with custody.—Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO²*** PROPERTY MARKS

463. Forgery.—³[Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document.—³[A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any ⁴[electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the ⁴[electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or ⁴[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with ⁴[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his ⁴[electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

2. The words “TRADE OR” omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

4. Subs. by Act 10 of 2009, s. 51, for “digital signature” (w.e.f. 27-10-2009).

practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

¹[*Explanation 3.*—For the purposes of this section, the expression “affixing ²[electronic signature]” shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

465. Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Forgery of record of Court or of public register, etc.—³[Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹[*Explanation.*—For the purposes of this section, “register” includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with ⁴[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the ³[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Forgery for purpose of harming reputation.—Whoever commits forgery, ³[intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. Forged document.—A false ⁵[document or electronic record] made wholly or in part by forgery is designated “a forged ⁵[document or electronic record]”.

471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any ⁵[document or electronic record] which he knows or has reason to believe to be a forged ⁵[document or electronic record], shall be punished in the same manner as if he had forged such ⁵[document or electronic record].

472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.—Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with ⁴[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. Ins. by Act 21 of 2000, s. 91 and the First Sch. (w.e.f. 17-10-2000).

2. Subs. by Act 10 of 2009, s. 51, for “digital signature” (w.e.f. 27-10-2009).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

4. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

5. Subs. by Act 21 of 2000, s. 91 and the First Sch., for “document” (w.e.f. 17-10-2000).

473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.—Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine.—¹[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with ²[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.—Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.—Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating ³[any document or electronic record] other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.—Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁴**[477A. Falsification of accounts.**—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any ⁵[book, electronic record, paper, writing] valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in. any such ⁵[book, electronic record, paper, writing] valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

1. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for “any document” (w.e.f. 17-10-2000).

4. Added by Act 3 of 1895, s. 4.

5. Subs. by Act 21 of 2000, s. 91 and the First Sch., for “book, paper, writing” (w.e.f. 17-10-2000).

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

¹[Of²****Property and Other Marks*

478. [*Trade Mark.*] *Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w. e. f. 25-11-1959).*

479. Property mark.—A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. [*Using a false trade mark.*] *Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w. e. f. 25- 11-1959).*

481. Using a false property mark.—Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Punishment for using a false property mark.—Whoever uses ³***any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Counterfeiting a property mark used by another.—Whoever counterfeits any ⁴***property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Counterfeiting a mark used by a public servant.—Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

⁵[**485. Making or possession of any instrument for counterfeiting a property mark.**—Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

486. Selling goods marked with a counterfeit property mark.—⁶[Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

1. Subs. by Act 4 of 1889, s. 3, for the original heading and ss. 478 to 489.

2. The word “*Trade*” omitted by Act 43 of 1958, s. 135 and the Sch. (w. e. f. 25-11-1959).

3. The words “any false trade mark or” omitted by s. 135 and the Sch., *ibid.* (w. e. f. 25-11-1959).

4. The words “trade mark or” omitted by s. 135 and the Sch., *ibid.* (w. e. f. 25-11-1959).

5. Subs. by s. 135 and the Sch., *ibid.*, for s. 485 (w. e. f. 25-11-1959).

6. Subs. by s. 135 and the Sch., *ibid.*, for certain words (w. e. f. 25-11-1959).

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Making a false mark upon any receptacle containing goods.—Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

488. Punishment for making use of any such false mark.—Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

489. Tampering with property mark with intent to cause injury.—Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

¹[*Of Currency-Notes and Bank-Notes*

489A. Counterfeiting currency-notes or bank-notes.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, ³[489C, 489D and 489E], the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D. Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes.—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

⁴[**489E. Making or using documents resembling currency-notes or bank-notes.**—(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

1. Added by Act 12 of 1899, s. 2.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).

3. Subs. by Act 35 of 1950, s. 3 and the Second Sch., for “489C and 489D”.

4. Ins. by Act 6 of 1943, s. 2.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.]

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

490. [*Breach of contract of service during voyage or journey.*] *Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.*

491. Breach of contract to attend on and supply wants of helpless person.—Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. [*Breach of contract to serve at distant place to which servant is conveyed at master's expense.*] *Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.*

CHAPTER XX

OF OFFENCES RELATING TO MARRIAGE

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Marriage ceremony fraudulently gone through without lawful marriage.—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[CHAPTER XXA

OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

CHAPTER XXI

OF DEFAMATION

499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—“Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

1. Ins. by Act 46 of 1983, s. 2.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or

arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Sale of printed or engraved substance containing defamatory matter.—Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[**505. Statements conducing to public mischief.**—²[(1)] Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, ³[sailor or airman] in the Army, ⁴[Navy or Air Force] ⁵[of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to ⁶[three years], or with fine, or with both.

⁷[(2) **Statements creating or promoting enmity, hatred or ill-will between classes.**—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) **Offence under sub-section (2) committed in place of worship, etc.**—Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it ²[in good faith and] without any such intent as aforesaid.]

506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or ⁸[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Criminal intimidation by an anonymous communication.—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

1. Subs. by Act 4 of 1898, s. 6, for s. 505.

2. Section 505 re-numbered as sub-section (1) of that section by Act 35 of 1969, s. 3.

3. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “or sailor”.

4. Subs. by s. 2 and the First Sch., *ibid.*, for “or Navy”.

5. Subs. by the A. O. 1950, for “of Her Majesty or in the Imperial Service Troops” The words “or in the Royal Indian Marine” occurring after the word “Majesty” omitted by Act 35 of 1934, s. 2 and Sch.

6. Subs. by Act 41 of 1961, s. 4, for “two years”.

7. Ins. by Act 35 of 1969, s. 3.

8. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation” (w.e.f. 1-1-1956).

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.—Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, ¹[shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

510. Misconduct in public by a drunken person.—Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with ²[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with ³[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

1. Subs. by Act 13 of 2013, s. 10, for "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both" (w.e.f. 3-2-2013).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

3. Subs. by s. 117 and the Sch., *ibid.*, for certain words (w.e.f. 1-1-1956).

THE CODE OF CIVIL PROCEDURE, 1908

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2. Definitions.
3. Subordination of Courts.
4. Savings.
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9. Courts to try all civil suits unless barred.
10. Stay of suit.
11. *Res judicata*.
12. Bar to further suit.
13. When foreign judgment not conclusive.
14. Presumption as to foreign judgments.

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15. Court in which suits to be instituted.
16. Suits to be instituted where subject-matter situate.
17. Suits for immovable property situate within jurisdiction of different Courts.
18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain.
19. Suits for compensation for wrongs to person or movables.
20. Other suits to be instituted where defendants reside or cause of action arises.
21. Objections to jurisdiction.
- 21A. Bar on suit to set aside decree on objection as to place of suing.
22. Power to transfer suits which may be instituted in more than one Court.
23. To what Court application lies.
24. General power of transfer and withdrawal.
25. Power of Supreme Court to transfer suits, etc.

INSTITUTION OF SUITS

26. Institution of suits.

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- 27. Summons to defendants.
- 28. Service of summons where defendant resides in another State.
- 29. Service of foreign summonses.
- 30. Power to order discovery and the like.
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- 33. Judgment of decree.

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- 34. Interest.

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- 35. Costs.
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- 36. Application to orders.
- 37. Definition of Court which passed a decree.

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- 38. Court by which decree may be executed.
- 39. Transfer of decree.
- 40. Transfer of decree to Court in another State.
- 41. Result of execution proceedings to be certified.
- 42. Powers of Court in executing transferred decree.
- 43. Execution of decrees passed by Civil Courts in places to which this Code does not extend.
- 44. Execution of decrees passed by Revenue Courts in places to which this Code does not extend.
- 44A. Execution of decrees passed by Courts in reciprocating territory.
- 45. Execution of decrees outside India.
- 46. Precepts.

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

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- 48. [*Repealed.*].

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- 49. Transferee.

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50. Legal representative.

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51. Powers of Court to enforce execution.

52. Enforcement of decree against legal representative.

53. Liability of ancestral property.

54. Partition of estate or separation of share.

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55. Arrest and detention.

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

57. Subsistence-allowance.

58. Detention and release.

59. Release on ground of illness.

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

61. Partial exemption of agricultural produce.

62. Seizure of property in dwelling house.

63. Property attached in execution of decrees of several Courts.

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

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65. Purchaser's title.

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

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES

AGAINST IMMOVABLE PROPERTY

68. [*Repealed.*].

69. [*Repealed.*].

70. [*Repealed.*].

71. [*Repealed.*].

72. [*Repealed.*].

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74. Resistance to execution.

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- 79. Suits by or against Government.
- 80. Notice.
- 81. Exemption from arrest and personal appearance.
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- 83. When aliens may sue.
- 84. When foreign States may sue.
- 85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.
- 86. Suits against foreign Rulers, Ambassadors and Envoys.
- 87. Style of foreign Rulers as parties to suits.
- 87A. Definitions of “foreign State” and “Ruler”

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- 87B. Application of Sections 85 and 86 to Rulers of former Indian States.

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- 88. Where interpleader-suit may be instituted.

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- 91. Public nuisances and other wrongful acts affecting the public.
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- 96. Appeal from original decree.
- 97. Appeal from final decree where no appeal from preliminary decree.
- 98. Decision where appeal heard by two or more Judges.
- 99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.
- 99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.

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- 100. Second appeal.
- 100A. No further appeal in certain cases.
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- 102. No second appeal in certain cases.
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- 105. Other orders.
- 106. What Courts to hear appeals.

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- 109. When appeals lie to the Supreme Court.
- 110. [*Repealed.*].
- 111. [*Repealed.*].
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- 114. Review.
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- 117. Application of Code to High Courts.
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- 119. Unauthorised persons not to address Court.
- 120. Provisions not applicable to High Court in original civil jurisdiction.

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

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- 132. Exemption of certain women from personal appearance.
- 133. Exemption of other persons.
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- 135. Exemption from arrest under civil process.
- 135A. Exemption of members of legislative bodies from arrest and detention under civil process.
- 136. Procedure where person to be arrested or property to be attached is outside district.
- 137. Language of subordinate Courts.
- 138. Power of High Court to require evidence to be recorded in English.
- 139. Oath on affidavit by whom to be administered.
- 140. Assessors in causes of salvage, etc.
- 141. Miscellaneous proceedings.
- 142. Orders and notices to be in writing.

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- 143. Postage.
- 144. Application for restitution.
- 145. Enforcement of liability of surety.
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- 148. Enlargement of time.
- 148A. Right to lodge a caveat.
- 149. Power to make up deficiency of court-fees.
- 150. Transfer of business.
- 151. Saving of inherent powers of Court.
- 152. Amendment of judgments, decrees or orders.
- 153. General power to amend.
- 153A. Power to amend decree or order where appeal is summarily dismissed.
- 153B. Place of trial to be deemed to be open Court.
- 154. *[Repealed.]*.
- 155. *[Repealed.]*.
- 156. *[Repealed.]*.
- 157. Continuance of orders under repealed enactments.
- 158. Reference to Code of Civil Procedure and other repealed enactments.

THE FIRST SCHEDULE

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PARTIES TO SUITS

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

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1. Frame of suit.
2. Suit to include the whole claim.
 - Relinquishment of part of claim.
 - Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immovable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
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1. Appearances, etc., may be in person, by recognised agent or by pleader.
2. Recognised agents.
3. Service of process on recognised agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
 - Appointment to be in writing and to be filed in Court.

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

ORDER V
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Issue of summons

1. Summons.
2. Copy of plaint annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons

9. Delivery of summons by Court.
- 9A. Summons given to the plaintiff for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable, or on his agent.
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immovable property.
15. Where service may be on an adult member of defendant's family.
16. Person served to sign acknowledgement.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
- 19A. *[Omitted.]*.
20. Substituted service.
 - Effect of substituted service.
 - Where service substituted, time for appearance to be fixed.
- 20A. *[Repealed.]*.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Service within presidency-towns of summons issued by Courts outside.
23. Duty of Court to which summons is sent.

RULES

24. Service on defendant in prison.
25. Service where defendant resides out of India and has no agent.
26. Service in foreign territory through Political Agent or Court.
- 26A. Summonses to be sent to officers of foreign countries.
27. Service on civil public officer or on servant of railway company or local authority.
28. Service on soldiers, sailors or airmen.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

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1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. [*Omitted.*].
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
- 14A. Address for service of notice.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
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1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suits immovable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.

RULES

8. Relief founded on separate grounds.
9. Procedure on admitting plaint.
10. Return of plaint.
Procedure on returning plaint.
- 10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.
- 10B. Power of appellate Court to transfer suit to the proper Court.
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12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.
Documents relied on in Plaint
14. Production of document on which plaintiff sues or relies.
15. [*Omitted.*].
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17. Production of shop-book.
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18. [*Omitted.*].

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1. Written statement.
- 1A. Duty of defendant to produce documents upon which relief is claimed or relief upon by him.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
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Effect of set-off.
- 6A. Counter-claim by defendant.
- 6B. Counter-claim to be stated.
- 6C. Exclusion of counter-claim.
- 6D. Effect of discontinuance of suit.
- 6E. Default of plaintiff to reply to counter-claim.
- 6F. Relief to defendant where counter-claim succeeds.
- 6G. Rules relating to written statement to apply.
7. Defence or set-off founded upon separate grounds.
8. New ground of defence.
- 8A. [*Omitted.*].
9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

ORDER IX

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

1. Parties to appear on day fixed in summons for defendant to appear and answer.

RULES

1. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
2. Where neither party appears, suit to be dismissed.
3. Plaintiff may bring fresh suit or Court may restore suit to file.
4. Dismissal of suit where plaintiff, after summons returned unserved, fails for one month to apply for fresh summons.
5. Procedure when only plaintiff appears.
 - When summons duly served.
 - When summons not duly served.
 - When summons served, but not in due time.
6. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Setting aside decrees ex parte

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

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1. Ascertainment whether allegations in pleadings are admitted or denied.
 - 1A. Direction of the court to opt for any one mode of alternative dispute resolution.
 - 1B. Appearance before the conciliatory forum or authority.
 - 1C. Appearance before the court consequent to the failure of efforts of conciliation.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
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1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.

RULES

12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents.
2. Discovery by interrogatories.
3. Inspection.
4. Admission and denial of documents.
5. Production of documents.
6. Electronic records.
7. Certain provisions of the Code of Civil Procedure, 1908 not to apply.

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

ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1. Documents evidence to be produced at or before the settlement of issues.
2. [Omitted.].
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.

RULES

6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may sent for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

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1. Scope of and classes of suits to which this Order applies.
2. Scope of and classes of suits to which this Order applies.
3. Grounds for summary judgment.
4. Procedure.
5. Evidence for hearing of summary judgment.
6. Orders that may be made by Court.
7. Conditional order.
8. Power to impose costs.

ORDER XIV

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

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

ORDER XV

DISPOSAL OF THE SUIT AT THE FIRST HEARING

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

ORDER XV-A

CASE MANAGEMENT HEARING

1. First Case Management Hearing.
2. Orders to be passed in a Case Management Hearing.
3. Time limit for the completion of a trial.
4. Recording of oral evidence on a day-to-day basis.

RULES

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

ORDER XVIA

ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

RULES

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

ORDER XVII

ADJOURNMENTS

1. Court may grant time and adjourn hearing.
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1. Right to begin.
2. Statement and production of evidence.
3. Evidence where several issues.
- 3A. Party to appear before other witnesses.
4. Recording of evidence.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
7. Evidence under section 138.
8. Memorandum when evidence not taken down by judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. [*Repealed.*].
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
- 17A. [*Omitted.*].
18. Power of Court to inspect.
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1. Power to order any point to be proved by affidavit.

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2. Power to order attendance of deponent for cross-examination.
3. Matters to which affidavits shall be confined.

ORDER XX

JUDGMENT AND DECREE

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

ORDER XXA

COSTS

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

ORDER XXI

EXECUTION OF DECREES AND ORDERS

Payment under decree

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

Courts executing decrees

RULES

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High court of decree transferred by other Court.

Application for execution

10. Application for execution.
11. Oral application.
Written application.
- 11A. Application for arrest to state grounds.
12. Application for attachment of movable property not in judgment-debtor's possession.
13. Application for attachment of immovable property to contain certain particulars.
14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
16. Application for execution by transferee of decree.
17. Procedure on receiving application for execution of decree.
18. Execution in case of cross-decrees.
19. Execution in case of cross-claims under same decree.
20. Cross-decrees and cross-claims in mortgage-suits.
21. Simultaneous execution.
22. Notice to show cause against execution in certain cases.
- 22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale.
23. Procedure after issue of notice.

Process for execution

24. Process for execution.
25. Endorsement on process.

Stay of execution

26. When Court may stay execution.
Power to require security from, or impose conditions upon, judgment-debtor.
27. Liability of judgment-debtor discharged.
28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
29. Stay of execution pending suit between decree-holder and judgment-debtor.

Mode of execution

30. Decree for payment of money.
31. Decree for specific movable property.

RULES

32. Decree for specific performance for restitution of conjugal rights or for an injunction.
33. Discretion of Court in executing decrees for restitution of conjugal rights.
34. Decree for execution of document, or endorsement of negotiable instrument.
35. Decree for immovable property.
36. Decree for delivery of immovable property when in occupancy of tenant.

Arrest and detention in the civil prison

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.
38. Warrant for arrest to direct judgment-debtor to be brought up.
39. Subsistence-allowance.
40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

Attachment of property

41. Examination of judgment-debtor as to his property.
42. Attachment in case of decree for rent or *mesne profits* or other matter, amount of which to be subsequently determined.
43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor.
- 43A. Custody of movable property.
44. Attachment of agricultural produce.
45. Provisions as to agricultural produce under attachment.
46. Attachment of debt, share and other property not in possession of judgment-debtor.
- 46A. Notice to garnishee.
- 46B. Order against garnishee.
- 46C. Trial of disputed questions.
- 46D. Procedure where debt, belongs to third person.
- 46E. Order as regards third person.
- 46F. Payment by garnishee to be valid discharge.
- 46G. Costs.
- 46H. Appeals.
- 46I. Application to negotiable instruments.
47. Attachment of share in movables.
48. Attachment of salary or allowances of servant of the Government or railway company or local authority.
- 48A. Attachment of salary or allowances of private employees.
49. Attachment of partnership property.
50. Execution of decree against firm.
51. Attachment of negotiable instruments.
52. Attachment of property in custody of Court or public officer.
53. Attachment of decrees.
54. Attachment of immovable property.
55. Removal of attachment after satisfaction of decree.
56. Order for payment of coin or currency notes to party entitled under decree.
57. Determination of attachment.

Adjudication of claims and objections

58. Adjudication of claims to, or objections to attachment of property.

RULES

59. Stay of sale.

Sale generally

64. Power to order property attached to be sold and proceeds to be paid to person entitled.

65. Sales by whom conducted and how made.

66. Proclamation of sales by public auction.

67. Mode of making proclamation.

68. Time of sale.

69. Adjournment or stoppage of sale.

70. [*Repealed.*].

71. Defaulting purchaser answerable for loss on re-sale.

72. Decree-holder not to bid for or buy property without permission.

Where decree-holder purchases, amount of decree may be taken as payment.

72A. Mortgagee not to bid at sale without the leave of the Court.

73. Restriction on bidding or purchase by officers.

Sale of movable property

74. Sale of agricultural produce.

75. Special provisions relating to growing crops.

76. Negotiable instruments and shares in corporations.

77. Sale by public auction.

78. Irregularity not to vitiate sale, but any person injured may sue.

79. Delivery of movable property, debts and shares.

80. Transfer of negotiable instruments and shares.

81. Vesting order in case of other property.

Sale of immovable property.

82. What Courts may order sales.

83. Postponement of sale to enable judgment-debtor to raise amount of decree.

84. Deposit by purchaser and re-sale on default.

85. Time for payment in full of purchase-money.

86. Procedure in default of payment.

87. Notification on re-sale.

88. Bid of co-sharer to have preference.

89. Application to set aside sale on deposit.

90. Application to set aside sale on ground of irregularity or fraud.

91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

92. Sale when to become absolute or be set aside.

93. Return of purchase-money in certain cases.

94. Certificate to purchaser.

95. Delivery of property in occupancy of judgment-debtor.

96. Delivery of property in occupancy of tenant.

Resistance to delivery of possession to decree-holder or purchaser

97. Resistance or obstruction to possession of immovable property.

98. Orders after adjudication.

99. Dispossession by decree-holder or purchaser.

RULES

100. Order to be passed upon application complaining of dispossession.
101. Question to be determined.
102. Rules not applicable to transferee *pendente lite*.
103. Orders to be treated as decrees.
104. Order under rule 101 or rule 103 to be subject to the result of pending suit.
105. Hearing of application.
106. Setting aside orders passed *ex parte*, etc.

ORDER XXII

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

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

ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

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

ORDER XXIV

PAYMENT INTO COURT

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

ORDER XXV
SECURITY FOR COSTS

RULES

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

ORDER XXVI
COMMISSIONS

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
3. Where witness resides within Court's jurisdiction.
4. Persons for whose examination commission may issue.
- 4A. Commission for examination of any person resident within the local limits of the jurisdiction of the Court.
5. Commission or request to examine witness not within India.
6. Court to examine witness pursuant to commission.
7. Return of commission with depositions of witnesses.
8. When depositions may be read in evidence.

Commissions for local investigations

9. Commissions to make local investigations.
10. Procedure of Commissioner.
Report and depositions to be evidence in suit.
Commissioner may be examined in person.

*Commissions for scientific investigation, performance of ministerial act
and sale of movable property*

- 10A. Commission for scientific investigation.
- 10B. Commission for performance of a ministerial act.
- 10C. Commission for the sale of movable property.

Commissions to examine accounts

11. Commission to examine or adjust accounts.
12. Court to give Commissioner necessary instructions.
Proceedings and report to be evidence.
Court may direct further inquiry.

Commissions to make partitions.

13. Commission to make partition of immovable property.
14. Procedure of Commissioner.

General Provisions

15. Expenses of commission to be paid into Court.
16. Powers of Commissioners.
- 16A. Questions objected to before the Commissioner.
17. Attendance and examination of witnesses before Commissioner.
18. Parties to appear before Commissioner.
- 18A. Application of Order to execution proceedings.
- 18B. Court to fix a time for return of Commission.

Commissions issued at the instance of Foreign Tribunals

RULES

19. Cases in which High Court may issue commission to examine witness.
20. Application for issue of commission.
21. To whom commission may be issued.
22. Issue, execution and return of commissions, and transmission of evidence to foreign Court.

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

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

ORDER XXVII-A

SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF THE
CONSTITUTION OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT

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

ORDER XXVIII

SUITS BY OR AGAINST MILITARY OR NAVALMEN OR AIRMEN

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

RULES

ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

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

ORDER XXX

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

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

ORDER XXXI

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

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

ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
- 2A. Security to be furnished by next friend when so ordered.
3. Guardian for the suit to be appointed by Court for minor defendant.
- 3A. Decree against minor not to be set aside unless prejudice has been caused to his interests.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of next friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal or death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.
13. Where minor co-plaintiff attaining majority desires to repudiate suit.
14. Unreasonable or improper suit.
15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.

RULES

16. Savings.

ORDER XXXIIA

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

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

ORDER XXXIII

SUITS BY INDIGENT PERSONS

1. Suits may be instituted by indigent persons.
- 1A. Inquiry into the means of an indigent person
 2. Contents of application.
 3. Presentation of application.
 4. Examination of applicant.

If presented by agent, Court may order applicant to be examined by commission.
 5. Rejection of application.
 6. Notice of day for receiving evidence of applicant's indigency.
 7. Procedure at hearing.
 8. Procedure if application admitted.
 9. Withdrawal of permission to sue as an indigent person.
- 9A. Court to assign a pleader to an unrepresented indigent person.
10. Costs where indigent person succeeds.
11. Procedure where indigent person fails.
- 11A. Procedure where indigent persons suit abates.
12. State Government may apply for payment of court-fees.
13. State Government to be deemed a party.
14. Recovery of amount of court-fees.
15. Refusal to allow applicant to sue as indigent person to bar subsequent application of like nature.
- 15A. Grant of time for payment of court-fee.
16. Costs.
17. Defence by an indigent person.
18. Power of Government to provide for free legal services to indigent persons.

ORDER XXXIV

SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

1. Parties to suits for foreclosure, sale and redemption.
2. Preliminary decree in foreclosure-suit.
3. Final decree in foreclosure-suit.
4. Preliminary decree in suit for sale.

Power to decree sale in foreclosure-suit.
5. Final decree in suit for sale.
6. Recovery of balance due on mortgage in suit for sale.

RULES

7. Preliminary decree in redemption suit.
8. Final decree in redemption suit.
- 8A. Recovery of balance due on mortgage in suit for redemption.
9. Decree where nothing is found due or where mortgagee has been overpaid.
10. Costs of mortgagee subsequent to decree.
- 10A. Power of Court to direct mortgagee to pay *mesne* profits.
11. Payment of interest.
12. Sale of property subject to prior mortgage.
13. Application of proceeds.
14. Suit for sale necessary for bringing mortgaged property to sale.
15. Mortgages by the deposit of title-deeds and charges.

ORDER XXXV INTERPLEADER

1. Plaint in interpleader-suit.
2. Payment of thing claimed into Court.
3. Procedure where defendant is suing plaintiff.
4. Procedure at first hearing.
5. Agents and tenants may not institute interpleader-suits.
6. Charge for plaintiff's costs.

ORDER XXXVI SPECIAL CASE

1. Power to state case for Court's opinion.
2. Where value of subject-matter must be stated.
3. Agreement to be filed and registered as suit.
4. Parties to be subject to Court's jurisdiction.
5. Hearing and disposal of case.
6. No appeal from a decree passed under rule 5.

ORDER XXXVII SUMMARY PROCEDURE

1. Courts and classes of suits to which the Order is to apply.
2. Institution of summary suits.
3. Procedure for the appearance of defendant.
4. Power to set aside decree.
5. Power to order bill, etc., to be deposited with officer of Court.
6. Recovery of cost of noting non-acceptance of dishonoured bill or note.
7. Procedure in suits.

ORDER XXXVIII ARREST AND ATTACHMENT BEFORE JUDGMENT *Arrest before Judgment*

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

RULES

3. Procedure on application by surety to be discharged.
4. Procedure where defendant fails to furnish security or find fresh security.

Attachment before Judgment

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

ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

1. Cases in which temporary injunction may be granted.
2. Injunction to restrain repetition or continuance of breach.
- 2A. Consequence of disobedience or breach of injunction.
3. Before granting injunction, Court to direct notice to opposite party.
- 3A. Court to dispose of application for injunction within thirty days.
4. Order for injunction may be discharged, varied or set aside.
5. Injunction to corporation binding on its officers.

Interlocutory orders

6. Power to order interim sale.
7. Detention, preservation, inspection, etc., of subject-matter of suit.
8. Application for such orders to be after notice.
9. When party may be put in immediate possession of land the subject-matter of suit.
10. Deposit of money, etc., in Court.

ORDER XL

APPOINTMENT OF RECEIVERS

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

ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. Form of appeal.
What to accompany memorandum.
Contents of memorandum.

RULES

2. Grounds which may be taken in appeal.
3. Rejection or amendment of memorandum.
- 3A. Application for condonation of delay.
4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Stay of proceedings and of execution

5. Stay by Appellate Court.
Stay by Court which passed the decree.
6. Security in case of order for execution of decree appealed from.
7. [*Repealed.*].
8. Exercise of powers in appeal from order made in execution of decree.

Procedure on admission of appeal

9. Registry of memorandum of appeal.
Register of appeal.
10. Appellate Court may require appellant to furnish security for costs.
Where appellant resides out of India.
11. Power to dismiss appeal without sending notice to Lower Court.
- 11A. Time within which hearing under rule 11 should be concluded.
12. Day for hearing appeal.
13. Appellate Court to give notice to Court whose decree appealed from.
Transmission of papers to Appellate Court.
Copies of exhibits in Court whose decree appealed from.
14. Publication and service of notice of day for hearing appeal.
Appellate Court may itself cause notice to be served.
15. Contents of notice.

Procedure on hearing

16. Right to begin.
17. Dismissal of appeal for appellant's default.
Hearing appeal *ex parte*.
18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.
19. Re-admission of appeal dismissed for default.
20. Power to adjourn hearing, and direct persons appearing interested to be made respondents.
21. Re-hearing on application of respondent against whom *ex parte* decree made.
22. Upon hearing respondent may object to decree as if he had preferred a separate appeal.
Form of objection and provisions applicable thereto.
23. Remand of case by Appellate Court.
- 23A. Remand in other cases.
24. Where evidence on record sufficient, Appellate Court may determine case finally.
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.
26. Findings and evidence to be put on record.
Objections to finding.
Determination of appeal.

RULES

- 26A. Order of remand to mention date of next hearing
- 27. Production of additional evidence in Appellate Court.
- 28. Mode of taking additional evidence.
- 29. Points to be defined and recorded.

Judgment in appeal

- 30. Judgment when and where pronounced.
- 31. Contents, date and signature of judgment.
- 32. What judgment may direct.
- 33. Power of Court of appeal.
- 34. Dissent to be recorded.

Decree in appeal

- 35. Date and contents of decree.
 - Judge dissenting from judgment need not sign decree.
- 36. Copies of judgment and decree to be furnished to parties.
- 37. Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLII

APPEALS FROM APPELLATE DECREES

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

ORDER XLIII

APPEALS FROM ORDERS

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

ORDER XLIV

APPEALS BY INDIGENT PERSONS

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

ORDER XLV

APPEALS TO THE SUPREME COURT

- 1. “Decree” defined.
- 2. Application to Court whose decree complained of.
- 3. Certificate as to value or fitness.
- 4. [*Repealed.*].
- 5. [*Repealed.*].
- 6. Effect of refusal of certificate.
- 7. Security and deposit required on grant of certificate.
- 8. Admission of appeal and procedure thereon.

RULES

9. Revocation of acceptance of security.
- 9A. Power to dispense with notices in case of deceased parties.
10. Power to order further security or payment.
11. Effect of failure to comply with order.
12. Refund of balance deposit.
13. Powers of Court pending appeal.
14. Increase of security found inadequate.
15. Procedure to enforce orders of the Supreme Court.
16. Appeal from order relating to execution.
17. [*Repealed.*].

ORDER XLVI

REFERENCE

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

ORDER XLVII

REVIEW

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

ORDER XLVIII

MISCELLANEOUS

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

ORDER XLIX

CHARTERED HIGH COURTS

1. Who may serve processes of High Court.

RULES

2. Saving in respect of Chartered High Courts.
3. Application of rules.

ORDER L

PROVINCIAL SMALL CAUSE COURTS

1. Provincial Small Cause Courts.

ORDER LI

PRESIDENCY SMALL CAUSE COURTS

1. Presidency Small Cause Courts.

APPENDIX — A. PLEADINGS.

APPENDIX — B. PROCESS.

APPENDIX—C. DISCOVERY, INSPECTION AND ADMISSION.

APPENDIX — F. DECREES.

APPENDIX — G. EXECUTION.

APPENDIX — H. SUPPLEMENTAL PROCEEDINGS.

APPENDIX— I. MISCELLANEOUS.

THE SECOND SCHEDULE — [*Repealed*].

THE THIRD SCHEDULE. — [*Repealed*].

THE FOURTH SCHEDULE. — [*Repealed*].

THE FIFTH SCHEDULE. — [*Repealed*].

ANNEXURE I

THE CODE OF CIVIL PROCEDURE, 1908

ACT NO. 5 OF 1908¹

[21st March, 1908.]

An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil
Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts
of Civil Judicature : It is hereby enacted as follows :

PRELIMINARY

1. Short title, commencement and extent.—(1) This Act may be cited as the Code of Civil
Procedure, 1908.

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

1. This Act has been amended in its application to Assam by Assam Acts 2 of 1941 and 3 of 1953; to Tamil Nadu by Madras Act 34 of 1950, Madras A.O. 1950, and Tamil Nadu Act 15 of 1970; to Punjab by Punjab Act 7 of 1934; to Uttar Pradesh by U.P. Acts 4 of 1925, 35 of 1948, 24 of 1954, 17 of 1970, 57 of 1976 and 31 of 1978; to Karnataka by Mysore Act 14 of 1955; to Kerala by Kerala Act 13 of 1957; to Rajasthan by Rajasthan Act 19 of 1958; to Maharashtra by Maharashtra Act 22 of 1960 and 25 of 1970; It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and, by notification under ss. 5 and 5A of the Schedule Districts Act, 1874 (14 of 1874), also to the following Scheduled Districts :—

(1) The district of Jalpaiguri, Cachar (excluding the North Cachar Hills Goalpara (including the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Mikir Hill Tracts) Sibsagar (excluding the Mikir Hill Tracts) and Lakhimpur (excluding the Dibrugarh Frontier Tracts) : Gazette of India, 1909, Pt. I, p. 5 and *ibid*, 1914, Pt I, p. 1690.

(2) The District of Darjeeling and the District of Hazaribagh, Ranchi, Palamau and Manbhum in Chota Nagpur : Calcutta Gazette, 1909, Pt. I, p. 25 and Gazette of India, 1909, Pt. I, p. 33.

(3) The Province of Kumaon and Garhwal and the Tarai Parganas (with modifications) : U.P. Gazette, 1909, Pt. I, p. 3 and Gazette of India, 1909, Pt. I, p. 31.

(4) The Pargana of Jaunsar-Bawar in Dehradun and the Scheduled portion of the Mirzapur District : U.P. Gazette, 1909, Pt. I, p. 4 and Gazette of India, 1909, Pt. I, p. 32.

(5) Coorg : Gazette of India, 1909, Pt. I, p. 32.

(6) Scheduled Districts in the Punjab : Gazette of India, 1909, Pt. I, p. 33.

(7) Sections 36 to 43 to all the Scheduled Districts in Madras, Gazette of India, 1909, Pt. I, p. 152.

(8) Scheduled Districts in the C.P., except so much as is already in force and so much as authorizes the attachment and sale of immovable property in execution of a decree, not being a decree directing the sale of such property : Gazette of India, 1909, Pt. I, p. 239.

(9) Ajmer-Merwara except ss. 1 and 155 to 158: Gazette of India, 1909, Pt. II, p. 480.

(10) Pargana Dhalbhum, the Municipality of Chaibassa in the Kolhan and the Porahat Estate in the District of Singhbhum : Calcutta, Gazette of India, 1909, Pt. I, p. 453 and Gazette of India, 1909, Pt. I, p. 443.

Under s. 3(3)(a) of the Sonthal Parganas Settlement Regulation (3 of 1872), ss. 38 to 42 and 156 and rules 4 to 9 in Order XXI in the First Schedule have been declared to be in force in the Sonthal Parganas and the rest of the Code for the trial of suits referred to in s. 10 of the Sonthal Parganas Justice Regulation, 1893 (5 of 1893) : *see* Calcutta, Gazette, 1909, Pt. I, p. 45.

It has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been extended to the District of Koraput and Ganjam Agency by Orissa Regulation, (5 of 1951) s.2.

It has been extended to the State of Manipur (w.e.f. 1-1-1957) by Act 30 of 1950, s. 3 to the whole of the Union Territory of Lakshadweep (w.e.f. 1-10-1967) by Regulation 8 of 1965, s. 3 and Sch. : to Goa, Daman and Diu (w.e.f. 15-6-1966) by Act 30 of 1965, s. 3; to Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Sch. 1 and to the State of Sikkim (w.e.f. 1-9-1984), *vide* Notification No. S.O. 599 (E), dated 13-8-1984, Gazette of India Extraordinary., Part. II, s. 3.

¹[(3) It extends to the whole of India except—

- (a) the State of Jammu and Kashmir;
- (b) the State of Nagaland and the tribal areas :

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

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

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

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “Code” includes rules;

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

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

(b) any order of dismissal for default.

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

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

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

³[(5) “foreign Court” means a Court situate outside India and not established or continued by the authority of the Central Government;]

(6) “foreign judgment” means the judgment of a foreign Court;

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

⁴[(7A) “High Court” in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7B) “India”, except in sections 1, 29, 43, 44, ⁵[44A,] 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;]

(8) “Judge” means the presiding officer of a Civil Court;

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

1. Subs. by Act 104 of 1976, s. 2, for sub-section (3) (w.e.f. 1-2-1977).

2. The words and figures “section 47 or” omitted by s. 3, *ibid.*, (w.e.f. 1-2-1977).

3. Subs. by Act 2 of 1951, s. 4 for cl. 5.

4. Ins. by s. 4 *ibid.*

5. Ins. by Act 42 of 1953, s. 4 and the Third Sch.

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

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

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

(13) “movable property” includes growing crops;

(14) “order” means the formal expression of any decision of a Civil Court which is not a decree;

(15) “pleader” means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;

(16) “prescribed” means prescribed by rules;

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

(a) every Judge;

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

(c) every commissioned or gazetted officer in the military ²[naval or air] forces of. ³[the Union] ^{4***} while serving under the Government;

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

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

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

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

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

(18) “rules” means rules and forms contained in the First Schedule or made under section 122 or section 125;

(19) “share in a corporation” shall be deemed to include stock, debenture stock, debentures or bonds; and

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

1. Subs. by Act 104 of 1976, s. 3, for “the Indian Civil Service” (w.e.f. 1-2-1977).

2. Subs. by Act 35 of 1934, s. 2 and the Sch., for “or naval”.

3. Subs. by the A.O. 1950, for “his Majesty”.

4. The words “including His Majesty’s Indian Marine Service” omitted by Act 35 of 1934, s. 2 and the Sch.

3. Subordination of Courts.—For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

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

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

5. Application of the Code to Revenue Courts.—(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government ^{2***} may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government ^{3***} may prescribe.

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

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

7. Provincial Small Cause Courts.—The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887(9 of 1887) ⁴[or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes ⁵[under the said Act or Law], ⁶[or to Courts in ⁷[any part of India to which the said Act does not extend] exercising a corresponding jurisdiction that is to say,—

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

- (i) suits excepted from the cognizance of a Court of Small Causes;
- (ii) the execution of decrees in such suits;
- (iii) the execution of decrees against immovable property; and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 ⁸[so far as they authorize or relate to]—

- (i) orders for the attachment of immovable property,
- (ii) injunctions,
- (iii) the appointment of a receiver of immovable property, or

1. Cl. (21) ins. by the A.O. 1950, and omitted by Act 2 of 1951, s. 4.

2. The words “with the previous sanction of the G.G. in C”, omitted by Act 38 of 1920, s. 2 and the First Sch. Pt. I.

3. The words “with the sanction aforesaid” omitted by s. 2 and the First Sch., Pt. I, *ibid.*

4. Ins. by Act 4 of 1941, s. 2 and the Third Sch.

5. Subs. by s. 2 and the Third Sch., *ibid.*, for “under that Act”.

6. Ins. by Act 2 of 1951, s. 5.

7. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for “Part B States”.

8. Subs. by Act 1 of 1926, s. 3, for “so far as they relate to injunctions and interlocutory orders”.

(iv) the interlocutory orders to in clause (e) of section 94], and sections 96 to 112 and 115.

8. Presidency Small Cause Courts.—Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, ¹[77, 157 and 158], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay :

²[Provided that—

(1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, direct³ that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court.

(2) All rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882) shall be deemed to have been validly made.]

PART I

SUITS IN GENERAL

JURISDICTION OF THE COURTS AND *Res Judicata*

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

⁴[*Explanation I*].—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

⁵[*Explanation I*].—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.]

10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in ⁶[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of ⁶[India] established or continued by ⁷[the Central Government ⁸* * *]. and having like jurisdiction, or before ⁹[the Supreme Court].

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

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

1. Subs. by Act 104 of 1976, s. 4, for “77 and 155 to 158” (w.e.f. 1-2-1977).

2. Added by Act 1 of 1914, s. 2.

3. For instance of such direction, see Calcutta Gazette, 1910, Pt. I, p. 814.

4. *Explanation* renumbered as *Explanation I* thereof by Act 104 of 1976, s. 5 (w.e.f. 1-2-1977).

5. Ins. by s. 5, *ibid.*, (w.e.f. 1-2-1977).

6. Subs. by Act 2 of 1951, s. 3, for “the States”.

7. Subs. by the A.O. 1937, for “the G.G. in C.”

8. The words “or the Crown Representative” omitted by the A.O. 1948.

9. Subs. by the A.O. 1950, for “His Majesty in Council”.

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

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

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

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

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

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

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

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

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

13. When foreign judgment not conclusive.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of ²[India] in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in ²[India].

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

PLACE OF SUING

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

16. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,

1. Ins. by Act 104 of 1976, s. 6 (w.e.f. 1-2-1977).

2. Subs. by Act 2 of 1951, s. 3, for “the States” (w.e.f. 1-4-1951).

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

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in ¹[India].

17. Suits for immovable property situate within jurisdiction of different Courts.—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts. the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. Place of Institution of suit where local limits of jurisdiction of Courts are uncertain.— (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

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

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

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

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

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

1. Subs. by Act 2 of 1951, s. 3 for “the States”

that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

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

¹* * * *

² [Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in ³[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. Objections to jurisdiction. —⁴[(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

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

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

⁶[21A. Bar on suit to set aside decree on objection as to place of suing.— No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

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

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

1. *Explanation 1* omitted by Act 104 of 1976, s. 7 (w.e.f. 1-2-1977).

2. Subs. by s. 7, *ibid.*, for “*Explanation II*” (w.e.f. 1-2-1977).

3. Subs. by Act 2 of 1951, s. 3 for “the States”.

4. S. 21 renumbered as sub-section (1) by Act 104 of 1976, s. 8 (w.e.f. 1-2-1977).

5. Ins. by s. 8, *ibid.* (w.e.f. 1-2-1977).

6. Ins. by s. 9, *ibid.* (w.e.f. 1-2-1977).

23. To what Court application lies.—(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

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

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

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

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

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

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

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

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

²[(3) For the purposes of this section,—

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

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

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

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

⁴[**25. Power of Supreme Court to transfer suits, etc.**—(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in an other State.

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

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

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

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

1. Subs. by Act 104 of 1976, s. 10, for “thereafter tries such suit” (w.e.f. 1-2-1977).

2. Subs. by s. 10, *ibid.*, for sub-section (3) (w.e.f. 1-2-1977).

3. Ins. by s. 10, *ibid.*, (w.e.f. 1-2-1977).

4. Subs. by s. 11, *ibid.*, for s. 25 (w.e.f. 1-2-1977).

INSTITUTION OF SUITS

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

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

*[Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.]

SUMMONS AND DISCOVERY

27. Summons to defendants.—Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed ²[on such day not beyond thirty days from date of the institution of the suit.]

28. Service of summons where defendant resides in another State.—(1) A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

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

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

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

(b) in Hindi or English where the language of such record is other than Hindi or English,

shall also be sent together with the record sent under that sub-section.]

⁴[**29. Service of foreign summonses.**—Summonses and other processes issued by—

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.]

30. Power to order discovery and the like.—Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. Summons to witness.—The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. Penalty for default.—The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

(a) issue a warrant for his arrest;

(b) attach and sell his property;

1. S. 26 renumbered as sub-section (1) by Act 46 of 1999, s. 2 (w.e.f. 1-7-2002).

2. Ins by s. 3, *ibid.*, (w.e.f. 1-7-2002).

3. Ins. by Act 104 of 1976, s. 12 (w.e.f. 1-5-1977).

4. Subs. by Act 2 of 1951, s. 6, for s. 29 (w.e.f. 1-4-1951).

* Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

- (c) impose a fine upon him ¹[not exceeding five thousand rupees];
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

JUDGMENT AND DECREE

33. Judgment and decree.—The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

INTEREST

34. Interest.— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, ²[with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

³[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.]

Explanation I.—In this Sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

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

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

COSTS

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

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

$$4* \qquad \qquad \qquad * \qquad \qquad \qquad * \qquad \qquad \qquad * \qquad \qquad \qquad *$$

*[**35. Costs.**— (1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;
(b) the quantum of those costs; and
(c) when they are to be paid.

Explanation.—For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred;
- (ii) legal fees and expenses incurred;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

1. Subs. by Act 46 of 1999, s. 4, for certain words (w.e.f. 1-7-2002).

2. Subs. by Act 66 of 1956, s. 2, for certain words.

3. Ins. by Act 104 of 1976, s. 13 (w.e.f. 1-7-1977).

4. Sub-section (3) omitted by Act 66 of 1956, s. 3.

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and
- (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.]

¹[**35A. Compensatory costs in respect of false or vexatious claims or defences.**—(1) If in any suit or other proceedings ²[including an execution proceeding but ³[excluding an appeal or a revision] any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, ⁴[if it so thinks fit], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.

*[(2) No Court shall make any such order for the payment of an amount exceeding ⁵[three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), ⁶[or under a corresponding law in force in ⁷[any part of India to which the said Act does not extend]] and not being a Court constituted ⁸[under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees :

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.]

1. S. 35A ins. by Act 9 of 1922, s. 2, which, under section 1(2) thereof may be brought into force in any State by the State Government on any specified date. It has been so brought into force in Bombay, Bengal, U.P., Punjab, Bihar, C.P., Assam, Orissa and Madras.

2. Subs. by Act 66 of 1956, s. 4, for "not being an appeal".

3. Subs. by Act 104 of 1976, s. 14, for "excluding an appeal" (w.e.f. 1-2-1977).

4. Subs. by Act 66 of 1956, s. 4, for certain words.

5. Subs. by Act 104 of 1976, s. 14, for "one thousand rupees" (w.e.f. 1-2-1977).

6. Ins. by Act 2 of 1951, s. 7.

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

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

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

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

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

¹[**35B. Costs for causing delay.**—(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(a) fails to take the step which he was required by or under this Code to take on that date, or

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

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

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

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

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

PART II EXECUTION GENERAL

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

37. Definition of Court which passed a decree.—The expression “Court which passed a decree,” or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

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

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

³[*Explanation.*—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]

COURTS BY WHICH DECREES MAY BE EXECUTED

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

39. Transfer of decree.—(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court ⁴[of competent jurisdiction],—

1. Ins. by Act 104 of 1976, s. 15 (w.e.f. 1-2-1977).

2. Subs. by s. 16, *ibid.*, for s. 36 (w.e.f. 1-2-1977).

3. Ins. by s. 17, *ibid.*, (w.e.f. 1-2-1977).

4. Ins. by s. 18, *ibid.*, (w.e.f. 1-2-1977).

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

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

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

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

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

¹[(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]

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

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

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

42. Powers of Court in executing transferred decree. — ³[(1)] The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had passed by itself.

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

(a) power to send the decree for execution to another Court under section 39;

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

(c) power to order attachment of a decree.

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

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

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

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

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

1. Ins. by Act 104 of 1976, s. 18, (w.e.f. 1-2-1977).

2. Ins. by Act 22 of 2002, s. 2 (w.e.f. 1-7-2002).

3. S. 42 renumbered as sub-section (1) by Act 104 of 1976, s. 19, (w.e.f. 1-2-1977).

4. Ins. by s. 19, *ibid.*, (w.e.f. 1-2-1977).

5. Subs. by Act 2 of 1951, s. 8, for s. 43.

¹[**44. Execution of decrees passed by Revenue Courts in places to which this Code does not extend.**—The State Government may, by notification in the Official Gazette, declare that the decrees of any Revenue Court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State.]

²[**44A. Execution of decrees passed by Courts in reciprocating territory.**—(1) Where a certified copy of a decree of any of the superior Courts of ³*** any reciprocating territory has been filed in a District Court, the decree may be executed in ⁴[India] as if it had been passed by the District Court.

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

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

⁵[*Explanation 1.*— “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and “superior Courts”, with reference to any such territory, means such Courts as may be specified in the said notification.

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

⁶[**45. Execution of decrees outside India.**—So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established ⁷*** by the authority of the Central Government ⁸[outside India] to which the State Government has by notification in the Official Gazette declared this section to apply.]

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

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

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

1. Subs. by Act 2 of 1951, s. 9, for s. 43.

2. Ins. by Act 8 of 1937, s. 2.

3. The words “the United Kingdom or” omitted by Act 71 of 1952, s. 2.

4. Subs. by Act 2 of 1951, s. 3, for “the States”.

5. Subs. by Act 71 of 1952, s. 2, for *Explanations 1 to 3*.

6. Subs. by the A.O. 1937, for s. 45.

7. The words “or continued” omitted by the A.O. 1948.

8. Subs. by the A.O. 1950, for “in any Indian State”.

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

²[*Explanation 1.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

LIMIT OF TIME FOR EXECUTION

48. [*Execution barred in certain cases.*] *Rep. by the Limitation Act, 1963 (36 of 1963), s. 28 (w.e.f. 1-1-1964).*

TRANSFEREES AND LEGAL REPRESENTATIVES

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

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

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

PROCEDURE IN EXECUTION

51. Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison ³[for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require :

⁴[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

1. Sub-section (2) omitted by Act 104 of 1976, s. 20 (w.e.f. 1-2-1977).

2. Subs. by s. 20, *ibid*, for the *Explanation* (w.e.f. 1-2-1977).

3. Ins. by *ibid*, s. 21, (w.e.f. 1-2-1977).

4. Ins. by Act 21 of 1936, s. 2.

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

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

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

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

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

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

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

ARREST AND DETENTION

55. Arrest and detention.—(1) A judgment-debtor may be arrested in execution of a decree at, any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

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

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he ¹[may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court ²[may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

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

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

58. Detention and release.—(1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding ³[⁴five thousand rupees], for a period not exceeding three months, and,]

⁵[(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.]

⁶(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed ⁷[two thousand rupees.]

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

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

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

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

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

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

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

ATTACHMENT

⁸60. Property liable to attachment and sale in execution of decree.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other

1. Subs. by Act 3 of 1921, s. 2, for “will be discharged”.

2. Subs. by s. 2, *ibid.*, for “shall release”.

3. Subs. by Act 104 of 1976, s. 22, for certain words (w.e.f. 1-2-1977).

4. Subs. by Act 46 of 1999, s. 5, “one thousand rupees” (w.e.f. 1-7-2002).

5. Subs. by s. 5, *ibid.*, by clause (b) (w.e.f. 1-7-2002).

6. Ins. by Act 104 of 1976, s. 22 (w.e.f. 1-2-1977).

7. Subs. by Act 46 of 1999, s. 5, for “five hundred rupees” (w.e.f. 1-7-2002).

8. For amendments to s. 60, in its application to East Punjab, *see* the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 35, as amended by Pun. Acts 12 of 1940 and 6 of 1942.

saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

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

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

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

(d) books of account ;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government ²[or of a local authority or of any other employer], or payable out of any service family pension fund ³notified in the Official Gazette by ⁴[the Central Government or the State Government] in this behalf, and political pensions;

⁵[(h) the wages of labourers and domestic servants, whether payable in money or in kind;

⁶***

⁷[(i) salary to the extent of ⁸[the first ⁹[one thousand rupees] and two third of the remainder] ¹⁰[in execution of any decree other than a decree for maintenance]:

¹¹[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.]]

¹²[(ia) one-third of the salary in execution of any decree for maintenance;]

¹²[(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;]

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, ¹³[1925], (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

¹⁰[(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

1. Subs. by Act 104 of 1976, s. 23, for “an agriculturist” (w.e.f. 1-2-1977)

2. Ins. by s. 23, *ibid.*, (w.e.f. 1-2-1977).

3. For such a notification, *see* Gazette of India, 1909, Pt I, p. 5.

4. Such by the A.O. 1937, for “the G.G. in C.”

5. Subs. by Act 9 of 1937, s. 2, for cls. (h) and (i). The amendments made by that section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937, *see ibid.*, s. 3.

6. The words “and salary, to the extent of the first hundred rupees and one-half the remainder of such salary” omitted by Act 5 of 1943, s. 2.

7. Subs. by s. 2, *ibid.*, for clause (i) and proviso.

8. Subs. by Act 26 of 1963, s. 2, for “the first hundred rupees”.

9. Subs. by Act 46 of 1999, s. 6, for “four hundred rupees” (w.e.f. 1-7-2002).

10. Ins. by Act 66 of 1956, s. 6.

11. Subs. by Act 104 of 1976, s. 23, for “the proviso” (w.e.f. 1-2-1977).

12. Subs. by s. 23, *ibid.*, for clause (j) (w.e.f. 1-2-1977).

13. Subs. by Act 9 of 1937, s. 2, for “1897”.

(*kc*) the interest of a lessee of a residential of building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]

¹[(*I*) any allowance forming part of the emoluments of any ²[servant of the ³[Government]] or of any servant of a railway company or local authority which the ⁴[appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to ⁵[any such servant] while under suspension;]

(*m*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*n*) a right to future maintenance;

(*o*) any allowance declared by ⁶[any Indian law] to be exempt from liability to attachment or sale in execution of a decree, and

(*p*) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

⁷[*Explanation 1*. —The moneys payable in relation to the matters mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*I*) and (*o*) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable.]

⁸[⁹[*Explanation II*. —In clauses (*i*) and (*ia*)], “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (*I*), derived by a person from his employment whether on duty or on leave.]

¹⁰[*Explanation III*—In clause (*I*) “appropriate Government” means—

(*i*) as respects any ¹²[person] in the service of the Central Government, or any servant of ¹³[a Railway Administration] or of a cantonment authority or of the port authority of a major port, the Central Government;

¹⁴* * * * *

(*iii*) as respects any other ⁵[servant of the ³[Government]] or a servant of any other ¹⁵*** local authority, the State Government.]

¹⁶[*Explanation IV*—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled unskilled or semi-skilled labourer.

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

Explanation VI—For the purposes of *Explanation V* an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(*a*) by his own labour, or

(*b*) by the labour of any member of his family, or

(*c*) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.]

¹⁵[(*IA*) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

1. Subs. by Act 9 of 1937, s. 2, for the original clause (*I*), see also footnote 3.

2. Subs. by Act 5 of 1943, s. 2, for “public officer”.

3. Subs. by the A.O. 1950 for “crown”.

4. Subs. by the A.O. 1937, for “G.G. in C”.

5. Subs. by Act 5 of 1943, s. 2, “any such officer or servant”.

6. Subs. by the A.O. 1937, for “any law passed under the Indian Councils Act 1861 and 1892”.

7. Subs. by Act 104 of 1976, s. 23 for *Explanation I* (w.e.f. 1-2-1977).

8. Added by Act 9 of 1937, s. 2, The amendments made by that section shall not effect in respect of any proceeding arising out of any suit instituted before 1st June, 1937, see *ibid.*, s. 3.

9. Subs. by Act 104 of 1976, s. 23, “*Explanation 2*. —in clauses (*h*) and (*i*)” (w.e.f. 1-2- 1977).

10. Ins. by the A.O. 1937.

11. Subs. by Act 104 of 1976, s. 23, for “3” (w.e.f. 1-2-1977).

12. Subs. by Act 5 of 1943, s. 2, for “Public officer”.

13. Subs. by the Act A.O. 1950, for “a Federal Railway”.

14. Clause (*ii*) omitted by the A.O. 1948.

15. The words “railway or” omitted by the A.O. 1950.

16. Ins. by Act 104 of 1976, s. 23, (w.e.f. 1-2-1977).

(2) Nothing in this section shall be deemed ^{1***} to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land ^{1***}

^{1*}

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61. Partial exemption of agricultural produce.—The State Government ^{2***} may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

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

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

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

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

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

³[*Explanation.*—For the purposes of sub-section (2), “proceeding taken by a Court” does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.]

64. Private alienation of property after attachment to be void. —⁴[(1)] Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moines contrary to such attachment, shall be void as against all claims enforceable under the attachment.

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

Explanation. —For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

1. The brackets and letter “(a)” the word “or” and clause (b) rep. by Act 10 of 1914, s. 3 and the Second Sch.

2. The words “with the previous sanction of the G.G. in C.” omitted by Act 38 of 1920, s. 2 and the First Sch. Pt 1.

3. *Explanation*, ins. by Act 104 of 1976, s. 24, (w.e.f. 1-2-1977).

4. S. 64 renumbered as sub-section (1) by Act 22 of 2002, s. 3 (w.e.f. 1-7-2002).

5. Ins. by s. 3, *ibid.* (w.e.f. 1-7-2002).

SALE

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

66. [*Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.*] — *Rep. by Act, 1988 (45 of 1988), s. 7 (w.e.f. 19-5-1988).*

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

³[(2)] When on the date on which this Code came into operation in any local area, any special rules as to sale of and in execution of decrees were in force therein, the State Government may, by notification in the Official Gazette declare such rules to be in force, or may ^{2***} by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.]

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

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVABLE PROPERTY

68. [Power to prescribe rules for transferring to collector execution of certain decrees.] — *Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 7.*

69. [*Provisions of Third Schedule to apply.*]— *Rep. by s. 7 ibid.*

70. [*Rules of Procedure.*] — *Rep. by s. 7 ibid.*

71. [*Jurisdiction of Civil Courts barred.*]— *Rep. by s. 7 ibid.*

72. [*Collector to deemed to be acting judicially.*] — *Rep. by s. 7 ibid.*

DISTRIBUTION OF ASSETS

73. Proceeds of execution sale to be rateably distributed among decree-holders.—(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :

Provided as follows :—

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

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

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

First, in defraying the expenses of the sale;

Secondly, in discharging the amount due under the decree;

1. S. 67 renumbered as sub-section (1) by Act 1 of 1914, s. 3.

2. The words "with the previous sanction of the G.G. in C." omitted by Act 38 of 1920, s. 2 and Sch., Pt. 1.

3. Added by Act 1 of 1914, s. 3.

4. Ins. by Act 20 of 1983, s. 2 and the Sch. (w.e.f. 15-3-1984).

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgement-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

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

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

RESISTANCE TO EXECUTION

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

PART III

INCIDENTAL PROCEEDINGS

COMMISSIONS

75. Power of Court to issue commissions.—Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

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

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

(g) to perform any ministerial act.]

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

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

77. Letter of request.—In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within ²[India]

³**[78. Commissions issued by foreign Courts.**—Subject to such conditions and limitations as may be prescribed the provisions as to the execution and return of commissions for the examination of witnesses

1. Ins. by Act 104 of 1976, s. 26 (w.e.f. 1-2-1977).

2. Subs. by Act 2 of 1951, s. 3, for “the States”.

3. Subs. by s. 11, *ibid.*, for s. 78.

shall apply to commissions issued by or at the instance of—

- (a) Courts situate in any part of India to which the provisions of this Code do not extend; or
- (b) Courts established or continued by the authority of the Central Government outside India; or
- (c) Courts of any State or country outside India.]

PART IV

SUITS IN PARTICULAR CASES

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

¹[**79. Suits by or against Government.**—In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

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

80. Notice.— ³[(1)] ⁴[Save as otherwise provided in sub-section (2), no suits ⁵[shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been ⁶[delivered to, or left at the office of—]

(a) in the case of a suit against the Central Government, ⁷[except where it relates to a railway] a Secretary to that Government;

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

⁹[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]

(c) in the case of a suit against ¹⁰[any other State Government], a Secretary to that Government or the Collector of the district; ¹¹***

¹²* * * * *

and, in the case of a public officer, delivered to him or left at his office, stating the cause of

1. Subs by the A.O. 1948, for s. 79.

2. Subs. by the A.O. 1950, for “the Dominion of India”.

3. S. 80 renumbered as sub-section (1) by Act 104 of 1976, s. 27 (w.e.f. 1-2-1977).

4. Subs. by s. 27, *ibid.*, for “No suit shall be instituted” (w.e.f. 1-2-1977).

5. Subs. by Act 26 of 1963, s. 3 for “*shall be instituted against the Government*” (w.e.f. 5-6-1964). The words in italics were subs. by the A.O. 1948, for “Instituted against the Crown”

6. Subs. by the A.O. 1937, for “in the case of the Secretary of State in Council, delivered to, or left at the office of a Secretary to the L.G. or the Collector of the District”.

7. Ins. by Act 6 of 1948, s. 2.

8. Clause (aa) ins. by Act 6 of 1948, s. 2 and relattered as clause (b) and the Former clause (b) omitted by the A.O. 1948.

9. Ins. by Act 26 of 1963, s. 3 (w.e.f. 5-6-1964).

10. Subs. by s. 3, *ibid.* for “a State Government” (w.e.f. 5-6-1964).

11. The word “and” omitted by the A.O. 1948.

12. Cl. (d) omitted, *ibid.*

action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

¹[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

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

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

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

81. Exemption from arrest and personal appearance.—In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

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

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

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

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of ³[such decree].

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

(a) is passed or made against ⁵[the Union of India] or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority; and

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

1. Ins. by Act 104 of 1976, s. 27 (w.e.f. 1-2-1977).

2. Subs. by s. 28, *ibid.*, for sub-section (1) (w.e.f. 1-2-1977).

3. Subs. by Act 104 of 1976, s. 28, for “such report” (w.e.f. 1-2-1977).

4. Ins. by Act 32 of 1949, s. 2.

5. Subs. by the A.O. 1950, for “the Dominion of India”.

¹[SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS]

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

Explanation. —Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

84. When foreign States may sue.—A foreign State may sue in any competent Court :

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.—(1) The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons so appointed shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

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

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

86. Suits against foreign Rulers, Ambassadors and Envoys.—(1) No. ²*** foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government :

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid ³[a foreign State] from whom he holds or claims to hold the property.

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

(a) has instituted a suit in the Court against the person desiring to sue ⁵[it], or

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

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

(d) has expressly or impliedly waived the privilege accorded to ⁵[it] by this section.

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

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

⁸[(a) any ruler of a foreign State;]

1. Subs. by Act 2 of 1951, s. 12, for the former heading and ss. 83 to 87.

2. The words “Ruler of a” omitted by Act 104 of 1976, s. 29 (w.e.f. 1-2-1977).

3. Subs. by s. 29, *ibid.*, for “a Ruler” (w.e.f. 1-2-1977).

4. Subs. by s. 29, *ibid.*, for “the Ruler (w.e.f. 1-2-1977).

5. Subs. by s. 29, *ibid.*, for “him” (w.e.f. 1-2-1977).

6. Subs. by Act 104 of 1976, s. 29, for “himself” (w.e.f. 1-2-1977).

7. Subs. by s. 29, *ibid.*, for sub-section (3) (w.e.f. 1-2-1977).

8. Ins. by s. 29, *ibid.* (w.e.f. 1-2-1977).

¹[(*aa*)] any Ambassador or Envoy of a foreign State;

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

(*c*) any such member of the staff ²[of the foreign State or the staff or retinue of the Ambassador] or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,

³[as they apply in relation to a foreign State].

⁴[(5) The following persons shall not be arrested under this Code. namely: —

(*a*) any Ruler of a foreign State;

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

(*c*) any High Commissioner of a Commonwealth country ;

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

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

87. Style of foreign Rulers as parties to suits.—The Ruler of a foreign State may sue, and shall be sued, in the name of his State:

Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

87A. Definitions of “Foreign State” and “Rulers”— (1) In this Part,—

(*a*) “foreign State” means any State outside India which has been recognised by the Central Government; and

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

(2) Every Court shall take judicial notice of the fact—

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

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

SUITS AGAINST RULERS OF FORMER INDIAN STATES

87B. Applications of sections 85 and 86 to Rulers of former Indian States.—⁵[(1) In the case of any suit by or against the Ruler of any former Indian State which is based wholly or in part upon a cause of action which arose before the commencement of the Constitution or any proceeding arising out of such suit, the provisions of section 85 and sub-sections (1) and (3) of section 86 shall apply in relation to such Ruler as they apply in relation to the Ruler of a foreign State.]

(2) In this section—

(*a*) “former Indian State” means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; ⁶***

1. Clause (*a*) re-lettered as clause (*aa*) by s. 29, *ibid.* (w.e.f. 1-2-1977).

2. Subs. by, s. 29, *ibid* for “or retinue of the Ruler, Ambassador” (w.e.f. 1-2-1977).

3. Subs. by s. 29, *ibid*, for “as they apply in relation to the Ruler of a foreign State” (w.e.f. 1-2-1977).

4. Ins. by s. 29, *ibid*, (w.e.f. 1-2-1977).

5. Subs. by Act 54 of 1972, s. 3, for sub-section (1).

6. The word “and” omitted by Act 54 of 1972, s. 3.

¹[(b) “Commencement of the Constitution” means the 26th day of January, 1950; and

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

INTERPLEADER

88. Where interpleader-suit may be instituted.—Where two or more persons claim adversely to one another the same debts, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V

SPECIAL PROCEEDINGS

ARBITRATION

²[**89. Settlement of disputes outside the Court.**—(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for :—

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

(2) Were a dispute has been referred—

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

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

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

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

SPECIAL CASE

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

1. Subs. by s. 3, *ibid.*, for clause (b).

2. Ins. by Act 46 of 1999, s. 7 (w.e.f. 1-7-2002), Earlier rep by Act 10 of 1940, s. 49 or the Third Sch.

91. Public nuisances and other wrongful acts affecting the public.—²[(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]

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

³**92. Public charities.**—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the ⁴[leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree :—

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

⁵[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquiries;

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

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

(g) settling a scheme; or

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

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), ⁶[or by any corresponding law in force in ⁷[the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

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

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

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

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

1. Subs. by Act 104 of 1976, s. 30, for the former headings (w.e.f. 1-2-1977).

2. Subs. by s. 30, *ibid.*, for sub-section (1) (w.e.f. 1-2-1977).

3. S. 92 shall not apply to any religious trust in Bihar, *see* Bihar Act 1 of 1951.

4. Subs. by Act 104 of 1976, s. 31, for “consent in writing of the Advocate-General”, (w.e.f. 1-2-1977).

5. Ins. by Act 66 of 1956, s. 9.

6. Ins. by Act 2 of 1951, s. 13.

7. Subs. by the A.O. (No. 2), 1956, for “a Part B State”.

8. Ins. by Act 104 of 1976, s. 31 (w.e.f. 1-2-1977).

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

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

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

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

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

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

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

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

93. Exercise of powers of Advocate-General outside presidency-towns.—The powers conferred by sections 91 and 92 on the Advocate-General may, outside the presidency-towns, be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in this behalf.

PART VI

SUPPLEMENTAL PROCEEDINGS

94. Supplemental proceedings.—In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, —

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

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

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

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

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

95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.—(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

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

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount ¹[not exceeding fifty thousand rupees], as it deems a reasonable compensation to the defendant for the ²[expense or injury (including injury to reputation) caused to him]:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniar jurisdiction.

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

1. Subs. by Act 46 of 1999, s. 8, for certain words (w.e.f. 1-7-2002).

2. Subs. by Act 104 of 1976, s. 32, for “expense or injury caused to him” (w.e.f. 1-7-2002).

PART VII

APPEALS

APPEALS FROM ORIGINAL DECREES

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

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

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

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

97. Appeal from final decree where no appeal from preliminary decree.—Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

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

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is ³[composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench] and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

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

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder ⁵[or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court :

⁶[Provided that nothing in this section shall apply to non-joinder of a necessary party.]

⁷[**99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.**—Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.]

APPEALS FROM APPELLATE DECREES

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

1. Ins. by Act 104 of 1976, s. 33 (w.e.f. 1-2-1977).

2. Subs. by Act 46 of 1999, s. 9, for “three thousand rupees” (w.e.f. 1-7-2002).

3. Subs. by Act 104 of 1976, s. 34, for certain words (w.e.f. 1-2-1977).

4. Ins. by Act 18 of 1928, s. 2 and the First Sch.

5. Ins. by Act 104 of 1976, s. 35 (w.e.f. 1-2-1977).

6. Province Added s. 35 *ibid.* (w.e.f. 1-2-1977).

7. Ins. by s. 36, *ibid.* (w.e.f. 1-2-1977).

8. Subs. by s. 37, *ibid.*, for s.100 (w.e.f. 1-2-1977).

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

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

¹[**100A. No further appeal in certain cases.**—Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.]

²[102. **No second appeal in certain cases.**—No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.]

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

$$4_* \quad \quad \quad * \quad \quad \quad * \quad \quad \quad * \quad \quad \quad *$$

(2) No appeal shall lie from any order passed in appeal under this section.

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105. Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand^{1***} from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

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

GENERAL PROVISIONS RELATING TO APPEALS

107. Powers of Appellate Court.—(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders.—The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

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

APPEALS TO THE SUPREME COURT

²[**109. When appeals lie to the Supreme Court.**—Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies—

- (i) that the case involves a substantial question of law of general importance; and
- (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

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111. [*Bar of certain appeals.*] omitted by the A.O. 1950.

⁴[**111A.** [*Appeals to Federal Court*] *Rep. by the Federal Court Act, 1941 (21 of 1941), s. 2.*

112. Savings.—⁵[(1) Nothing contained in this Code shall be deemed—

(a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution; or

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

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

1. Certain words omitted by Act 104 of 1976, s. 42, (w.e.f. 1-2-1977).

2. Subs. by Act 49 of 1973, s. 2, for s. 109.

3. S. 110 omitted by *ibid*, s. 3.

4. Ins. by the A.O. 1937.

5. Subs. by the A.O. 1950, for the former sub-section (1).

PART VIII

REFERENCE, REVIEW AND REVISION

113. Reference to High Court.—Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

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

Explanation.—In this section, “Regulation” means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State.]

114. Review.—Subject as aforesaid, any person considering himself aggrieved—

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

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

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. Revision.—²[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

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

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

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

³[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

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

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

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

PART IX

SPECIAL PROVISIONS RELATING TO THE ⁶[HIGH COURTS ⁷[NOT BEING THE COURT OF A JUDICIAL COMMISSIONER]

116. Part to apply only to certain High Courts.—This Part applies only to High Courts ⁷[not being the court of a Judicial Commissioner].

1. Added by Act 24 of 1951, s. 2.

2. S. 115 re-numbered as sub-section (1) by Act 104 of 1976, s. 43 (w.e.f 1-2-1977).

3. Subs. by Act 46 of 1999, s.12, for “proviso” (w.e.f. 1-7-2002).

4. Ins. by Act 104 of 1976, s. 43 (w.e.f 1-2-1977).

5. Ins. by Act 46 of 1999, s.12 (w.e.f. 1-7-2002).

6. Subs. by Act 2 of 1951, s. 14, for “CHARTERED HIGH COURTS”.

7. Subs. by the Adaptation of Laws (No. 2) Order, 1956 for “For Part A States and Part B States”.

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

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

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Unauthorized persons not to address Court.—Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120. Provisions not applicable to High Court in original civil jurisdiction.—(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

¹* * * *

PART X RULES

121. Effect of rules in First Schedule.—The rules in a First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

122. Power of certain High Courts to make rules.—²[High Courts ³[not being the Court of a Judicial Commissioner]] ^{4***} may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subjects to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

123. Constitution of Rules Committees in certain States.—(1) A Committee, to be called the Rule Committee, shall be constituted at ⁵[the town which is the usual place of sitting of each of the High Courts ^{6***} referred to in section 122].

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

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or ^{7***} a Divisional Judge for three years,

⁸[(b) two legal practitioners enrolled in that Court,]

⁹[(c) a Judge of a Civil Court subordinate to the High Court, ^{10***}

¹¹* * * *

1. Sub-section (2) rep. by Act 3 of 1909, s. 127 and the Third Sch.

2. Subs. by the A.O. 1950, for "Courts which are High Courts for the purposes of the Government of India Act, 1935".

3. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "*for Part A States and Part B States*". The words in italics were ins. by Act 2 of 1951, s. 15.

4. The words "and the Chief Court of Lower Burma" rep. by Act 11 of 1923, s. 3 and the Second Sch.

5. Subs. by Act 13 of 1916, s. 2 and Sch., for "each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon".

6. The words "and of the Chief Court" omitted by the Act 11 of 1923, s. 3 and the Second Sch. These words were again ins. by Act 32 of 1925, and subsequently omitted by the A.O. 1948.

7. The brackets and words "(in Burma)" rep. by Act 11 of 1923, s. 3 and the Second Sch.

8. Subs. by Act 2 of 1951, s. 16, for cls. (b) and (c).

9. Cl. (d) re-lettered as cl. (c) by s. 16, *ibid*.

10. The word "and" omitted by Act 38 of 1978, s. 3 and the Second Sch.

11. Cl. (d) omitted by Act 38 of 1978, s. 3 and the Second Sch.

(3) The members of each Committee shall be appointed by the ¹[High Court], which shall also nominate one of their number to be President:

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(4) Each member of any such Committee shall hold office for such period as may be prescribed by the ¹[High Court] in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the State in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said ¹[High Court] may appoint another person to be a member in his stead.

(5) There shall be a secretary to each such Committee, who shall be appointed by the ¹[High Court] and shall receive such remuneration as may be provided in this behalf ³[by the State Government].

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

125. Power of other High Courts to make rules.—High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions ⁴[as ⁵[the State Government] may determine:]

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

⁶[**126. Rules to be subject to approval.**—Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the State in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any State, to the previous approval of ⁷[Central Government.]]

127. Publication of rules.—Rules so made and ⁸[approved] shall be published in the ⁹[Official Gazette], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. Matters for which rules may provide.—(1) Such rules shall be not inconsistent with the provisions in the body of this code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

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

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

(b) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

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

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

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

1. Subs. by Act 104 of 1976, s. 44, for “Chief Justice or Chief Judge” (w.e.f. 1-2-1977).

2. Proviso omitted by s. 44, *ibid.* (w.e.f. 1-2-1977).

3. Subs. by the A.O. 1937, for “by the G.G. in C. or by the L.G., as the case may be”.

4. Subs. by Act 38 of 1920, s. 2 and the First Sch. Pt. I, for “as the G.G. in C. may determine”.

5. Subs. by the A.O. 1937, for “in the case of the Court of the Judicial Commissioner of Coorg, the G.G. in C., and, in other cases the L.G.”

6. Subs. by the A.O. 1937, for s. 126.

7. Subs. by the A.O. 1950, for “Governor General”.

8. Subs. by Act 24 of 1917, s. 2 and the First Sch., for “sanctioned”.

9. Subs. by the A.O. 1937, for “Gazette of India or in the local Official Gazette, as the case may be”. Strictly the substitution would read “Official Gazette or in the Official Gazette, as the case may be, but the latter words have been omitted as being redundant”.

(f) summary procedure—

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or

on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or *mesne profits*, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

129. Power of High Courts to make rules as to their original Civil procedure.—Notwithstanding anything in this Code, any High Court ¹[not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent ²[or order] ³[or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

⁴**130. Powers of other High Courts to make rules as to matters other than procedure.**—A High Court ⁵[not being a High Court to which section 129 applies] may, with the previous approval of the State Government, make with respect to any matter other than procedure any rule which a High Court ⁶[for a ^{7***} State] might under ⁸[article 227 of the Constitution] make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency town.]

131. Publication of rules.—Rules made in accordance with section 129 or section 130 shall be published in the ⁹[Official Gazette] and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI

MISCELLANEOUS

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

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

133. Exemption of other persons.—¹⁰[(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:—

(i) the President of India;

(ii) the Vice-President of India;

1. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for “for a Part A State or a Part B State”.

2. Ins. by the A.O. 1950.

3. Ins. by Act 2 of 1951, s. 17.

4. Subs. by the A.O. 1937, for s. 130.

5. Subs. by the A.O. 1950, for “not constituted by His Majesty by Letters Patent”.

6. Subs., *ibid.*, for “so constituted”.

7. The word and letter “Part A” omitted by the Adaptation of Laws (No. 2) Order, 1956.

8. Subs. by the A.O. 1950, for “section 224 of the Government of India Act, 1935”.

9. Subs. by the A.O. 1937, for “Gazette of India or in the Local Official Gazette, as the case may be”. Strictly the substitution would read “Official Gazette or in the Official Gazette, as the case may be,” but the latter words have been omitted as being redundant.

10. Subs. by Act 66 of 1956, s. 12, for sub-section (1).

- (iii) the Speaker of the House of the People;
- (iv) the Ministers of the Union;
- (v) the Judges of the Supreme Court;
- (vi) the Governors of States and the administrators of Union territories;
- (vii) the Speakers of the State Legislative Assemblies;
- (viii) the Chairman of the State Legislative Councils;
- (ix) the Ministers of States;
- (x) the Judges of the High Courts; and
- (xi) the persons to whom section 87B applies.]

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(3) Where any person ^{2***} claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. Arrest other than in execution of decree.—The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

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

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

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

³[**135A. Exemption of members of legislative bodies from arrest and detention under civil process.**—⁴(1) No person shall be liable to arrest or detention in prison under civil process—

(a) if he is a member of—

- (i) either House of Parliament, or
- (ii) the Legislative Assembly or Legislative Council of a State, or
- (iii) a Legislative Assembly of a Union territory,

during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

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

- (i) either House of Parliament, or
- (ii) the Legislative Assembly of a State or Union territory, or
- (iii) the Legislative Council of a State,

during the continuance of any meeting of such committee;

(c) if he is a member of—

- (i) either House of Parliament, or

1. Sub-section (2) omitted by Act 66 of 1966, s. 12.

2. The words “so exempted” omitted by s. 12, *ibid*.

3. Ins. by Act 23 of 1925, s. 3.

4. Subs. by Act 104 of 1976, s. 45, for sub-section (1) (w.e.f. 1-2-1977).

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

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

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

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

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

(4) Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, ^{1***} the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small-Causes of Calcutta, Madras ²[or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

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

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

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

³[**138. Power of High Court to require evidence to be recorded in English.—**(1) The ⁴[High Court] may, by notification in the Official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

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

1. The words or “of the Chief Court of Lower Burma”, omitted by the A.O. 1937.

2. Subs., *ibid.*, for “Bomaby or Rangoon”.

3. For s. 138, as applicable to Assam, *see* the Civil Procedure (Assam Amendment) Act 1941, (Assam 1 of 1941), s. 2.

4. Subs. by Act 4 of 1914, s. 2 and Sch., Pt. I for “L.G.”.

139. Oath on affidavit by whom to be administered.— In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

¹[(aa) any notary appointed under the Notaries Act, 1952 (53 of 1952); or]

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

(c) any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. Assessors in causes of salvage, etc.—(1) In any admiralty or vice-admiralty cause of salvage to wage or collision the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

141. Miscellaneous proceedings.—The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

²[*Explanation.*— In this section, the expression “proceedings” includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.]

142. Orders and notices to be in writing.—All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

143. Postage.—Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the State Government ^{3****} may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

144. Application for restitution.—(1) Where and in so far as a decree ⁴[or an order] is ⁵[varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree ⁴[or order] or ⁵[such part thereof as has been varied, reversed, set aside or modified]; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly ⁵[consequential on such variation, reversal, setting aside or modification of the decree or order].

⁶[*Explanation.*—For the purposes of sub-section (1), the expression “Court which passed the decree or order” shall be deemed to include,—

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order.

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

1. Ins. by Act 104 of 1976, s. 46 (w.e.f. 1-2-1977).

2. Ins. by, s. 47, *ibid.* (w.e.f. 1-2-1977).

3. The words “with the previous sanction of the G.G. in C.” omitted by Act 38 of 1920, s 2 and the First Sch. I, Pt. I

4. Ins. by Act 66 of 1956, s. 13.

5. Subs. by Act 104 of 1976. s. 48, for certain words (w.e.f. 1-2-1977).

6. Ins. by, s. 48, *ibid.* (w.e.f. 1-2-1977).

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

145. Enforcement of liability of surety.—Where any person ¹[has furnished security or given a guarantee]—

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

¹[the decree or order may be executed in the manner therein provided for the execution of decrees, namely:—

(i) if he has rendered himself personally liable, against him to that extent;

(ii) if he has furnished any property as security, by sale of such property to the extent of the security;

(iii) if the case falls both under clauses (i) and (ii) then to the extent specified in those clauses, and such person shall, be deemed to be a party within the meaning of section 47]:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

146. Proceedings by or against representatives.—Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.

147. Consent or agreement by persons under disability.—In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

148. Enlargement of time.—Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, ²[not exceeding thirty days in total,] even though the period originally fixed or granted may have expired.

³**[148A. Right to lodge a caveat.**—(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.]

1. Subs. by Act 104 of 1976, s. 49, for certain words (w.e.f. 1-2-1977).

2. Ins. by Act 46 of 1999, s. 13 (w.e.f. 1-7-2002).

3. Ins. by Act 104 of 1976, s. 50 (w.e.f. 1-5-1977).

149. Power to make up deficiency of court-fees.—Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Transfer of business.— Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders.—Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. General power to amend .— The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit ; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

¹[**153A. Power to amend decree or order where appeal is summarily dismissed.**—Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first, instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

153B. Place of trial to be deemed to be open Court .—The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.]

154. [*Saving of present right of appeal.*] *Rep. by the Repealing and Amending Act, 1952 (48 of 1952), s. 2 and the First Sch.*

155. [*Amendment of certain Acts.*] *Rep. by s. 2 and the First Sch., ibid.*

156. [*Repeals.*] *Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914). s. 3 and the Second Sch.*

157. Continuance of orders under repealed enactments.—Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. Reference to Code of Civil Procedure and other repealed enactments.—In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

1. Ins. by Act 104 of 1976. s. 51 (w.e.f. 1-2-1977).

THE FIRST SCHEDULE

ORDER I

Parties to Suits

¹[**1. Who may be joined as plaintiffs.**—All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.]

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

¹[**3. Who may be joined as defendants.**—All persons may be joined in one suit as defendants where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.]

²[**3A. Power to order separate trials where joinder of defendants may embarrass or delay trial.**—Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

4. Court may give judgment for or against one or more of joint parties.—Judgment may be given without any amendment —

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

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

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

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

7. When plaintiff in doubt from whom redress is to be sought.—Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

1. Subs. by Act 104 of 1976, s. 52, for rule 1 and 3 respectively (w.e.f. 1-2-1977).

2. Ins. by s. 52, *ibid.* (w.e.f. 1-2-1977).

¹**[8. One person may sue or defend on behalf of all in same interest.]**—(1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

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

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.— For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.]

²**[8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.]**— While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.]

9. Misjoinder and nonjoinder.—No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

³[Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) **Court may strike out or add parties.**—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose

1. Subs. by Act 104 of 1976, s. 52, for rule 8 (w.e.f. 1-2-1977).

2. Ins. by s. 52, *ibid.* (w.e.f. 1-2-1977).

3. The proviso added by Act 104 of 1976, s. 52 (w.e.f. 1-2-1977).

presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) **Where defendant added, plaint to be amended.**—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the ¹[Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

²[**10A. Power of Court to request any pleader to address it.**—The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.]

11. Conduct of suit.—The Court may give the conduct of ³[a suit] to such persons as it deems proper.

12. Appearance of one of several plaintiffs or defendants for others.—(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

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

13. Objections as to non-joinder or misjoinder.—All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II

Frame of Suit

1. Frame of suit.—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

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

(3) **Omission to sue for one of several reliefs.**—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

1. See now the Limitation Act, 1963 (36 of 1963), s. 21.

2. Ins. by Act 104 of 1976, s. 52 (w.e.f. 1-2-1977).

3. Subs. by s. 52, *ibid.*, for “the Suit” (w.e.f. 1-2-1977).

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to be at a yearly of rent Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. Joinder of causes of action.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

4. Only certain claims to be joined for recovery of immovable property.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except—

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. Claims by or against executor, administrator or heir.—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

¹**[6. Power of Court to order separate trials.**—Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.]

7. Objections as to misjoinder.—All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III

Recognized Agents and Pleadings

1. Appearances, etc., may be in person, by recognized agent or by pleader.—Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the

1. Subs. by Act 104 of 1976, s. 53, for rule 6 (w.e.f. 1-2-1977).

party in person, or by his recognized agent, or by a pleader ¹[appearing, applying or acting, as the case may be,] on his behalf :

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

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

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

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

3. Service of process on recognized agent.—(1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

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

²**[4. Appointment of pleader.**—(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be ³[filed in Court and shall, for the purposes of sub-rule (1), be] deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

⁴[*Explanation.* —For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]

⁵[(3) Nothing in sub-rule (2) shall be construed—

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).]

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed

1. Subs. by Act 22 of 1926, s. 2, for “duly appointed to act”.

2. Subs. by s. 2, *ibid*, for rule 4.

3. Subs. by Act 104 of 1976, s. 54, for certain words (w.e.f. 1-2-1977).

4. Ins. by s. 54, *ibid*. (w.e.f. 1-2-1977).

5. Subs. by s. 54, *ibid*. for sub-rule (3) (w.e.f. 1-2-1977).

is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating—

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]

5. Service of process on pleader.—¹[Any process served on the pleader who has been duly appointed to act in Court for any party] or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

6. Agent to accept service.—(1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

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

²[(3) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.]

ORDER IV

Institution of suits

1. Suit to be commenced by plaintiff.—(1) Every suit shall be instituted by presenting ³[plaint in duplicate to the Court] or such officer as it appoints in this behalf.

(2) Every plaintiff shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

⁴[(3) The plaintiff shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)].

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

1. Subs. by Act 104 of 1976, s. 54, for certain words (w.e.f. 1-2-1977).

2. Ins. by s. 54, *ibid*, (w.e.f. 1-2-1977).

3. Subs. by Act 46 of 1999, s. 14, for certain words (w.e.f. 1-7-2002).

4. Ins. by s. 14, *ibid*, (w.e.f. 1-7-2002).

ORDER V
Issue and service of summons
Issue of Summons

1. Summons.—¹[(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant :

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.].

*[Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

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

²[**2. Copy of plaint annexed to summons.**—Every summon shall be accompanied by a copy of the plaint.]

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

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

4. No party to be ordered to appear in person unless resident within certain limits.—No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

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

5. Summons to be either to settle issues or for final disposal.—The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant.—The day ³[under sub-rule (1) of rule 1] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. Summons to order defendant to produce documents relied on by him.—The summons to appear and answer shall order the defendant to produce ³[all documents or copies thereof specified in rule 1A of Order VIII] in his possession or power upon which he intends to rely in support of his case.

1. Subs. by Act 22 of 2002, s. 6, for sub-rule (1) (w.e.f. 1-7-2002).

*. Shall be applicable to commercial disputes of a specified value only by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

2. Subs. by Act 46 of 1999, s. 15, for sub-rule (2) (w.e.f. 1-7-2002).

3. Subs. by s. 15, *ibid.*, for certain words (w.e.f. 1-7-2002).

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.—Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons

¹[9. Delivery of summons by Court.—(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant :

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service.—(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.]

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

1. Subs. by Act 22 of 2002, s. 6, for rule 9 (w.e.f. 1-7-2002).

11. Service on several defendants.—Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant in person when practicable, or on his agent. —Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business.—(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

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

14. Service on agent in charge in suits for immovable property.— Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

¹[**15. Where service may be on an adult member of defendant's family.**— Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation. —A servant is not a member of the family within the meaning of this rule.]

16. Person served to sign acknowledgement.—Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, ²[who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Endorsement of time and manner of service.—The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his

1. Subs. by Act 104 of 1976, s. 55, for rule 15 (w.e.f. 1-2-1977).

2. Ins. by s. 55, *ibid.*, (w.e.f. 1-2-1977).

proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

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

²[(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) **Effect of substituted service.**—Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) **Where service substituted, time for appearance to be fixed.**—Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

³[**20A. Service of summons by post.**] *Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 55 (w.e.f. 1-2-1977)].*

21. Service of summons where defendant resides within jurisdiction of another Court.—A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers ⁴[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court.] to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Service within presidency towns of summons issued by Courts outside.—Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras ⁵[and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. Duty of Court to which summons is sent.—The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison.—Where the defendant is confined in a prison, the summons shall be delivered or sent ⁴[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to the officer in charge of the prison for service on the defendant.

25. Service where defendant resides out of India and has no agent.—Where the defendant resides out of ⁶[India] and has no agent in ⁶[India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him ⁴[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the Court is situate :

1. Rule 19A omitted by Act 46 of 1999, s. 15 (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, s. 55 (w.e.f. 1-2-1977).

3. Ins. by Act 66 of 1956, s. 14.

4. Subs. by Act 46 of 1999, s. 15, for certain words (w.e.f. 1-7-2002).

5. Subs. by the A.O. 1937, for “Bombay and Rangoon”.

6. Subs. by Act 2 of 1951, s. 3, for “the State”.

¹[Provided that where any such defendant ²[resides in Bangladesh or Pakistan], the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides :

Provided further that where any such defendant is a public officer ³[in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, maybe sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

⁴**[26. Service in foreign territory through Political Agent or Court.—Where—**

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

26A. Summonses to be sent to officers to foreign countries.—Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service].

27. Service on civil public officer or on servant of railway company or local authority.—Where the defendant is a public officer (not belonging to the ⁵[the Indians] military ⁶[naval or air] forces ⁷***), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served. send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Service on soldiers, sailors or airmen.—Where the defendant is a soldier, ⁸[sailor] ⁹[or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

1. Ins. by Act 19 of 1951, s. 2.

2. Subs. by Act 104 of 1976, s. 53, for “resides in Pakistan,” (w.e.f. 1-2-1977).

3. Subs. by s. 55, *ibid.*, for certain words (w.e.f. 1-2-1977).

4. Subs. by s. 55, *ibid.*, for rule 26 (w.e.f. 1-2-1977).

5. Subs. by the A.O. 1950, for “his Majesty’s”.

6. Subs. by Act 10 of 1927, s. 2 and the First Sch., for “or naval”.

7. The words “or His Majesty’s Indian Marine Service” omitted by Act 35 of 1934, s. 2 and Sch.

8. Ins. by s. 2 and Sch., *ibid.*

9. Ins. by Act 10 of 1927, s. 2 and the First Sch. I.

29. Duty of person to whom summons is delivered or sent for service.—(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

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

30. Substitution of letter for summons. — (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI

Pleadings generally

1. Pleading.—“Pleading” shall mean plaint or written statement.

¹**[2. Pleading to state material facts and not evidence.**—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]

3. Forms of pleading.—The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

^{*}**[3A. Forms of pleading in Commercial Courts.**—In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.]

4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

²* * * * *

6. Condition precedent. —Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

7. Departure.—No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

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

1. Subs. by Act 104 of 1976, s. 56, for rule 2 (w.e.f. 1-2-1977).

2. Rule 5 omitted by Act 46 of 1999, s. 16 (w.e.f. 1-7-2002).

* Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

9. Effect of document to be stated.—Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Malice, knowledge, etc.—Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

11. Notice.—Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

12. Implied contract, or relation.—Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Presumptions of law.—Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

14. Pleading to be signed.—Every pleading shall be signed by the party and his pleader (if any) : Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf

¹**[14A. Address for service of notice.**—(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made under sub-rule (1) shall be called the “registered address” of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order—

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

1. Ins. by Act 104 of 1976, s. 56 (w.e.f. 1-2-1977).

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.]

15. Verification of pleadings.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

¹[(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

***[15A. Verification of pleadings in a commercial dispute,**— (1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.]

²**[16. Striking out pleadings.**—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, of

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

³**[17. Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after Order.—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.]

ORDER VII

Plaint

1. Particulars to be contained in plaint.—The plaint shall contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

1. Ins. by Act 46 of 1999, s. 16 (w.e.f. 1-7-2002).

2. Subs. by Act 104 of 1976, s. 56, for rule 16 (w.e.f. 1-2-1977).

3. Subs. by Act 22 of 2002, s. 7, for rules 17 and 18 (w.e.f. 1-7-2002).

* Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

2. In money suits.—Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed :

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, ¹[or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.]

***[2A. Where interest is sought in the suit, —** (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

- (a) the rate at which interest is claimed;
- (b) the date from which it is claimed;
- (c) the date to which it is calculated;
- (d) the total amount of interest claimed to the date of calculation; and
- (e) the daily rate at which interest accrues after that date.]

3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. When plaintiff sues as representative.—Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

5. Defendant's interest and liability to be shown.—The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

6. Grounds of exemption from limitation law.—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed :

²[Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.]

7. Relief to be specifically stated.—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

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

³**[9. Procedure on admitting plaint.**—Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.]

1. Subs. by Act 104 of 1976, s. 57, for certain words (w.e.f. 1-2-1977).

2. The proviso added by s. 57, *ibid.* (w.e.f. 1-2-1977).

3. Subs. by Act 22 of 2002, s. 8, for rule 9 (w.e.f. 1-7-2002).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015)

¹**10. Return of plaint.**—(1) ²[Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

³[*Explanation.*— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) **Procedure on returning plaint.** —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

³**[10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.**—(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.]

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court—

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

10B. Power of appellate Court to transfer suit to the proper Court.— (1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the suit should have been instituted, (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

1. This rule has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act, 1908 (Ben. 6 of 1908) s. 265.

2. Subs. by Act 104 of 1976, s. 57, for, certain words (w.e.f. 1-2-1977).

3. Ins. by s. 57, *ibid.* (w.e.f. 1-2-1977).

(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.]

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

¹[(e) where it is not filed in duplicate;]

²[(f) where the plaintiff fails to comply with the provisions of rule 9:]

³[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

12. Procedure on rejecting plaint.—Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

13. Where rejection of plaint does not preclude presentation of fresh plaint.—The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents relied on in plaint

⁴**14. Production of document on which plaintiff sues or relies.**—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

⁵[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.]

15. [Statement in case of documents not in plaintiff possession or powers] omitted by Act 46 of 1999 s. 17 (w.e.f. 1-7-2002).

16. Suits on lost negotiable instruments.—Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

1. Ins. by Act 46 of 1999, s. 17 (w.e.f. 1-7-2002).

2. Subs. by Act 22 of 2002, s. 8, for sub-clauses (f) and (g) (w.e.f. 1-7-2002).

3. Added by Act 104 of 1976, s. 57 (w.e.f. 1-2-1977).

4. Subs. by Act 46 of 1999, s. 17, for rule 14 (w.e.f. 1-7-2002).

5. Subs. by Act 22 of 2002, s. 8, for sub-rule (3) (w.e.f. 1-7-2002).

17. Production of shop-book.—(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) **Original entry to be marked and returned.**—The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

18. *[Inadmissibility of document not produced when plaint filed.] omitted by Act 22 of 2002, s. 8 (w. e. f. 1-7-2002).*

ORDER VIII

¹*[Written statement, set-off and counter-claim]*

²**[I. Written Statement.**—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

*[Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]

³**[1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.**—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

⁴[(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents—

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]

2. New facts must be specially pleaded.—The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific.—It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

***[3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court.**— (1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.]

1. Subs. by Act 104 of 1976, s. 58, for the former heading (w.e.f. 1-2-1977).

2. Subs. by Act 22 of 2002, s. 9, for rule 1 (w.e.f. 1-7-2002).

3. Ins. by Act 46 of 1999, s.18 (w.e.f. 1-7-2002).

4. Subs. by Act 22 of 2002, s. 9, for sub-rule (3) (w.e.f. 1-7-2002).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

4. Evasive-denial.—Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial.—¹[(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

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

*[Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.]

²[(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]

6. Particulars of set-off to be given in written statement.—(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.

(2) **Effect of set-off.**—The written statement shall have the same effect as a plaint in a cross-suit so as to enable the court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations

- (a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects, C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.
- (b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.
- (c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.
- (d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

1. Rule 5 renumbered as sub-rule (1) by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

2. Ins. by s. 58, *ibid.* (w.e.f. 1-2-1977).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

(e) A sues B for compensation on account of trespass. B hold a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt for Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

¹[6A. Counter-claim by defendant.—(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

6B. Counter-claim to be stated.—Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6C. Exclusion of counter-claim.—Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

6D. Effect of discontinuance of suit.—If in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

6E. Default of plaintiff to reply to counter-claim.—If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

6F. Relief to defendant where counter-claim succeeds.—Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be. the Court may give judgment to the party entitled to such balance.

6G. Rules relating to written statement to apply.—The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.]

7. Defence or set-off founded upon separate grounds.—Where the defendant relies upon several distinct grounds of defence or set-off ¹[or counter-claim] founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

8. New ground of defence.—Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off ¹[or counter-claim] may be raised by the defendant or plaintiff, as the case may be, in his written statement.

1. Ins. by Act 104 of 1976, s. 58 (w.e.f. 1-2-1977).

8A. [*Duty of defendant to produce documents upon which relief is claimed by him*] omitted by Act 46 of 1999, s. 18 (w.e.f. 1-7-2002).

¹[9. Subsequent pleadings.—No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:]

*[Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.]

ORDER IX

Appearance of parties and consequence of non-appearance

1. Parties to appear on day fixed in summons for defendant to appear and answer.—On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

²[2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.—Where on the day so fixed it is found that summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.]

3. Where neither party appears suit to be dismissed.—Where neither party appears when the suit is called on for hearing, the court may make an order that the suit be dismissed.

4. Plaintiff may bring fresh suit or Court may restore suit to file.—Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for ³[such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

5. Dismissal of suit where plaintiff after summons returned unserved, fails for one month to apply for fresh summons. —⁴[(1) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of ⁵[seven days] from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(a) he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or

1. Subs. by Act 22 of 2002, s. 9, for rules 9 and 10 (w.e.f. 1-7-2002).

2. Subs. by s. 10, *ibid.*, for rule, 2 (w.e.f. 1-7-2002).

3. Subs. by Act 104 of 1976 s. 59, for certain words (w.e.f. 1-2-1977).

4. Subs. by Act 24 of 1920 s. 2, for sub-rule (1).

5. Subs. by Act 46 of 1999, s. 19, for “one month” (w.e.f 1-7-2002).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

(b) such defendant is avoiding service of process, or
(c) there is any other sufficient cause for extending the time,
in which case the Court may extend the time for making such application for such period as it thinks fit.]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. Procedure when only plaintiff appears.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

¹[(a) **When summons duly served.**—if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard *ex parte*;]

(b) **When summons not duly served.**—if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) **When summons served but not in due time.**—if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons,

the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit, *ex parte*, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

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

9. Decree against plaintiff by default bars fresh suit.—(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

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

10. Procedure in case of non-attendance of one or more of several plaintiff's.—Where there are more plaintiffs than one, and one or more of them appear and the others do not appear, the Court may, at the instance of the plaintiff or plaintiff's appearing, permit the suit to proceed in the same way as if all the plaintiff's had appeared, or make such order as it thinks fit.

11. Procedure in case of non-attendance of one or more of several defendants.—Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.—Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

1. Subs. by Act 104 of 1976, s. 59, for cl. (a) (w.e.f 1-2-1977).

Setting aside Decrees ex parte

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

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

¹[Provided further than no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

²[*Explanation.*—Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.]

14. No decree to be set aside without notice to opposite party.—No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER X

Examination of parties by the court

1. Ascertainment whether allegations in pleadings are admitted or denied.—At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

³**1A. Direction of the court to opt for any one mode of alternative dispute resolution.**—After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliatory forum or authority.—Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation.—Where a suit is referred under rule 1A, and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.]

⁴**2. Oral examination of party, or companion of party.**—(1) At the first hearing of the suit, the Court—

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

1. The proviso added by Act 104 of 1976, s. 59 (w.e.f. 1-2-1977).

2. *Explanation* ins. by s. 59, *ibid.* (w.e.f. 1-2-1977).

3. Ins. by Act 46 of 1999, s. 20 (w.e.f. 1-7-2002).

4. Subs. by Act 104 of 1976, s. 60, for rule 2 (w.e.f. 1-2-1977).

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.]

¹3. Substance of examination to be written.—The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. Consequence of refusal or inability of pleader to answer.—(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court ²[may postpone the hearing of the suit to a day not later than seven days from the date of first hearing] and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI

Discovery and Inspection

1. Discovery by interrogatories.—In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose : Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. Particular interrogatories to be submitted.—On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court ³[and that court shall decide within seven days from the day of filing of the said application]. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

3. Costs of interrogatories.—In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the interrogatories and the answers thereto shall be paid in any even by the party in fault.

4. Form of interrogatories.—Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

5. Corporations.—Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Objections to interrogatories by answer.—Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, ⁴[or on the ground of privilege or any other ground], may be taken in the affidavit in answer.

1. This rule is not applicable to the Chief Court of Oudh, *see* the Oudh Court Act, 1925 (U.P. 4 of 1925), s. 16(2).

2. Subs. by Act 46 of 1999, s. 20, for certain words (w.e.f. 1-7-2002).

3. Ins. by s. 21, *ibid.* (w.e.f. 1-7-2002).

4. Subs. by Act 104 of 1976, s. 61, for certain words (w.e.f. 1-2-1977).

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

8. Affidavit in answer, filing.—Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Court may allow.

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

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

11. Order to answer or answer further.—Where any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

12. Application for discovery of documents.—Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oaths, of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. Affidavit of documents.—The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

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

15. Inspection of documents referred to in pleadings or affidavits.—Every party to a suit shall be entitled ¹[at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document, ²[or who has entered any document in any list annexed to his pleadings,] to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

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

1. Subs. by Act 46 of 1999, s. 21, for “at any time” (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, s. 61 (w.e.f. 1-2-1977).

17. Time for inspection when notice given.—The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C; with such variations as circumstances may require.

18. Order for inspection.—(1) Where the party served with notice rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

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

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

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege ¹[unless the document relates to matters of State.]

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

20. Premature discovery.—Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Non-compliance with order for discovery.—²[(1)] Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be

1. Ins. by Act 104 of 1976, s. 61 (w.e.f. 1-2-1977).

2. Rule 21 renumbered as sub-rule (1) by s. 61. *ibid* (w.e.f. 1-2-19.77).

placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and ¹[an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.]

²[(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]

22. Using answer to interrogatories at trial.—Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer : Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answer ought not to be used without them, it may direct them to be put in.

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

*[ORDER XI

Disclosure, Discovery and inspection of documents in suits before the commercial division of a high court or a commercial court

1. Disclosure and discovery of documents.—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

1. Subs. by Act 104 of 1976, s. 61, for "an order may be made accordingly" (w.e.f. 1-2-1977).

2. Ins. by s. 61, *ibid.* (w.e.f. 1-2-1977).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

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

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

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

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908) with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

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

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908), with such variations as circumstances may require.

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

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by *viva voce* examination, as the court may direct.

3. Inspection. — (1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents. — (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:—

- (a) correctness of contents of a document;
- (b) existence of a document;
- (c) execution of a document;
- (d) issuance or receipt of a document;
- (e) custody of a document.

Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule (2) (b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, – costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents. — (1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

6. Electronic records. — (1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000)), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify—

- (a) the parties to such Electronic Record;
- (b) the manner in which such electronic record was produced and by whom;
- (c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;
- (d) the source of such electronic record and date and time when the electronic record was printed;
- (e) in case of email ids, details of ownership, custody and access to such email ids;
- (f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;
- (g) deponent's knowledge of contents and correctness of contents;
- (h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;
- (i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply. — For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.]

ORDER XII

Admissions

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

2. Notice to admit documents.—Either party may call upon the other party ¹[to admit, within ²[seven] days from the date of service of the notice any document,] saving all exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the

1. Subs. by Act 104 of 1976, s. 62, for “to admit any document” (w.e.f. 1-2-1977).

2. Subs. by Act 46 of 1999, s. 22, for “fifteen” (w.e.f. 1-7-2002).

party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

¹[**2A. Document to be deemed to be admitted if not denied after service of notice to admit documents.**—(*I*) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.]

3. Form of notice.—A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

²[**3A. Power of Court to record admission.**—Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document.]

4. Notice to admit acts.—Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

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5. Form of admissions.—A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

⁴[**6. Judgment on admissions.**—(*I*) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (*I*) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]

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

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

1. Ins. by Act 104 of 1976, s. 62 (w.e.f. 1-2-1977).

2. Ins. by Act 66 of 1956, s. 14.

3. Second proviso omitted by Act 46 of 1999, s. 22 (w.e.f. 1-7-2002).

4. Subs. by Act 104 of 1976, s. 62, for rule 6 (w.e.f 1-2-1977).

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

ORDER XIII

Production, Impounding and Return of Documents

¹[1. Original documents to be produced at or before the settlement of issues.]—(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.]

3. Rejection of irrelevant or inadmissible documents.—The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. Endorsements on documents admitted in evidence.—(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. Endorsements on copies of admitted entries in books, accounts and records.—(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

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

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

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

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Endorsements on documents rejected an inadmissible in evidence.—Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be

1. Subs. by Act 46 of 1999, s. 23, for rules 1 and 2 (w.e.f. 1-7-2002).

endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1) together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. Recording of admitted and return of rejected documents.—(1) Every documents which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Court may order any document to be impounded.—Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. Return of admitted documents.—(1) Any person, whether a party to the suit or not, desirous of receiving back any documents produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

¹[Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(a) delivers to the proper officer for being substituted for the original,—

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so:]

Provided also, that no document shall be returned with, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

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

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

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

11. Provisions as to documents applied to material objects.—The provisions therein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

***[ORDER XIII-A**

Summary Judgment

1. Scope of and classes of suits to which this Order applies. —(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim” shall include—

1. Subs. by Act 104 of 1976, s. 63, for the First proviso (w.e.f. 1-2-1977).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

- (a) part of a claim;
- (b) any particular question on which the claim (whether in whole or in part) depends; or
- (c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment. — An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment. —The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

- (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure. —(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

- (a) the application must contain a statement that it is an application for summary judgment made under this Order;
- (b) the application must precisely disclose all material facts and identify the point of law, if any;
- (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies;
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;
- (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

- (a) the date fixed for the hearing; and
- (b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

- (a) the reply must precisely—
 - (i) disclose all material facts;
 - (ii) identify the point of law, if any; and
 - (iii) state the reasons why the relief sought by the applicant should not be granted;
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment. —(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6. Orders that may be made by Court. —(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order. —(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs. — The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.]

ORDER XIV
*Settlement of issues and determination of suit on
issues of law or on issues agreed upon*

1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

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

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and ¹[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

²**2. Court to pronounce judgment on all issues.**—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

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

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

4. Court may examine witnesses or documents before framing issues.—Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it ³[may adjourn the framing of issues to a day not later than seven days] and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

⁴**5. Power to amend and strike out, issues.**—(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or

1. Subs. by s. 64, Act 104 of 1976 for certain words (w.e.f. 1-2-1977).

2. Subs. by *ibid.*, s. 64, for rule 2 (w.e.f. 1-2-1977).

3. Subs. by Act 46 of 1999, s. 24, for certain words (w.e.f. 1-7-2002).

4. Subs. by Act 22 of 2002, s. 11, for rule 5 (w.e.f. 1-7-2002).

additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

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

6. Questions of fact or law may by agreement be stated in form of issues.—(1) Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative or such issue,—

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.—Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

*[ORDER XV

Disposal of the Suit at the first hearing

1. Parties not at issue.—(1) Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. One of several defendants not at issue.—¹[(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.]

²[(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.]

3. Parties at issue.—(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

1. Rule 2 renumbered as sub-rule (1) by Act 104 of 1976, s. 65 (w.e.f. 1-2-1977).

2. Ins. by s. 65, *ibid.* (w.e.f. 1-2-1977).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence.—Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.]

*[ORDER XV-A

Case Management Hearing

1. First Case Management Hearing. — The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing. — In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908), after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the Court by the parties;

(f) fixing the date on which oral arguments are to be heard by the Court; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial. —In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis. —The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. Case Management Hearings during a trial. —The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the Court in a Case Management Hearing. — (1) In any Case Management Hearing held under this Order, the Court shall have the power to—

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;

(c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;

(f) consolidate proceedings;

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

- (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;
 - (h) direct a separate trial of any issue;
 - (i) decide the order in which issues are to be tried;
 - (j) exclude an issue from consideration;
 - (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
 - (l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;
 - (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;
 - (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;
 - (o) delegate the recording of evidence to such authority appointed by the Court for this purpose;
 - (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;
 - (q) order any party to file and exchange a costs budget;
 - (r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.
- (2) When the Court passes an order in exercise of its powers under this Order, it may—
- (a) make it subject to conditions, including a condition to pay a sum of money into Court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing. —(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders. — Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

- (a) condone such non-compliance by payment of costs to the Court;
- (b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or
- (c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.]

ORDER XVI

Summoning and attendance of witnesses

¹[**1. List of witnesses and summons to witnesses.**—(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

1. Subs. by Act 104 of 1976, s. 66, for rule 1 (w.e.f. 1-2-1977).

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the ¹[Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]

²[**1A. Production of witnesses without summons.**—A Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.]

2. Expenses of witness to be paid into Court on applying for summons.—(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed ³[which shall not be later than seven days from the date of making applications under sub-rule (4) of rule 1] pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) **Experts.**—In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) **Scale of expenses.**—Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

⁴[(4) **Expenses to be directly paid to witnesses.**—Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.]

3. Tender of expenses to witness.—The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. Procedure where insufficient sum paid in.—(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons, or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

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

5. Time, place and purpose of attendance to be specified in summons.—Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Summons to produce document.—Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

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

1. Subs. by Act 46 of 1999, s. 25, for certain words (w.e.f. 1-7-2002).

2. Subs. by Act 104 of 1976, s. 66, for rule 1A (w.e.f. 1-2-1977).

3. Ins. by Act 46 of 1999, s. 25 (w.e.f. 7-2002).

4. Ins. by Act 104 of 1976, s. 66 (w.e.f. 1-2-1977).

¹[**7A. Summons given to the party for service.**—(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons, shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign and acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.]

8. Summons how served.—Every summons ²[under this Order, not being a summons delivered to a party for service under rule 7A,] shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

9. Time for serving summons.—Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons.—³[(1) Where a person has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.]

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

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

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

1. Ins. by Act 104 of 1976, s. 66 (w.e.f. 1-2-1977).

2. Subs. by s. 66, *ibid.*, for certain words (w.e.f. 1-2-1977).

3. Subs. by s. 66, *ibid.*, for sub-rule (1) (w.e.f. 1-2-1977).

11. If witness appears, attachment may be withdrawn.—Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear.—¹[(1)] The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

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

²[(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.]

13. Mode of attachment.—The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

14. Court may of its own accord summon as witnesses strangers to suit.—Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary ³[to examine any person, including a party to the suit] and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. Duty of persons summoned to give evidence or produce document. —Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

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

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13.—The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

1. Rule 12 renumbered as sub-rule (1) by Act 104 of 1976, s. 66 (w.e.f. 1-2-1977).

2. Ins. by s. 66, *ibid.* (w.e.f. 1-2-1977).

3. Subs. by s. 66, *ibid.*, for certain words (w.e.f. 1-2-1977).

18. Procedure where witness apprehended cannot give evidence or produce document.—Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits.—No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the Court's ordinary jurisdiction, or

(b) without such limits but at a place less than ¹[one hundred] or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than ²[five hundred kilometres] distance from the court-house:

³[Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.]

20. Consequence of refusal of party to give evidence when called on by Court.—Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Rules as to witnesses to apply to parties summoned.—Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

⁴[ORDER XVIA

Attendance of witnesses confined or detained in prisons

1. Definitions.—In this Order,—

(a) “detained” includes detained under any law providing for preventive detention;

(b) “prison” includes—

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(ii) any reformatory, borstal institution or other institution of a like nature.

2. Power to require attendance of prisoners to give evidence.—Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometers, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

3. Expenses to be paid into Court.—(1) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(2) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made by the High Court in that behalf.

4. Power of State Government to exclude certain persons from the operation of rule 2.—(1) The State Government may, at any time, having regard to the matters specified in sub-rule (2), by general or special order,

1. Subs. by Act 104 of 1976, s. 66, for “fifty” (w.e.f. 1-2-1977).

2. Subs. by s. 66, *ibid.*, for “two hundred miles” (w.e.f. 1-2-1977).

3. The proviso added, by s. 66, *ibid.* (w.e.f. 1-2-1977).

4. Ins. by s. 67, *ibid.* (w.e.f. 1-2-1977).

direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(c) the public interest, generally.

5. Officer in charge of prison to abstain from carrying out order in certain cases.—Where the person in respect of whom an order is made under rule 2—

(a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity, or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under rule 4 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

6. Prisoner to be brought to Court in custody.—In any other case, the officer in charge, of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

7. Power to issue commission for examination of witness in prison.—(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.]

ORDER XVII

Adjournments

1. Court may grant time and adjourn hearing.—¹[(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.]

(2) **Costs of adjournment.**—In every such case the Court shall fix a day for the further hearing of the suit, and ²[shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:]

³[Provided that,—

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

1. Subs. by Act 46 of 1999, s. 26, for sub-rule (1) (w.e.f. 1-7-2002).

2. Subs. by s. 26, *ibid.*, for certain words (w.e.f. 1-7-2002).

3. Subs. by Act 104 of 1976, s. 68, for the previous proviso (w.e.f. 1-2-1977).

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

2. Procedure if parties fail to appear on day fixed.—Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

¹[*Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.]

3. Court may proceed notwithstanding either party fails to produce evidence, etc.—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed ²[the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2].

ORDER XVIII

Hearing of the suit and examination of witnesses

1. Right to begin.—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

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

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

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

³[(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

1. The *Explanation* ins. by Act 104 of 1976, s. 68 (w.e.f. 1-2-1977).

2. Subs. by s. 68, *ibid.*, for certain words (w.e.f. 1-2-1977).

3. Ins. by Act 22 of 2002, s. 12 (w.e.f. 1-7-2002).

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.]

*[(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.]

¹[* * * * *]

3. Evidence where several issues.—Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

²[**3A. Party to appear before other witnesses.**—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.]

³[**4. Recording of evidence.**—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

*[(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.]

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

1. Sub-rule (4) omitted by Act 46 of 1999, s. 27 (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, s. 69 (w.e.f. 1-2-1977).

3. Subs. by Act 22 of 2002, s. 12, for rule 4 (w.e.f. 1-7-2002).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]

¹[²5. How evidence shall be taken in appealable cases.—In case in which an appeal is allowed, the evidence of each witness shall be,—

(a) taken down in the language of the Court,—

(i) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.]

³6. When deposition to be interpreted.—Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

³7. Evidence under section 138.—Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

³8. Memorandum when evidence not taken down by Judge.—Where the evidence is not taken down in writing by the Judge, ⁴[or from his dictation in the open Court, or recorded mechanically in his presence,] he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

⁵[³9. When evidence may be taken in English.—(1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the judge may so take it down or cause it to be taken down.

1. Subs. by Act 104 of 1976 s. 69, for rule 5 (w.e.f. 1-2-1977).

2. The provisions of rule so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, *see* the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

3. The provisions of rules 6, 7, 8, 9, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, *see*, s. 16 (2), *ibid*.

4. Ins. by Act 104 of 1976 s. 69 (w.e.f.1-2-1977).

5. Subs. by s. 69, *ibid.*, for rule 9 (w.e.f. 1-2-1977).

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.]

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

¹**11. Questions objected to and allowed by Court** —Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. Remarks on demeanour of witnesses.—The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

²**13. Memorandum of evidence in unappealable cases.**—In cases in which an appeal is not allowed it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.]

⁴**14.** [*Judge unable to make such memorandum to record reasons of his inability*] omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 69 (w.e.f. 1-2-1977).]

¹**15. Power to deal with evidence taken before another Judge.**—(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

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

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

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

17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

17A. [*Production of evidence not previously known or which could not be produced despite due diligence.*] omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 27 (w.e.f. 1-7-2002).

18. Power of Court to inspect.—The Court may at any stage of a suit inspect any property or thing concerning which any question may arise ³[and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit].

⁴**19. Power to get statements recorded on commission.**—Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI.]

1. The provisions of rules 11, 13, 14, 15, ruled so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, *see* the Oudh Courts Act, 1925 (u. P. Act 4 of 1925), s. 16 (2).

2. Subs. by Act 104 of 1976, s. 69, for the rule, (w.e.f. 1-2-1977).

4. Ins. by Act 104 of 1976, s. 69 (w.e.f. 1-2-1977).

5. Ins. by Act 46 of 1999, s. 27 (w.e.f. 1-7-2002).

ORDER XIX

Affidavits

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

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

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

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

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

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

***[4. Court may control evidence.** —(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence. — A Court may, in its discretion, for reasons to be recorded in writing—

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence. —An affidavit must comply with the form and requirements set forth below:—

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief;

(e) an affidavit should—

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.]

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

ORDER XX

Judgment and decree

¹**1. Judgment when pronounced.**—³[(I) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

*[(I) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.]

⁴[(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment ⁵***.

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.]

2. Power to pronounce judgment written by judge's predecessor.—⁶[A Judge shall] pronounce a judgment written, but not pronounced, by his predecessor.

²**3. Judgment to be signed.**—The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

²**4. Judgments of Small Cause Courts.**—(I) Judgments of a court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) **Judgments of other Courts.**—Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

²**5. Court to state its decision on each issue.**—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is, sufficient for the decision of the suit.

⁴**[5A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.**—Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.]

1. Subs. by Act 66 of 1956, s. 14, for rule I.

2. The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh, *see* the Oudh Courts Act, 1925 (U. P. Act 4 of 1925), s. 16 (2).

3. Subs. by Act 22 of 2002, s. 13, for sub-rule (I) (w.e.f. 1-7-2002), Earlier rule 1 renumbered as sub-rule (I) of that rule by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

4. Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

5. Certain words omitted by Act 46 of 1999, s. 28 (w.e.f. 1-2-1977).

6. Subs. by Act 104 of 1976, s. 70 for "A Judge may" (w.e.f. 1-2-2002).

*. Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Sch. (w.e.f. 23-10-2015).

6. Contents of decree.—(1) The decree shall agree with the judgment: it shall contain the number of the suit, the ¹[names and descriptions of the parties, their registered addresses,] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

²**6A. Preparation of decree.**—(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

6B. Copies of judgments when to be made available.—Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.]

7. Date of decree.—The decree shall bear the day on which the judgment was pronounced, and, when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

8. Procedure where Judge has vacated office before signing decree.—Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Decree for recovery of immovable property.—Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Decree for delivery of movable property.—Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

11. Decree may direct payment by instalments.—(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason ³[incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that] payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) **Order, after decree, for payment by instalments.**—After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

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

(a) for the possession of the property;

⁴[(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

1. Subs. by Act 104 of 1976, s. 70, for “names and descriptions of the parties” (w.e.f. 1-2-1977).

2. Subs. by Act 46 of 1999, s. 28, for rules 6A and 6B (w.e.f. 1-7-2002).

3. Subs. by Act 104 of 1976, s. 70, for certain words (w.e.f. 1-2-1977).

4. Subs. by s. 70, *ibid.*, for cl. (b) (w.e.f. 1-2-1977).

(ba) for the mesne profits or directing an inquiry as to such mesne profits;]

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree,
whichever event first occurs.

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

¹[12A. Decree for specific performance of contract for the sale or lease of immovable property.—

Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.]

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

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. Decree in pre-emption suit.—(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decrees against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in decree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Decree in suit for dissolution of partnership.—Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. Decree in suit for account between principal and agent.—In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken,

1. Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. Special directions as to accounts.—The Court may either by the decree directing an account to be taken or by any subsequent order give special direction with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

18. Decree in suit for partition of property or separate possession of a share therein.—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19. Decree when set-off or counterclaim is allowed.—(1) Where the defendant has been allowed a set-off ¹[or counterclaim] against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) **Appeal from decree relating to set-off or counterclaim.**—Any decree passed in a suit in which a set-off ¹[or counterclaim] is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off ¹[or counterclaim] had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

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

²[ORDER XXA

Costs

1. Provisions relating to certain items.—Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,—

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

2. Costs to be awarded in accordance with the rules made by High Court.—The award of Costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.]

1. Ins. by Act 104 of 1976, s. 70 (w.e.f. 1-2-1977).

2. Ins. by s. 71, *ibid.*, (w.e.f. 1-2-1977).

ORDER XXI

Execution of Decrees and Orders *Payment under Decree*

¹[**1. Modes of paying money under decree.**—(1) All money, payable under a decree shall be paid as follows, namely:—

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

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

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

³[(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

(a) the payment is made in the manner provided in rule 1; or

1. Subs. by Act 104 of 1976 s. 72, for rule 1 (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for certain words (w.e.f. 1-2-1977).

3. Ins. by s. 72, *ibid.*, (w.e.f. 1-2-1977).

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.]

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

Courts executing Decrees

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

4. Transfer to Court of Small Causes.—Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the title being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras ²[or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras ²[or Bombay], as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

³**[5. Mode of transfer.**—Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.]

6. Procedure where Court desires that its own decree shall be executed by another Court.—The Court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

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

8. Execution of decree or order by Court to which it is sent.—Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Execution by High Court of decree transferred by other Court.—Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for execution

10. Application for execution.—Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

1. In the application of the Act. to Punjab, sub-rule (3) rep. by the Punjab Relief of Indebtedness Act, 1934 (Pun. Act 7 of 1934), s. 36.

2. Subs. by the A.O. 1937, for "Bombay or Rangoon".

3. Subs. by Act 104 of 1976, s. 72, for rule 5 (w.e.f. 1-2-1977).

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

(2) Written application.—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :—

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with, interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether,—

(i) by the delivery of any property specifically decreed;

¹[(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

²[**11A. Application for arrest to state grounds.**—Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.]

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

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

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

1. Subs. by Act 104 of 1976, s. 72, for sub-clause, (ii) (w.e.f. 1-2-1977).

2. Ins. by s. 72, *ibid.*, (w.e.f. 1-2-1977).

14. Power to require certified extract from Collector's register in certain cases.—Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

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

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

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

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

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

¹[*Explanation.* —Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]

17. Procedure on receiving application for execution of decree.—(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, ²[the Court shall allow] the defect to be remedied then and there or within a time to be fixed by it.

²[1A] If the defect is not so remedied, the Court shall reject the application :

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.]

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

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

1. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for certain words (w.e.f. 1-2-1977).

18. Execution in case of cross-decrees.—(1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(a) if the two sums are, equal, satisfaction shall be entered upon both decrees; and

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

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

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

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

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000. against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 1,000 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as cross-decree under this rule.

19. Execution in case of cross-claims under same decree.—Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then—

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

20. Cross-decrees and cross-claims in mortgage-suits.—The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

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

22. Notice to show cause against execution in certain cases.—(1) Where an application for execution is made—

(a) more than ¹[two years] after the date of the decree, or

(b) against the legal representative of a party to the decree ²[or where an application is made for execution of a decree filed under the provisions of section 44A], ³[or]

1. Subs. by Act 104 of 1976, s. 72, for “one year” (w.e.f. 1-2-1977).

2. Ins. by Act 8 of 1937, s. 3.

3. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

¹[(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent]

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than Two years] having elapsed between the date of the decree and the application for execution if the application is made within ²[two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

²[22A. **Sale not be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale.**—Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.]

Procedure after issue of notice.—(1) Where the person to whom notice is issued under ³[rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

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

Process for execution

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

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

⁴[(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.]

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

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

1. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for “one year” (w.e.f. 1-2-1977).

3. Subs. by Act 38 of 1978, s. 3 and the second Sch., for “the last preceding rule”.

4. Subs. by Act 104 of 1976, s. 72, for sub-rule (3) (w.e.f. 1-2-1977).

Stay of execution

26. When Court may stay execution.—(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

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

(3) Power to require security from, or impose conditions upon, judgment-debtor.—Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, ¹[the Court shall require] such security from, or impose such condition upon, the judgment-debtor as it thinks fit.

27. Liability of judgment-debtor discharged.—No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

28. Order of Court which passed decree or of Appellate Court to be binding upon Court applied to.—Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

29. Stay of execution pending suit between decree-holder and judgment-debtors.—Where a suit is pending in any Court against the holder of a decree of such Court ²[or of a decree which is being executed by such Court,] on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

²[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]

Mode of execution

30. Decree for payment of money.—Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

31. Decree for specific movable property.—(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for ³[three months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

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

1. Subs. by Act 104 of 1976, s. 72, for “the Court may require” (w.e.f. 1-2-1977).

2. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

3. Subs. by s. 72, *ibid.* for “six months” (w.e.f. 1-2-1977).

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced ¹[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

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

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for ²[six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of ²[six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

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

³[*Explanation.—*For the removal doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandtory injunctions.]

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

33. Discretion of Court in executing decrees for restitution of conjugal rights.—(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree ⁴[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree ⁵[shall be executed in the manner provided in this rule.]

(2) Where the Court has made an order under sub-rule (1) ^{6***}, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may

1. Ins. by Act 29 of 1923, s. 2.

2. Subs. by Act 104 of 1976, s. 72, for "one year (w.e.f. 1-2-1977).

3. Ins. by Act 22 of 2002, s. 14 (w.e.f. 1-7-2002)

4. Ins. by Act 29 of 1923, s. 3.

5. Subs. by s. 3, *ibid.*, for "shall not be executed by detention in prison".

6. The words "and the decree-holder is the wife" omitted by s. 3, *ibid.*

temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again review the same, either wholly or in part as it may think just.

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

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

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

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

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

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

“C. D., Judge of the Court of,

(or as the case may be), for A. B., in a suit by E. F against A. B.”,

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

¹[(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so, required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.]

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

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Decree for delivery of immovable property when in occupancy of tenant—Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

1. Subs. by Act 104 of 1976, s. 72, for sub-rule (6) (w.e.f. 1-2-1977).

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.—(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court ¹[shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison :

²[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

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

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

39. Subsistence allowance.—(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit :

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

³[**40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.**—(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

1. Subs. by Act 21 of 1936, s. 3, for “may”.

2. Ins. by s. 3, *ibid.*

3. Subs. by s. 4, *ibid.*, for rule 40.

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

Attachment of property

41. Examination of judgment-debtor as to his property.—¹[(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

(a) the judgment-debtor, or

(b) ²[where the judgment-debtor is a corporation] , any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

³[(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.]

42. Attachment in case of decree for rent or *mesne* profits or other matter, amount of which to be subsequently determined.—Where a decree directs an inquiry as to rent or *mesne* profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

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

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

³[43A, Custody of movable property.—(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree holder or of any

1. Rule 41 renumbered as sub-rule (1) by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for “in the case of a corporation” (w.e.f. 1-2-1977).

3. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the “custodian”).

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced—

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgement-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.]

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

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

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

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

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

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

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

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

46. Attachment of debt, share and other property not in possession of judgment-debtor.—(1) In the case of—

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgement-debtor.

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

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

¹[46A. Notice to garnishee.—(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46 upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

46B. Order against garnishee.—Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

46C. Trial of disputed questions.—Where the garnishee disputes liability, the Court may order that any issue of question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

46D.Procedure where debt belongs to third person.—Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

46E. Order as regards third person.—After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such

1. Ss. 46A to 46 I ins. by Act 104 of 1976, s. 72 (w.e.f 1-2-1977).

terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

46F. Payment by garnishee to be valid discharge.—Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46G. Costs.—The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

46 H. Appeals.—An order made under rule 46B, rule 46C or rule 46E shall be applicable as a decree.

46 I.—Application to negotiable instruments.—The provisions of rule 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.]

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

48. Attachment of salary or allowances of servant of the Government or railway company or local authority.—(1) Where the property to be attached is the salary or allowances of a ¹[servant of the Government] or of a servant of a railway company or local authority ²[or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)] the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such officer as ³[the appropriate Government may by notification in the Official Gazette] appoint ⁴[in this behalf,—

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by ⁵[the appropriate Government] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

1. Subs. by Act 5 of 1943, s. 3, for “public officer”.

2. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

3. Subs. by Act 25 of 1942, s. 3 and the second Sch., for “the Central Government or the Provincial Government may be notification in their Official Gazette”.

4. Subs. by Act 26 of 1939, s. 2, for certain words.

5. Subs. by Act 25 of 1942, s. 3, and Sch., II, for “the Central Government or the Provincial Government, as the may be”.

¹[(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation of Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.]

²[*Explanation.*—In this rule, “appropriate Government” means,—

(i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(ii) As respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State act, or a servant of any other Government company, the State Government.]

³[**48A. Attachment of salary or allowances of private employees.**—(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provision of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtor, is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India, and the employer shall be liable for any sum paid in contravention of this rule.]

49. Attachment of partnership property.—(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

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

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

1. Subs. by Act 104 of 1976, s. 72, for sub-rule (3) (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for *Explanation* (w.e.f. 1-2-1977).

3. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within ¹[India].

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within ¹[India].

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such applications shall be similarly served.

50. Execution of decree against firm.—(1) Where a decree has been passed against a firm, execution may be granted—

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of ²[section 30 of the Indian Partnership Act, 1932 (9 of 1932)].

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may, apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

³[(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provisions of rule 10 of Order XXX.]

51. Attachment of negotiable instruments.—Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Attachment of property in custody of Court or public officer.—Where the property to be attached is in the custody Of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. Attachment of decrees.—(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by Order of such Court, and

1. Subs. by Act 2 of 1951, s. 3, for “the States”.

2. Subs. by Act 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).

3. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the court which passed the decree sought to be executed cancels the notice, or

¹[(ii) (a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.]

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under subhead (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceeds to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another of decree the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way: and , where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order ²[with knowledge thereof or] after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

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

²[(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon, a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate ²[and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

55. Removal of attachment after satisfaction of decree.—Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

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

1. Subs. by Act 104 of 1972, s. 72, for sub-clause (ii) (w.e.f. 1-2-1977).

2. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

56. Order for payment of coin or currency notes to party entitled under decree.—Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

¹[**57. Determination of attachment.**—(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period upto which such attachment shall continue or the date on which such attachment shall cease.

(2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.]

²[*Adjudication of claims and objections*

58. Adjudication of claims to or objections to attachment of, property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained :

Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

59. Stay of sale.—Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.]

1. Subs. by Act 104 of 1976, s. 72, for rule 57 (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for the sub heading “Investigation of claims and objections” and for rules 58 to 63 (w.e.f. 1-2-1977).

64. Power to order property attached to be sold and proceeds to be paid to person entitled.—Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

65. Sales by whom conducted and how made.—save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. Proclamation of sales by public auction.—(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold ¹[or, where a part of the property would be sufficient to satisfy the decree, such part];

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property :

¹[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs :

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the Parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the varification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. Mode of making proclamation.—(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

1. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

68. Time of sale.—Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least ¹[fifteen days] in the case of immovable property, and of at least ²[seven days] in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

69. Adjournment or stoppage of sale.—(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than ³[thirty] days afresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

70. [Saving of certain sales.] *Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), & 14.*

71. Defaulting purchaser answerable for loss on re-sale.—Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court ⁴*** by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72. Decree holder not to bid for or buy property without permission.—(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) **Where decree-holder purchases, amount of decree may be taken as payment.**—Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

⁵[**72A. Mortgagee not to bid at sale without the leave of the Court.**—(1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be—

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

1. Subs. by Act 104 of 1976, s. 72, for “thirty days” (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for “fifteen days” (w.e.f. 1-2-1977).

3. Subs. by s. 72, *ibid.*, for “ seven days” (w.e.f. 1-2-1977).

4. The words “or to the Collector or subordinate of the Collector, as the case may,” omitted by Act 66 of 1956, s. 14.

5. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.]

73. Restriction on bidding or purchase by officers.—No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of movable property

74. Sale of agricultural produce.—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near the threshing floor or place for trading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the Produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. Special provisions relating to growing crops.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, *the* day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. Negotiable instruments and shares in corporations.—Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

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

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

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

78. Irregularity not to vitiate sale, but any person injured may sue.—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery).

79. Delivery of movable property, debts and shares.—(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

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

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share, may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

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

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

A. B. by C.D. Judge of the Court of (*or as the case maybe*) , in a suit by E. F. against A.B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

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

Sale of immovable property

82. What Court may order sales.—Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

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

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale :

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court :

Provided also that not mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

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

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

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

85. Time for payment in full of purchase money.—The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. Procedure in default of payment.—In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Notification on re-sale.—Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

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

89. Application to set aside sale on deposit.—(1) Where immovable property has been sold in execution of a decree, ¹[any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

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

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

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.—The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92. Sale when to become absolute or be set aside.—(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

1. Subs. by Act 104 of 1976, s. 72, for certain words (w.e.f. 1-2-1977).

2. Subs. by s. 72, *ibid.*, for rule 90 (w.e.f. 1-2-1977).

¹[Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.]

(2) Where such application is made and allowed, and where, in the case of an application-under rule 89, the deposit required by that rule is made within ²[sixty days] from the date of sale, ³[or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale]:

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

⁴[Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

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

⁵[(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered].

93. Return of purchase-money in certain cases.—Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

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

95. Delivery of property in occupancy of judgment-debtor—Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

96. Delivery of property in occupancy of tenant.—Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser

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

⁶[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

1. Added by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

2. Subs. by Act 22 of 2002, s. 14, for "thirty days" (w.e.f. 1-7-2002).

3. Subs. by Act 104 of 1976, s. 72, for "the Court shall make an order setting aside the sale" (w.e.f. 1-2-1977).

4. Ins. by Act 22 of 2002, s. 14 (w.e.f. 1-7-2002).

5. Ins. by Act 104 of 1976, s. 72 (w.e.f. 1-2-1977).

6. Subs. by s. 72, *ibid.*, for sub-rule (2) (w.e.f. 1-2-1977).

¹**98. Orders after adjudication.**—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee pendente lite.—Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, “transfer” includes a transfer by operation of law.

103. Orders to be treated as decrees.—Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.]

²**104. Orders under rule 101 or rule 103 to be subject to the result or pending suit.**—Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order, is made if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

105. Hearing of application.—(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

1. Subs. by Act 104 of 1976, s. 72, for rules 98 to 103 (w.e.f. 1-2-1977).

2. Ins. by s. 72, *ibid.* (w.e.f. 1-2-1977).

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

106. Setting aside orders passed *ex parte*, etc.—(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance whom the application was called on for hearing, the Court shall set aside the order or such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an *ex parte* order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.]

ORDER XXII

DEATH, MARRIAGE AND INSOLVENCY OR PARTIES

1. No abatement by party's death if right to sue survives.—The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.—Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.—(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

¹[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

1. Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

(5) Where—

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

¹**[4A. Procedure where there is no legal representative.—**(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may be order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court—

(a) may require notice of the application for, the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.]

5. Determination of question as to legal representative.—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

¹[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]

6. No abatement by reason of death after hearing.—Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

7. Suit not abated by marriage of female party.—(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with the judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. When plaintiff's insolvency bars suit.—(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

1. Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

(2) **Procedure where assignee fails to continue suit, or give security.**—Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

9. Effect of abatement or dismissal.—(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the 'Indian Limitation Act, 1877 (15 of 1877) shall apply to applications under sub-rule (2).

¹[*Explanation.*—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.]

10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

²[**10A. Duty of pleader to communicate to Court death of a party.**—Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

11. Application of Order to appeals.—In the application of this Order to appeals, so far as may be, the word "Plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

12. Application of Order to proceedings.—Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

³[**1. Withdrawal of suit or abandonment of part of claim.**—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

1. See now the Limitation Act, 1973 (36 of 1963), ss. 4 and 5.

2. Ins. by Act 104 of 1976, s. 73 (w.e.f. 1-2-1977).

3. Subs. by s. 74, *ibid.*, for rule 1 (w.e.f. 1-2-1977).

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

¹[1A. When transposition of defendants as plaintiffs may be permitted.]—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

2. Limitation law not affected by first suit.—In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise ¹[in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith ²[so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

¹[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction) has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

¹[*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]

¹[**3A. Bar to suit.**—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

38B. No agreement or compromise to be entered in a representative suit without leave of Court.—(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court as recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such person as may appear to it to be interested in the suit.

Explanation.—In this rule, “representative suit” means,—

(a) a suit under Section 91 or Section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

1. Ins. by Act 104 of 1976, s. 74 (w.e.f. 1-2-1977).

2. Subs. by s. 74, *ibid.*, for certain words (w.e.f. 1-2-1977).

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]

4. Proceedings in execution of decrees not affected.—Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV

PAYMENT INTO COURT

1. Deposit by defendant of amount in satisfaction of claim.—The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of deposit.—Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. Interest on deposit not allowed to plaintiff after notice.—No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. Procedure where plaintiff accepts deposit as satisfaction in part.—(1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) **Procedure where he accepts it as satisfaction in full.**—Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations

(a) A owes B Rs. 100. B. sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court, B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(h) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts in full satisfaction of his claim. The Court should also give B his cast of suit. A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV

SECURITY FOR COSTS

¹**1. When security for costs may be required from plaintiff.**—(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

1. Subs. by Act 66 of 1956, s. 14, rule 1.

(2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1)].

2. Effect of failure to furnish security.—(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security; costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI COMMISSIONS

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it :

¹[Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation.—The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.]

2. Order for commission.—An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within Court's jurisdiction.—A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

4. Persons for whose examination commission may issue.—(1) Any Court may in any suit issue a commission ²[for the examination on interrogatories or otherwise of—]

(a) any person resident beyond the local limits of its jurisdiction ;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) ³[any person in the service of the Government] who cannot in the opinion of the Court, attend without detriment to the public service :

¹[Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.]

1. Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

2. Subs. by s. 75, *ibid.*, for “for the examination of” (w.e.f. 1-2-1977).

3. Subs. by the A.O 1937, for “any civil or military officer of the Government”.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

¹[4A. **Commission for examination of any person resident within the local limits of the jurisdiction of the Court.**—Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.]

5. Commission or request to examine witness not within India.—Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within ²[India] is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to Commission.—Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witnesses.—Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the returned thereto and the evidence taken under it shall ³[(subject to the provisions of rule 8)] from part of the record of the suit.

8. When depositions may be read in evidence.—Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a ⁴[person in the service of the Government] who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for local investigations

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

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

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

(2) **Report and depositions to be evidence in suit. Commissioner may be examined in person.**—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of

1. Ins. by Act 46 of 1999, s. 29 (w.e.f. 1-7-2002).

2. Subs. by Act 2 of 1951, s. 3, for “the States”.

3. Subs. by Act 104 of 1976, s. 75, for certain words (w.e.f. 1-2-1977).

4. Subs. by the A.O. 1937, for “civil or military officer of the Government”.

the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

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

¹*[Commissions for scientific investigation, performance of ministerial act and sale of movable property]*

10A. Commission for scientific investigation.—(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

10B. Commission for performance of a ministerial act.—(1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

10C. Commission for the sale of movable property.—(1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.]

Commissions to examine accounts

11. Commission to examine or adjust accounts.—In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

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

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

Commissions to make partitions

13. Commission to make partition of immovable property.—Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner.—(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was

1. Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value Of the shares.

(2) The commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions

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

16. Powers of commissioners.—Any commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

¹[**16A. Questions objected to before the Commissioner.**—(1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting :

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.]

17. Attendance and examination of witnesses before Commissioner.—(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of ²[India], and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

¹[Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.]

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits or whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

1. Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

2. Subs. by Act 2 of 1951, s. 3, for “the States”.

18. Parties to appear before Commissioner.—(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

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

¹[**18A. Application of order to execution proceedings.**—The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.]

18B. Court to fix a time for return of commission.—The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.]

²[*Commissions issued of the instance of foreign Tribunals*]

19. Cases in which High Court may issue commission to examine witness.—(1) If a High Court is satisfied,—

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clause (a), (b) and (c) of sub-rule (1)—

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding.

20. Application for issue of commission.—The High Court may issue a commission under rule 19—

(a) upon application by a party to the proceeding before the foreign court, or

(b) upon an application by a law officer of the State Government acting under instructions from the State Government.

21. To whom commission may be issued.—A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or ³*** the witness resides within the local limits of ⁴[the ordinary original civil jurisdiction of the High Court], to any person whom the Court thinks fit to execute the commission.

22. Issue, execution and return of commissions, and transmission of evidence to foreign Court.—The provisions of rules 6, 15, ⁵[sub-rule (1) of rule 16A, 17, 18 and 18B] of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has, along with the letter of request for transmission to the foreign Court, been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government court.]

1. Ins. by Act 104 of 1976, s. 75 (w.e.f. 1-2-1977).

2. Ins. by Act 10 of 1932, s. 3.

3. The words “the high Court is established under the Indian high Courts Act. 1861, or the Government of India Act, 1915, and” omitted by the A.O. 1937.

4. Subs. *ibid.*, “its ordinary original civil jurisdiction”.

5. Subs. by Act 104 of 1976, s. 75, for “16, 17 and 18” (w.e.f. 1-2-1977).

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

1. Suits by or against Government.—In any suit by or against ¹[the Government], the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

2. Persons authorised to act for Government.—Persons being *ex officio* or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

3. Plaints in suits by or against Government.—In suits by or ²[against the Government], instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert ¹[the appropriate name as provided in section 79 ³***].

⁴**[4. Agent for Government to receive process.**—The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court].

5. Fixing of day for appearance on behalf of Government.—The Court, in fixing the day for [the Government] to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the ⁵[Government pleader] to appear and answer on behalf of ⁶[the Government] ⁷***, and may extend the time at its discretion ⁸[but the time so extended shall not exceed two months in the aggregate].

⁸**[5A. Government to be joined as a party in a suit against a public officer.**—Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.—(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.].

6. Attendance of person able to answer questions relating to suit against Government.—The Court may also, in any case in which the ⁵[Government pleader] is not accompanied by any person on the part of ¹[the Government] who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

1. Subs. by A. O. 1937, for “the Secretary of State for India in Council”.

2. Subs. *ibid.*, for “against the Secretary of State for India in Council”.

3. The words ‘or’ if the suit is against the Secretary of State, the words “the Secretary of State” omitted by the A.O. 1948.

4. Subs. by the A. O. 1937, for rule 4.

5. Subs. by the A. O. 1950, for “Crown pleader” which had been subs. by the A. O. 1937, for “Government pleader”.

6. Subs. by the A. O. 1937, for “the said Secretary of State, for India in Council”.

7. The words. “or the Government,” omitted by the A. O. 1948.

8. Ins. by Act 104 of 1976, s. 76 (w.e.f. 1-2-1977).

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

(2) Where no application under sub-rule (1) is made by the ¹[Government pleader] on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

[8A. No security to be required from Government or a public officer in certain cases.—No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

(a) in relation to any suit by or against^{4***} the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this order ;

5^* $*$ $*$ $*$ $*$

⁷[ORDER XXVIIA]

1. Notice to the Attorney General or the Advocate-General.—In any suit in which it appears to the Court that ¹⁰[any such question as is referred to ¹¹[in clause (I) of Article 132, read with Article 147 of the Constitution,] is involved, the Court shall not proceed to determine that question until after notice has been given to ¹²[the Attorney General for India] if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

1. Subs. by the A. O. 1937 and the A. O. 1950, for "Crown pleader".

2. Ins. by the A.O. 1937.

3. Ins. by the A.O. 1950.

4. The words "the Secretary of State or" omitted by the A.O.1948.

5. Cl. (b) omitted by the A.O. 1948.

6. Ins. by the A.O. 1950.

7. Ins. by Act 23 of 1942. s. 2.

8. Subs. by the A.O. 1950, for "the Government of India Act, 1935, or any Order-in-Council made thereunder".

9. Ins. by Act 104 of 1976, s. 77 (w.e.f. 1-2-1977).

10. Subs. by the A.O. 1948, fir “substantial question of law as to the interpretation of the Government of India Act, 1935. or any Order-in-Council made thereunder”.

11. Subs. by the A.O. 1950, "In sub-section (1) of section 205 of the Government of India Act, 1935".

12. Subs. *ibid.*, "the Advocate-General of India".

the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice—

(a) to the Government pleader, if the question concern the Government, or

(b) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.]

2. Court may add Government as party.—The Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving ¹[any such question as is referred to ²[in clause (1) of Article 132 read with Article 147, of the Constitution]], if ³[the Attorney General for India] or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

⁴**[2A. Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument.**—The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.]

⁵**[3. Costs.**—Where, under rule 2 or rule 2A the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.]

4. Application of Order to appeals.—In the application of this Order to appeals the word “defendant” shall be held to include a respondent and the word “suit” an appeal.]

⁴*[Explanation—*In this Order, “statutory instrument” means a rule, notification, bye-law, order, scheme or form made as specified under any enactment.]

ORDER XXVIII

SUITS BY OR AGAINST MILITARY ⁶[OR NAVAL] MEN ⁷[OR AIRMEN]

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them.—(1) Where any officer, ⁸[soldier, ⁶[sailor] or airman] actually ⁹[serving under the Government] in ¹⁰[such] capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

1. Subs. by the A. O. 1948, for “a substantial question of law as to the interpretation of the Government of India Act, 1935 or any Order-in-Council made thereunder”.

2. Subs. by the A.O. 1950, for “in sub-section (1) of section 205 of the Government of India Act, 1935”.

3. Subs., *ibid.*, for “the Advocate-General of India”.

4. Ins. by Act 104 of 1976, s. 77 (w.e.f. 1-2-1977).

5. Subs. by s. 77, *ibid.*, for rule 3 (w.e.f. 1-2-1977).

6. Ins. by Act 35 of 1934, s. 2 and Sch.

7. Ins. by Act 10 of 1927, s. 2 and the First Sch.

8. Subs. by s. 2, *ibid.*, and the First Sch., for “or soldier” and “or a soldier”.

9. Subs. by the A.O. 1937, for “serving the Government”.

10. Subs. by Act 35 of 1934, s. 2 and Sch., for “a military or air force”.

(2) The authority shall be writing and shall be signed by the officer, ¹[soldier, ²[sailor] or airman] in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (h) where the officer, ¹[soldier, ²[sailor] or airman,] is serving in military, ²[naval], ³[or air force] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, ¹[soldier ²[, sailor] or air man] by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, ²[ship,] detachment or depot to which the officer, ¹[soldier ²[, sailor] or airman] belongs.

2. Person so authorised may act personally or appoint pleader.—Any person authorised by an officer, ¹[soldier ²[, sailor] or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, ¹[soldier ²[, sailor] or airman] could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, ¹[soldier ²[, sailor] or airman].

3. Service on person so authorised, or on his pleader, to be good service.—Processes served upon any person authorised by an officer ¹[soldier ²[, sailor] or airman] under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading.—In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

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

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. Power to require personal attendance of officer of corporation.—The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX

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

1. Suing of partners in name of firm.—(1) Any two or more persons claiming or being liable as partners and carrying on business in, ⁴[India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

1. Subs. by Act 10 of 1927, s. 2 and the First Sch. for “or soldier”.

2. Ins. by Act 35 of 1934, s. 2 and Sch.

3. Ins. by Act 10 of 1927, s. 2 and Sch.

4. Subs. by Act 2 of 1951, s. 3, for “the States”.

2. Disclosure of partners' names.—(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

¹[Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.]

3. Service.—Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within ²[India] upon any person having, at the time of service, the control or management of the partnership business, there.

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without ²[India] :

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within ²[India] whom it is sought to make liable.

4. Rights of suit on death of partner.—(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

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

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

(b) to enforce any claim against the survivor or survivors.

5. Notice in what capacity served.—Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6. Appearance of partners.—Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. No appearance except by partners.—Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

³**[8. Appearance under protest.**—Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(2) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

1. Subs. by Act 104 of 1976, s. 78, for the proviso (w.e.f. 1-2-1977).

2. Subs. by Act 2 of 1951, s. 3, for "the States".

3. Subs. by Act 104 of 1976, s. 78, for rule 8 (w.e.f. 1-2-1977).

(3) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant,

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.]

9. Suits between co-partners.—This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

¹[**10. Suit against person carrying on business in name other than his own.**—Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.]

ORDER XXXI

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

1. Representation of beneficiaries in suits concerning property vested in trustees etc.—In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Joinder of trustees, executors and administrators.—Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside ²[India], need not be made parties.

3. Husband of married executrix not to join.—Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

³[*Explanation.*—In this Order, “minor” means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875(9 of 1875) where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter.]

2. Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

1. Subs. by Act 104 of 1976, s. 78, for rule 10 (w.e.f. 1-2-1977).

2. Subs. by Act 2 of 1951, s. 3, for “the States”.

3. Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

¹[**2A. Security to be furnished by next friend when so ordered.**—(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person. the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

3. Guardian for the suit to be appointed by Court for minor defendants.—(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice ^{2****} to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian ³[upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is ³[no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

¹[(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

⁴[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.]

¹[**3A. Decree against minor not to be set aside unless prejudice has been caused to his interests.**—(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor. but the fact that by reasons of such adverse interest of the next friend or guardian for the suit. prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

4. Who may act as next friend or he appointed guardian for the suit—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend 'a defendant, or, in the case of a guardian for the suit, a plaintiff.

1. Ins. by Act 104 of 1976. s. 79 (w.e.f. 1-2-1977).

2. The words "to the minor and" omitted by s. 79, *ibid.* (w.e.f. 1-2-1977).

3. Subs. by s. 79, *ibid.*, for certain words (w.e.f. 1-2-1977).

4. Ins. by Act 16 of 1937. s. 2.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent [in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested [or out of the property of the minor], and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. Representation of minor by next friend or guardian for the suit.—(1) Every application to the Court on behalf Of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor.—(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application :

¹[Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order. where such next friend or guardian—

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

7. Agreement or compromise by next friend or guardian for the suit.—(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

¹[(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor :

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is, for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor:

1. Ins. by Act 104 of 1976, s. 79 (w.e.f. 1-2-1977).

8. Retirement of next friend.—(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in this place' and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

9. Removal of next friend.—(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within ¹[India], or for any other sufficient cause, application, may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. Stay of proceedings on removal, etc., of next friend.—(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may, apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. Retirement, removal or death of guardian for the suit.—(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit, retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. Course to be followed by minor plaintiff or applicant on attaining majority.—(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus :

“A.B., late a minor by C.D., his next friend, but now having attained majority.”.

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend

(5) Any application under this rule may be made *ex parte* but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. Where minor co-plaintiff attaining majority desires to repudiate suit.—(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

1. Subs. by Act 2 of 1951, s. 3. for “the States”

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. Unreasonable or improper suit.—(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

¹[**15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind.**—Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when being sued.]

²[**16. Savings.**—(1) Nothing contained in this Order shall apply to the Ruler foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(2) Nothing contained in this Order shall be construed as affecting or in any way, derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind]

²[ORDER XXXIIA

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

1. Application of the Order.—(1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:—

(a) a suit or proceeding for matrimonial relief, including a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which, the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

1. Subs. by Act 104 of 1976, s. 79, for rule 15 (w.e.f. 1-2-1977).

2. Ins. by s. 80, *ibid.* (w.e.f. 1-2-1977).

2. Proceedings to be held in *camera*.—In every suit or proceeding to which this Order applies, the proceedings may be held in *camera* if the Court so desires and shall be so held if either party so desires.

3. Duty of Court to make efforts for settlement.—(1) In every suit or proceeding to which this Order applied, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement. In respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

4. Assistance of welfare expert.—In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 of this Order.

5. Duty to inquire into facts.—In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

6. “Family”—meaning of.—For the purposes of this Order, each of the following shall be treated as constituting a family, namely:—

(a) (i) a man and his wife living together,

(ii) any child or children, being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation.—For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of “family” in any personal law or in another law for the time being in force.]

ORDER XXXIII

¹[SUITS BY INDIGENT PERSONS]

1. Suits may be instituted by indigent persons.—Subject to the following provisions, any suit may be instituted by an ²[indigent person].

³[*Explanation 1.*—A person is an indigent person,—

(a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

1. Subs. by Act 104 of 1976, s. 81, for “*Suits by Paupers*” (w.e.f. 1-2-1977).

2. Subs. by s. 81, *ibid.* for “*paupe*” (w.e.f. 1-2-1977).

3. Subs. by s. 81, *ibid.*, for the *Explanation* (w.e.f. 1-2-1977).

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.—Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.—Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.]

¹[**1A. Inquiry into the means of an indigent person.**—Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court. unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.]

2. Contents of application.—Every application for permission to sue as an ²[indigent person] shall contain the particulars required in regard to claims in suits: a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto: and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Presentation of application.—Notwithstanding anything contained in these rules the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person:

¹[Provided that, where there are more plaintiffs than one. it shall be sufficient if the application is presented by one of the plaintiffs.]

4. Examination of applicant.—(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant.

(2) **If presented by agent, Court may order applicant to be examined by commission.**—Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. Rejection of application.—The Court shall reject an application for permission to use as ²[an indigent person]—

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not ²[an indigent person], or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to use as ²[an indigent person]:

¹[Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.) or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter;¹[or]

¹[(f) where the allegations, made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation .]

1. Ins. by Act 104 of 1976, s. 81 (w.e.f. 1-2-1977).

2. Subs. by s. 81, *ibid.*, for “pauper” (w.e.f. 1-2-1977).

6. Notice of day for receiving evidence of applicant's indigency.—Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten day's clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

¹7. **Procedure at hearing.**—(1) On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall may ²[a full record of their evidence].

³[(1A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court ²[under rule 6 or under this rule], the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as ⁴[an indigent person].

8. Procedure if application admitted.—Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee ²[or fees payable for service of process] in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. Withdrawal of permission to sue as an indigent person.—The Court may, on the application of the defendant, or of the Government pleader, of which seven days, clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as ⁴[an indigent person]; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

⁵[9A. **Court to assign a pleader to an unrepresented indigent person.**—(1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders to be assigned under sub-rule (1);

(b) the facilities to be provided to such pleaders by the Court ;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).]

10. Costs where indigent person succeeds.—Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as ⁴[an indigent person]; such amount shall be recoverable by the ⁵[State Government] from any party ordered by the decree to pay the same and shall be a first charge, on the subject-matter of the suit.

1. The provisions of this rule so far as it relates to the making of a memorandum are not applicable to the Chief Court of Oudh, see Oudh Courts Act, 1925 (U.P. Act 4 of 1925), s. 16 (2).

2. Subs. by Act 104 of 1976, s. 81, for certain words (w.e.f. 1-2-1977).

3. Ins. by s. 81, *ibid.*, (w.e.f. 1-2-1977).

4. Subs. by s. 81, *ibid.*, for “pauper” (w.e.f. 1-2-1977).

5. Subs. by the A.O. 1950, for “Provincial Government” which had been subs. by the A.O. 1937, for “Government”.

11. Procedure where indigent person fails.—Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismisses,—

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service ¹[or to present copies of the plaint or concise statement], or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as ²[an indigent, person].

³[**11 A. Procedure where indigent person suit abates.**—Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as ²[an In indigent person] shall be recoverable by the State Government from the estate of the deceased plaintiff.]

12. State Government may apply for payment of court-fees.—The ⁴[State Government] shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or ⁵[rule 11A].

13. State Government to be deemed a party.—All matters arising between the ⁴[State Government] and any party to the suit under rule 10, rule 11, ⁵[rule 11A] or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

⁶[**14. Recovery of amount of court-fees.**—Where an order is made under rule 10, rule 11 or rule 11A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court- fees specified therein from the person or property liable for the payment as if it were an arrear or land revenue.]

15. Refusal to allow applicant to sue as an indigent person to bar subsequent application of like nature.—An order refusing to allow the applicant to sue as ²[an indigent person] shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right; ⁷[provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,] the costs (if any) incurred by the ⁴[State Government] and by the opposite party in opposing his application for leave to sue as ²[an indigent person].

¹[**15A. Grant of time for payment of court-fee.**—Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in ^{8***} rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.]

1. Ins. by Act 104 of 1976, s. 81 (w.e.f. 1-2-1977).

2. Subs. by p. 81, *ibid.*, for “pauper” (w.e.f. 1-2-1977).

3. Ins. by Act 24 of 1942, s. 2.

4. Subs. by the A.O. 1950, for “Provincial Government” which had been subs. by the A.O.1937, for “Government”.

5. Subs. by Act 24 of 1942, s. 2, for “or rule 11.”

6. Subs. by s. 2 *ibid.*, for the rule 14.

7. Subs. by Act 104 of 1976, s. 81, for certain words (w.e.f. 1-2-1977).

8. Omitted by Act 19 of 1988. s. 3 and the Second Sch.

16. Costs.—The costs of an application for permission to sue as an ¹[indigent person] and of an inquiry into indigency shall be costs in the suit.

²**[17. Defence by an indigent person.**—Any defendant, who desire to plead a set-off or counterclaim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

18. Power of Government to provide for free legal services to indigent persons.—(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which, such services may be rendered.]

ORDER XXXIV

SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

1. Parties to suits for foreclosure sale and redemption.—Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

³**[2. Preliminary decree in foreclosure suit.**—(1) In a suit for foreclosure, if the plaintiff succeeds, the, Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court

¹ Subs. by Act 104 of 1976, s. 81 for “pauper” (w.e.f. 1-2-1977).

² Ins. by s. 81, *ibid.* (w.e.f. 1-2-1977).

³ Subs by Act 21 of 1929, s. 4, for the rules 2 to 8.

may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

3. Final decree in foreclosure suit.—(1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary,—

(b) ordering him to re-transfer at the cost or the defendant the mortgaged property as directed in the said decree, and also, if necessary.—

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him or debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

4. Preliminary decree in suit for sale.—(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, Charges, expenses and interest.

(3) **Power to decree sale in foreclosure-suit.**—In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit foreclosure in which sale is ordered, subsequent mortgages or persons deriving title from, or subrogated to the rights of any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11 as the case may be, of Appendix D with such variations as the circumstances of the case may require.

5. Final decree in suit for sale.—(1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree, and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

6. Recovery of balance due on mortgage in suit for sale.—Where the net proceeds of any sale held under ¹[rule 5] are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

7. Preliminary decree in redemption suit.—(1) In a suit for redemption. if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date. in respect of mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing—

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10. together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property. and shall, if so required, retransfer the property to the plaintiff at his cost free from the mortgage and from all encumbrances created by the defendant or any person claiming under him where the defendant claims by derived title, by those under whom the claims, and shall also. if necessary put the plaintiff in possession of the property; and

1. Subs. by Act 104 of 1976, s. 82, for “the last preceding rule” (w.e.f. 1-2-1977).

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgage property, be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

8. Final decree in redemption suit.—(1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the defendant to delivery up the documents referred to in the preliminary decree, and, if necessary. —

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree.
and, also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this nine, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

¹[**8A. Recovery of balance due on mortgage in suit for redemption.**—Where the net proceeds of any sale held under ²[rule 8] are found insufficient to pay the amount due to the defendant. the Court, ²[on

1. Ins. by Act 21 of 1929, s. 5.

2. Subs. by Act 104 of 1976, s. 82, for “the last preceding rule” (w.e.f. 1-2-1977).

9. Decree where nothing is found due or where mortgagee has been overpaid.—Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so require, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

²[Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not subsequently deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.]

11. Payment of interest. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

(i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court Deems reasonable,

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties or, failing such rate, ⁴[at such rate not exceeding six per cent. per annum as the Court deems reasonable]; and

⁵[(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at-such rate as the Court deems reasonable.]

12. Stile of property subject to prior mortgage.—Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

5. Subs. try s. 14, *ibid.*, for cl, (b).

13. Application of proceeds.—(1) Such proceeds shall be brought into Court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

Secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith ;

thirdly, in payment in all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, than two, to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

14. Suit for sale necessary for bringing mortgaged property to sale.—(1) Where a mortgage has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 (4 of 1882), has not been extended.

¹[**15. Mortgages by the deposit of title deeds and charges.**—²[(1)] All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882 (4 of 1882);

³[(2) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.]

ORDER XXXV

INTERPLEADER

1. Plaintiff in interpleader-suit.—In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs:

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

2. Payment of thing claimed into Court.—Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Procedure where defendant is suing plaintiff.—Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him: and his costs in the suit so stayed may be provided for in such suit; but if and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

1. Subs. by Act 21 of 1929, s. 7, for rule 15.

2. Rule 15 renumbered as sub-rule (1) by Act 104 of 1976, s. 82 (w.e.f. 1-2-1977).

3. Ins. by s. 82, *ibid.* (w.e.f. 1-2-1977).

4. Procedure at first hearing.—(1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admission of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

5. Agents and tenants may not institute interpleader suits.—Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

6. Charge for plaintiff's costs.—Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI
SPECIAL CASE

1. Power to state case for Court's opinion.—(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where value of subject-matter must be stated.—Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

3. Agreement to be filed and registered as suit.—(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed ¹[with an application] in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) ²[The application] when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom ³[the application was presented.]

4. Parties to be subject to Court's jurisdiction.—Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. Hearing and disposal of case.—(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit—

- (a) that the agreement was duly executed by them,
- (b) that they have a *bona fide* interest in question stated therein, and
- (c) that the same is fit to be decided.

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

⁴[**6. No appeal from a decree passed under rule 5.**—No appeal shall lie from a decree passed under rule 5.]

ORDER XXXVII

SUMMARY PROCEDURE ⁵***

⁶[**1. Courts and classes of suits to which the Order is to apply.**—(1) This Order shall apply to the following Courts, namely :—

- (a) High Courts, City Civil Courts and Courts of Small Causes; and
- (b) other Courts:

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:—

- (a) suits upon bills of exchange, hundies and promissory notes :
- (b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—
 - (i) on a written contract, or
 - (ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
 - (iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.]

1. Ins. by Act 104 of 1976, s. 83 (w.e.f. 1-2-1977).

2. Subs. by s. 83, *ibid.*, for "The agreement" (w.e.f. 1-2-1977).

3. Subs. by s. 83, *ibid.*, for "it was presented" (w.e.f. 1-2-1977).

4. Ins. by Act 104 of 1976, s. 83 (w.e.f. 1-2-1977).

5. The words "On Negotiable Instruments" omitted by s. 84, *ibid.* (w.e.f. 1-2-1977).

6. Subs. by s. 84, *ibid.*, for rule 1 (w.e.f. 1-2-1977).

¹[2. **Institution of summary suits.**—(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely :—

“(Under Order XXXVII of the Code of Civil Procedure, 1908).”

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

²[3. **Procedure for the appearance of defendant**—(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

1. Subs. by Act 104 of 1976, s. 84, for rule 2 (w.e.f. 1-2-1977).

2. Subs. by s. 84, *ibid.*, for rule 3 (w.e.f. 1-2-1977).

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]

4. Power to set aside decree.—After decree the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

5. Power to order bill, etc., to be deposited with officer of Court.—In any proceeding under this Order the Court may order the bill, *hundi* or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. Recovery of cost of noting non-acceptance of dishonoured bill or note.—The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Procedure in suits.—Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII

ARREST AND ATTACHMENT BEFORE JUDGMENT

Arrest before judgment

1. Where defendant may be called upon to furnish security for appearance.—Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave ¹[India] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

1. Subs. by Act 2 of 1951, s. 3. for “the States”.

2. Security.—(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. Procedure on application by surety to be discharged.—(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Procedure where defendant fails to furnish security or find fresh security.—Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before judgment

5. Where defendant may be called upon to furnish security for production of property.—(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

¹[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.]

6. Attachment where cause not shown or security not furnished.—(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

¹ Ins. by Act 104 of 1976. s. 85 (w.e.f. 1-2-1977).

7. Mode of making attachment.—Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree,

¹**[8. Adjudication of claim to property attached before judgment.**—Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claim to property attached in execution of a decree for the payment of money.]

9. Removal of attachment when security furnished or suit dismissed.—Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.—Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Property attached before judgment not to be re-attached in execution of decree.—Where property is under attachment by virtue of the provisions of this order decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

²**[11A. Provisions applicable to attachment.**—(1) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.]

12. Agricultural produce not attachable before judgment.—Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

³**[13. Small Cause Court no to attach immovable property.**—Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.]

ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

1. Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to ⁴[defrauding] his creditors,

⁵[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

1. Subs. by Act 104 of 1976, s. 85, for rule 8 (w.e.f. 1-2-1977).

2. Ins. by s. 85, *ibid.* (w.e.f. 1-2-1977).

3. Ins. by Act 1 of 1926, s. 4.

4. Subs. by Act 104 of 1976, s. 86, for “defraud” (w.e.f. 1-2-1977).

5. Ins. by s. 86, *ibid.* (w.e.f. 1-2-1977).

the Court may by order grant a temporary injunction to restrain such act. or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property ¹[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.—(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment. apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

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¹**2A. Consequence of disobedience or breach of injunction.**—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made. the Court granting the injunction or making the order. or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached. and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]

3. Before granting injunction, Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

¹[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay. and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application:

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant, relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

¹**3A. Court to dispose of application for injunction within thirty days.**—Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.]

1. Ins. by Act 104 of 1976. s. 86 (w.e.f. 1-2-1977).

2. Sub-rules (3) and (4) omitted by s. 86. *ibid.* (w.e.f. 1-2-1977).

4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

¹[Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.]

5. Injunction to corporation binding on its officer.—An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory orders

6. Power to order interim sale.—The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural delay, or which for any other just and sufficient cause, it may be desirable to have sold at once.

7. Detention, preservation, inspection, etc., of subject-matter of suit.—(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this rule.

8. Application for such orders to be after notice.—(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made ^{2***} at any time after institution of the suit.

(2) An application by the defendant for a like order may be made ^{3***} at any time after appearance.

¹[(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.]

9. When party may be put in immediate possession of land the subject-matter of suit.—Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure:

1. Ins. by Act 104 of 1976, s. 86 (w.e.f. 1-2-1977).

2. The words “after notice to the defendant” omitted by s. 86, *ibid.* (w.e.f. 1-2-1977).

3. The words “after notice to the plaintiff” omitted by s. 86, *ibid.* (w.e.f. 1-2-1977).

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Deposit of money, etc., in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL

APPOINTMENT OF RECEIVERS

1. Appointment of receivers.—(1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. Remuneration.—The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

3. Duties.—Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;
- (b) submit his accounts at such periods and in such form as the Court directs.
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

4. Enforcement of receiver's duties.—Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. When Collector may be appointed receiver.—Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. Form of appeal. What to accompany memorandum.—(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the ¹[Judgment].

1. Subs. by Act 46 of 1999. s. 31 (w.c.f. 1-7-2002).

¹[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.]

(2) **Contents of memorandum.**—The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

¹[(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

2. Grounds which may be taken in appeal.—The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandum.—(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

²[**3A. Application for condonation of delay.**—(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.]

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.—Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or van the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution

5. Stay by Appellate Court.—(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree: but the Appellate Court may for sufficient cause order stay of execution of such decree.

²[*Explanation.*—An order by the Appellate Court for the stay of execution of the decree shall be from the date of the communication of such order to the Court of first instance, but an affidavit sworn

1. Subs. by Act 46 of 1999, s. 31, for certain words (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree.—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) ¹[Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

²[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

(6) Security in case of order for execution of decree appealed from.—(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of. •

7. ³[No security to be required from the Government or a public officer in certain cases.] Rep. by the A.O. 1937.

8. Exercise of power in appeal from order made in execution of decree.—The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

⁴[**9. Registry of memorandum of appeal.**—(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.]

10. Appellate Court may require appellant to furnish security for costs.—(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India.—Provided that the Court shall demand such security in all cases in which the appellant is residing out of ⁵[India], and is not possessed of any sufficient immovable property within ⁵[India] other than the property (if any) to which the appeal relates.

1. Subs. by Act 104 of 1976, s. 87, for certain words (w.e.f. 1-2-1977).

2. Ins. by s. 87, *ibid.* (w.e.f. 1-2-1977).

3. Order XXVII, rule 8A, *supra*.

4. Subs. by Act 46 of 1999, s. 31, for rule 9 (w.e.f. 1-7-2002).

5. Subs. by Act 2 of 1951, s. 3, for “the States”.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. Power to dismiss appeal without sending notice to Lower Court.—¹[(1) The appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal].

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

²[(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.]

²**[11A. Time within which hearing under rule 11 should be concluded.**—Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.]

12. Day for hearing appeal.—(1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

³[(2) Such day shall be fixed with reference to the current business of the Court]

⁴ * * * * *

14. Publication and service of notice of day for hearing appeal.—(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) **Appellate Court may itself cause notice to be served.**—**Instead** of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

²[(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) *Notwithstanding* anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.]

⁴ * * * * *

Procedure on hearing

16. Right to begin.—(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. Dismissal of appeal for appellants' default.—(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

1. Subs. by Act 46 of 1999, s. 31, for sub-rule (1) (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

3. Subs. by Act 46 of 1999, s. 31, for sub-rule (2) (w.e.f. 1-7-2002).

4. Rule 13 omitted by s. 31, *ibidi*. (w.e.f. 1-7-2002).

¹[*Explanation.*—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.]

(2) Hearing appeal *ex parte*.—Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

²* * * *

19. Re-admission of appeal dismissed for default.—Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 ³[***] the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was, called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20. Power to adjourn hearing and direct persons appearing interested to be made respondents.—⁴[(I)] Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

⁵[(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.]

21. Re-hearing on application of respondent against whom *ex parte* decree made.—Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to rehear the appeal: and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. Upon hearing respondent may object to decree as if he had preferred separate appeal.—(I) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree ⁶[but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

⁵[*Explanation.*—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) **Form of objection and provisions applicable thereto.**—Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

⁷* * * *

1. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

2. Rule 18 omitted by Act 46 of 1999, s. 31 (w.e.f. 1-7-2002).

3. The words “or rule 18” omitted by s. 31, *ibid.* (w.e.f. 1-7-2002).

4. Rule 20 re-numbered as sub-rule (I) by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

5. Ins. by s 87, *ibid.* (w.e.f. 1-2-1977).

6. Subs. by s. 87, *ibid.*, for certain words (w.e.f. 1-2-1977).

7. Subs-rule (3) omitted by Act 46 of 1999, s.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

23. Remand of case by Appellate Court.—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

¹[**23A. Remand in other cases.**—Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23

24. Where evidence on record sufficient Appellate Court may determine case finally.—Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgement of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor ¹[within such time as may be fixed by the Appellate Court or extended by it from time to time].

26. Findings and evidence to be put on record. Objections to findings.—(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) **Determination of appeal.**—After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

¹[**26A. Order of remand to mention date of next hearing.**—Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.]

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

¹[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Mode of taking additional evidence.—Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded.—Where additional evidence is, directed, and allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal

30. Judgment when and where pronounced.—²[(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

¹[(2)] Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.]

31. Contents, date and signature of judgment.—The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. What judgment may direct.—The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection ¹[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] :

1. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977).

2. Rule 30 re-numbered as sub-rule (1) by s. 87, *ibid.* (w.e.f. 1-2-1977).

¹[Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

34. Dissent to be recorded.—Where the Appeal is heard by more judges than one, any judge dissenting from the judgement of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal

²35. Date and contents of decree.—(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Judge dissenting from judgment need not sign decree.—Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

36. Copies of judgment and decree to be furnished to parties.—Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. Certified copy of decree to be sent to Court whose decree appealed from.—A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

ORDER XLII

APPEALS FROM APPELLATE DECREES

1. Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

³2. Power of Court to direct that the appeal be heard on the question formulated by it —At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

3. Application of rule 14 of Order XLI—Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.]

1. Ins. by Act 9 of 1922, s. 4, which under s. 1(2) thereof, may be brought into force in any State by the State Government on any specified date. The Act has been brought into force in Bombay, Bengal, U.P., Punjab, Bihar, C.P. Assam, Orissa and Tamil Nadu.

2. This rule is not applicable to the Chief Court of Oudh in the exercise of its appellate Jurisdiction; see the Oudh Courts Act, 1925 (U.P. 4 of 1925), s. 16(3).

3. Ins. by Act 104 of 1976, s. 88 (w.e.f. 1-2-1977).

ORDER XLIII
APPEALS FROM ORDERS

1. Appeal from orders.—An appeal shall lie from the following orders under the provisions of section 104, namely : —

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court ¹[except where the procedure specified in rule 10A of Order VII has been followed];

²* * * *

(c) an order under rule 9 of order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;

²* * * *

(f) an order under rule 21 of Order XI;

²* * * *

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

¹[*ja*) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (*l*) of rule 105 of that Order is appealable;]

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

²* * * *

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

¹[*na*) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person:]

²* * * *

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of order)(XXVIII;

(r) an order under rule 1. rule 2 ' [rule 2A], rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 '[or rule 23A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate court;

²* * * *

(w) an order under rule 4 of Order XLVII granting an application for review.

1. Ins. by Act 104 of 1976, s. 89 (w.e.f. 1-2-1977).

2. Cs. (b), (e), (g) (h) (m), (o) and (v) omitted by s. 89, *ibid*, (w.e.f. 1-2-1977).

¹[**1A. Right to challenge non-appealable orders in appeal against decrees.**—(1) Where any order is made under this Code against a party and there upon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]

2. Procedure.—The rules of Order XLI shall apply, so far as may be to appeals from orders.

ORDER XLIV

²[APPEALS BY INDIGENT PERSONS]

1. Who may appeal ³[as an indigent person].-⁴[(1)] Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an ⁵[indigent person], subject, in all matters, including the presentation of such application, to the provisions relating to suits by ⁵[indigent persons], in so far as those provisions are applicable.

⁶ *	*	*	*	*
⁷ *	*	*	*	*

⁸[**2. Grant of time for payment of court-fee.**—Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

3. Inquiry as to whether applicant is an indigent person.—(1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court or, under the orders of the Appellate Court, by an officer of the Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.]

1. Ins. by Act 104 of 1976, s. 89 (w.e.f. 1-2-1977).

2. Subs. by s. 90, *ibid.*, for “pauper appeals” (w.e.f. 1-2-1977).

3. Subs. by s. 90, *ibid.*, for “as pauper” (w.e.f. 1-2-1977).

4. Rule 1 re-numbered as sub-rule (1) by Act 66 of 1956, s. 14.

5. Subs. by Act 104 of 1976, s. 90, for “pauper” and “paupers” respectively (w.e.f. 1-2-1977).

6. Proviso omitted by Act 66 of 1956, s. 14.

7. Sub-rule (2) ins. by s. 14, *ibid.* and omitted by Act 104 of 1976, s. 90 (w.e.f. 1-2-1977).

8. Subs. by Act 104 of 1976, s. 90, for rule 2 (w.e.f. 1-2-1977).

ORDER XLV

APPEALS TO THE ¹[SUPREME COURT]

1. “Decree” defined.—In this Order, unless there is something repugnant in the subject or context, the expression “decree” shall include a final order.

2. Application to Court whose decree complained of.—²[(I)] Whoever desires to appeal ³[the Supreme Court] shall apply by petition to the Court whose decree is complained of.

⁴[(2) Every petition under sub-rule (I) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (I).]

3. Certificate as to value or fitness. —⁵[(I) Every petition shall state the grounds of appeal and pray for a certificate—

(i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of the Court the said question needs to be decided by the Supreme Court.]

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. [Consolidation of suits.] Rep. by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973). S4 (w.e.f. 1-2-1977)

5. [Remission of dispute to Court of first instance.] Rep. by s. 4, *ibid.* (w.e.f. 1-2-1977)

6. Effect of refusal of certificate.—Where such certificate is refused, the petition shall be dismissed.

7. Security and deposit required on grant of certificate.—(I) Where the certificate is granted, the applicant shall, within ⁶[ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow;] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date,—

(a) furnish security ⁷[in cash or in Government securities] for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing indexing ⁸[printing,] and transmitting to ⁹[the Supreme Court] a correct. copy of the whole record of the suit, except—

(I) formal documents directed to be excluded by any ¹⁰[Rule of the Supreme Court] in force for the time being;

(2) papers which the parties agree to exclude;

1. Subs. by the A.O. 1950, for “King-in-Council”.

2. Rule 2 re-numbered as sub-rule (1) of that rule by Act 104 of 1976, s. 91 (w.e.f. 1-2-1977).

3. Subs. by the A.O. 1950, for “His Majesty in Council”.

4. Ins. by Act 104 of 1976, s. 91 (w.e.f. 1-2-1977).

5. Subs. by Act 49 of 1973, s. 4, for sub-rule (1).

6. Subs. by Act 26 of 1920, s. 3, for “six months”.

7. Ins. by s. 3, *ibid.*

8. Ins. by the A.O. 1950.

9. Subs., *ibid.*, for “order of His Majesty in Council”.

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded :

¹[Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.]

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8. Admission of appeal and procedure thereon.—Where such security has been furnished and deposit made to the satisfaction of the Court, the court shall—

(a) declare the appeal admitted,

(b) give notice thereof to the respondent,

(c) transmit to' (the Supreme Court] under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore and paying the reasonable expenses incurred in preparing them.

9. Revocation of acceptance of security.—At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

³**19A. Power to dispense with notices in case of deceased parties.**—Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some Conspicuous place in the court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct.]

10. Power to order further security or payment.—Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to ⁴[the Supreme Court], such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid.

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, of to make, within like time, the required payment.

11. Effect of failure to comply with order.—Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of ⁴[the Supreme Court],

1. Added by Act 26 of 1920, s. 3.

2. Sub-rule (2) omitted by the A.O. 1950.

3. Subs. by the A.O. 1950, for "his Majesty in Council"

4. Ins. by Act 26 of 1920, s 4.

and in the meantime execution of the decree appealed from shall not be stayed.

12. Refund of balance deposit.--When the copy of the record, except as aforesaid, has been transmitted to ¹[the Supreme Court], the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. Powers of Court pending appeal.—(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which ¹[the Supreme Court] may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of ²[any decree or order] which the ¹[the Supreme Court] may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. Increase of security found inadequate.—(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree, appealed from as if the appellant had furnished no such security:

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. Procedure to enforce orders of the Supreme Court.—(1) Whoever desires to obtain execution of ³[any decree or order] of ¹[the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to ³[the Supreme Court] was preferred.

(2) Such Court shall transmit the ⁴[decree or order] of ¹[the Supreme Court] to the Court which passed the first decree appealed from, or to such other Court as ¹[the Supreme Court] by such ⁴[decree or order] may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said ⁴[decree or order] is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

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1. Subs., by the A.O. 1950, for "His Majesty in Council".

2. Subs., *ibid.*, for "any order".

3. Subs., *ibid.*, for "any other".

4. Subs., *ibid.*, for "order".

5. Sub-rule (3) omitted by the A.O. 1950.

¹[(4) ²[Unless the Supreme Court otherwise directs, no decree or order of that Court I shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case. where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place. I

16. Appeal from order relating to execution.—The orders made by the Court which executes the ³[decree or order] of ¹[the Supreme Court], relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. [Appeals to Federal Court.]— *Rep. by the Federal Act, 1941 (21 of 1941), s. 2.*

ORDER XLVI

REFERENCE

1. Reference of question to High Court.—Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree. entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. Court may pass decree contingent upon decision of High Court.—The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and 111:1V pass a decree or make an order contingent upon the decision of the, High Court on the point referred:

But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgement of the High Court upon the reference.

3. Judgement of High Court to be transmitted and case disposed of accordingly.—The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made: and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Cost of reference to High Court.—The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

⁴[**4A. Reference to High Court under proviso to section 113.**—The provisions of rules 2.3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.1

5. Power to alter, etc., decree of Court making reference.—Where a case is referred to the High Court under rule ⁵[or under the proviso to section 113], the High Court may return the case for amendment and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

1. Ins. by Act 26 of 1920, s. 5.

2. Subs. by the A.O. 1950, for “Unless His Majesty in Council in pleased otherwise to direct, no order of His Majesty in Council”.

3. Subs., *ibid.*, for “order”.

4. Subs., *ibid.*, for “His Majesty in Council”.

5. Ins. by Act 24 of 1951, s. 2.

6. Power to refer to High Court questions as to jurisdiction in small causes.—(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. Power to District Court to submit for revision proceeding had under mistake as to jurisdiction in small causes.—(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make" for any record or information for the purposes of this rule.

ORDER XLVII

REVIEW

1. Application for review of judgment.—(1) Any person considering himself aggrieved—

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

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

(c) by a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

¹[*Explanation.*—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

2. [To whom applications for review may be made.]—*Rep. by the Code of Civil Procedure (Amendment) Act 1956 (66 of 1956). s. 14.*

3. Form of applications for review.—The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. Application where rejected.—(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

1. Ins. by Act 104 of 1976, s. 92 (w.e.f. 1-2-1977).

(2) **Application where granted.**—Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in Court consisting of two or more Judges.—Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6. Application where rejected.—(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application.—¹[(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing which such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

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

8. Registry of application granted, and order for re-hearings.—When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain application.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII MISCELLANEOUS

1. Process to be served at expense of party issuing.—(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) **Costs of service.**—The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. Orders and notices how served.—All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

1. Subs. by Act 104 of 1976, s. 92, for sub-rule (1) (w.e.f. 1-2-1977).

3. Use of forms in appendices.—The Forms given in the appendices, with such variation as the circumstances or each case may require, shall be used for the purposes therein mentioned.

ORDER XLIX

CHARTERED HIGH COURTS

1. Who may serve processes of High Court.—Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Saving in respect of Chartered High Courts.—Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

3. Application of rules.—The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence⁴) of Order XVIII.

(5) rule 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction

ORDER L

PROVINCIAL SMALL CAUSE COURTS

1. Provincial Small Cause Courts.—The provisions hereinafter specified shall not extend to Court constituted under the Provincial Small Cause Courts Act 1887 (9 of 1887) ¹[or under the Berar Small Cause Courts Law 1905] or to Courts exercising the jurisdiction of a Court of Small Causes ²[under the said Act or Law] ³[or to Courts in ⁴[any part of India to which the said Act does not extend] exercising a corresponding jurisdictions that is to say—

(a) so, much of this Schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immovable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders:—

Order II, rule 1 (frame of suit):

Order X, rule 3 (record of examination of parties):

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment:

Order XVIII, rule 5 to 12 (evidence);

Order XLI, to XLV (appeals):

Order XLVII, rules 2, 3, 5, 6, 7 (review);

Order LI.

1. Ins. by Act 4 of 1941, s. 2, and the Third Sch.

2. Subs. by s. 2, and the Third Sch. *ibid.*, for “under that Act”.

3. Ins. by Act 2 of 1951 s. 18.

4. Subs. by the Adaptation of Laws (No. 2) Order, 1956 for “Part B States”.

ORDER LI
PRESIDENCY SMALL CAUSE COURTS

1. Presidency Small Cause Courts.—Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI. and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), this Schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

APPENDIX A

PLEADINGS

(1) *Titles of Suits*

IN THE COURT OF

A.B. (add description and residence).

Plaintiff

against

C.D. (add description and residence) . . .

Defendant

(2) *Description of parties in particular Cases*

¹[The Union of India or the State of..... as the case may be.]

The Advocate General of _____

The Collector of _____

The State of _____

The A. B. Company, Limited having its registered office at _____

A. B., a public officer of the C. D. Company.

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D. late of (*add description and residence*). _____

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued 1317 the Company limited. _____

The Official Receiver. _____

A. B. a minor (*add description and residence*), by C. D. [or by the Court of Wards], his next friend. _____

A. B. (*add description and residence*), a person of unsound mind [or of weak mind] by. C. D. his next friend. _____

A. B. a firm carrying on business in partnership at _____

A. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*). _____

A. B. (*add description and residence*), Shebait of Thakur. _____

A. B. (*add description and residence*), executor of C. D. deceased. _____

A. B. (*add description and residence*), heir of C. D. deceased. _____

1. Subs. by the A. O. 1950, for "The Secretary of State or the Federation of India or the Province of....., as the case may be".

(3) *Plaints*

No. 1

MONEY LENT

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the.....day of.....19....., he lent the defendantrupees repayable on the.....day of.....
2. The defendant has not paid the same, except.....rupees paid on the.....day of.....19.....

[If the plaintiff claims exemption from any law of limitation, say: —]

3. The plaintiff was a minor [or insane] from the.....day of..... till the.....day of.....
4. [Facts showing when the cause of action arose and that the Court has jurisdiction.]
5. The Value of the subject-matter of the suit for the purpose of jurisdiction isrupees and for the purpose of court-fees is.....rupees.
6. The plaintiff claims.....rupees, with interest atper cent. from the..... day of19.....

No. 2

MONEY OVERPAID

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the.....day of..... 19, the plaintiff agreed to buy and the defendant agreed to sell.....bars of silver at.....annas per tola of fine silver.
2. The plaintiff procured the said bars to be assayed by *E.F.*, who was paid by the defendant for such assay, and *E.F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly the defendant..... rupees.
3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.
4. The defendant has not repaid the sum so overpaid.

[As in paras 4 and 5 of Form No. 1, and Relief claimed. I

No. 3

GOODS SOLD AT A FIXED PRICE AND DELIVERED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the..... day of.....19, *E.F.* sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed. or sundry goods.]
2. The defendant promised to pay..... rupees for the said goods on delivery [or on the..... day of.....some day before the plaint was filed].
3. He has not paid the same.
4. *E. F.* died on the.....day of 19.....By his last will he appointed his brother, the plaintiff. his executor.

[As in paras 4 and 5 of Form No. 1,]

7. The plaintiff as executor of *E.F.* claims [Relief Claimed].

No. 4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price.
2. The goods were reasonably worth rupees.
3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. 1, and relief claimed]

No. 5

GOODS MADE AT DEPENDANT'S REQUEST, AND NOT ACCEPTED

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the.....day of.....19....., E.F. agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that E.F. should pay for the goods on delivery.....rupees.
2. The plaintiff made the goods, and on the.....day of.....19....., offered to deliver them to E.F., and has ever since been ready and willing so to do.
3. E.F. has not accepted the goods or paid for them.

[As in paras. 4 and 5 of Form No. I, and Relief claimed.]

No. 6

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff put up at auction sundry [goods]. subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
2. The defendant purchased [*one crate of crockery*] at the auction at the price of..... rupees.
3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.
4. The defenant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.
5. On the.....day of.....19....., the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for.....rupees.
6. The expenses attendant upon such re-sale amounted to.....rupees.
7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[As in paras 4 and 5 of Form No. I, and Relief claimed.]

No. 7

SERVICES AT A REASONABLE RATE

(Title)

A. B., the above named plaintiff, states as follows:—

1. Between the..... day of.....19....., and the..... day of..... 19..... at....., plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth.....rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 8

SERVICES AND MATERIALS AT A REASONABLE COST

(Title)

A. B., the above named plaintiff, states as follows:—

1. On the.....day of..... 19.....,at..... the plaintiff built a house [known as No., in.....], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth..... rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 9

USE AND OCCUPATION

(Title)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

1. That the defendant occupied the [house No.....,.....Street], by permission of the said XY, from the.....day of.....19....., until the day of..... 19....., and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. I.*]

4. The plaintiff as executor of X 1, claims [*relief claimed*].

No. 10

ON AN AWARD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19.....,the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay]; agreed in writing to submit the difference to the arbitration of E. F and G. H. and the original document is annexed hereto.

2. On the.....day of.....19....., the arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1 and relief claimed.*]

No. 11

ON A FOREIGN JUDGMENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., at.....in the State [or Kingdom] of....., the..... Court of that State [or Kingdom,] in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff.....rupees, with interest from the said date.

2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 12

AGAINST SURETY FOR PAYMENT OF RENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., E. F. hired from the plaintiff for the term of.....years, the [house No.....,street], at the annual rent of.....rupees, payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to E.F, to gurantee the punctual payment of the rent.

3. The rent for the month of19....., amounting to.....rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add:--]

4. On the.....day of.....19....., the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 13

BREACH OF AGREEMENT TO PURCHASE LAND

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff and defendant entered into an agreement, and the Original document is hereto annexed.

[Or, on the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of.....for..... rupees.]

2. On the..... day of.....19....., the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument*] on the payment by the defendant of the money agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 14

NOT DELIVERING GOODS SOLD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the.....day of.....19.....and that the plaintiff should pay there for..... rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 15

WRONGFUL DISMISSAL

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services.....rupees [monthly].

2. On the.....day of.....19....., the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the.....day of.....19....., the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 16

BREACH OF CONTRACT TO SERVE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at as [annual] salary of.....rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of.....19....., offered so to do].

3. The defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the.....day of.....19....., he refused to serve the plaintiff as aforesaid.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 17
AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of..... 19....., the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [*Or state the tenor of the contract.*]
- [2. The plaintiff duly performed all the conditions of the agreement on his part.]
3. The defendant [built the house referred to in the agreement in a bad and unworkman like manner].
[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 18
ON A BOND FOR THE FIDELITY OF A CLERK
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff took *E.F.* into his employment as a clerk.
2. In consideration thereof, on the.....day of.....19....., the defendant agreed with plaintiff that if *E.F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding...rupees.
[*Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of.....rupees, subjects to the condition that if *E.F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.*]
- [*On 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.*]
3. Between the.....day of.....19....., and the.....day of 19....., *E.F.* received money and other property, amounting to the value of.....rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.
[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 19
BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the defendant, by a registered instrument, let to the plaintiff [the house No.....Street] for the term of.....years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.
2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.
3. On the.....day of.....19....., during the said term, *E.F.* who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.
4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend.....rupees in moving, and lost the custom of *G.H. and I.I* by such removal].
[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 20

ON AN AGREEMENT OF INDEMNITY

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of..... 19....., the plaintiff and defendant, being partners in trade under the style of A. B. and C.D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the..... day of.....19....., [a judgment was recovered against the plaintiff and defendant by E.F., in the High Court of Judicature at....., upon a debt due from the firm to E.F., and on the day of..... 19.....] the plaintiff paid.....rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 21

PROCURING PROPERTY BY FRAUD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of 19, the defendant, for the purpose of including the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth.....rupees over all his liabilities].

2. The plaintiff was thereby induced to, sell [and deliver] to the defendant, [dry goods] of the value of.....rupees.

3. The said representations were false [or state the particular falsehoods] and were then known by the defendant to be so.

4. The defendant has not paid for the goods, [Or, if the goods were not delivered.] The plaintiff, in preparing and shipping the goods and procuring their restoration, expendedrupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 22

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of..... 19....., the defendant, represented to the plaintiff that E.F., was solvent and in good credit, and worth rupees over all his liabilities [or that E.F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to E.F., (rice) of the value of..... rupees[on.....months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. E.F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 23

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called and situate in.....and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the.....day of 19....., the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 24

CARRYING ON A NOXIOUS MANUFACTURE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called.....situate in.....

2. Ever since the..... day of..... 19....., the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stocks of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 25

OBSTRUCTING A RIGHT OF WAY

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of.....].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. On the..... day of..... 19....., defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].

4. *(State special damage, if any).*

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 26

OBSTRUCTING A HIGHWAY

(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from..... to..... so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones, [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 27

DIVERTING A WATER-COURSE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the....., in the village of....., district of.....

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the..... day of..... 19....., the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than..... sacks per day, whereas, before the said diversion of water, he was able to grind..... sacks per day.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 28

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and was at the times hereinafter mentioned was, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the..... day of..... 19....., the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

No. 29

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the..... day of..... 19, the defendants were common carriers of passengers by railway between..... and

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at..... [or near the station of..... or between the stations of and], a collision occurred on the said railway caused by the negligence and unskillfulness of state the special damage, if any, as], and servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman].

[As in paras. 4 and 5 of Form No. 1, and relief claimed.]

[*Or thus*:—2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendant's railway which the plaintiff was then lawfully crossing that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para. 3*].

No. 30

INJURIES CAUSED IN NEGLIGENT DRIVING

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at he defendant is a merchant of

2. On the day of 19, the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 31

FOR MALICIOUS PROSECUTION

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the defendant obtained a warrant of arrest from [a Magistrate of the said city, *or as the case may be*] on a charge of, and the plaintiff was arrested thereon, and imprisoned for [days, *or* hours, and gave bail in the sum of rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19, the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one E.F.; *or* in consequence the plaintiff suffered pain of body and mind, and was prevented transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 32

MOVABLES WRONGFULLY DETAINED

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods,*] the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff

3. Before the commencement of the suit, to wit, on the day of.....19, the plaintiff demanded the same from the defendant, but he refused to deliver them.

[As in Paras 4 and 5 of Form No. 1.]

6. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

No. 33

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the defendant C.D., for the purpose of including the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. The plaintiff was thereby induced to sell and deliver to C.D. [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by C.D. to be so [*or at the time of making the said representations, C.D. was insolvent, and knew himself to be so*].

4. C.D. afterwards transferred the said goods to the defendant E.F. without consideration [*or who had notice of the falsity of the representation*].

5. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]

6. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.

7. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

No. 34

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at, contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price ofrupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the day of 19....., the plaintiff paid the defendant
rupees as part of the purchase money.

4. That the said piece of ground contained in fact only [five bighas].
5. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]
6. The value of the subject-matter of the suit for the purpose of jurisdiction is..... rupees and for the purpose of court-fees is..... rupees.
7. The plaintiff claims—
 - (1).....rupees, with interest from the..... day of..... 19.....
 - (2) that the said agreement be delivered up and cancelled.

No. 35

AN INJUNCTION RESTRAINING WASTE

(Title)

A. B., the above-named plaintiff; states as follows:—

1. The plaintiff is the absolute owner of [*describe the property*].
 2. The defendant is in possession of the same under a lease from the plaintiff.
 3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.
 4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]
 5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.
 6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.
- [*Pecuniary compensation may also be claimed.*]

No. 36

INJUNCTION RESTRAINING NUISANCE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.....Street, Calcutta].
2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street.....]
3. On the..... day of..... 19....., the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].
- [4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]
5. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]
6. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is.....rupees.
7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37

PUBLIC NUISANCE

(Title)

A. B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as.....Street at.....so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

¹[*2. The plaintiff has obtained the leave of the Court for the institution of this suit.

*Not applicable where suit is instituted by the Advocate-General.]

1. Subs. by Act 104 of 1976, s. 93, for paragraph 2 (w.e.f. 1-2-1977).

[As in paras. 4 and 5 of Form No. 1]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said road;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE

(Title)

A. B., the above-named plaintiff, states as follows:—

[As in form No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39

RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION AND FOR AN INJUNCTION

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].
2. On the..... day of..... 19 he deposited the same for the safe-keeping with the defendant.
3. On the.....day of..... 19 ; he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.
4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.
5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting]

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said[painting],

(2) that he be compelled to deliver the same to the plaintiff.

No. 40

INTERPLEADER

(Title)

A. B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned G.H. deposited with the plaintiff [describe the property) for [safe-keeping].
- 2 The defendant C.D. claims the same [under an alleged assignment thereof to him from G.H.].
3. defendant E F also claims the same [under an order of G.H. transferring the same to him.]
4. The plaintiff is ignorant of the respective rights of the defendants.
5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.
[As in paras. 4 and 5 of Form No. 1.]

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorised to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 41

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS

(Title)

A. B., the above-named plaintiff, states as follows:—

1. E.F. late of....., was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of..... [here insert nature of debt and security, if any].

2. E.F. died on or about the..... day of..... By his last will, dated the..... day of.....he appointed C.D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be.]

3. The will was proved by C.D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the movable [and immovable], or the proceeds of the immovable property of E.F, and has not paid the plaintiff his debt.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims that an account may be taken of the movable [and immovable] property of E.F., deceased, and that the same may be administered under the decree of the Court.

No. 42

ADMINISTRATION BY SPECIFIC LEGATEE

(Title)

[Alter Form No. 41 thus]

[Omit paragraph 1 and commence paragraph 2] E.F. late of, died on or about the.....

day of.....By his last will, dated the.....day ofhe appointed C.D., his executor, and bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the movable property of E.F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.

No. 43

ADMINISTRATION BY PECUNIARY LEGATEE

(Title)

[Alter Form No. 41 thus]

[Omit paragraph 1 and substitute for paragraph 2] *E.F.*, late of.....died on or about the..... day of.....By his last will, dated the.....day of..... he appointed *CD.* his executor, and bequeathed to the plaintiff a legacy of..... rupees.

In paragraph 4 substitute "legacy" for "debt"

Another form

(Title)

E. F., the above-named plaintiff, states as follows:—

1. *A. B.* of *K.* in the.....died on the..... Day of.....by his last will, dated the..... day of..... he appointed the defendant and *M.N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the.....day of.....The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims—

(1) to have a movable and immovable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and account; taken;

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

No.44

EXECUTION OF TRUSTS

(Title)

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the.....day of..... made upon the marriage of *E.E.* and *G.H.*, the father and mother of the defendant [or an instrument of transfer of the estate and effects of *E.F.* for the benefit of *C.D.*, the defendant, and the other creditors of *E.F.*].

2. *A.B.* has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the movable and immovable property transferred by the said instrument.

3. *C.D.* claims to be entitled to a beneficial interest under the instrument.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, *or* of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of, *or* of part of, the said movable property, *or* the profits occurring to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C.D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C.D.* and such other persons so interested as the Court may direct, or that *C.D.* may show good cause to the contrary.

[*N.B.—Where the suit is by a beneficiary, the plaint may be modeled mutatis mutandis on the plaint by a legatee.*]

No. 45

FORECLOSURE OR SALE

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

(e) (Property subject to mortgage);

(g) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the plaintiff is mortgagee in possession add*).

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time.

[*As in paras. 4 and 5 of Form No. 11*

6. The plaintiff claims—

(1) payment, or in default [sale *or*] foreclosure [and possession];

[*Where Order 34, rule 6, applies.*]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff then that liberty be reserved to the plaintiff to apply for ¹[an order for the balance].

No. 46

REDEMPTION

(*Title*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

1. Subs. by Act 104 of 1976 s. 93, for “a decree for the balance” (w.e.f. 1-2-1977).

(e) (property subject to mortgage);

(f) (If the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the defendant is mortgagee in possession, add)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof]. ¹[together with *mesne* profits].

No. 47

SPECIFIC PERFORMANCE (No. 1)

(Title)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and deferred to, for the sum of..... rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48

SPECIFIC PERFORMANCE (No. 2)

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the.....day of.....19....., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the.....day of.....19, the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 , the plaintiff again demanded such transfer. [Or the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras. 4 and 5 of Form No. I.]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];

(2)..... rupees compensation for withholding the same.

1. Ins. by Act 104 of 1976, s. 93 (w.e.f. 1-2-1977).

No. 49
PARTNERSHIP
(Title)

A.B., the above-named plaintiff, states as follows:—

1. He and C.D., the defendant, have been for.....years [or months] past carrying on business together under articles of partnership in writing [*or under a deed, or under a verbal agreement*].

2. Several disputes and differences have arisen between the plaintiff whereby and defendant as such partners whereby it has become impossible to carry on the business with advantage to the partners, [or the defendant has committed the following breaches of the in partnership articles:—

- (1)
- (2)
- (3) .]

[As in paras 4 and 5 of Form No. 1.]

5. The plaintiff claims—

- (1) dissolution of the partnership;
- (2) that accounts be taken;
- (3) that a receiver be appointed

(N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the fact of the partnership having been dissolved).

4. WRITTEN STATEMENTS

General Defences

Denial—The defendant denies that (*set out facts*).

The defendant does not admit that (*set out facts*).

The defendant admits that.....but says that.....

The defendant denies that he is a partner in the defendant firm of.....

Protest—The defendant denies that he made the contract alleged or any contract with the plaintiff. The defendant denies that he contracted with the plaintiff's alleged or at all.

The defendant admits assets but not the plaintiffs claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaintiff or any of them.

Limitation—The suit is barred by article.....or article.....of the Second Schedule to the Indian¹ Limitation Act, 1877 (15 of 1877).

Jurisdiction—The Court has .no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On theday of.....a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency—The defendant has been adjudged an insolvent.

The plaintiff before the institution of the it was adjudged an insolvent and the right to sue vested in the receiver.

Minority—The defendant was a minor at the time of making the alleged contract.

1. See now the Limitation Act, 1973 (36 of 1973).

Payment into Court—The defendant as to the whole claim (*or as to Rs. part of the money claimed, or as the case may be*) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (*or the part aforesaid*).

Performance remitted—The performance of the promise alleged was remitted on the (*date*).

Rescission—The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata—The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel—The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Ground of defence subsequent to institution of suit—Since the institution of this that is to say, on the day of (*set out facts*).

No. 1

DEFENCE IN SUITS FOR GOODS SOLIAND DELIVERED

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[or]

- | | | | |
|--|--|---|--|
| <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">4.</div><div style="display: inline-block; vertical-align: middle;">5.</div><div style="display: inline-block; vertical-align: middle;">6.</div> </div> | <div style="display: inline-block; vertical-align: middle; font-size: 3em;">}</div> <div style="display: inline-block; vertical-align: middle;">Except as to Rs.</div> | <div style="display: inline-block; vertical-align: middle;">, same as</div> | <div style="display: inline-block; vertical-align: middle; font-size: 3em;">{</div> <div style="display: inline-block; vertical-align: middle;">1.
2.
3.</div> |
|--|--|---|--|

7. the defendant *for* A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff *for* to C.D., the plaintiff's agent] on the day of 19,

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19

No. 2

DEFENCE IN SUITS ON BONDS

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond:

No. 3

DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4

DEFENCE IN ANY SUITS FOR DEBT

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by he defendant to the plaintiff.

Particulars are as follows :	Rs.
1907 January 25th. . . . .	.150
„ February 1st	50
	50
Total	200

2. As to the whole [*or* as to Rs..... , part of the money claimed/ the defendant made tender before suit of Rs.....and has paid the same into Court.

No. 5

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1. The defendat denies that the carries mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to..... of.....Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses: and the person under whose charge and control the said carriage was, was the savant of the said.

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and, diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph the plaint.

No. 6

DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts *for* matters] complained of.

No. 7

DEFENCE IN ALL SUITS FOR DETENTION OF GOODS

1. The goods were not the property of the plaintiff.

2. The good were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1907, May 3rd to carriage of the goods claimed from Delhi to Calcutta:—

45 maunds at Rs. 2 per maund.....Rs. 90

No. 8

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1. The plaintiff is not author [*assignee, etc.*]

2. The book was not registered.

3. The defendant did not infringe.

No. 9

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

1. The trade mark is not the plaintiff's

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

No. 10

DEFENCE IN SUITS RELATING TO NUISANCES

1. The plaintiff's lights are not ancient [*or* deny his other alleged prescriptive rights]

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff *[If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]*

No. 11

DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff *(if more than one transfer is alleged, say which is denied)*.

3. The suit is barred by articles.....of the Second Schedule to the ¹Indian Limitation Act, 1877 (15 of 1877).

4. The following payments have been made viz, :—

(Insert date)— Rs. 1,000

(Insert date)— Rs. 500

5. The plaintiff took— possession on the.....ofand has received the rents ever since.

6. The plaintiff released the debt on theof.....

7. The defendant transferred all his interest to A. B. by a document dated.

No. 12

DEFENCE TO SUIT FOR REDEMPTION

1. The plaintiff's right to redeem is barred by article of the Second Schedule to the ¹Indian Limitation Act 1877 (15 of 1877).

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant, by a document dated the.....day oftransferred all his interest in the mortgage-debt and property comprised in the mortgage to A.B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(if the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits.)

1. See now the Limitation Act, 1963 (36 of 1963).

No. 13

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

1. The defendant did not enter into the agreement.
2. *A.B.* was not the agent of the defendant (*if alleged by plaintiff*).
3. The plaintiff has not performed the following *conditions*—(*Conditions*).
4. The defendant did *not*—(*alleged acts of part performance*).
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following *matter*—(*State why*).
6. The agreement is uncertain in the following respects—(*State them*).
7. (*or*) The plaintiff has been guilty of delay.
8. (*or*) The plaintiff has been guilty of fraud (*or* misrepresentation).
9. (*or*) The agreement is unfair.
10. (*or*) The agreement was entered into by mistake.
11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).
12. The agreement was rescinded under Conditions of Sale, No. 11 (*or by mutual agreement*).

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement Or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the ¹Indian Limitation Act, accord and satisfaction, release, fraud, etc.*)

No. 14

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. *A.B.* 's will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs....., and the testator had some movable property which the defendant got in, and which produced the net sum of Rs.....
2. The defendant applied the whole of the said sums and the sum of Rs..... which the defendant received from rents of the immovable property in -the payment of the funeral and testamentary expenses and some of the debts of the testator.
3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the..... day of..... 19....., and offered to plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.
4. The defendant submits that the plaintiff ought to pay the cost of this suit.

No. 15

PROBATE OF WILL IN SOLEMN FORM

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865² (10 of 1865) [*or of the Hindu Wills Act, 1870*² (21 of 1870)].
2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.
3. The execution of the said will and, codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].
4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

1. See now the Limitation Act, 1963 (36 of 1963).

2. See now the Indian Succession Act, 1925 (39 of 1925).

5. The deceased at the time of the execution of the said will and codicil did not know and approve the contents thereof [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff ;

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16

PARTICULARS (O.6, r. 5.)

(Title of suit)

Particulars.—The following are the particulars of *(here state the matters in respect of which particulars have been ordered)* delivered pursuant to the order of the of

(Here set out the particulars ordered in paragraphs if necessary).

APPENDIX B

PROCESS

No. 1.

SUMMONS FOR DISPOSAL OF SUIT (O. 5, rr. 1.5.)

(Title)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed (and able to answer all material questions relating to the suit, or who shall be accompanied by some person; able to answer all such questions, on the.....day of19,.....at.....o'clock in the.....noon, to answer the claim ; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

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

Judge

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 2

SUMMONS FOR SETTLEMENT OF ISSUES (O. 5, rr.1. 5.)

(Title)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for.....you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material question relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the.....day of.....19....., at.....o'clock in the.....noon, to answer the claim; ¹[and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counterclaim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counterclaim, you shall enter such documents in a list to be annexed to the written statement].

Take note that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

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

Judge.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 3

SUMMONS TO APPEAR IN PERSON (O. 5, r. 3.)

(Title)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for.....you are hereby summoned to appear in this Court in person on the..... day of.....19.....at o'clock in the.....noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

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

Judge.

1. Subs. by Act 104 of 1976, s. 94, for certain words (w.e.f- 1-2-1977).

¹[**No. 4**
SUMMONS IN A SUMMARY SUIT
(O. 37, r. 2)
(Title)

To

[Name description and place of residence.]

WHEREAS..... has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs.....and interest, you are hereby summoned to cause and appearance to be entered for you, within ten days from the service hereof, in default hereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs.....and the sum of Rs.....for costs, together with such interest, if any, as the Court may order.

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is defence to the suit on the merits or that it is reasonable that you should be allowed to defend.

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

²[**No. 4A**
SUMMONS FOR JUDGMENT IN A SUMMARY SUIT
(O. 37, r. 31)
(Title)

In the.....Court, at.....Suit No.....of 19
XYZ Plaintiff

Versus

ABC Defendant

Upon reading the affidavit of the plaintiff the Court makes the following order, namely:—

Let all parties concerned attend the Court or Judge, as the case may be, on theday of19 , ato'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs.....and for interest and costs.

Date theday of.....19 .]

No. 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF
(O. 1, r. 10)
(Title)

To

[Name, description and place of residence.]

WHEREAS.....has instituted a suit against.....for.....and whereas it appears necessary that you should be added as plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon the settle all the questions involved.

Take notice that you should on or before the day of 19 , signify to this

1. Subs. by Act 104 of 1976, s. 94, for Form No. 4 (w.e.f 1-2-1977).
2. Subs. by s. 94, *ibid.* (w.e.f. 1-2-1977).

Court whether you consent to be so added.

Given under my hand and the seal of the Court, thisday of 19

Judge.

No. 6

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT

(O. 22, r. 4)

(Title)

To

WHEREAS the plaintiff instituted a suit in this Court on the...day of..... 19,...against the defendant..... who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said, deceased, and desiring that you be made, the defendant in his stead;

You are hereby summoned to attend in this Court on the.....day of 19, atA.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, thisday of 19

Judge.

No. 7

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT

(O. 5, r. 21)

(Title)

WHEREAS it is stated that

defendant	in the above suit is at present residing in.....
witness	

It is ordered that a summons returnable on the.....day of 19 , be forwarded to theCourt of.....for

service on the said defendant with a duplicate of this proceeding.

witness

The court-fee ofchargeable in respect to the summons has been realised on this Court in stamps.

Dated19.....

Judge

No. 8

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER

(O. 5, r. 25.)

(Title)

To

The Superintendent of the Jail at.....
.....0.....

Under the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is here with forwarded for service on the defendant..... who is..... a prisoner in jail, You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

No. 9

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER
(O. 5, rr. 27, 28.)

(Title)

To

UNDER the provisions of Order V, rule 27 (*or 28, as the case may be*), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant.....who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

No. 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT

(O. 5, r. 23.)

(Title)

Read proceeding from theforwarding..... for service on.....in Suit No.of 19..... of that Court.

Read Serving Officer's endorsement stating that the.....and proof of the above having been duly taken by me on the oath of.....and.....it is ordered that the.....be returned to the.....with a copy of this proceeding.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 11

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE

(O. 5, r. 18.)

(Title)

The Affidavit of....., son of

I

make oath
affirm

and say as follows :—

(1) I am a process-server of this Court.

(2)	On the day of..... 19.....I received a	summons
		notice

issued by the Court ofin Suit No... ..of 19....., in the said Court, dated theday of 19....., for service on.....

(3) The said.....was at the time personally known to me, and I served the said Summons
notice

him On theday of.....19....., at about.....o'clock in the
hernoon at.....by tendering a copy thereof him and requiring Him
her her

Signature to the original summon

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said.....not being personally known to me.....accompanied me.....to

and pointed out to me a person whom he stated to be the said....., and I served the summon
said..... Notice

on Him on theday of.....19....., at about.....o'clock in the.....
her

noon at.....by tendering a copy thereof to him and requiring him Signature to the original summon
her her Notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said.....and the house in which he ordinarily resides being personally known to me, I went to the said house, inand thereon theday, of19

at about.....o'clock in the.....noon, I did not find the said.....

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One.....accompanied me to.....and there pointed out to me which he said was the house in which.....ordinarily resides. I did not find the said.....there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn

_____ by the said.....before me

Affirmed

this.....day of.....

Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.

No. 12

NOTICE TO DEPENDANT

(O. 9, r. 6.)

(Title)

To

[Name, description and place of residence.]

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the..... day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 13

SUMMONS TO WITNESS

(O. 16, rr. 1, 5.)

(Title)

To

WHEREAS your attendance is required to on behalf of the.....in the above suit, you are hereby required [personally] to appear before this Court on the..... day of 19....., at..... o'clock in the forenoon, and to bring with you [*or* to send to this Court].

A sum of Rs....., being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this.....day of.....

Judge.

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs.....will be tendered to you for each day's attendance beyond the day specified.

No. 14

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS (O. 16, r. 10.)

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law : and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons : This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the.....day of.....19.....at.....o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

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

Judge.

No. 15

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS

(O. 16, r. 10.)

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons : This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the.....day of..... 19..... at..... o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

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

Judge.

No. 16

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS (O. 16, T. 10.)

(Title)

To

The Bailiff of the Court.

WHEREAS the witness

cited by

has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment..... property belonging to the said witness to the value..... of and to submit a return, accompanied with an inventory thereof, within.....days.

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

.....

Judge.

No. 17

WARRANT OF ARREST OF WITNESS (O. 16, r. 10)

(Title)

To

The Bailiff of the Court.

WHEREAS.....has been duly served with a summons but has failed to attend (absconds and keeps out of the way for the purpose of avoiding service of a summons); You are hereby ordered to arrest and bring the said.....before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

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

Judge.

No. 18

WARRANT OF COMMITTAL (O. 16, r. 16)

(Title)

To

The Officer in charge of the Jail at.....

WHEREAS the plaintiff (*or* defendant) in the above-named suit has made application to this Court that security be taken for the appearance of..... give evidence (*or* to produce a document), on the day of 19 and whereas the Court has called upon the said.....to furnish such security, which he has failed to do; This is to require you to receive the said.....into your custody in the civil prison and to produce him before this Court aton the said day and on such other day or days as may be hereafter ordered.

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

Judge.

No. 19

WARRANT OF COMMITTAL (O 16, r. 18)

(Title)

To

The Officer in charge of the Jail at.....

WHEREAS, whose attendance is required before this Court in the above-named case to give evidence *or* to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (*or* defendant), the said.....cannot give such evidence (*or* produce such document); and whereas the Court has called upon the said to.....to-give security for his appearance on the.....day of.....19....., at.....which he has failed to do; This is to require you to receive the said..... into your custody in the civil prison and to produce him before this Court at..... on the.....day of..... 19

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 1

Plaintiff.

C.D.E.F. and *G.H* *Defendants.*

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No. 5

AFFIDAVIT AS TO DOCUMENTS (O. 11, r. 13.)

(Title as in No. 1, supra)

I, the above-named defendant *C. D.*, make oath and say as follows : —

1. have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. object to produce the said documents set forth in the second part of the first schedule hereto [*stale grounds of objection*]

3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on. [*State when and what has become of them and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter memorandum, paper or writing, or any copy of or extract from any such document, or any other documents whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION (O. 11, r. 14.)

(Title as in No. 1, supra)

Upon hearing.....and upon reading the affidavit of..... filed the.....

day of.....19.....; It is ordered that the.....do, at all reasonable times, on reasonable notice, produce at....., situate at, the

following documents, namely,....., and that the.....be at liberty to inspect and produce the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings be stayed and that the costs of this application be.....

No. 7

NOTICE TO PRODUCE DOCUMENTS (O. 11, r. 16.)

(Title as in No. 1, supra)

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit, dated the.....day of19.....].

[Describe documents required.]

X. Y, pleader for the.....

To Z., pleader for the.....

No. 8

NOTICE TO INSPECT DOCUMENTS (O. 11, r. 17.)

(Title as in No. 1, supra)

Take notice that you can inspect the documents mentioned in your notice of theday Of.....19..... [except the documents numberedin that notice ins place of inspection] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the day of.....19....., on the ground that [state the ground].

No. 9

NOTICE TO ADMIT DOCUMENTS (O. 12, r. 3.)

(Title as in No. 1, supra)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent..... at.....on.....between the hours of.....; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

To E.F., pleader [or agent] for defendant [or plaintiff].

[Here describe the documents and specify as to each document whether it is original or a copy].

No. 10

NOTICE TO ADMIT FACTS (O. 12, r. 5.)

(Title as in No. 1, supra)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G.H. pleader [or agent] for plaintiff [or defendant].

To E.F., pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

No. 11

ADMISSION OF FACTS PURSUANT TO NOTICE (O. 12, r. 5.)

(Title as in No. 1, supra)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant, or party requiring the admission].

E. F., pleader [or agent] for defendant [or plaintiff].

To G. H., pleader [or agent] for plaintiff [or defendant].

Facts admitted	Qualifications or limitations, if any, subject to which they are admitted
1. That M. died on the 1st January, 1890.....	1.
2. That he died intestate.....	2.
3. That N. was his lawful son	3. But not that he was his only lawful son.
4. That O. died.....	4. But not that died on the 1st April, 1896.
5. That O. was never married.....	5.

No. 12

NOTICE TO PRODUCE (GENERAL FORM) (O. 12, r. 8.)

(Title as in No. 1, supra)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit. all books, papers, letters, copies of letters and other writings and documents in your custody. possession or power. containing any entry, memorandum or minute relating to the matters in question in this suit. and particularly.

G. H., *pleader* [or *agent*] for *plaintiff* [or *defendant*].

To E. F. *pleader* or *agent* for *defendant* [or *plaintiff*].

APPENDIX D

DECREES

No. 1

DECREE IN ORIGINAL SUIT (O. 20, IT. 6,7.)

(Title)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed that and that the sum of Rs be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to date of realization.

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

Judge.

Costs of Suit

Plaintiff				Defendant			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.....				Stamp for power.....			
2. Do for power.....				Do for petition.....			
3. Do for exhibits.....				Pleader's fee.....			
4. Pleader's fee on Rs.				Subsistence for witnesses...			
5. Subsistence for witnesses..				Service of process.....			
6. Commissioner's fee.....				Commissioner's fee.....			
7. service of process.....							
Total				Total			

No. 2

SIMPLE MONEY DECREE

(Section 34)

(Title)

Claim for

THIS suit coming on this.....day for final disposal before.....in the presence offor the plaintiff and offor the defendant; It is ordered that the.....do pay to the..... the sum of Rs..... with interest thereon at the rate of.....per cent. per annum from.....to the date of realization of the said sum and do also pay Rs....., the costs of this suit, with interest thereon at the rate of.....per cent. per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this..... day of19

Judge.

Costs of Suit

Plaintiff				Defendant			
1. Stamp for plaint.....	Rs.	A.	B.	Stamp for power.....	Rs.	A.	P.
2. Do. for power.....				Do. for petition			
3. Do. for exhibit.....				Pleader's fee			
4. Pleader's fee on Rs.....				Subsistence for witnesses			
5. Subsistence for witnesses.....				Service of process ...			
6. Commissioner's fee.....				Commissioner's			
7. Service of process.....							
Total				Total			

¹[No.3

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2.—Where accounts are directed to be taken.)

(*Title*)

This suit coming on this.....day, etc.; It is hereby ordered and decreed that it be referred to.....as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by *the* terms the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the

1. Subs. by Act 21 of 1929, s. 8 and Sch., for the forms 3 to 11.

mortgage-money or, as the case may be, debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due, and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of..... and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the..... day of..... or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs..... for the costs of the suit awarded to the plaintiff.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order VOCIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever or arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
Description of the mortgaged property]

¹[No. 3A

PRELIMINARY DECREE FOR FORECLOSURE
(Order XXXIV, rule 2.—Where the Court declares the amount due.)
(Title)

This suit coming on this..... day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to thisday of..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs..... for the costs of this suit awarded to the plaintiff, making in all sum of Rs.....

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court of the said sum of Rs.....

1. Subs. by Act 21 of 1929, s. 8 and the Schedule, for Forms 3 to 11.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order =V of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 4

FINAL DECREE FOR FORECLOSURE

(Order XXXIV, rule 3.)

(Title)

Upon reading the preliminary decree passed in this suit on the..... day of..... and further orders (if any) dated the.....day of.....and the application of the plaintiff dated the.....day of.....for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage :

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; ²[and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property'].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

Schedule

(Description of the Mortgage Property).]

¹[No. 5

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

(Title)

This suit coming on this.....day, etc.: It is hereby ordered and decreed that it be referred to.....as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

1. Subs. by Act 21 of 1929, s. 8 and the Schedule, for Forms 3 to 11.

* Words not required to be deleted.

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of....., and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.....for the costs of the suit awarded to the plaintiff;

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quit and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with Such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property.]

¹[No. 5A

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.—When the Court declares the amount due.)

(Title)

This suit coming on this.....day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this..... day of.....is the sum of Rs..... for principal, the sum of Rs.....for interest on the said principal, the sum of Rs..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs.....for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.....

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the..... day of..... or any later date up to which time for payment may be extended by the Court, the said sum of Rs.....

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quit and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property.]

1. Subs. by Act 21 of 1929, s. 8 and the Schedule, for Form 3 to 11.

¹[No. 6

FINAL DECREE FOR SALE

(Order XXXIV, rule 3.)

(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage :

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.]

¹[No. 7

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(Title)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to..... as the Commissioner to take the account following:—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on

1. Subs. by Act 21 of 1929, s. 9 and the Schedule, for Forms 3 to 11.

account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of....., and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property, in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 7A

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR
DECREE A DECREE FOR SALE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(Title)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following :—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

1. Subs. by Act 21 of 1929, s. 8 and the Schedule, for Forms 3 to 11.

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of....., and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby farther ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of or any later

date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, or such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff; or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom the claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in his suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

¹[No. 7B

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE
FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the..... day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time- as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 7C

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE
FOR SALE IS PASSED

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of mortgage-security together with interest thereon, and the sum of Rs. for the cost of this suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[**No. 7D**

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR
(Order XXXIV, rule 8.)

(Title)

Upon reading the preliminary decree in this suit on the day of and further order (if any) dated the day of, and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned *[and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quit and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharge and extinguished.

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

* Words not required to be deleted.

¹[No. 7E

FINAL DECREE FOR SALE IN A REDEMPTION ON SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the day of and further order (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, a documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment. of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.]

¹[No. 7F

FINAL DECREE IN A SUIT FOR FORAOCLOSURE, SALE OR REDEMPTION WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE

(Order XXXIV, rule 3, 5 and 8)

(Title)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of ; It is hereby ordered and decreed that:—

(i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor *[or, as the case may be, who has redeemed the property] or an acknowledgement of the payment of the amount due in his favour;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

2. And it is hereby further ordered and decreed that upon the mortgagee executing the deed of re-conveyance or acknowledgement in the manner aforesaid,—

(i) the said sum of Rs. be paid out of Court to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor *[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor *[or other person making the payment], the said deed of re-conveyance or the acknowledgement in the office of the Sub-Registrar of; and

(iii) *[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

* Words not required to be deleted.

the aforesaid preliminary decree mentioned to the mortgagor *[or such person as aforesaid who has made the payment].

¹[No. 8

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF THE MORTGAGED
PROPERTY

(Order XXXIV may, rules 6 and 8A)

(Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case maybe) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realisation of the said sum, and the costs of this application.]

¹[No. 9

PRELIMINARY DECREE FOR FORECLOSURE OF SALE

[Plaintiff 1st Mortgagee,

vs

Defendant No. 1 Mortgagor,

Defendant No. 2 2nd Mortgagee.]

(Order XXXIV, rules 2 and 4)

(Title)

The suit coming on this day, etc; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 *[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—

3. And it is hereby ordered and decreed as follows:—

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

* Words not required to be deleted.

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage).

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

(i) **[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) **[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

* Words not required to be deleted.

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and

6. And it is hereby further ordered and decreed * *[in the case where a sale is ordered under clause 5 above]*—

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against No. 1 for the amount of the balance.

¹[No. 10]

[Plaintiff 2nd Mortgagee,
vs.
Defendant No. 1. Mortgagor,
Defendant No. 2 1st Mortgagee].

259

(Order XXXIV, rules 2, 4, and 7)

(Title)

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in pr to the plaintiff *[or (if there are several subsequent mortgages) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—]

3. And it is hereby ordered and decreed as follows:—

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has extended by the Court the said sum of Rs. due to defendant No. 2; a

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff defendant No 1 or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due respect of such costs of the suit and such costs, charges and expenses as may be payable un rule 10, together with such subsequent interest as may be payable under rule 11, of Order XX) of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mention and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, convey or re-transfer the said property free from the said mortgage and clear of and from incumbrances created by defendant No. 2 or any person claiming under him or any person um whom he claims, and also free from all liability whatsoever arising from the mortgage or this s and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made t payment) quiet and peaceable possession of the said property.

(Similar declarations) to be introduced, if defendant No. 1 pays the amount found or declared due the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or I a final decree—

(i) *[in the case of a mortgage by conditional sale or an anomalous mortgage where the or remedy provided for in the mortgage-deed is foreclosure and not sale] that the plaintiff and defend No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from right to redeem the mortgaged property described in the Schedule annexed hereto and shall; if required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

* Words not required to be deleted.

(ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part then shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court such officer as it appoints, all documents in his possession or power relating to the mortgaged proper and

(iii) **[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defend No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

(a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for final decree *(in the same manner as the defendant No. 2 might have done under clause 4 above)*—

**[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property]; or*

**[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and*

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *(in the case where a sale is ordered under clause 5 above)*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the cost of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

* Words not required to be deleted

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Description of the mortgaged property]

[illegible]

This suit coming on the day, etc. ; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(i) that defendant No. 1 do pay into Court on or before the said day of or any later date of up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability

* Words not required to be deleted.

arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

(iii) that, upon payment into the Conn by defendant No. 1 of the amount due to defendant No. 2 the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interests as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against as defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc., [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendant Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order) (XXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2, or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(*declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder*).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
Description of the mortgaged property]

No. 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

IT is hereby declared that , dated the day of 20 , does not truly express the intention of the parties to such

And it is decreed that the said be rectified by

Here insert name of proper officer.

No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

It is hereby declared that the , dated the day of 20 , and made between and , is void as against the plaintiff and all other the creditors, if any, of the defendant

No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

LET the defendant , his agents, servants and workmen, be perpetually restrained from burning , or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

LET the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiffs windows in his said premises as are ancient lights.

No.16

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

LET the defendant his agents, servants and workmen, be perpetually restrained from using or permitting to be used and part of the lane at , the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT

(Title)

It is ordered that the following accounts and inquiries be taken and made; that is to say :—

In creditors suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an accounts be taken of the legacies given by the testators will,

In suits by next-of-kin—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into, Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the * shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the *(and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

(a) an inquiry what immovable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the encumbrances (if any) affecting the immovable property of the deceased or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the *and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the *shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the *to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the *do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

* Here insert name of proper officer.

15. And, lastly, it is ordered that this suit [or proceedings] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

No. 18

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

(Title)

1. It is ordered that the defendant do, on or before the day of pay into Court the sum of Rs., the balance by the said certificate found to be due from the said defendant on account of the estate of, the testator and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of, amounting together to the sum of Rs.

2. Let thef the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr., his attorney [or pleader] or and the costs of the defendant to Mr., his attorney [or pleader].

(b) And (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the *, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES

(Title)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff. —

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the *, pay to the plaintiff the amount of what the *shall certify to be due for principal and interest.

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

* Here insert name of proper officer.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN

(Title)

1. LET the *of the said Court tax the costs of the “plaintiff and defendant in this suit, and let the amount of the said plaintiff’s costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance, by the said certificate found to be due from the said defendant on account of the personal estate of E.F., the *intestate*, within one week after the taxation of the said costs by the said *and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. after payment of the plaintiff’s and defendant’s costs as aforesaid, be paid and applied by defendant as follows:—

(a) Let the defendant, within one week after the taxation of the said costs by the *..... as aforesaid, pay one-third share of the said residue to the plaintiffs A.B., and C.D., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the *intestate*.

(b) Let the defendant retain for her own use one other third share of said residue, as the mother and one of the next-of-kin of the said E.F., the *intestate*.

(c) And let the defendant, within one week after the taxation of the said costs by the *..... as aforesaid, pay the remaining one-third share of the said residue to G H., as the brother and the other next- of-kin of the said E.F. the *intestate*.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS

(Title)

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership;
2. An account of the debts and liabilities of the said partnership;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned; and the stock-in-trade, be sold on the premises, and that the *may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the * do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

* Here insert name of proper officer.

No. 22

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNT
(Title)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the certificate of the * amounting the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs. [These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the day of pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 23

DECREE FOR RECOVERY OF LAND AND MESNE PROFIT
(Title)

It is hereby decreed as follows:—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of *mesne* profits which have accrued due prior to the institution of the suit.

Or

2. That an inquiry be made as to the account of *mesne* profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount *mesne* profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

* Here insert name of proper officer.

APPENDIX E

EXECUTION

No. 1

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED

(O.21, r.2.)

(Title)

WHEREAS in execution of the decree in the above-named suit has applied to this Court to get the Sum of Rs. recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19, to show cause why the payment/adjustment aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this day of 20.

Judge.

No. 2

PRECEPT (Section 46)

(Title)

Upon hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule

Dated the day of 20

Judge.

No. 3

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT

(O.21, r. 6.)

(Title)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits, for the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is.

Ordered:

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 20

Judge.

No. 4

CERTIFICATE OF NON-SATISFACTION OF DECREE

(O.21, r. 6.)

(Title)

CERTIFIED that no¹ satisfaction of the decree of this Court in suit No of 19, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 20

Judge.

1. If partial strike out "no" and State to what extent.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT

(*Title*)

Signature of Muharrir in charge.

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No. 6

APPLICATION FOR EXECUTION OF DECREE

(O.21, r.11.)

In the Court of

I, decree-holder, hereby apply for execution of the decree herein-below set forth:—

789 of 1897	No. of Suit	1	Mode in which the assistance of the Court is required.
A.B. —Plaintiff C.D. —Defendant	Names of parties	2	
October 11, 1897	Date of Decree	3	
No.	Whether any appeal preferred from decree	4	
None	Payment of adjustment made if any	5	
R.s 72-4-0 recorded on application, dated the 4th March, 1899	Previous application, if any, with date and result	6	
R.s. 314-8-2 principal [interest at 6 per cent, per annum, from date of decree till payment].	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	7	
Rs. a. p 47 10 4 8 2 0 Total 55 12 4	Amount of costs, if any, awarded	8	
Against the defendant C.D.	Against whom to be executed	9	
<p>[When attachment and sale of movable property is sought.]</p> <p>I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the cost of taking out this execution, be realised by attachment and sale of defendant's movable property as per annexed list and paid to me.</p> <p>[When attachment and sale of immovable property is sought.]</p> <p>I Pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the cost of taking out this execution, be realised by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.]</p>			10

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed , *decree-holder.*

Dated the day of 19

[When attachment and sale of immovable property is sought.]

Description and specification of property

The undivided one-third share of the judgment-debtor in a house situated in the village of value Rs. 40, and bounded as follows:—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed , *decree-holder.*

No. 7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE

¹**[(O. 21, r.16.)]**

(Title)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19, on the allegation that the said decree has been transferred to him by assignment ²[or without assignment], this is to give you notice that you are to appear before this Court on the day of 19, to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 8

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN EXECUTION OF A DECREE

FOR MONEY **(O.21. r. 30.)**

(Title)

To

The Bailiff of the Court.

Decree		
Principal		
Interest		
Costs		
Cost of execution		
Further interest		
Total		

WHEREAS was ordered by decree of this Court passed on the day of 19 in Suit No. of 19, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the movable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said, and unless the said shall pay to you the said sum of Rs. together with Rs., the cost of this attachment, to hold the same until further orders from this Court.

1. Subs. by Act 10 of 1914, s. 2 and the First Sch., for “(O. 21, r. 22).”

2. Ins. by Act 104 of 1976, s. 95 (w.e.f. 1-2-1977).

You are further commanded to return this warrant on or before the.....day of.....19.... with an endorsement certifying the day on which and manner in which it has been executed, or Why it has not been executed.

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

Schedule

Judge.

No. 9

WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY ADJUDGED BY DECREE

(O. 21, r. 31.)

(Title)

To

The Bailiff of the Court.

WHEREAS.....was ordered by decree of this Court passed on the..... day of.....19....., in Suit No.....of 19....., to deliver to the plaintiff the movable property (*or* a

.....share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (*or* share) has not been delivered.

These are to command you to seize the said movable property (*or* a.....share of the said movable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

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

Schedule

Judge.

No. 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT

(O. 21; r. 34.)

(Title)

To

TAKE notice that on the.....day of.....19.....,the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of..... whereof a draft is hereunto annexed, of the immovable property specified hereunder and that the.....day of.....19....., is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of property

GIVEN under my hand and the seal of the Court, this.....day of19

Judge.

No. 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.

(O.21, r. 35.)

(Title)

To

The Bailiff of the Court.

WHEREAS the under mentioned property in the occupancy of.....has been decreed to

....., the plaintiff in this suit; you are hereby directed to put the said.....in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 19

Schedule

Judge

No. 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

(O. 21, r. 37.)

(*Title*)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19, to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 13

WARRANT OF ARREST IN EXECUTION

(O. 21, r. 38.)

(*Title*)

To

The Bailiff of the Court.

WHEREAS was adjudged by a decree of this Court in suit No of 19...., dated

Decree				the.....day of.....19.....,to pay to the decree-holder the sum of Rs.....as noted in the margin, and whereas the said sum of Rs.....has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgement-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs..... together with Rs.....for the cost of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the.....day of.....19.....,with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.
Principal				
Interest				
Costs				
Execution				
Total				

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

Judge.

No. 14

WARRANT OF COMMITTAL OF JUDGEMENT-DEBTOR TO JAIL

(O.21, r. 30.)

(*Title*)

To

The Officer in charge of the Jail at

WHEREAS..... who has been brought before this Court this.....day Of.....19....., under a warrant in execution of a decree which was made and pronounced by the said Court on the..... day of19....., and by which decree it was ordered that the said..... should pay.....; And whereas the said.....has not obeyed

the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby ^{1***} commanded and required to take and receive the said.....into the civil prison and keep him imprisoned therein for a period not exceeding.....or until the said decree shall be fully satisfied, or the said.....shall be otherwise entitled to be released according to terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix ^{2***} per diem as the rate of the monthly allowance for the subsistence of the said.....during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this.....day of.....19.....

Judge.

No. 15

(ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE (Sections 58, 59)

(Title)

To

The Officer in charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free.....judgment-debtor now in your custody.

Dated

Judge.

No. 16

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF

(O. 21, r. 46.)

(Title)

To

WHEREAS.....has failed to satisfy a decree passed against.....on the.....day of.....19....., in Suit No.....of 19..., in favour of.....for Rs.....;

It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from.....the following property in the possession of the said,that is to say,.....to which the defendant is entitled, subject to any claim of the said....., and the said.....is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

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

Judge.

1. The words "in the name of the King-Emperor of India," omitted by the A. O. 1950.
2. The word "annas" omitted by Act 104 of 1976, s. 95 (w.e.f. 1-2-1977).

¹[No. 16A
AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGEMENT-DEBTOR
ORDER XXI, RULE 41(2)]

In the Court of

A.B.....

Decree-holder

Vs.

C.....

Judgement-debtor

I

State on $\frac{\text{oath}}{\text{solemn affirmation}}$ as follows:-

1. My full name is
(Block Capitals)

2. I live at

*3. I am married

single

widower (widow)

divorced

4. The following persons are dependent upon me:—

5. My employment, trade or profession is that of
carried on by me at

I am a director of the following companies:—

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:—

(a) From my employment, trade or profession Rs.

(b) From other sources Rs.

*7. (a) I own the house in which I live; its value is Rs.

I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.

(b) I pay as rent the annual sum of Rs.

8. I possess the following:—

(a) Banking accounts;

(b) Stocks and shares;

(c) Life and endowment policies;

(d) House property;

(e) Other property;

(f) Other securities;

} Give particulars

9. The following debts are due to me:—

(give particulars)

(a) From _____ of
Rs.

(b) From _____ of
Rs. (etc.)

Sworn before me, etc.]

1. Ins. by Act 104 of 1976, s. 95 (w.e.f. 1-2-1977).

*Strike off the words which are not applicable.

No.17

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED

BY NEGOTIABLE INSTRUMENTS

(O. 21, r. 46.)

(Title)

To

WHEREAS.....has failed to satisfy a decree passed against.....on the.....day of.....19....., in Suit No.....of 19....., in favour of.....for Rs.....; it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,..... and that you, the said.....be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

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

Judge.

No. 18

ATTACHMENT IN EXECUTION PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION

(O. 21, r. 46.)

(Title)

To

Defendant and to....., Secretary of Corporation.

WHEREAS.....has failed to satisfy a decree passed against.....on the.....day of.....19....., in Suit No.....of 19....., in favour of....., for Rs.....; it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making and transfer of.....shares in the aforesaid corporation, namely,.....or from receiving payment of any dividends thereon; and you,.....the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

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

Judge.

No. 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY

(O. 21, r. 48.)

(Title)

To

WHEREAS....., judgment-debtor in the above-named case; is a (*describe office of judgement-debtor*) receiving his salary (or allowances) at your hands; and whereas....., decree-holder in the said case, has applied in this Court for the attachment of the salary (or allowances) of the said.....to the extent of.....due to him under the decree; You are hereby required to withhold the said sum of.....from the salary of the said.....in monthly instalments of.....and to remit the said sum (or monthly instalments) to this Court.

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

Judge.

No. 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT

(O. 21, r. 51.)

(Title)

To

The Bailiff of the Court,

WHEREAS an order has been passed by this Court on the.....day of.....20....., for the attachment of.....; You are hereby directed to seize the said.....and bring the same into Court.

GIVEN under my hand and the seal of the Court, this.....day of.....20.....

Judge.

No. 21

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR ¹[PUBLIC OFFICER]

(O. 21, r. 52.)

(Title)

To

Sir,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, etc.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir

Your most obedient Servant.

Dated the.....day of.....19.....

Judge.

No. 22

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT

(O. 21, r. 53.)

(Title)

To

The Judge of the Court of

Sir,

I have the honour to inform you that the decree obtained in your Court on theday of.....19.....by.....in Suit No.....of 19.....in which he was.....andwas.....has been attached by this Court on the application of....., the.....in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.

Judge.

Dated the.....day of.....20.....

1. Subs. by the A. O. 1937, for "Officer of Government".

No. 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE

(O. 21, r. 53.)

(Title)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the.....day of.....19, in the Court of.....in Suit No.....of 19, in which.....was.....and.....was.....;It is ordered that you, the said....., be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this.....day of.....20.....

Judge.

No. 24

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY

(O. 21, r. 54.)

(Title)

To

Defendant

WHEREAS you have failed to satisfy a decree passed against you on the.....day of.....19....., in Suit No.....OF.....19, in favour of.....for Rs.....; It is ordered that you, the said....., be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property Specified in the Schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, et or otherwise.

¹[It is also ordered that you should attend Court on the.....day of19....., to take notice of the date fixed for settling the terms of the proclamation of sale.]

GIVEN under my hand and seal of the Court, this.....day of.....20.....

Schedule

Judge.

No. 25

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY

(O.21, r. 56.)

(Title)

To

WHEREAS the following property.....has been attached in execution of a decree in Suit No.....of 19....., passed on the.....day of.....19, in favour of.....for Rs.....It is ordered that the property so attached, consisting of Rs.....in money and Rs.....in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said.....to.....

GIVEN under my hand and the seal of the Court, this.....day of.....20

Judge.

1. Ins. by Act 104 of 1976, s. 95 (w.e.f. 1-2-1977).

No. 26

NOTICE TO ATTACHING CREDITOR
(O. 21, r. 58.)

(Title)

To

WHEREAS.....has made application to this Court for the removal of attachment on.....placed at your instance in execution of the decree in Suit No.....of.....20 this is to give you notice to appear before this Court on....., the.....day of.....20....., either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this.....day of.....20.

Judge.

No. 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY
(O. 21, r. 66.)

(Title)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving.....day's previous notice, by affixing the same in this Court-house, and after making due proclamation, the.....property attached under a warrant from this Court, dated the.....day of 20 , in execution of a decree in favour of.....in Suit No.....of 20 , or so much of the said property as shall realize the sum of Rs.....being the.....of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the.....day of.....20 with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this.....day of.....20.

Judge.

No. 28

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION
(O. 21, r. 66.)

(Title)

To

Judgment-debtor.

WHEREAS in the above-named suit....., the decree-holder, has applied for the sale of....., You are hereby informed.....that the.....day of.....20 , has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this..... day of.....20.....

Judge

No. 29

PROCLAMATION OF SALE

(O. 21, r. 66)

(Title)

(1) Suit No.....of 20....., decided by the.....of.....in which was plaintiff and was defendant.—Notice is hereby given that, under rule 64 of Order XXI Of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (*I*) mentioned in the margin, amounting with costs and interest upto date of sale to the sum of.....

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by.....at the monthly sale commencing at O'clock on theat.....In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.,

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

Conditions of sale

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale: The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Given under my hand and the seal of the Court, this.....day of.....20.....

Judge.

Schedule of Property

Number of lot	Description of property to be sold, with the name of each owner where there are more judgment- debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government	Detail of any encumbrances to which the property is liable	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value	¹ [The value of the property as stated by the decree holder	The value of the property as stated by the judgment-debtor.]

No. 30

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE

(O. 21, r. 66.)

(Title)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the.....day of.....20 , has been fixed for the sale of the said property,..... copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the.....day of.....20.....

Schedule

Judge.

1. Ins. by Act 104 of 1976, s. 95 (w.e.f. 1-2-1977).

No. 31

**CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY
BY REASON OF THE PURCHASER'S DEFAULT**

(O. 21, r. 71.)

(Title)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of..., purchaser, there was a deficiency in the price of the said property amounting to Rs....., and that the expenses attending such re-sale amounted to Rs....., making a total of Rs....., which sum is recoverable from the defaulter.

Dated the.....day of.....20.....

Officers holding the sale.

No. 32

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION

(O.21, r. 79.)

(Title)

To

WHEREAS.....has become the purchaser at a public sale in execution of the decree in the above suit of.....now in your possession, you are hereby prohibited from delivering possession of the said..... to any person except the said.....

Given under my hand and the seal of the Court, this.....day of.....20.....

Judge.

No. 33

**PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION
TO ANY OTHER THAN THE PURCHASER**

(O. 21, r. 79.)

(Title)

To

and to

WHEREAS.....has become the purchaser at a public sale in execution of the decree in the above suit of.....being debts due from you.....to you.....; It is ordered that you be, and you are hereby, prohibited from receiving, and you.....from making payment of, the said debt to any person or persons except the said.....

Given under my hand and the seal of the Court, this.....day of.....20.....

Judge.

No. 34

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARE SOLD IN EXECUTION

(O. 21, r. 79.)

(Title)

To

and , Secretary of
Corporation,

WHEREAS.....has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of.....standing in the name of you.....; It is ordered that you.....be, and you are hereby, prohibited from making any

transfer of the said shares to any person except the said....., the purchaser aforesaid, or from receiving any dividends thereon; and you....., Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said....., the purchaser aforesaid.

Given under my hand and the seal of the Court, this.....day of20.....

Judge.

No. 35

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE LEASE OR SELL PROPERTY

(O. 21, r. 83.)

(Title)

To

WHEREAS in execution of the decree passed in the above suit an order was made on the.....day of.....20....., for the sale of the under-mentioned property of the judgment-debtor....., and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or Sale within a period of..... from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

Description of property

Given under my hand and the seal of the Court, this.....day of.....20.....

Judge.

No. 36

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

(O. 21, n. 90, 92.)

(Title)

To

WHEREAS the under-mentioned property was sold on the.....day of.....20....., in execution of the decree passed in the above named suit, and whereas....., the decree-holder [*or judgment-debtor*], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [*or fraud*] in publishing [*or conducting*] the sale, namely, that.....

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the.....day of.....20....., when the said application will be heard and determined.

Given under my hand and the seal of the Court, this.....day of.....20.....

Description of property

Judge.

No. 37

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

(O. 21, rr. 91, 92.)

(Title)

To

WHEREAS.....the purchaser of the under-mentioned property sold on the..... day of20....., in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that....., the judgment-debtor, had no saleable interest therein.

Take notice that if you have any cause, to show why the said application should not be granted, you should appear with your proofs in this Court on the..... day of.....19, when the said application will be heard and determined.

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

Description of property

Judge.

No. 38

CERTIFICATE OF SALE OF LAND

(O. 21, r. 94.)

(Title)

This is to certify that.....has been declared the purchaser at a sale by public auction on the.....day of.....19.....of.....in execution of decree in this and that the said sale has been duly confirmed by this Court.

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

Judge

No. 39

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION

(O. 21, r. 95.)

(Title)

To

The Bailiff of the Court.

WHEREAS.....has become the certified purchaser of.....at a sale in execution of decree in Suit No.....of.....19.....; You are hereby ordered to put the said....., the certified purchaser, as aforesaid, in possession of the same.

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

Judge

No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE

(O. 21, r. 97.)

(Title)

To

WHEREAS.....,the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the.....day of.....19..... at.....A.M., to answer the said complaint.

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

Judge.

No. 41

WARRANT OF COMMITTAL

(O. 21, r. 98.)

(Title)

To

The Officer in Charge of the Jail at.....

WHEREAS the under-mentioned property has been decreed to....., the plaintiff in this suit, and whereas the Court is satisfied that.....without any just cause resisted (*or* obstructed) and is still resisting (*or* obstructing) the said.....in obtaining possession of the property, and whereas the said.....has made application to this Court that the said.....be committed to the Civil prison;

You are hereby commanded and required to take and receive the said..... into the civil prison and to keep him imprisoned therein for the period of.....days.

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

Judge.

No. 42

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND
(Section 72)

(Title)

To

Collector of

SIR,

In answer to your communication No....., dated.....representing that the Sale in execution of the decree in this suit of.....land situate within your district is objectionable, I have the honour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient servant

Judge.

APPENDIX F
SUPPLEMENTAL PROCEEDINGS

No. 1
WARRANT OF ARREST BEFORE JUDGEMENT
(O. 38, r. 1.)
(Title)

To

The Bailiff of the Court.

WHEREAS.....the plaintiff in the above suit, claims the sum of Rs.

				as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant.....
Principal Interest				is about to.....These are to command you to demand and receive from the said .....the sum of Rs.....as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. ....is forthwith delivered to you by or on behalf of the said.....to take the said.....into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. ....for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.
Costs				
TOTAL				

GIVEN under my hand and the seal of the Court, this..... Day of19...

Judge.

No. 2
SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGEMENT
(O. 38, r. 2.)
(Title)

WHEREAS at the instance of....., the plaintiff in the above suit, the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I.....have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at.....this.....day of.....19.....

(Signed.)

Witnesses.

- 1.
- 2.

No. 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE

(O. 38, r. 3.)

(Title)

To

WHEREAS....., who became surety on the.....day of.....
19.....for your appearance in the above suit, has applied to this Court to be discharged from his obligation

You are hereby summoned to appear in this Court in person on the.....day
of.....20.....at.....A M., when the said application, will be heard and determined.

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

Judge.

No. 4

ORDER FOR COMMITTAL

(O. 38, r. 4.)

(Title)

To

WHEREAS....., plaintiff in this suit, has made application to the Court that security be
taken for the appearance of....., the defendant, to answer any judgment that may be passed
against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer
a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant.....
be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him,
until satisfaction of the decree.

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

Judge.

No. 5

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE

(O. 38, r. 5.)

(Title)

To

The Bailiff of the Court.

WHEREAS.....has proved to the satisfaction of the Court that the defendant in the above
suit.....

These are to command you to call upon the said defendant.....on or before
the.....day of.....19.....either to furnish security for the sum of rupees
.....to produce and place at the disposal of this Court when required.....or
the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed
against him; or to appear and show cause why he should not furnish security; and you are further ordered
to attach the said.....and keep the same under safe and secure custody until the further order of
the Court; and you are further commanded to return this warrant on or before the.....day

of..... 20....., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

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

Judge.

No. 6

SECURITY FOR THE PRODUCTION OF PROPERTY

(O. 38, r. 5.)

(Title)

WHEREAS at the instance of....., the plaintiff in the above suit, the defendant has been directed by the Coml. to furnish security in the sum of Rs.....to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I.....have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court. at its order, the said sum of Rs.....or such sum not exceeding the said sum as the said Court may adjudge.

Schedule

Witness my hand at.....this.....day of.....19.....

(Signed.)

Witnesses.

- 1.
- 2.

No. 7

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY

(O. 38, r. 6.)

(Title)

To

The Bailiff of the Court.

WHEREAS....., the plaintiff in this suit, has applied to the Court to call upon..... the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said.....to furnish such security, which he has failed to do; these are to command you to attach....., the property of the said....., and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the.....day of.....19.....with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

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

Judge.

No. 8
TEMPORARY INJUNCTIONS
(O. 39, r. 1.)

(Title)

Upon motion made unto this Court by.....Pleader of [*or* Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this suit on theday of....., *or* the written statement of the said plaintiff filed on the.....day of.....] and upon hearing the evidence of.....and.....in support thereof [*if after notice and defendant not appearing : add, and also, the evidence of*as to service of notice of this motion upon the defendant C. D.]: This Court doth order that an injunction be awarded to restrain the defendant C. D. his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in a Taluk of....., and from selling the materials where of the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this.....day of.....19.....

Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—]

.....to restrain the defendant..... and.....from parting without of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question dated on or about the....., etc., mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases].....to restrain the defendant C. D., his servants, agents or workmen. From printing, publishing or vending a book, called.....or any part thereof, until the, etc.

[Where part only of a book is to be restrained]

.....to restrain the defendant CD., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or* petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled.....and also that part which is entitled.....[*or* which is contained in page.....to page both inclusive] until, etc.

[In Patent cases].....to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [*or* as the case maybe] upon the principle of the inventions in the plaintiff's plaint [*or* petition, etc., *or* written statement, etc.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of Trade marks].....to restrain the defendant CD., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff A.B., in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A.B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B. until the, etc.

[To restrain a partner from in any way interfering in the business]

to restrain the defendant *C.D.*, his agents, and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of *B* and *D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B.* and *D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. ¹[9]

APPOINTMENT OF A RECEIVER

(O. 40, r. 1.)

(Title)

To

WHEREAS.....has been attached in execution of a decree passed in the above suit on the..... day of.....19....., in favour of.....; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on You will be entitled to remuneration at the rate of.....per cent. upon your receipts under the authority of this appointment.

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

Judge.

No. ²[10]

BOND TO BE GIVEN BY RECEIVER

(O. 40, r. 3)

(Title)

KNOW all men by these presents, that we,..... and.....and....., are jointly and severally bound to.....of the Court of.....in Rs..... to be paid to the said.....or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this.....day of.....19.....

WHEREAS a plaint has been filed in the Court by.....against.....for the purpose of [*here insert the object of suit*]:

And whereas the said.....has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of.....in the said plaint named:

Now the condition of this obligation is such, that if the above-bounden.....shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said.....at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him

1. The number of the Form, originally misprinted as 6, was corrected by Act 10 of 1914, s. 2 and the First Sch.

2. The number of the Form, originally misprinted as 7, was corrected by Act 10 of 1914, s. 2 and the First Sch.

as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of.....

NOTE.-If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX G
APPEAL, REFERENCE AND REVIEW

No. 1

MEMORANDUM OF APPEAL

(O .41, r. 1.)

(Title)

The

.....above-named appeals to the.....
Court at.....from the decree of.....in Suit No.....of.....19.....
dated the.....day of.....19.....,and sets forth the following grounds of objection
to the decree appealed from, namely:—

No. 2

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE

(O .41, r. 5.)

(Title)

To

This security bond on stay of execution of decree executed by.....witnesseth:—
That....., the plaintiff in Suit No.....of. 19.....having sued
....., the defendant, in this Court and a decree having been passed on the.....day
of.....20....., in favour of the plaintiff, and the defendant having preferred an appeal from the
said decree in the.....Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application
praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will,
stand security to the extent of Rs., mortgaging the properties specified in the schedule
hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate
Court 'the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay
whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall
be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are
insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance.
To this effect I execute this security bond this.....day of.....19.....

Schedule

(Signed.)

Witnessed by

- 1.
- 2.

No. 3

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL

(O .41, r. 6.)

(Title)

To

THIS security bond on stay of execution of decree executed by witnesseth:—

That....., the plaintiff in Suit No.....of.....19.....
having sued....., defendant,, in this. Court and a decree having been passed on the
.....day of.....19.....in favour of the plaintiff, and the defendant having
preferred an appeal from the said decree in the..... Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs....., mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this.....day of19.....

Schedule

(Signed.)

Witnessed by

- 1.
- 2.

No. 4

SECURITY FOR COSTS OF APPEAL (O. 41, r. 10.)

(Title)

To

This security bond for costs of appeal executed by.....witnesseth:—

This appellant has preferred an appeal from the decree in Suit No.of19....., against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. TO this effect, I execute this security bond thisday of.....19.....

Schedule

Witnessed by

- 1.
- 2.

(Signed.)

No. 5

INTIMATION TO DOWER COURT OF ADMISSION OF APPEAL

(O. 41, r. 13.)

(Title)

To

You are hereby directed to take notice that....., the.....in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the..... day of.....19.....

You are requested to send with all practicable despatch all material papers in the suit.

Dated the.....day of.....19.....

Judge.

No. 6

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL

(O. 41, r. 14.)

(Title)

Appeal from the.....of the Court.....of..... dated.....the.....day of.....19.....

To

Respondent

Take notice that an appeal from the decree of.....in this case has been presented by.....and registered in this Court, and that the.....day of..... 19..... has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

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

Judge.

[NOTE—If a stay of execution has been ordered intimation should be given of the fact on this notice.]

No. 7

NOTICE TO A PARTY TO A SUIT NOT MADE, A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT

(O. 41, r. 20.)

(Title)

To

WHEREAS you were a party in Suit No.....of.....19....., in the Court of....., and whereas the.....has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the.....day of.....19....., at.....A. M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

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

Judge

No. 8**MEMORANDUM OF CROSS OBJECTION**

(O. 41, r. 22.)

(Title)

WHEREAS the.....has preferred an appeal to the.....Court.....at.....from the decree of.....in Suit No.....of.....19.....dated the..... day of.....19....., and whereas notice of the day fixed for hearing the appeal was served.....on the.....day of.....19....., the files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely:—

No. 9**DECREE IN APPEAL**

(O. 41, r. 35.)

(Title)

Appeal No.of 19.....from the decree of the Court ofdated the.....day of.....19.....

Memorandum of Appeal.*Plaintiff.**Defendant:*

The.....above-named appeals to the.....Court at.....from the decree of.....in the above suit dated the.....day of.....19....., for the following reasons, namely:—

This appeal coming on for hearing on the.....day of.....19....., before in the presence of.....or the appellant and of.....for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs.....are to be paid by.....The cost of the original suit are to be paid by.....

GIVEN under my hand this.....day of.....19.....

*Judge.**Costs of Appeal*

Appellant	Amount			Respondent	Amount		
1. Stamp for memorandum of appeal...	Rs.	A.	P.	Stamp for power.....	Rs.	A.	P.
2. Do. for power.....				Do. for petition.....			
3. Service of processes.....				Service of processes.....			
4. Pleader's fee on Rs.				Pleader's fee on Rs.			
TOTAL				TOTAL			

No. 10

APPLICATION TO APPEAL IN *forma pauperis*

(O. 44, r. 1.)

(*Title*)

I.....the.....above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof.

Dated the.....day of.....19.....

(*Signed.*)

[NOTE.—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.]

No. 11

NOTICE OF APPEAL IN *forma pauperis*

(O. 44, r. 1.)

(*Title*)

WHEREAS the above-named.....has applied to be allowed to *appeal* as a pauper from the decree in the above suit dated the.....day of..... 19..... and whereas the.....day of.....19....., has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

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

Judge

No. 12

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE ¹[SUPREME COURT] SHOULD NOT BE GRANTED

(O. 45, r. 3.)

(*Title*)

To

²[TAKE notice that.....has applied to this Court for a certificate—

(i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of this Court the said question needs to be decided by the Supreme Court.]

The.....day of.....19.....is fixed for you to show cause why the Court should not grant the certificate asked for.

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

Registrar.

1. Subs. by the A.O. 1950, for “KING IN COUNCIL”.

2. Subs. by Act 49 of 1973, s. 4, for the former paragraph.

No. 13

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE ¹[SUPREME COURT]

(O. 45, r. 8.)

(Title)

To

WHEREAS....., the.....in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said.....to ¹[the Supreme Court] has been admitted on the.....day of.....19.....

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

Registrar.

No. 14

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED

(O. 47, r. 4.)

(Title)

To

TAKE notice that.....has applied to this Court for a review of its decree passed on the.....day of..... 19..... in the above case. Theday of.....19.....fixed for you to show cause why the Court should not grant a review of its decree in this case.

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

Judge.

3. Subs. by the A.O, for "His Majesty in Council".

APPENDIX H
MISCELLANEOUS

No. 1

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED

(O. 14, r. 6.)

(Title)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or of law*] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of.....19.....and filed as Exhibit.....in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*):

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or affirmative*] of such issue,.....will pay to the said.....the sum of Rupees.....(*or such sum as the Court shall hold to be due thereon*), and I, the said....., will accept the said sum of Rupees.....(*or such sum as the Court shall hold to be due*) in full satisfaction of my claim on the bond aforesaid [*or that upon such finding I, the said....., will do or abstain from doing, etc., etc.*]

Plaintiff.
Defendant.

Witnesses—

- 1.
- 2.

Dated the.....day of.....19.....

No. 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL

(Section 24.)

In the Court of the District Judge of.....No.....of 19.....

To

WHEREAS an application, dated the.....day of.....19....., has been made to this Court by.....the.....in Suit No.....of 20.....now pending in the Court of the.....at.....in whichis plaintiff and.....is defendant, for the transfer of the suit for trial to the Court of the.....at.....:—

You are hereby informed that the.....day of.....19.....has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

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

Judge

¹[**No. 2A**

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT

(O. XVI r. 1.)

Name of the party which proposes to call the witness	Name and address of the witness	Remarks]
--	------------------------------------	----------

¹ Ins. by Act 104 of 1976, s. 96 (w.e.f. 1-2-1977).

No. 3
NOTICE OF PAYMENT INTO COURT
(O. 24, r.2.)

(Title)

TAKE notice that the defendant has paid into Court Rs.and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X Y, *Pleader for the defendant.*

To Z., *Pleader for the plaintiff.*

No. 4
NOTICE To SHOW CAUSE (GENERAL FORM)

(Title)

To

WHEREAS the above-named.....has made application to this Court that.....;

You are hereby warned to appear in this Court in person or by a pleader duly instructed on theday of.....19....,at.....O'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

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

Judge.

No. 5
LIST OF DOCUMENTS PRODUCED BY
(O. 13, r. 1.)

PLAINTIFF

DEFENDANT

(Title)

No.	Description of document.	Date, if any which the document bears.	Signature of party or pleader.
1	2	3	4

No. 6
NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION
(O. 18, r. 16.)
(Title)

To

Plaintiff (or defendant).

WHEREAS in the above suit application has been made to the Court by.....that the examination of....., a witness required by the said....., in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause to be stated*);

Take notice that the examination of the said witness.....will be taken by the Court on the.....day of.....19.....

Dated the.....day of.....19.....

Judge.

No. 7
COMMISSION TO EXAMINE ABSENT WITNESS
(O. 26, rr. 4, 18.)
(Title)

WHEREAS the evidence of.....is required by the.....in the above suit; and whereas.....; you are requested to take the evidence on interrogatories [*or viva voce*] of such witness.....and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence or the parties or their agents if in attendance, wild will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs....., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this.....day of.....19.....
Judge.

No. 8
LETTER OF REQUEST
(O. 26, r.5.)
(Title)

(Heading:—To the President and Judges of, etc., etc., *or as the case may be.*)

WHEREAS a suit is now pending in the.....in which A. B. is plaintiff and C.D. is defendant; And in the said suit the plaintiff claims.

(Abstract of claim.)

And whereas it has been represneted to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of
G. H., of

and

I. J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I....., as the..... of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said.....or some one or more of you, will be pleased to summon the said witness (and such other witnesses as * the agents of the said plaintiff and defendant shall humbly, request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

Note.—If the request is directed to a Foreign Court, the words “through ¹[the Ministry of External Affairs of the Government of India] for transmission” should be inserted after the words “other witnesses” in the last line of this form.)

1. Subs. by the A. O. 1950, for “His Majesty’s Secretary of State for Foreign Affairs”.

No. 9

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS

(O. 26, rr. 9, 11.)

(Title)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for..... should be issued; You are hereby appointed Commissioner for the purpose of.....

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs....., being your fee in the above, is herewith forwarded.

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

Judge.

No. 10

COMMISSION TO MAKE A PARTITION (O. 26, r. 13.)

(Title)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the.....day of.....19.....; You are here by appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to be several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs....., being your fee in the above, is herewith forwarded.

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

Judge.

¹[**No.11**

NOTICE TO CERTIFICATED, NATURAL, OR, *de facto* GUARDIAN

(O. XXXII, r. 3.)

(Title)

(*Certificated/Natural/de facto Guardian*)

To

WHEREAS an application has been presented on the part of the plaintiff*/on behalf of the minor defendant*/in the above suit for the appointment of a guardian for the suit for the minor defendant, you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit.

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

Judge.

*Strike off the words which are not applicable.

1. Subs. by Act 104 of 1976, s. 96, for Form 11 (w.e.f. 1-2-1977).

No. 11A
NOTICE TO MINOR DEFENDANT
(Order XXXII, r. 3.)
(Title)

Minor Defendant.

To

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of.....*as guardian for the suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the.....day of.....19.....at.....O'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined *ex parte*.

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

Judge.]

*Strike off the words which are not applicable.

No. 12
NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM
(O. 33, r.6.)
(Title)

To

WHEREAS
has applied to this Court for permission to institute a suit against.....*in forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the day of.....19.....has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the saidday of..... 19 .

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

Judge.

No. 13
NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE
(Section 145)
(Title)

To

WHEREAS you.....did on.....become liable as surety for the performance of any decree which might be passed against the said.....defendant in the above suit; and whereas a decree was passed on the.....day of.....19.....against the said defendant for the payment of.....and whereas application has been made for execution of the said decree against you:

Take notice that you are hereby required on or before the..... day of..... 19..... to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will forthwith issued in the terms of the said application.

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

Judge.

<p style="text-align: center;">No. 14</p> <p style="text-align: center;">REGISTER OF CIVIL SUITS (O. 4, R.2.)</p> <p style="text-align: center;">COURT OF THE OF AT</p> <p style="text-align: center;">REGISTER OF CIVIL SUITS IN THE YEAR 20</p>																										
		Plaintiff			Defendant					Appearanc			Judgment		Appe		Execution			Return of Execution						
Date of presentation of Plaintiff	Number of suit	Name	Description	Place of residence	Name	Description	Place of residence	Particulars	Amount of value	When the cause of action accrued	Day for parties to appear	Plaintiff	Defendant	Date	For whom	For what, or amount	Date of decision of appeal	Judgment in appeal	Date of application	Date of order	Against whom	For what and amount, if money	Amount of costs	Amount paid into Court	Arrested	Minute of other Return than Payment or Arrest, and date to every Return

NOTE.—Where there are numerous plaintiffs, or numerous defendants, the name of the first Plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

<p style="text-align: center;">No. 15</p> <p style="text-align: center;">REGISTER OF APPEALS (O. 41, r.9.)</p> <p style="text-align: center;">COURT (OR HIGH COURT) AT</p> <p style="text-align: center;">REGISTER OF APPEALS FROM DECREES IN THE YEAR 20</p>																	
Date of memorandum	Number of appeal	Appellant			Respondent			Decree appealed from				Appearance			Judgment		
		Name	Description	Place of residence	Name	Description	Place of residence	Of what Court	Number of Original Suit	Particulars	Amount or value	Day for parties to appear	Appellant	Respondent	Date	Confirmed, reversed or varied	For what or amount

¹[APPENDIX-I

STATEMENT OF TRUTH

(Under First Schedule, Order VI- Rule 15A and Order XI- Rule 3)

I ----- the deponent do hereby solemnly affirm and declare as under:

1. I am the party in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.
3. I say that the statements made in -----paragraphs are true to my knowledge and statements made in -
---paragraphs are based on information received which I believe to be correct and statements made in ---
paragraphs are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I
have included information that is according to me, relevant for the present suit.
5. I say that all documents in my power, possession, control or custody, pertaining to the facts and
circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the
plaint, and that I do not have any other documents in my power, possession, control or custody.
6. I say that the above-mentioned pleading comprises of a total of ----- pages, each of which has been
duly signed by me.
7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.
8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken
against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I, do hereby declare that the statements made above are true to my
knowledge.

Verified at [place] on this [date]

DEPONENT.]

1. Ins. by Act 28 of 2018, s. 18 (w.e.f. 23-10-2015).

THE SECOND SCHEDULE.—[*Arbitration.*] *Rep. by the Arbitration Act, 1940 (10 of 1940), s. 49 (1) and the Third Sch.*

THE THIRD SCHEDULE.—[*Execution of Decrees by Collectors.*] *Rep by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 15.*

THE FOURTH SCHEDULE.—[*Enactments amended.*] *Rep. by the Repealing and Amending Act, 1952 (48 of 1952), s. 2 and the First Sch.*

THE FIFTH SCHEDULE.—[*Enactments repealed.*] *Rep. by the Second Repealing and Amending Act, 1914 (17 of 1914). s. 3 and the Second Sch.*

ANNEXURE I
THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1976
(104 OF 1976)

* * * *

CHAPTER V
REPEAL AND SAVINGS

97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by State Legislature or a High Court before the commencement of this Act shall except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897),—

(a) the amendment made to clause (2) of section 2 of the principal Act 1 section 3 of this Act shall not affect any appeal against the determination of any such question as is referred to in section 47 and every such appeal shall be dealt with as if the said section 3 had not come into force;

(b) the provisions of section 20 of the principal Act, as amended by section 7 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section; and every such suit shall be tried as if the said section 7 had not come into force;

(c) the provisions of section 21 of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section 8; and every such suit shall be tried as if the said section 8 had not come into force;

(d) the provisions of section 25 of the principal Act: as substituted by section 11 of this Act, shall not apply to or affect any suit, appeal or other proceeding wherein any report has been made under the provisions of section 25 before the commencement of the said section 11; and every such suit, appeal or other proceeding shall be dealt with as if the said section 11 had not come into force;

(e) the provisions of section 34 of the principal Act, as amended by section 13 of this Act, shall not affect the rate at which interest may be allowed on a decree in any suit instituted before the commencement of the said section 13 and interest on a decree passed in such suit shall be ordered in accordance with the provisions of section 34 as they stood before the commencement of the said section 13 as if the said section 13 had not come into force;

(f) the provisions of section 35A of the principal Act, as amended by section 14 of this Act, shall not apply to or affect any proceedings for revision, pending immediately before the commencement of the said section 14 and every such proceedings shall be dealt with and disposed of as if the said section 14 had not come into force;

(g) the provisions of section 60 of the principal Act, as amended by section 23 of this Act, shall not apply to any attachment made before the commencement of the said section 23;

(h) the amendment of section 80 of the principal Act by section 27 of this Act shall not apply to or affect any suit instituted before the commencement of the said section 27; and every such suit shall be dealt with as if section 80 had not been amended by the said section 27;

(i) the provisions of section 82 of the principal Act, as amended by section 28 of this Act, shall not apply to or affect any decree passed against the Union of India or a State or, as the case maybe, a public officer, before the commencement of the said section 28 or to the execution of any such decree; and every such decree or execution shall be dealt with as if the said section 28 had not come into force;

(j) the provisions of section 91 of the principal Act, as amended by section, 30 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 30; and every such suit, appeal or proceeding shall be disposed of as if the said section 30 had not come into force;

(k) the provisions of section 92 of the principal Act, as amended by section 31 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 31; and every such suit, appeal or proceeding shall be disposed of as if the said section 31 had not come into force;

(l) the provisions of section 96 of the principal Act, as amended by section 33 of this Act, shall not apply to or affect any appeal against the decree passed in any suit instituted before the commencement of the said section 33; and every such appeal shall be dealt with as if the said section 33 had not come into force;

(m) the provisions of section 100 of the principal Act, as substituted by section 37 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted; before the commencement of the said section 37; after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 37 had not come into force;

(n) section 100A, as inserted in the principal Act, by section 38 of this Act, shall not apply to or affect any appeal against the decision of a single Judge of a High Court under any Letter Patent which had been admitted before the commencement of the said section 38; and every such admitted appeal shall be disposed of as if the said section 38 had not come into force;

(o) the amendment of section 115 of the principal Act, by section 43 of this Act, shall not apply to or affect any proceeding for revision which had been admitted, after preliminary hearing, before the commencement of the said section 43; and every such proceeding for revision shall be disposed of as if the said section 43 had not come into force;

(p) the provisions of section 141 of the principal Act, as amended by section 47 of this Act, shall not apply to or affect any proceedings which is pending immediately before the commencement of the said section 47; and every such proceeding shall be dealt with as if the said section 47 had not come into force;

(q) the provisions of rule 31, 32, 48A, 57 to 59, 90 and 97 to 103 of Order XXI of the First Schedule as amended or, as the case may be, substituted or inserted by section 72 of this Act shall not apply to or affect —

(i) any attachment subsisting immediately before the commencement of the said section 72, or

(ii) any suit instituted before such commencement under rule 63 aforesaid to establish right to attached property or under rule 103 aforesaid to establish possession, or

(iii) any proceeding to set aside the sale of any immovable property,

and every such attachment, suit or proceeding shall be continued as if the said section 72 had not come into force;

(r) the provisions of rule 4 of Order XXII of the First Schedule, as substituted by section 73 of this Act shall not apply to any order of abatement made before the commencement of the said section 73;

(s) the amendment, as well as substitution made in Order XXIII of the First Schedule by section 74 of this Act shall not apply to any suit or proceeding pending before the commencement of the said section 74;

(t) the provisions of rules 5A and 5B of Order XXVII, as inserted by section 76 of this Act, shall not apply to any suit, pending immediately before the commencement of the said section 76; against the Government or any public officer; and every such suit shall be dealt with as if the said section 76 had not come into force;

(u) the provisions of rules 1A, 2A, and 3 of Order XXVIII, as inserted or substituted, as the case may be, by section 77 of this Act shall not apply to or affect any suit which is pending before the commencement of the said section 77;

(v) rules 2A, 3A and 15 of Order XXXII of the First Schedule, as amended, or as the case may be. substituted by section 79 of this Act, shall not apply to a suit pending at the commencement of the said section 79 and every such suit shall be dealt with and disposed of as if the said section 79 had not come into force;

(w) the provisions of Order XXXIII of the First Schedule, as amended by section 81 of this Act, shall not apply to or affect any suit or proceeding pending before the commencement of the said section 81 for permission to sue as a pauper; and every such suit or proceeding shall be dealt with and disposed of as if the said section 81 had not come into force;

(x) the provisions of Order XXXVII of the First Schedule, as amended by section 84 of this Act, shall not apply to any suit pending before the commencement of the said section 84: and every such suit shall be dealt with and disposed of as if the said section 84 had not come into force;

(y) the provisions of Order XXXIX of the First Schedule, as amended by section 86 of this Act, shall not apply to or affect any injunction subsisting immediately before the commencement of the said section 86; and every such injunction and proceeding for dis-obedience of such injunction shall be dealt with as if the said section 81 had not come into force;

(z) the provisions of Order XLI of the First Schedule, as amended by section 87 of this Act, shall not apply to or affect any appeal pending immediately before the commencement of the said section 87: and every such appeal shall be disposed of as if the said section 87 had not come into force:

(za) the provisions of Order XLII of the First Schedule, as amended by section 88 of this Act. shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of the said section 88 after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 88 had not come into force;

(zb) the provisions of Order XLIII of the First Schedule, as amended by section 89 of this Act. shall not apply to any appeal against any order pending immediately before the commencement of the said section 89; and every such appeal shall be disposed of as if the said section 89 had not come into force;

(3) Save as otherwise provided in sub-section (2), the provision of the principal Act, as amended by this Act, shall apply to every suit, proceedings, appeal or application, pending at the commencement of this Act or instituted or filed after such commencement, notwithstanding the fact that the right, or cause of action, in pursuance of which such suit proceeding, appeal or application is instituted or filed, had been acquired or had accrued before such commencement.

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Fundamental Rights - Articles 12-35 (Part III of Indian Constitution)

Fundamental rights are a very important topic in the polity section of the UPSC exam. It is a basic static portion of the syllabus but it is highly dynamic in the sense that it is featured in the daily news in some form or the other. Hence, it is highly important for the [IAS exam](#).

In this article, you can read all about fundamental rights, their significance and list of fundamental rights for the UPSC IAS exam.

Fundamental Rights

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applicable without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights

There are six fundamental rights mentioned in the Indian Constitution. They are listed below:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

Right to Property

There was one more fundamental right in the Constitution, i.e., the right to property.

- However, this right was deleted from the list of fundamental rights by the [44th Constitutional Amendment](#).
- This was because this right proved to be a hindrance towards attaining the goal of socialism, and redistributing wealth (property) equitably among the people.
- **The right to property is now a legal right.**

Fundamental Rights (Articles 12 to 35)

Under this section, we list the fundamental rights in India and briefly describe each of them.

Right to Equality (Articles 14 - 18)

Right to equality guarantees equal rights for everyone irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government, and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

Right to Freedom (Articles 19 - 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

Right against Exploitation (Articles 23 - 24)

This right implies prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

Right to Freedom of Religion (Articles 25 - 28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

Cultural and Educational Rights (Articles 29 - 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

Right to Constitutional Remedies (32 - 35)

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the [Supreme Court](#) which can issue writs for enforcing fundamental rights.

For more on writs, click [here](#).

Features of Fundamental Rights

Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.

- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution. For more on the basic structure doctrine, click [here](#).
- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.

Fundamental rights available only to citizens

The following is the list of fundamental rights that are available **only to citizens** (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of: (Article 19)
 1. Speech and expression
 2. Association
 3. Assembly
 4. Movement
 5. Residence
 6. Profession
4. Protection of the culture, language and script of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article 30).

Importance of Fundamental Rights

Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

According to Article 13, all laws that are violative of fundamental rights shall be void. Here, there is an express provision for [judicial review](#). The SC and the High Courts can declare any law unconstitutional on the grounds that it is violative of the fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

Amendability of Fundamental Rights

Any changes to the fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament. For more

on the special majority and other types of majorities, click [here](#).

- **As per the Constitution, Article 13(2) states that no laws can be made that take away fundamental rights.**
- The question is whether a constitutional amendment act can be termed law or not.
- In the Sajjan Singh case of 1965, the Supreme Court held that the Parliament can amend any part of the Constitution including fundamental rights.
- But in 1967, the SC reversed its stance taken earlier when in the verdict of the Golaknath case, it said that the fundamental rights cannot be amended.
- In 1973, a landmark judgement ensued in the **Kesavananda Bharati case**, where the SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."
- This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the [basic structure of the Constitution](#).
- In 1981, the Supreme Court reiterated the Basic Structure doctrine.
- It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date.

Doctrine of Severability

This is a doctrine that protects the fundamental rights enshrined in the Constitution.

- It is also known as the Doctrine of Separability.
- It is mentioned in Article 13, according to which all laws that were enforced in India before the commencement of the Constitution, inconsistent with the provisions of fundamental rights shall **to the extent of that inconsistency** be void.
- This implies that only the parts of the statute that is inconsistent shall be deemed void and not the whole statute. Only those provisions which are inconsistent with fundamental rights shall be void.

Doctrine of Eclipse

This doctrine states that any law that violates fundamental rights is not null or void ab initio, but is only non-enforceable, i.e., it is not dead but inactive.

- This implies that whenever that fundamental right (which was violated by the law) is struck down, the law becomes active again (is revived).
- Another point to note is that the doctrine of eclipse applies only to pre-constitutional laws (laws that were enacted before the Constitution came into force) and not to post-constitutional laws.
- This means that any post-constitutional law which is violative of a fundamental right is void ab initio.

UPSC Questions related to Fundamental Rights

What are the 7 fundamental rights?

There were 7 fundamental rights in the Constitution. Currently, there are only six as the 'Right to Property' was removed as a fundamental right. It is now only a legal right. The list of fundamental rights are:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

What are the 11 fundamental duties?

There are 11 fundamental duties. They are described in the article linked below:

[Fundamental Duties](#)

What is Article 51A?

Article 51A gives the list of fundamental duties prescribed for every Indian citizen.

THE MOTOR VEHICLES ACT, 1988

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
- 2A. e-cart and e-rickshaw.

CHAPTER II LICENSING OF DRIVERS OF MOTOR VEHICLES

3. Necessity for driving licence.
4. Age limit in connection with driving of motor vehicles.
5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.
6. Restrictions on the holding of driving licences.
7. Restrictions on the granting of learner's licences for certain vehicles.
8. Grant of learner's licence.
9. Grant of driving licence.
10. Form and contents of licences to drive.
11. Additions to driving licence.
12. Licensing and regulation of schools or establishments for imparting instruction in driving of motor vehicles.
13. Extent of effectiveness of licences, to drive motor vehicles.
14. Currency of licences to drive motor vehicles.
15. Renewal of driving licences.
16. Revocation of driving licence on grounds of disease or disability.
17. Orders refusing or revoking driving licences and appeals therefrom.
18. Driving Licences to drive motor vehicles, belonging to the Central Government.
19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.
20. Power of Court to disqualify.
21. Suspension of driving licence in certain cases.
22. Suspension or cancellation of driving licence on conviction.
23. Effect of disqualification order.
24. Endorsement.
25. Transfer of endorsement and issue of driving licence free from endorsement.
26. Maintenance of State Registers of Driving Licences.
27. Power of Central Government to make rules.
28. Power of State Government to make rules.

CHAPTER III LICENSING OF CONDUCTORS OF STAGE CARRIAGES

29. Necessity for conductor's licence.

SECTIONS

30. Grant of conductor's licence.
31. Disqualifications for the grant of conductor's licence.
32. Revocation of a conductor's licence on grounds of disease or disability.
33. Orders refusing, etc, conductor's licences and appeals therefrom.
34. Power of licensing authority to disqualify.
35. Power of Court to disqualify.
36. Certain provisions of Chapter II to apply to conductor's licence.
37. Savings.
38. Power of State Government to make rules.

CHAPTER IV

REGISTRATION OF MOTOR VEHICLES

39. Necessity for registration.
40. Registration, where to be made.
41. Registration, how to be made.
42. Special provision for registration of motor vehicles of diplomatic officers, etc.
43. Temporary registration.
44. Production of vehicle at the time of registration.
45. Refusal of registration or renewal of the certificate of registration.
46. Effectiveness in India of registration.
47. Assignment of new registration mark on removal to another State.
48. No objection certificate.
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THE FIRST SCHEDULE.

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THE MOTOR VEHICLES ACT, 1988

ACT NO. 59 OF 1988

[14th October, 1988.]

An Act to consolidate and amend the law relating to motor vehicles.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Motor Vehicles Act, 1988.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different State and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) “area”, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;

(2) “articulated vehicle” means a motor vehicle to which a semitrailer is attached;

(3) “axle weight” means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests;

(4) “certificate of registration” means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV;

(5) “conductor”, in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed;

(6) “conductor’s licence” means the licence issued by a competent authority under Chapter III authorising the person specified therein to act as a conductor;

(7) “contract carriage” means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) a maxicab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers;

(8) “dealer” includes a person who is engaged—

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(b) in building bodies for attachment to chassis; or

1. 1st July, 1989, *vide* notification No. S.O. 368(E), dated 22nd May, 1989, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

2. Sub-clause (a) omitted by Act 54 of 1994, s. 2 (w.e.f. 14-11-1994).

(c) in the repair of motor vehicles; or

(d) in the business of hypothecation, leasing or hire-purchase of motor vehicle;

(9) “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(11) “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

(12) “fares” includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(13) “goods” includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(14) “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

(15) “gross vehicle weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(16) “heavy goods vehicle” means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

(17) “heavy passenger motor vehicle” means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

(18) “invalid carriage” means a motor vehicle specially designed and constructed, and not merely, adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(19) “learner’s licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(20) “licensing authority” means an authority empowered to issue licences under Chapter II or, as the case may be, Chapter III;

(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed ¹[7500] kilograms;

²[(21A) “manufacturer” means a person who is engaged in the manufacture of motor vehicles;]

(22) “maxicab” means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

(23) “medium goods vehicle” means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

(24) “medium passenger motor vehicle” means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;

1. Subs. by Act 54 of 1994, s. 2, for “6000” (w.e.f. 14-11-1994).

2. Ins. by s. 2, *ibid.* (w.e.f. 14-11-1994).

(25) “motorcab” means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

(26) “motor car” means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

(27) “motor cycle” means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding¹ [twenty-five cubic centimetres];

(29) “omnibus” means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

(31) “permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;

(32) “prescribed” means prescribed by rules made under this Act;

(33) “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

(34) “public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(35) “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;

(36) “registered axle weight” means in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;

(37) “registering authority” means an authority empowered to register motor vehicles under Chapter IV;

(38) “route” means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;

²[(39) “semi-trailer” means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle;]

(40) “stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(41) “State Government” in relation to a Union territory means the Administrator thereof appointed under article 239 of the Constitution;

1. Subs. by Act 54 of 1994, s. 2, for “thirty-five cubic centimetres” (w.e.f. 14-11-1994).

2. Subs. by s. 2, *ibid.*, for clause (39) (w.e.f. 14-11-1994).

(42) “State transport undertaking” means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

¹[(iv) Zilla Parishad or any other similar local authority.]

Explanation.—For the purposes of this clause, “road transport service” means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(43) “tourist vehicle” means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

(44) “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

(45) “traffic signs” includes all signals, warning sign posts, direction posts, markings on the road or other devices for the information, guidance or direction of drivers of motor vehicles;

(46) “trailer” means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

(48) “unladen weight” means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(49) “weight” means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

²[**2A. e-cart and e-rickshaw.**—(1) Save as otherwise provided in the proviso to sub-section (1) of section 7 and sub-section (10) of section 9, the provisions of this Act shall apply to e-cart and e-rickshaw.

(2) For the purposes of this section, “e-cart or e-rickshaw” means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.]

CHAPTER II

LICENSING OF DRIVERS OF MOTOR VEHICLES

3. Necessity for driving licence.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than ³[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

1. Ins. by Act 54 of 1988, s. 2 (w.e.f. 14-11-1994).

2. Ins. by Act 3 of 2015, s. 2 (w.e.f. 7-1-2015).

3. Subs. by s. 3, *ibid.*, for “a motor cab” (w.e.f. 14-11-1994).

4. Age limit in connection with driving of motor vehicles.—(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that ¹[a motor cycle with engine capacity not exceeding 50cc] out gear may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.—No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

6. Restrictions on the holding of driving licences.—(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive.

7. Restrictions on the granting of learner's licences for certain vehicles.—²[(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year:]

³[Provided that nothing contained in this sub-section shall apply to an e-cart or e-rickshaw.]

(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.

8. Grant of learner's licence.—(1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area—

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate,

for the issue to him of a learner's licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such documents and with such fee as may be prescribed by the Central Government.

(3) Every application under sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose:

⁴[Provided that no such medical certificate is required for licence to drive a vehicle other than a transport vehicle.]

1. Subs. by Act 54 of 1988, s. 4, for "a motor cycle without gear" (w.e.f. 14-11-1994).

2. Subs. by s. 5, *ibid.*, for sub-section (1) (w.e.f. 14-11-1994).

3. Ins. by Act 3 of 2015, s. 3 (w.e.f. 7-1-2015).

4. Ins. by Act 54 of 1988, s. 6 (w.e.f. 14-11-1994).

(4) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the learner's licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the learner's licence:

Provided that a learner's licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage.

(5) No learner's licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test as may be prescribed by the Central Government.

(6) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness under sub-section (3) and has passed to the satisfaction of the licensing authority the test referred to in sub-section (5), the licensing authority shall, subject to the provisions of section 7, issue the applicant a learner's licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence to drive a motor vehicle:

Provided that a licensing authority may issue a learner's licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if such authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

(7) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by rules made in this behalf, exempt generally, either absolutely or subject to such conditions as may be specified in the rules, any class of persons from the provisions of sub-section (3), or sub-section (5), or both.

(8) Any learner's licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

9. Grant of driving licence—(1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area—

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated,

for the issue to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

¹[(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that—

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

1. Subs. by Act 54 of 1994, s. 7, for sub-section (3) (w.e.f. 14-11-1994).

(b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant possesses a driving certificate issued by any institution recognised in this behalf by the State Government.]

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.

¹[(5) Where the applicant does not pass the test; he may be permitted to re-appear for the test after a period of seven days:

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.]

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) If the licensing authority is satisfied, after giving the applicant an opportunity of being heard, that he—

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is a person whose licence to drive any motor vehicle has, at any time earlier, been revoked,

it may, for reasons to be recorded in writing, make an order refusing to issue a driving licence to such person and any person aggrieved by such an order made by a licensing authority under this sub-section may, within thirty days of the receipt of the order, appeal to the prescribed authority.

(9) Any driving licence for driving a motor cycle in force immediately before the commencement of this Act shall, after such commencement, be deemed to be effective for driving a motor cycle with or without gear.

1. Subs. by Act 54 of 1994, s. 7, for sub-section (5) (w.e.f. 14-11-1994).

¹[(10) Notwithstanding anything contained in this section, the driving licence to drive e-cart or e-rickshaw shall be issued in such manner and subject to such conditions, as may be prescribed.]

10. Form and contents of licences to drive.—(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- ²[(e) transport vehicle;]
- (i) road-roller;
- (j) motor vehicle of a specified description.

11. Additions to driving licence.—(1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

(2) Subject to such rules as may be prescribed by the Central Government, the provisions of section 9 shall apply to an application under this section as if the said application were for the grant of a licence under that section to drive the class or description of motor vehicles which the applicant desires to be added to his licence.

12. Licensing and regulation of schools or establishments for imparting instruction in driving of motor vehicles.—(1) The Central Government may make rules for the purpose of licensing and regulating, by the State Governments, schools or establishments (by whatever name called) for imparting instruction in driving of motor vehicles and matters connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) licensing of such schools or establishments including grant, renewal and revocation of such licences;
- (b) supervision of such schools or establishments;
- (c) the form of application and the form of licence and the particulars to be contained therein;
- (d) fee to be paid with the application for such licences;
- (e) conditions subject to which such licences may be granted;
- (f) appeals against the orders of refusal to grant or renew such licences and appeals against the orders revoking such licences;
- (g) conditions subject to which a person may establish and maintain any such school or establishment for imparting instruction in driving of motor vehicles;
- (h) nature, syllabus and duration of course or courses for efficient instruction in driving any motor vehicle;

1. Ins. by Act 3 of 2015, s. 4 (w.e.f. 7-1-2015).

2. Subs. by Act 54 of 1994, s. 8, for clauses (e) to (h) (w.e.f. 14-11-1994).

(i) apparatus and equipments (including motor vehicles fitted with dual control) required for the purpose of imparting such instruction;

(j) suitability of the premises at which such schools or establishments may be established or maintained and facilities to be provided therein;

(k) qualifications, both educational and professional (including experience), which a person imparting instruction in driving a motor vehicle shall possess;

(l) inspection of such schools and establishments (including the services rendered by them and the apparatus, equipments and motor vehicles maintained by them for imparting such instruction);

(m) maintenance of records by such schools or establishments;

(n) financial stability of such schools or establishments;

(o) the driving certificates, if any, to be issued by such schools or establishments and the form in which such driving certificates shall be issued and the requirements to be complied with for the purposes of issuing such certificates;

(p) such other matters as may be necessary to carry out the purposes of this section.

(3) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by rules made in this behalf, exempt generally, either absolutely or subject to such conditions as may be specified in the rules, any class of schools or establishments imparting instruction in driving of motor vehicles or matters connected therewith from the provisions of this section.

(4) A school or establishment imparting instruction in driving of motor vehicles or matters connected therewith immediately before the commencement of this Act whether under a licence or not, may continue to impart such instruction without a licence issued under this Act for a period of one month from such commencement, and if it has made an application for such licence under this Act within the said period of one month and such application is in the prescribed form, contains the prescribed particulars and is accompanied by the prescribed fee, till the disposal of such application by the licensing authority.

13. Extent of effectiveness of licences, to drive motor vehicles.—A learner's licence or a driving licence issued under this Act shall be effective throughout India.

14. Currency of licences to drive motor vehicles.—(1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,—

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

¹***

²[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and;]

(b) in the case of any other licence,—

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of ³[fifty years] on the date of issue or, as the case may be, renewal thereof,—

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of ³[fifty years],

whichever is earlier;

1. The word "and" omitted by Act 54 of 1994, s. 9 (w.e.f. 14-11-1994).

2. Ins. by s. 9, *ibid.* (w.e.f. 14-11-1994).

3. Subs. by s. 9, *ibid.*, for "forty years" (w.e.f. 14-11-1994).

¹[(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be. renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:]

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry.

15. Renewal of driving licences.—(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.

16. Revocation of driving licence on grounds of disease or disability.—Notwithstanding anything contained in the foregoing sections, any licensing authority may at any time revoke a driving licence or may require, as a condition of continuing to hold such driving licence, the holder thereof to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, if the licensing authority has reasonable grounds to believe that the holder of the driving licence is, by virtue of any disease or disability, unfit to drive a motor vehicle and where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence.

17. Orders refusing or revoking driving licences and appeals therefrom—(1) Where a licensing authority refuses to issue any learner's licence or to issue or renew, or revokes, any driving licence, or

1. Subs. by Act 54 of 1994, s. 9, for sub-clause (ii) (w.e.f. 14-11-1994).

refuses to add a class or description of motor vehicle to any driving licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority which made the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority which made the order.

18. Driving licences to drive motor vehicles, belonging to the Central Government.—(1) Such authority as may be prescribed by the Central Government may issue driving licence valid throughout India to persons who have completed their eighteenth year to drive motor vehicles which are the property or for the time being under the exclusive control of the Central Government and are used for Government purposes relating to the defence of the country and unconnected with any commercial enterprise.

(2) A driving licence issued under this section shall specify the class or description of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A driving licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle referred to in sub-section (1).

(4) The authority issuing any driving licence under this section shall, at the request of any State Government, furnish such information respecting any person to whom a driving licence is issued as that Government may at any time require.

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.—(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he—

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care,

it may, for reasons to be recorded in writing, make an order—

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,—

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

20. Power of Court to disqualify.—(1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorised by law, declare the persons so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any person of any such offence shall order the disqualification under sub-section (1), and if the offence is relatable to clause (c) of sub-section (1) of section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person—

(a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 189, or

(c) who is convicted of an offence punishable under section 192:

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or, in the case referred to in clause (b), two years or, in the case referred to in clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.

21. Suspension of driving licence in certain cases.—(1) Where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or

more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended—

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.

22. Suspension or cancellation of driving licence on conviction.—(1) Without prejudice to the provisions of sub-section (3) of section 20 where a person, referred to in sub-section (1) of section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person in so far as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185 is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.

23. Effect of disqualification order.—(1) A person in respect of whom any disqualification order is made under section 19 or section 20 shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period.

(2) The operation of a disqualification order made under section 20 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either cancel or vary the disqualification order:

Provided that where the Court or other authority refuses to cancel or vary any disqualification order under this section, a second application thereunder shall not be entertained before the expiry of a period of three months from the date of such refusal.

24. Endorsement.—(1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the driving licence if any, held by the person disqualified, particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any cancellation or variation of an order of disqualification made under sub-section (3) of section 23 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence under this Act as may be prescribed by the Central Government, having regard to the objects of this Act, shall, whether or not a disqualification order is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any driving licence held by the person convicted.

(3) Any person accused of an offence prescribed under sub-section (2) shall when attending the Court bring with him his driving licence if it is in his possession.

(4) Where any person is convicted of any offence under this Act and sentenced to imprisonment for a period exceeding three months the Court awarding the sentence shall endorse the fact of such sentence upon the driving licence of the person concerned and the prosecuting authority shall intimate the fact of such endorsement to the authority by which the driving licence was granted or last renewed.

(5) When the driving licence is endorsed or caused to be endorsed by any Court, such Court shall send the particulars of the endorsement to the licensing authority by which the driving licence was granted or last renewed.

(6) Where on an appeal against any conviction or order of a Court, which has been endorsed on a driving licence, the appellate court varies or sets aside the conviction or order, the appellate court shall inform the licensing authority by which the driving licence was granted or last renewed and such authority shall amend or cause to be amended the endorsement.

25. Transfer of endorsement and issue of driving licence free from endorsement.—(1) An endorsement on any driving licence shall be transferred to any new or duplicate driving licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a driving licence issued to him free from endorsement.

(2) Where a driving licence is required to be endorsed and the driving licence is not in the possession of the Court or authority by which the endorsement is to be made, then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a driving licence, he shall produce the driving licence to the Court or authority within five days, or such longer time as the Court or authority may fix; or

(b) if, not being then the holder of a driving licence, he subsequently obtains a driving licence, he shall within five days after obtaining the driving licence produce it to the Court or authority,

and if the driving licence is not produced within the time specified, it shall, on the expiration of such time, be of no effect until it is produced for the purpose of endorsement.

(3) A person whose driving licence has been endorsed shall, if during a continuous period of three years after such endorsement no further endorsement has been made against him, be entitled on surrendering his driving licence and on payment of a fee of five rupees, to receive a new driving licence free from all endorsements:

Provided that if the endorsement is only in respect of an offence contravening the speed limits referred to in section 112, such person shall be entitled to receive a new driving licence free from such endorsements on the expiration of one year of the date of the endorsement:

Provided further that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a driving licence shall be excluded.

26. Maintenance of State Registers of Driving Licences.—(1) Each State Government shall maintain, in such form as may be prescribed by the Central Government, a register to be known as the State Register of Driving Licences, in respect of driving licences issued and renewed by the licensing authorities of the State Government, containing the following particulars, namely:—

- (a) names and addresses of holders of driving licences;
- (b) licence numbers;
- (c) dates of issue or renewal of licences;
- (d) dates of expiry of licences;
- (e) classes and types of vehicles authorised to be driven; and
- (f) such other particulars as the Central Government may prescribe.

(2) Each State Government shall supply to the Central Government a ¹[printed copy or copy in such other form as the Central Government may require] of the State Register of Driving Licences and shall inform the Central Government without delay of all additions to and other amendments in such register made from time to time.

(3) The State Register of Driving Licences shall be maintained in such manner as may be prescribed by the State Government.

27. Power of Central Government to make rules.—The Central Government may make rules—

²[(a) specifications relating to e-cart and e-rickshaw under sub-section (2) of section 2A;]

³[(aa)] regarding conditions referred to in sub-section (2) of section 3;

(b) providing for the form in which the application for learner's licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section 8;

(c) providing for the form of medical certificate referred to in sub-section (3) of section 8;

(d) providing for the particulars for the test referred to in sub-section (5) of section 8;

(e) providing for the form in which the application for driving licence may be made, the information it shall contain and the documents to be submitted with the application referred to in sub-section (2) of section 9;

(f) providing for the particulars regarding test of competence to drive, referred to in sub-section (3) of section 9;

²[(ff) the manner and the conditions subject to which the driving licence may be issued under sub-section (10) of section 9;]

(g) specifying the minimum educational qualifications of persons to whom licences to drive transport vehicles may be issued under this Act and the time within which such qualifications are to be acquired by such persons;

(h) providing for the form and contents of the licences referred to in sub-section (1) of section 10;

(i) providing for the form and contents of the application referred to in sub-section (1) of section 11 and documents to be submitted with the application and the fee to be charged;

(j) providing for the conditions subject to which section 9 shall apply to an application made under section 11;

1. Subs. by Act 54 of 1994, s. 10, for "printed copy" (w.e.f. 14-11-1994).

2. Ins. by Act 3 of 2015, s. 5 (w.e.f. 7-1-2015).

3. Clause (a) renumbered as clause (aa) thereof by s. 5, *ibid.* (w.e.f. 7-1-2015).

(k) providing for the form and contents of the application referred to in sub-section (1) of section 15 and the documents to accompany such application under sub-section (2) of section 15;

(l) providing for the authority to grant licences under sub-section (1) of section 18;

(m) specifying the fees payable under sub-section (2) of section 8, sub-section (2) of section 9 and sub-sections (3) and (4) of section 15 for the grant of learner's licences, and for the grant and renewal of driving licences and licences for the purpose of regulating the schools or establishment for imparting instructions in driving motor vehicles;

(n) specifying the acts for the purposes of clause (f) of sub-section (1) of section 19;

(o) specifying the offences under this Act for the purposes of sub-section (2) of section 24;

(p) to provide for all or any of the matters referred to in sub-section (1) of section 26;

(q) any other matter which is, or has to be, prescribed by the Central Government.

28. Power of State Government to make rules.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 27.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;

(b) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees:

Provided that no fee so fixed shall exceed twenty-five rupees;

(c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete and the fees to be charged therefor;

(d) the badges and uniform to be worn by drivers of transport vehicles and the fees to be paid in respect of badges;

(e) the fee payable for the issue of a medical certificate under sub-section (3) of section 8;

(f) the exemption of prescribed persons, or prescribed classes of persons, from payment of all or any portion of the fees payable under this Chapter;

(g) the communication of particulars of licences granted by one licensing authority to other licensing authorities;

(h) the duties, functions and conduct of such persons to whom licences to drive transport vehicles are issued;

(i) the exemption of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder;

(j) the manner in which the State Register of Driving Licences shall be maintained under section 26;

(k) any other matter which is to be, or may be, prescribed.

CHAPTER III

LICENSING OF CONDUCTORS OF STAGE CARRIAGES

29. Necessity for conductor's licence.—(1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorising him to act as such conductor; and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

(2) A State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act as a conductor for a period not exceeding one month.

30. Grant of conductor's licence.—(1) Any person who possesses such minimum educational qualification as may be prescribed by the State Government and is not disqualified under sub-section (1) of section 31 and who is not for the time being disqualified for holding or obtaining a conductor's licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business for the issue to him of a conductor's licence.

(2) Every application under sub-section (1) shall be in such form and shall contain such information as may be prescribed.

(3) Every application for a conductor's licence shall be accompanied by a medical certificate in such form as may be prescribed, signed by a registered medical practitioner and shall also be accompanied by two clear copies of a recent photograph of the applicant.

(4) A conductor's licence issued under this Chapter shall be in such form and contain such particulars as may be prescribed and shall be effective throughout the State in which it is issued.

(5) The fee for a conductor's licence and for each renewal thereof shall be one-half of that for a driving licence.

31. Disqualifications for the grant of conductor's licence.—(1) No person under the age of eighteen years shall hold, or be granted, a conductor's licence.

(2) The licensing authority may refuse to issue a conductor's licence—

(a) if the applicant does not possess the minimum educational qualification;

(b) if the medical certificate produced by the applicant discloses that he is physically unfit to act as a conductor; and

(c) if any previous conductor's licence held by the applicant was revoked.

32. Revocation of a conductor's licence on grounds of disease or disability.—A conductor's licence may at any time be revoked by any licensing authority if that authority has reasonable grounds to believe that the holder of the licence is suffering from any disease or disability which is likely to render him permanently unfit to hold such a licence and where the authority revoking a conductor's licence is not the authority which issued the same, it shall intimate the fact of such revocation to the authority which issued that licence:

Provided that before revoking any licence, the licensing authority shall give the person holding such licence a reasonable opportunity of being heard.

33. Orders refusing, etc., conductor's licences and appeals therefrom.—(1) Where a licensing authority refuses to issue or renew, or revokes any conductor's licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority which made the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority which made the order.

34. Power of licensing authority to disqualify.—(1) If any licensing authority is of opinion that it is necessary to disqualify the holder of a conductor's licence for holding or obtaining such a licence on account of his previous conduct as a conductor, it may, for reasons to be recorded, make an order disqualifying that person for a specified period, not exceeding one year, for holding or obtaining a conductor's licence:

Provided that before disqualifying the holder of a licence, the licensing authority shall give the person holding such licence a reasonable opportunity of being heard.

(2) Upon the issue of any such order, the holder of the conductor's licence shall forthwith surrender the licence to the authority making the order, if the licence has not already been surrendered, and the authority shall keep the licence until the disqualification has expired or has been removed.

(3) Where the authority disqualifying the holder of a conductor's licence under this section is not the authority which issued the licence, it shall intimate the fact of such disqualification to the authority which issued the same.

(4) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority which made the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority which made the order.

35. Power of Court to disqualify.—(1) Where any person holding a conductor's licence is convicted of an offence under this Act, the Court by which such person is convicted may, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify for holding a conductor's licence.

(2) The Court to which an appeal lies from any conviction of an offence under this Act may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from such Court, may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

36. Certain provisions of Chapter II to apply to conductor's licence.—The provisions of sub-section (2) of section 6, sections 14, 15 and 23, sub-section (1) of section 24 and section 25 shall, so far as may be, apply in relation to a conductor's licence, as they apply in relation to a driving licence.

37. Savings.—If any licence to act as a conductor of a stage carriage (by whatever name called) has been issued in any State and is effective immediately before the commencement of this Act, it shall continue to be effective, notwithstanding such commencement, for the period for which it would have been effective, if this Act had not been passed, and every such licence shall be deemed to be a licence issued under this Chapter as if this Chapter had been in force on the date on which that licence was granted.

38. Power of State Government to make rules.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities under this Chapter;

(b) the conditions subject to which drivers of stage carriages performing the functions of a conductor and persons temporarily employed to act as conductors may be exempted from the provisions of sub-section (1) of section 29;

(c) the minimum educational qualifications of conductors; their duties and functions and the conduct of persons to whom conductor's licences are issued;

(d) the form of application for conductor's licences or for renewal of such licences and the particulars it may contain;

(e) the form in which conductor's licences may be issued or renewed and the particulars it may contain;

(f) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete and the fees to be charged therefor;

(g) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees:

Provided that no fee so fixed shall exceed twenty-five rupees;

(h) the badges and uniform to be worn by conductors of stage carriages and the fees to be paid in respect of such badges;

(i) the grant of the certificates referred to in sub-section (3) of section 30 by registered medical practitioners and the form of such certificates;

(j) the conditions subject to which, and the extent to which, a conductor's licence issued in another State shall be effective in the State;

(k) the communication of particulars of conductor's licences from one authority to other authorities; and

(l) any other matter which is to be, or may be, prescribed.

CHAPTER IV

REGISTRATION OF MOTOR VEHICLES

39. Necessity for registration.—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

40. Registration, where to be made.—Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept.

41. Registration, how to be made.—(1) An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government:

Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.

(2) An application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government.

(3) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.

(4) In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify.

(5) The registering authority shall enter the particulars of the certificate referred to in sub-section (3) in a register to be maintained in such form and manner as may be prescribed by the Central Government.

(6) The registering authority shall assign to the vehicle, for display thereon, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government.

(7) A certificate of registration issued under sub-section (3), whether before or after the commencement of this Act, in respect of a motor vehicle, other than a transport vehicle, shall, subject to the provisions contained in this Act, be valid only for a period of fifteen years from the date of issue of such certificate and shall be renewable.

(8) An application by or on behalf of the owner of a motor vehicle, other than a transport vehicle, for the renewal of a certificate of registration shall be made within such period and in such form, containing such particulars and information as may be prescribed by the Central Government.

(9) An application referred to in sub-section (8) shall be accompanied by such fee as may be prescribed by the Central Government.

(10) Subject to the provisions of section 56, the registering authority may, on receipt of an application under sub-section (8), renew the certificate of registration for a period of five years and intimate the fact to the original registering authority, if it is not the original registering authority.

(11) If the owner fails to make an application under sub-section (1), or, as the case may be, under sub-section (8) within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under section 177, such amount not exceeding one hundred rupees as may be prescribed under sub-section (13):

Provided that action under section 177 shall be taken against the owner where the owner fails to pay the said amount.

(12) Where the owner has paid the amount under sub-section (11), no action shall be taken against him under section 177.

(13) For the purposes of sub-section (11), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section (1) or sub-section (8).

(14) An application for the issue of a duplicate certificate of registration shall be made to the ¹[last registering authority] in such form, containing such particulars and information along with such fee as may be prescribed by the Central Government.

42. Special provision for registration of motor vehicles of diplomatic officers, etc.—(1) Where an application for registration of a motor vehicle is made under sub-section (1) of section 41 by or on behalf of any diplomatic officer or consular officer, then, notwithstanding anything contained in sub-section (3) or sub-section (6) of that section, the registering authority shall register the vehicle in such manner and in accordance with such procedure as may be provided by rules made in this behalf by the Central Government under sub-section (3) and shall assign to the vehicle for display thereon a special registration mark in accordance with the provisions contained in those rules and shall issue a certificate (hereafter in this section referred to as the certificate of registration) that the vehicle has been registered under this section; and any vehicle so registered shall not, so long as it remains the property of any diplomatic officer or consular officer, require to be registered otherwise under this Act.

(2) If any vehicle registered under this section ceases to be the property of any diplomatic officer or consular officer, the certificate of registration issued under this section shall also cease to be effective, and the provisions of sections 39 and 40 shall thereupon apply.

(3) The Central Government may make rules for the registration of motor vehicles belonging to diplomatic officers and consular officers regarding the procedure to be followed by the registering authority for registering such vehicles, the form in which the certificates of registration of such vehicles are to be issued, the manner in which such certificates of registration are to be sent to the owners of the vehicles and the special registration marks to be assigned to such vehicles.

(4) For the purposes of this section, “diplomatic officer” or “consular officer” means any person who is recognised as such by the Central Government and if any question arises as to whether a person is or is not such an officer, the decision of the Central Government thereon shall be final.

43. Temporary registration.—(1) Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle

1. Subs. by Act 54 of 1994, s. 11, for “original registering authority” (w.e.f. 14-11-1994).

temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable:

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted ¹[with a body or any unforeseen circumstances beyond the control of the owner], the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

²[(3) In a case where the motor vehicle is held under hire-purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner.]

44. Production of vehicle at the time of registration.—The registering authority shall before proceeding to register a motor vehicle or renew the certificate of registration in respect of a motor vehicle, other than a transport vehicle, require the person applying for registration of the vehicle or, as the case may be, for renewing the certificate of registration to produce the vehicle either before itself or such authority as the State Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of this Act and of the rules made thereunder.

45. Refusal of registration or renewal of the certificate of registration.—The registering authority may, by order, refuse to register any motor vehicle, or renew the certificate of registration in respect of a motor vehicle (other than a transport vehicle), if in either case, the registering authority has reason to believe that it is a stolen motor vehicle or the vehicle is mechanically defective or fails to comply with the requirements of this Act or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle or furnishes inaccurate particulars in the application for registration of the vehicle or, as the case may be, for renewal of the certificate or registration thereof and the registering authority shall furnish the applicant whose vehicle is refused registration, or whose application for renewal of the certificate of registration is refused, a copy of such order, together with the reasons for such refusal.

46. Effectiveness in India of registration.—Subject to the provisions of section 47, a motor vehicle registered in accordance with this Chapter in any State shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India.

47. Assignment of new registration mark on removal to another State.—(1) When a motor vehicle registered in one State has been kept in another State, for a period exceeding twelve months, the owner of the vehicle shall, within such period and in such form containing such particulars as may be prescribed by the Central Government, apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority:

Provided that an application under this sub-section shall be accompanied—

- (i) by the no objection certificate obtained under section 48, or
- (ii) in a case where no such certificate has been obtained, by—
 - (a) the receipt obtained under sub-section (2) of section 48; or

1. Subs. by Act 54 of 1994, s. 12, for “with a body” (w.e.f. 14-11-1994).

2. Ins. by s. 12, *ibid.* (w.e.f. 14-11-1994).

(b) the postal acknowledgement received by the owner of the vehicle if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted:

Provided further that, in a case where a motor vehicle is held under a hire-purchase, lease or hypothecation agreement, an application under this sub-section shall be accompanied by a no objection certificate from the person with whom such agreement has been entered into, and the provisions of section 51, so far as may be, regarding obtaining of such certificate from the person with whom such agreement has been entered into, shall apply.

(2) The registering authority, to which application is made under sub-section (1), shall after making such verification, as it thinks fit, of the returns, if any, received under section 62, assign the vehicle a registration mark as specified in sub-section (6) of section 41 to be displayed and shown thereafter on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) Where a motor vehicle is held under a hire-purchase or lease or hypothecation agreement, the registering authority shall, after assigning the vehicle a registration mark under sub-section (2), inform the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the hire-purchase or lease or hypothecation agreement (by sending to such person a notice by registered post acknowledgement due at the address of such person entered in the certificate of registration the fact of assignment of the said registration mark).

(4) A State Government may make rules under section 65 requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State, to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed.

(5) If the owner fails to make an application under sub-section (1) within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under section 177, such amount not exceeding one hundred rupees as may be prescribed under sub-section (7):

Provided that action under section 177 shall be taken against the owner where the owner fails to pay the said amount.

(6) Where the owner has paid the amount under sub-section (5), no action shall be taken against him under section 177.

(7) For the purposes of sub-section (5), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section (1).

48. No objection certificate.—(1) The owner of a motor vehicle when applying for the assignment of a new registration mark under sub-section (1) of section 47, or where the transfer of a motor vehicle is to be effected in a State other than the State of its registration, the transferor of such vehicle when reporting the transfer under sub-section (1) of section 50, shall make an application in such form and in such manner as may be prescribed by the Central Government to the registering authority by which the vehicle was registered for the issue of a certificate (hereafter in this section referred to as the no objection certificate), to the effect that the registering authority has no objection for assigning a new registration mark to the vehicle or, as the case may be, for entering the particulars of the transfer of ownership in the certificate of registration.

(2) The registering authority shall, on receipt of an application under sub-section (1), issue a receipt in such form as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the registering authority may, after making such inquiry and requiring the applicant to comply with such directions as it deems fit and within thirty days of the receipt thereof, by order in writing, communicate to the applicant that it has granted or refused to grant the no objection certificate:

Provided that a registering authority shall not refuse to grant the no objection certificate unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of thirty days referred to in sub-section (3), the registering authority does not refuse to grant the no objection certificate or does not communicate the refusal to the applicant, the registering authority shall be deemed to have granted the no objection certificate.

(5) Before granting or refusing to grant the no objection certificate, the registering authority shall obtain a report in writing from the police that no case relating to the theft of the motor vehicle concerned has been reported or is pending, verify whether all the amounts due to Government including road tax in respect of that motor vehicle have been paid and take into account such other factors as may be prescribed by the Central Government.

¹[(6)The owner of the vehicle shall also inform at the earliest, in writing, the registering authority about the theft of his vehicle together with the name of the police station where the theft report was lodged, and the registering authority shall take into account such report while disposing of any application for no objection certification, registration, transfer of ownership or issue of duplicate registration certificate.]

49. Change of residence or place of business.—(1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate in such form accompanied by such documents as may be prescribed by the Central Government, his new address, to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority or, as the case may be, to the other registering authority in order that the new address may be entered therein.

(2) If the owner of a motor vehicle fails to intimate his new address to the concerned registering authority within the period specified in sub-section (1), the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (4):

Provided that action under section 177 shall be taken against the owner where he fails to pay the said amount.

(3) Where a person has paid the amount under sub-section (2), no action shall be taken against him under section 177.

(4) For the purposes of sub-section (2), a State Government may prescribe different amounts having regard to the period of delay in intimating his new address.

(5) On receipt of intimation under sub-section (1), the registering authority may, after making such verification as it may think fit, cause the new address to be entered in the certificate of registration.

(6) A registering authority other than the original registering authority making any such entry shall communicate the altered address to the original registering authority.

(7) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

1. Ins. by Act 54 of 1994, s. 13 (w.e.f. 14-11-1994).

50. Transfer of ownership.—(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,—

(a) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,—

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgement received by the transferor if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where—

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,

the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.

51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.—(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the ¹[last registering authority] shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration ²[and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority].

(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the ¹[last registering authority] on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe²[and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority].

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle³[from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.

(6) The registered owner shall, before applying to the appropriate authority, for the renewal of a permit under section 81 or for the issue of duplicate certificate of registration under sub-section (14) of section 41, or for the assignment of a new registration mark ⁴[under section 47, or removal of the vehicle to another State, or at the time of conversion of the vehicle from one class to another, or for issue of no objection certificate under section 48, or for change of residence or place of business under section 49, or for the alteration of the vehicle under section 52, make an application] to the person with whom the registered owner has entered into the said agreement (such person being hereafter in this section referred

1. Subs. by Act 54 of 1994, s. 14, for “original registering authority” (w.e.f. 14-11-1994).

2. Added. by s. 14, *ibid.* (w.e.f. 14-11-1994).

3. Ins. by s. 14, *ibid.* (w.e.f. 14-11-1994).

4. Subs. by s. 14, *ibid.*, for “under section 47, make an application” (w.e.f. 14-11-1994).

to as the financier) for the issue of a no objection certificate (hereafter in this section referred to as the certificate).

Explanation.—For the purposes of this sub-section and sub-sections (8) and (9), “appropriate authority” in relation to any permit means the authority which is authorised by this Act to renew such permit and, in relation to registration, means the authority which is authorised by this Act to issue duplicate certificate of registration or to assign a new registration mark.

(7) Within seven days of the receipt of an application under sub-section (6), the financier may issue, or refuse for reasons which shall be recorded in writing and communicated to the applicant, to issue, the certificate applied for and where the financier fails to issue the certificate and also fails to communicate the reasons for refusal to issue the certificate to the applicant within the said period of seven days, the certificate applied for shall be deemed to have been issued by the financier.

(8) The registered owner shall, while applying to the appropriate authority for the renewal of any permit under section 81, or for the issue of a duplicate certificate of registration under sub-section (14) of section 41, or while applying for assignment of a new registration mark under section 47, submit with such application the certificate, if any, obtained under sub-section (7) or, where no such certificate has been obtained, the communication received from the financier under that sub-section, or, as the case may be a declaration that he has not received any communication from the financier within the period of seven days specified in that sub-section.

(9) On receipt of an application for the renewal of any permit or for the issue of duplicate certificate of registration or for assignment of a new registration mark in respect of a vehicle which is held under the said agreement, the appropriate authority may, subject to the other provisions of this Act,—

(a) in a case where the financier has refused to issue the certificate applied for, after giving the applicant an opportunity of being heard, either—

- (i) renew or refuse to renew the permit, or
- (ii) issue or refuse to issue the duplicate certificate of registration, or
- (iii) assign or refuse to assign a new registration mark;

(b) in any other case,—

- (i) renew the permit, or
- (ii) issue duplicate certificate of registration, or
- (iii) assign a new registration mark.

(10) A registering authority making an entry in the certificate of registration regarding—

- (a) hire-purchase, lease or hypothecation agreement of a motor vehicle, or
- (b) the cancellation under sub-section (3) of an entry, or
- (c) recording transfer of ownership of motor vehicle, or
- (d) any alteration in a motor vehicle, or
- (e) suspension or cancellation of registration of a motor vehicle, or
- (f) change of address,

shall communicate¹[by registered post acknowledgment due] to the financier that such entry has been made.

²[(11) A registering authority registering the new vehicle, or issuing the duplicate certificate of registration or a no objection certificate or a temporary certificate of registration, or issuing or renewing, a fitness certificate or substituting entries relating to another motor vehicle in the permit, shall intimate the financier of such transaction.

1. Ins. by Act 54 of 1994, s.14 (w.e.f. 14-11-1994).

2. Subs. by s.14, *ibid.*, for sub-section (11) (w.e.f. 14-11-1994).

(12) The registering authority where it is not the original registering authority, when making entry under sub-section (1) or sub-section (2), or cancelling the said entry under sub-section (3) or issuing the fresh certificate of registration under sub-section (5) shall communicate the same to the original registering authority.]

¹**[52. Alteration in motor vehicle.**— (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer:

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits:

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub-section (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-sections (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation.—For the purposes of this section, “alteration” means a change in the structure of a vehicle which results in a change in its basic feature.]

53. Suspension of registration.—(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.

1. Subs. by Act 27 of 2000, s. 2, for section 52 (w.e.f. 11-8-2000).

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of such suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1), for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration.

(5) A certificate of registration surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

54. Cancellation of registration suspended under section 53.—Where the suspension of registration of a vehicle under section 53 has continued without interruption for a period of not less than six months, the registering authority within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel the registration.

55. Cancellation of registration.—(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to that authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if, upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), and for reasons to be recorded in writing cancel the registration.

(6) A registering authority cancelling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of

registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(8) The expression “original registering authority” in this section and in sections 41, 49, 50, 51, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.

(9) In this section, “certificate of registration” includes a certificate of registration renewed under the provisions of this Act.

56. Certificate of fitness of transport vehicles.—(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the authorised testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) The “authorised testing station” referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

¹[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.]

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

57. Appeals.—²[(1) Any person aggrieved by an order of the registering authority under section 41, 42, 43, 45, 47, 48, 49, 50, 52, 53, 55 or 56 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.]

(2) The appellate authority shall give notice of the appeal to the original authority and after giving an opportunity to the original authority and the appellant to be heard in the appeal pass such orders as it thinks fit.

58. Special provisions in regard to transport vehicles.—(1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle, (other than a motorcab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the ³[maximum gross vehicle weight] of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motorcab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

(a) the unladen weight of the vehicle;

1. Ins. by Act 54 of 1994, s. 16 (w.e.f. 14-11-1994).

2. Subs. by s.17, *ibid.*, for sub-section (1) (w.e.f. 14-11-1994).

3. Subs. by s. 18, *ibid.*, for “maximum safe laden weight” (w.e.f. 14-11-1994).

(b) the number, nature and size of the tyres attached to each wheel;

(c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided,

and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels:

Provided that where it appears to the Central Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

¹* * * *

(5) In order that the gross vehicle weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owner of transport vehicle in accordance with such procedure as may be prescribed to produce the certificate of registration within such time as may be specified by the registering authority.

59. Power to fix the age limit of motor vehicle.—(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorised testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

60. Registration of vehicles belonging to the Central Government.—(1) Such authority as the Central Government may, by notification in the Official Gazette, specify, may register any motor vehicle which is the property or for the time being under the exclusive control of the Central Government and is used for Government purposes relating to the defence of the country and unconnected with any commercial enterprise and any vehicle so registered shall not, so long as it remains the property or under the exclusive control of the Central Government, require to be registered otherwise under this Act.

(2) The authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the rules made in this behalf by the Central Government and shall issue a certificate in respect of that vehicle to the effect that such vehicle complies for the time being with all the requirements of this Act and the rules made thereunder and that the vehicle has been registered under this section.

(3) A vehicle registered under this section shall carry the certificate issued under sub-section (2).

1. Sub-section (4) omitted by Act 27 of 2000, s. 3 (w.e.f. 11-8-2000).

(4) If a vehicle registered under this section ceases to be the property or under the exclusive control of the Central Government, the provisions of sections 39 and 40 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any State Government all such information regarding the general nature, overall dimensions and axle weights of the vehicle as the State Government may at any time require.

61. Application of Chapter to trailers.—(1) The provisions of this Chapter shall apply to the registration of trailers as they apply to the registration of any other motor vehicle.

(2) The registration mark assigned to a trailer shall be displayed in such manner on the side of the drawing vehicle, as may be prescribed by the Central Government.

(3) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed on the trailer or on the last trailer in the train, as the case may be, in such manner as may be prescribed by the Central Government.

62. Information regarding stolen and recovered motor vehicles to be furnished by the police to the State Transport Authority.—The State Government may, if it thinks necessary or expedient so to do in the public interest, direct the submission by the Inspector General of Police (by whatever designation called) and such other police officers as the State Government may specify in this behalf, of such returns containing the information regarding vehicles which have been stolen and stolen vehicles which have been recovered of which the police are aware, to the State Transport Authority, and may prescribe the form in which and the period within which such returns shall be made.

63. Maintenance of State Registers of Motor Vehicles.—(1) Each State Government shall maintain in such form as may be prescribed by the Central Government a register to be known as the State Register of Motor Vehicle, in respect of the motor vehicles in that State, containing the following particulars, namely:—

- (a) registration numbers;
- (b) years of manufacture;
- (c) classes and types;
- (d) names and addresses of registered owners; and
- (e) such other particulars as may be prescribed by the Central Government.

(2) Each State Government shall supply to the Central Government¹[if so desired by it] a printed copy of the State Register of Motor Vehicles and shall also inform the Central Government without delay of all additions to and other amendments in such register made from time to time.

(3) The State Register of Motor Vehicles shall be maintained in such manner as may be prescribed by the State Government.

64. Power of Central Government to make rules.—The Central Government may make rules to provide for all or any of the following matters, namely:—

- (a) the period within which and the form in which an application shall be made and the documents, particulars and information it shall accompany under sub-section (1) of section 41;
- (b) the form in which the certificate of registration shall be made and the particulars and information it shall contain and the manner in which it shall be issued under sub-section (3) of section 41;
- (c) the form and manner in which the particulars of the certificate of registration shall be entered in the records of the registering authority under sub-section (5) of section 41;
- (d) the manner in which and the form in which the registration mark, the letters and figures and other particulars referred to in sub-section (6) of section 41 shall be displayed and shown;

1. Ins. by Act 54 of 1994, s. 19 (w.e.f. 14-11-1994).

(e) the period within which and the form in which the application shall be made and the particulars and information it shall contain under sub-section (8) of section 41;

(f) the form in which the application referred to in sub-section (14) of section 41 shall be made, the particulars and information it shall contain and the fee to be charged;

(g) the form in which the period within which the application referred to in sub-section (1) of section 47 shall be made and the particulars it shall contain;

(h) the form in which and the manner in which the application for “No Objection Certificate” shall be made under sub-section (1) of section 48 and the form of receipt to be issued under sub-section (2) of section 48;

(i) the matters that are to be complied with by an applicant before no objection certificate may be issued under section 48;

(j) the form in which the intimation of change of address shall be made under sub-section (1) of section 49 and the documents to be submitted along with the application;

(k) the form in which and the manner in which the intimation of transfer of ownership shall be made under sub-section (1) of section 50 or under sub-section (2) of section 50 and the document to be submitted along with the application;

(l) the form in which the application under sub-section (2) or sub-section (3) of section 51 shall be made;

(m) the form in which the certificate of fitness shall be issued under sub-section (1) of section 56 and the particulars and information it shall contain;

(n) the period for which the certificate of fitness granted or renewed under section 56 shall be effective;

(o) the fees to be charged for the issue or renewal or alteration of certificates of registration, for making an entry regarding transfer of ownership on a certificate of registration, for making or cancelling an endorsement in respect of agreement of hire-purchase or lease or hypothecation on a certificate of registration, for certificates of fitness for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees.

(p) any other matter which is to be, or may be, prescribed by the Central Government.

65. Power of State Government to make rules.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 64.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred under this Chapter (the fees to be paid in respect of such appeals and the refund of such fees);

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

(c) the exemption of road-rollers, graders and other vehicles designed and used solely for the construction, repair and cleaning of roads from all or any of the provisions of this Chapter and the rules made thereunder and the conditions governing such exemption;

(d) the issue or renewal of certificates of registration and fitness and duplicates of such certificates to replace the certificates lost, destroyed or mutilated;

(e) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the gross vehicle weight;

(f) the temporary registration of motor vehicles, and the issue of temporary certificate of registration and marks;

(g) the manner in which the particulars referred to in sub-section (2) of section 58 and other prescribed particulars shall be exhibited;

(h) the exemption of prescribed persons or prescribed classes of persons from payment of all or any portion of the fees payable under this Chapter;

(i) the forms, other than those prescribed by the Central Government, to be used for the purpose of this Chapter;

(j) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the State of particulars of such vehicles and of their registration;

(k) the amount or amounts under sub-section (13) of section 41 or sub-section (7) of section 47 or sub-section (4) of section 49 or sub-section (5) of section 50;

(l) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;

(m) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;

(n) the form in which and the period within which the return under section 62 shall be sent;

(o) the manner in which the State Register of Motor Vehicles shall be maintained under section 63;

(p) any other matter which is to be or may be prescribed.

CHAPTER V

CONTROL OF TRANSPORT VEHICLES

66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any public or semi-trailer not owned by him, subject to such conditions as may be prescribed.

¹[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor:]

(3) The provisions of sub-section (1) shall not apply—

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

1. Added by Act 54 of 1994, s. 20 (w.e.f. 14-11-1994).

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

¹* * * *

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

²* * * *

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

67. Power to State Government to control road transport.—(1) A State Government, having regard to—

(a) the advantages offered to the public, trade and industry by the development of motor transport,

(b) the desirability of co-ordinating road and rail transport,

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among holders of permits,

may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority—

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages;

1. Clause (h) omitted by Act 27 of 2000, s. 4 (w.e.f. 11-8-2000).

2. Clause (l) omitted by Act 39 of 2001, s. 2 (w.e.f. 27-9-2001).

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;

(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its coordination with other means of transport and the conveying of long distance goods traffic:

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.

68. Transport Authorities.—(1) The State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the Union territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of a State Transport Authority, such other persons (whether officials or not), not being more than four and, in the case of a Regional Transport Authority, such other persons (whether officials or not), not being more than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed, or continue to be, a member of a State or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office:

Provided that nothing in this sub-section shall prevent any of the members of the State Transport Authority or a Regional Transport Authority, as the case may be, to preside over a meeting of such Authority during the absence of the Chairman, notwithstanding that such member does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law:

Provided further that the State Government may,—

(i) where it considers necessary or expedient so to do, constitute the State Transport Authority or a Regional Transport Authority for any region so as to consist of only one member who shall be an

1. The proviso omitted by Act 39 of 2001, s. 3 (w.e.f. 27-9-2001).

official with judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law;

(ii) by rules made in this behalf, provide for the transaction of business of such authorities in the absence of the Chairman or any other member and specify the circumstances under which, and the manner in which, such business could be so transacted:

Provided also that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking.

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely:—

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

¹[(ca) Government to formulate routes for plying stage carriages;]

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority, and the Regional Transport Authority shall, in the discharge of its functions under this Act, give effect to and be guided by such directions.

(5) The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under section 96, may delegate such of its powers and functions to such authority or person subject to such restrictions, limitations and conditions as may be prescribed by the said rules.

69. General provision as to applications for permits.—(1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business.

1. Ins. by Act 54 of 1994, s. 22 (w.e.f. 14-11-1994).

70. Application for stage carriage permit.—(1) An application for a permit in respect of a stage carriage (in this Chapter referred to as a stage carriage permit) or as a reserve stage carriage shall, as far as may be, contain the following particulars, namely:—

- (a) the route or routes or the area or areas to which the application relates;
- (b) the type and seating capacity of each such vehicle;
- (c) the minimum and maximum number of daily trips proposed to be provided and the time-table of the normal trips.

Explanation.—For the purposes of this section, section 72, section 80 and section 102, “trip” means a single journey from one point to another, and every return journey shall be deemed to be a separate trip;

- (d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;
- (e) the arrangements intended to be made for the housing, maintenance and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage;
- (f) such other matters as may be prescribed.

(2) An application referred to in sub-section (1) shall be accompanied by such documents as may be prescribed.

71. Procedure of Regional Transport Authority in considering application for stage carriage permit.— (1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act:

$$1^* \qquad \qquad \qquad * \qquad \qquad \qquad * \qquad \qquad \qquad * \qquad \qquad \qquad *$$

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the timetable so as to conform to the said provisions.

(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State.

(c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b).

(d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:—

- (i) financial stability of the applicant;
- (ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and
- (iii) such other matters as may be prescribed by the State Government;

1. Proviso omitted by Act 54 of 1994, s. 23 (w.e.f. 14-11-1994).

Provided that, other conditions being equal, preference shall be given to applications for permits from—

(i) State transport undertakings;

(ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; ¹***

(iii) ex-servicemen; ²[or]

²[(iv) any other class or category of persons, as the State government may, for reasons to be recorded in writing consider necessary;]

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Explanation.—For the purposes of this section “company” means any body corporate, and includes a firm or other association of individuals; and “director”, in relation to a firm, means a partner in the firm.

72. Grant of stage carriage permits.—(1) Subject to the provisions of section 71, a Regional Transport Authority may, on an application made to it under section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

(i) that the vehicles shall be used only in a specified area, or on a specified route or routes;

(ii) that the operation of the stage carriage shall be commenced with effect from a specified date;

(iii) the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions;

(iv) that copies of the time-table of the stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

(v) that the stage carriage shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify;

(vi) that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points;

(vii) the maximum number of passengers and the maximum weight of luggage that may be carried on the stage carriage, either generally or on specified occasions or at specified times and seasons;

(viii) the weight and nature of passengers’ luggage that shall be carried free of charge, the total weight of luggage that may be carried in relation to each passenger, and the arrangements that shall be made for the carriage of luggage without causing inconvenience to passengers;

(ix) the rate of charge that may be levied for passengers’ luggage in excess of the free allowance;

(x) that vehicles of a specified type fitted with body conforming to approved specifications shall be used:

Provided that the attachment of this condition to a permit shall not prevent the continued use, for a period of two years from the date of publication of the approved specifications, of any vehicle operating on that date;

1. The word “or” omitted by Act 54 of 1994, s. 23 (w.e.f. 14-11-1994).

2. Ins.by s.23, *ibid.* (w.e.f. 14-11-1994).

3. Sub-sections (4) and (5) omitted by s. 23, *ibid.* (w.e.f. 14-11-1994).

- (xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;
 - (xii) the conditions subject to which goods may be carried in the stage carriage in addition to or to the exclusion of passengers;
 - (xiii) that fares shall be charged in accordance with the approved fare table;
 - (xiv) that a copy of, or extract from, the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on the stage carriage and at specified stands and halts;
 - (xv) that tickets bearing specified particulars shall be issued to passengers and shall show the fares actually charged and that records of tickets issued shall be kept in a specified manner;
 - (xvi) that mails shall be carried on the vehicle subject to such conditions (including conditions as to the time in which mails are to be carried and the charges which may be levied) as may be specified;
 - (xvii) the vehicles to be kept as reserve by the holder of the permit to maintain the operation and to provide for special occasions;
 - (xviii) the conditions subject to which vehicle may be used as a contract carriage;
 - (xix) that specified arrangements shall be made for the housing, maintenance and repair of vehicle;
 - (xx) that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use;
 - (xxi) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;
 - (xxii) that the Regional Transport Authority may, after giving notice of not less than one month,—
 - (a) vary the conditions of the permit;
 - (b) attach to the permit further conditions:
- Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;
- (xxiii) that the holder of a permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may from time to time prescribe;
 - (xxiv) any other conditions which may be prescribed.

73. Application for contract carriage permit.—An application for a permit in respect of a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely:—

- (a) the type and seating capacity of the vehicle;
- (b) the area for which the permit is required;
- (c) any other particulars which may be prescribed.

74. Grant of contract carriage permit.—(1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

- (i) that the vehicles shall be used only in a specified area or on a specified route or routes;
- (ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;
- (iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;
- (iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;
- (v) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;
- (vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maximum shall be charged;
- (vii) that, in the case of motor cabs, a special weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;
- (viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;
- (ix) that the Regional Transport Authority may, after giving notice of not less than one month,—
 - (a) vary the conditions of the permit;
 - (b) attach to the permit further conditions;
- (x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;
- (xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;
- (xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;
- (xiii) any other conditions which may be prescribed.

(3) (a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:—

- (i) financial stability of the applicant;
- (ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and
- (iii) such other matters as may be prescribed by the State Government:

Provided that, other conditions being equal, preference shall be given to applications for permits from—

- (i) the India Tourism Development Corporation;
- (ii) State Tourism Development Corporations;
- (iii) State Tourism Departments;

- (iv) State transport undertakings;
- (v) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;
- (vi) ex-servicemen.

75. Scheme for renting of motor cabs.—(1) The Central Government may, by notification in the Official Gazette, make a scheme for the purpose of regulating the business of renting of ¹[motor cabs or motor cycles to persons desiring to drive either by themselves or through drivers, motor cabs or motor cycles] for their own use and for matters connected therewith.

(2) A scheme made under sub-section (1) may provide for all or any of the following matters, namely:—

- (a) licensing of operators under the scheme including grant, renewal and revocation of such licences;
- (b) form of application and form of licences and the particulars to be contained therein;
- (c) fee to be paid with the application for such licences;
- (d) the authorities to which the application shall be made;
- (e) condition subject to which such licences may be granted, renewed or revoked;
- (f) appeals against orders of refusal to grant or renew such licences and appeals against orders revoking such licences;
- (g) conditions subject to which motor cabs may be rented;
- (h) maintenance of records and inspection of such records;
- (i) such other matters as may be necessary to carry out the purposes of this section.

76. Application for private service vehicle permit.—(1) A Regional Transport Authority may, on an application made to it, grant a private service vehicle permit in accordance with the application or with such modification as it deems fit or refuse to grant such permit:

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) An application for a permit to use a motor vehicle as a private service vehicle shall contain the following particulars, namely:—

- (a) type and seating capacity of the vehicle;
- (b) the area or the route or routes to which the application relates;
- (c) the manner in which it is claimed that the purpose of carrying persons otherwise than for hire or reward or in connection with the trade or business carried on by the applicant will be served by the vehicle; and
- (d) any other particulars which may be prescribed.

(3) The Regional Transport Authority if it decides to grant the permit may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

- (i) that the vehicle be used only in a specified area or on a specified route or routes;
- (ii) the maximum number of persons and the maximum weight of luggage that may be carried;
- (iii) that the Regional Transport Authority may, after giving notice of not less than one month—
 - (a) vary the conditions of the permit;

1. Subs. by Act 54 of 1994, s. 24, for “motor cabs to persons desiring to drive the cabs” (w.e.f. 14-11-1994).

- (b) attach to the permit further conditions;
- (iv) that the conditions of permit shall not be departed from, save with the approval of the Regional Transport Authority;
- (v) that specified standards of comforts and cleanliness shall be maintained in the vehicle;
- (vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, specify; and
- (vii) such other conditions as may be prescribed.

77. Application for goods carriage permit.—An application for a permit to use a motor vehicle for the carriage of goods for hire or reward or for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a goods carriage permit) shall, as far as may be, contain the following particulars, namely:—

- (a) the area or the route or routes to which the application relates;
- (b) the type and capacity of the vehicle;
- (c) the nature of the goods it is proposed to carry;
- (d) the arrangements intended to be made for the housing, maintenance and repair of the vehicle and for the storage and safe custody of the goods;
- (e) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;
- (f) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;
- (g) any other particulars which may be prescribed.

78. Consideration of application for goods carriage permit.—A Regional Transport Authority shall, in considering an application for a goods carriage permit, have regard to the following matters, namely:—

- (a) the nature of the goods to be carried with special reference to their dangerous or hazardous nature to human life;
- (b) the nature of the chemicals or explosives to be carried with special reference to the safety to human life.

79. Grant of goods carriage permit.—(1) A Regional Transport Authority may, on an application made to it under section 77, grant a goods carriage permit to be valid throughout the State or in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a goods carriage permit, may grant the permit and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

- (i) that the vehicle shall be used only in a specified area or on a specified route or routes;
- (ii) that the gross vehicle weight of any vehicle used shall not exceed a specified maximum;
- (iii) that goods of a specified nature shall not be carried;
- (iv) that goods shall be carried at specified rates;

(v) that specified arrangement shall be made for the housing, maintenance and repair of the vehicle and the storage and safe custody of the goods carried;

(vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, prescribe;

(vii) that the Regional Transport Authority may, after giving notice of not less than one month,—

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(viii) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;

(ix) any other conditions which may be prescribed.

(3) The conditions referred to in sub-section (2) may include conditions relating to the packaging and carriage of goods of dangerous or hazardous nature to human life.

80. Procedure in applying for and granting permits.—(1) An application for a permit of any kind may be made at any time.

(2) A ¹[Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act:

Provided that the ¹[Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 71 or of contract carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 74:

Provided further that where a ¹[Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that,—

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

1. Subs. by Act 54 of 1994, s. 25, for “Regional Transport Authority” (w.e.f. 14-11-1994).

(4) A ¹[Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] may, before such date as may be specified by it in this behalf, replace any permit granted by it before the said date by a fresh permit conforming to the provisions of section 72 or section 74 or section 76 or section 79, as the case may be, and the fresh permit shall be valid for the same route or routes or the same area for which the replaced permit was valid:

Provided that no condition other than a condition which was already attached to the replaced permit or which could have been attached thereto under the law in force when that permit was granted shall be attached to the fresh permit except with the consent in writing of the holder of the permit.

(5) Notwithstanding anything contained in section 81, a permit issued under the provisions of sub-section (4) shall be effective without renewal for the remainder of the period during which the replaced permit would have been so effective.

81. Duration and renewal of permits.—(1) A permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective ²[from the date of issuance or renewal thereof] for a period of five years:

Provided that where the permit is countersigned under sub-section (1) of section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:—

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:—

(i) plying any vehicle—

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit

1. Subs. by Act 54 of 1994, s. 25, for “Regional Transport Authority” (w.e.f. 14-11-1994).

2. Subs. by s. 26, *ibid.*, for “without renewal” (w.e.f. 14-11-1994).

has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

82. Transfer of permit.—(1) Save as provided in sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit:

Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

83. Replacement of vehicles.—The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature.

84. General conditions attaching to all permits.—The following shall be conditions of every permit—

(a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;

(b) that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act;

(c) that any prohibition or restriction imposed and any fares or freight fixed by notification made under section 67 are observed in connection with the vehicle to which the permit relates;

(d) that the vehicle to which the permit relates is not driven in contravention of the provisions of section 5 or section 113;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates;

(f) that the provisions of Chapters X, XI and XII so far as they apply to the holder of the permit are observed; and

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

85. General form of permits.—Every permit issued under this Act shall be complete in itself and shall contain all the necessary particulars of the permit and the conditions attached thereto.

86. Cancellation and suspension of permits.—(1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) The transport authority may exercise the powers conferred on it under sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under sub-section (5) of section 68 as if the said permit was a permit granted by the transport authority.

(3) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the action taken.

(4) The powers exercisable under sub-section (1) (other than the power to cancel a permit) by the transport authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub-section (5) of section 68.

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The powers exercisable by the transport authority under sub-section (5) may, where an appeal has been preferred under section 89, be exercised also by the appellate authority.

(7) In relation to a permit referred to in sub-section (9) of section 88, the powers exercisable under sub-section (1) (other than the power to cancel a permit) by the transport authority which granted the permit, may be exercised by any transport authority and any authority or persons to whom power in this behalf has been delegated under sub-section (5) of section 68, as if the said permit was a permit granted by any such authority or persons.

87. Temporary permits.—(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily—

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit,

and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where—

(i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a court or other competent authority restraining the issue

of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension.

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

88. Validation of permits for use outside region in which granted.—(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

Provided also that—

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, in so far as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, ¹[grant a special permit to any public service vehicle including any vehicle covered] by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86²[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

³* * * * *

(11) The following shall be conditions of every permit granted under sub-section (9), namely:—

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government.

(12) Notwithstanding anything contained in sub-section (1), but, subject to the rules that may be made by the Central Government under sub-section (14), the appropriate authority may, for the purpose of

1. Subs. by Act 54 of 1994, s. 27, for “grant a special permit in relation to a vehicle covered” (w.e.f. 14-11-1994).

2. Subs. by s. 27, *ibid*, for “and 89” (w.e.f. 14-11-1994).

3. Sub-section (10) omitted by s. 27, *ibid*. (w.e.f. 14-11-1994).

encouraging long distance inter-State road transport, grant in a State, national permits in respect of goods carriages and the provisions of sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86 ¹[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply to or in relation to the grant of national permits.

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(14) (a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (i) the authorisation fee payable for the issue of a permit referred to in sub-sections (9) and (12);
- (ii) the fixation of the laden weight of the motor vehicle;
- (iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;
- (iv) the colour or colours in which the motor vehicle is to be painted;
- (v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.—In this section,—

(a) “appropriate authority”, in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit;

(b) “authorisation fee” means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) “national permit” means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.

89. Appeals.—(1) Any person—

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit under section 82, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed, may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

³[(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of a

1. Subs. by Act 54 of 1994, s. 27, for “and 89” (w.e.f. 14-11-1994).

2. Sub-section (13) omitted by s. 27, *ibid.* (w.e.f. 14-11-1994).

3. Subs. by s. 28, *ibid.*, for sub-section (2) (w.e.f. 14-11-1994).

District Judge or who is qualified to be a Judge of the High Court and it shall exercise jurisdiction within such area as may be notified by that Government.]

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.

Explanation.—For the removal of doubts, it is hereby declared that when any order is made by the State Transport Authority or the Regional Transport Authority in pursuance of a direction issued by the Inter-State Transport Commission under clause (c) of sub-section (2) of section 63A of the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act, and any person feels aggrieved by such order on the ground that it is not in consonance with such direction, he may appeal under sub-section (1) to the State Transport Appellate Tribunal against such order but not against the direction so issued.

90. Revision.—The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

91. Restriction of hours of work of drivers.—¹[(1) The hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport Workers Act, 1961 (27 of 1961).]

(2) A State Government may, by notification in the Official Gazette, grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) A State Government or, if authorised in this behalf by the State Government by rules made under section 96, the State or a Regional Transport Authority may require persons employing any person whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform to those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons under sub-section (3).

(5) A State Government may prescribe the circumstances under which and the period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

92. Voidance of contracts restrictive of liability.—Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

1. Subs. by Act 54 of 1994, s. 29, for sub-section (1) (w.e.f. 14-11-1994).

93. Agent or canvasser to obtain licence.—(1) No person shall engage himself—

(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting custom for such vehicles, or

(ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriages,

unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government.

(2) The conditions referred to in sub-section (1) may include all or any of the following matters, namely:—

(a) the period for which a licence may be granted or renewed;

(b) the fee payable for the issue or renewal of the licence;

(c) the deposit of security—

(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages;

(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser, and the circumstances under which the security may be forfeited;

(d) the provisions by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the licence may be suspended or revoked;

(f) such other conditions as may be prescribed by the State Government.

(3) It shall be a condition of every licence that no agent or canvasser to whom the licence is granted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication the licence number, the date of expiry of licence and the particulars of the authority which granted the licence.

94. Bar on jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any Civil Court.

95. Power of State Government to make rules as to stage carriages and contract carriages.—(1) A State Government may make rules to regulate, in respect of stage carriages and contract carriages and the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorise the removal from such vehicle of any person contravening the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(c) require a passenger to declare, if so demanded by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket issued therefor;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owners of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;

(g) require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger;

(h) require a passenger not to smoke in any vehicle on which a notice prohibiting smoking is exhibited;

(i) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

96. Power of State Government to make rules for the purposes of this Chapter.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

(i) the period of appointment and the terms of appointment of and the conduct of business by Regional and State Transport Authorities and the reports to be furnished by them;

(ii) the conduct of business by any such authority in the absence of any member (including the Chairman) thereof and the nature of business which, the circumstances under which and the manner in which, business could be so conducted;

(iii) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees;

(iv) the forms to be used for the purposes of this Chapter, including the forms of permits;

(v) the issue of copies of permits in place of permits lost, destroyed or mutilated;

(vi) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;

(vii) the fees to be paid in respect of applications for permits, duplicate permits and plates;

(viii) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;

(ix) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have been cancelled;

(x) the conditions subject to which, and the extent to which, a permit granted in another State shall be valid in the State without countersignature;

(xi) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without countersignature;

(xii) the conditions to be attached to permits for the purpose of giving effect to any agreement such as is referred to in clause (iii) of sub-section (1) of section 67;

(xiii) the authorities to whom, the time within which and the manner in which appeals may be made;

(xiv) the construction and fittings of, and the equipment to be carried by, stage and contract carriage, whether generally or in specified areas;

(xv) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;

(xvi) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

(xvii) the safe custody and disposal of property left in a stage or contract carriage;

(xviii) regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;

(xix) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriage; if used for such purposes;

(xx) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining testing and sealing taxi meters;

(xxi) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place;

(xxii) the requirements which shall be complied with in the construction or use of any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof; the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition;

(xxiii) the regulation of motor cab ranks;

(xxiv) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;

(xxv) authorising specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business;

(xxvi) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;

(xxvii) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;

(xxviii) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit custom for such vehicles;

(xxix) the licensing of agents engaged in the business of collecting for forwarding and distributing goods carried by goods carriages;

(xxx) the inspection of transport vehicles and their contents and of the permits relating to them;

(xxxi) the carriage of persons other than the driver in goods carriages;

(xxxii) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and

(xxxiii) any other matter which is to be or may be prescribed.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

97. Definition.—In this Chapter, unless the context otherwise requires, “road transport service” means a service of motor vehicles carrying passengers or goods or both by road for hire or reward.

98. Chapter to override Chapter V and other laws.—The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law.

99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.—¹[(1)]Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

²[(2)]Notwithstanding anything contained in sub-section (1), when a proposal is published under that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue of till the date of final publication of the scheme under section 100, whichever is earlier.]

100. Objection to the proposal.—(1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal any person may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify such proposal.

(3) The scheme relating to the proposal as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed.

Explanation.—In computing the period of one year referred to in this sub-section, any period or periods during which the publication of the approved scheme under sub-section (3) was held up on account of any stay or injunction by the order of any court shall be excluded.

101. Operation of additional services by a State transport undertaking in certain circumstances.— Notwithstanding anything contained in section 87, a State transport undertaking may, in the public interest operate additional services for the conveyance of the passengers on special occasions such as to and from fairs and religious gatherings:

Provided that the State transport undertaking shall inform about the operation of such additional services to the concerned Transport Authority without delay.

1. Section 99 renumbered as sub-section (1) thereof by Act of 54 of 1994, s. 30 (w.e.f. 14-11-1994).

2. Ins. by s. 30, *ibid.* (w.e.f. 14-11-1994).

102. Cancellation or modification of scheme.—(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving—

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,

an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government.

103. Issue of permits to State transport undertakings.—(1) Where, in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter V.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order,—

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to—

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under sub-section (1) or sub-section (2).

104. Restriction on grant of permits in respect of a notified area or notified route.—Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

105. Principles and method of determining compensation and payment thereof.—(1) Where, in exercise of the powers conferred by clause (b) or clause (c) of sub-section (2) of section 103, any existing permit is cancelled or the terms thereof are modified, there shall be paid by the State transport undertaking to the holder of the permit, compensation, the amount of which shall be determined in accordance with the provisions of sub-section (4) or sub-section (5), as the case may be.

(2) Notwithstanding anything contained in sub-section (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit

for an alternative route or area in lieu thereof has been offered by the State Transport Authority or the Regional Transport Authority, as the case may be and accepted by the holder of the permit.

(3) For the removal of doubts, it is hereby declared that no compensation shall be payable on account of the refusal to renew a permit under clause (a) of sub-section (2) of section 103.

(4) Where, in exercise of the powers conferred by clause (b) or sub-clause (i) or sub-clause (ii) of clause (c) of sub-section (2) of section 103, any existing permit is cancelled or the terms thereof are modified so as to prevent the holder of the permit from using any vehicle authorised to be used thereunder for the full period from which the permit, would otherwise have been effective, the compensation payable to the holder of the permit for each vehicle affected by such cancellation or modification shall be computed as follows:—

- | | |
|--|---------------------|
| (a) for every complete month or part of a month exceeding fifteen days of the unexpired period of the permit | Two hundred rupees; |
| (b) for part of a month not exceeding fifteen days of the unexpired period of the permit | One hundred rupees: |

Provided that the amount of compensation shall, in no case, be less than four hundred rupees.

(5) Where, in exercise of the powers conferred by sub-clause (iii) of clause (c) of sub-section (2) of section 103, the terms of an existing permit are modified so as to curtail the area or route of any vehicle authorised to be used thereunder, the compensation payable to the holder of the permit on account of such curtailment shall be an amount computed in accordance with the following formula, namely:—

$$\frac{YA}{R}$$

Explanation.—In this formula,—

- (i) “Y” means the length or area by which the route or area covered by the permit is curtailed;
- (ii) “A” means the amount computed in accordance with sub-section (4);
- (iii) “R” means the total length of the route or the total area covered by the permit.

(6) The amount of compensation payable under this section shall be paid by the State transport undertaking to the person or persons entitled thereto within one month from the date on which the cancellation or modification of the permit becomes effective:

Provided that where the State transport undertaking fails to make the payment within the said period of one month, it shall pay interest at the rate of seven per cent. per annum from the date on which it falls due.

106. Disposal of article found in vehicles.—Where any article found in any transport vehicle operated by the State transport undertaking is not claimed by its owner within the prescribed period, the State transport undertaking may sell the article in the prescribed manner and the sale proceeds thereof, after deducting the costs incidental to sale, shall be paid to the owner on demand.

107. Power of State Government to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form in which any proposal regarding a scheme may be published under section 99;
- (b) the manner in which objections may be filed under sub-section (1) of section 100;
- (c) the manner in which objections may be considered and disposed of under sub-section (2) of section 100;
- (d) the form in which any approved scheme may be published under sub-section (3) of section 100;

- (e) the manner in which application under sub-section (1) of section 103 may be made;
- (f) the period within which the owner may claim any article found left in any transport vehicle under section 106 and the manner of sale of such article;
- (g) the manner of service of orders under this Chapter;
- (h) any other matter which has to be, or may be, prescribed.

108. Certain powers of State Government exercisable by the Central Government.—The powers conferred on the State Government under this Chapter shall, in relation to a corporation or company owned or controlled by the Central Government or by the Central Government and one or more State Governments, be exercisable only by the Central Government in relation to an inter-State route or area.

CHAPTER VII

CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES

109. General provision regarding construction and maintenance of vehicles.—(1) Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

(2) Every motor vehicle shall be so constructed as to have right hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature.

¹[(3) If the Central Government is of the opinion that it is necessary or expedient so to do in the public interest, it may by order published in the Official Gazette, notify that any article or process used by a manufacturer shall conform to such standard as may be specified in that order.]

110. Power of Central Government to make rules.—(1) The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the following matters, namely:—

- (a) the width, height, length and overhang of vehicles and of the loads carried;
- ²[(b) the size, nature, maximum retail price and condition of tyres, including embossing thereon of date and year of manufacture and the maximum load carrying capacity;]
- (c) brakes and steering gear;
- (d) the use of safety glasses including prohibition of the use of tinted safety glasses;
- (e) signalling appliances, lamps and reflectors;
- (f) speed governors;
- (g) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (h) the reduction of noise emitted by or caused by vehicles;
- (i) the embossment of chassis number and engine number and the date of manufacture;
- (j) safety belts, handle bars of motor cycles, auto-dippers and other equipments essential for safety of drivers, passengers and other road users;
- (k) standards of the components used in the vehicle as inbuilt safety devices;
- (l) provision for transportation of goods of dangerous or hazardous nature to human life;
- (m) standards for emission of air pollutants;
- ³[(n) installation of catalytic convertors in the class of vehicles to be prescribed;
- (o) the placement of audio-visual or radio or tape recorder type of device in public vehicles;

1. Ins. by Act 54 of 1994, s. 31 (w.e.f. 14-11-1994).

2. Subs. by s. 32, *ibid.*, for clause (b) (w.e.f. 14-11-1994).

3. Ins. by s. 32, *ibid.* (w.e.f. 14-11-1994).

(p) warranty after sale of vehicle and norms therefor:]

Provided that any rules relating to the matters dealing with the protection of environment, so far as may be, shall be made after consultation with the Ministry of the Government of India dealing with environment.

(2) Rules may be made under sub-section (1) governing the matters mentioned therein, including the manner of ensuring the compliance with such matters and the maintenance of motor vehicles in respect of such matters, either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances.

(3) Notwithstanding anything contained in this section,—

(a) the Central Government may exempt any class of motor vehicles from the provisions of this Chapter;

(b) a State Government may exempt any motor vehicle or any class or description of motor vehicles from the rules made under sub-section (1) subject to such conditions as may be prescribed by the Central Government.

111. Power of State Government to make rules.—(1) A State Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all matters other than the matters specified in sub-section (1) of section 110.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing all or any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or description or in particular circumstances, namely:—

(a) seating arrangements in public service vehicles and the protection of passengers against the weather;

(b) prohibiting or restricting the use of audible signals at certain times or in certain places;

(c) prohibiting the carrying of appliances likely to cause annoyance or danger;

(d) the periodical testing and inspection of vehicles by prescribed authorities¹[and fees to be charged for such test];

(e) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited;

(f) the use of trailers with motor vehicles; and

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CHAPTER VIII

CONTROL OF TRAFFIC

112. Limits of speed.—(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorised in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected under section 116 at suitable places, fix such

1. Ins. by Act 54 of 1994, s. 33 (w.e.f. 14-11-1994).

2. Clause (g) omitted by s. 33, *ibid.* (w.e.f. 14-11-1994).

maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered under section 60 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (5 of 1938).

113. Limits of weight and limitations on use.—(1) The State Government may prescribe the conditions for the issue of permits for ¹[transport vehicles] by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

114. Power to have vehicle weighed.—(1) ²[Any officer of the Motor Vehicles Department authorized in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113] require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighing; and if on such weighing the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.

115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.

1. Subs. by Act 54 of 1994, s. 34, for “heavy goods vehicles or heavy passenger motor vehicles” (w.e.f. 14-11-1994).

2. Subs. by s. 35, *ibid.*, for certain words and figures (w.e.f. 14-11-1994).

116. Power to erect traffic signs.—(1) (a) The State Government or any authority authorised in this behalf by the State Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice any speed limits fixed under sub-section (2) of section 112 or any prohibitions or restrictions imposed under section 115 or generally for the purpose of regulating motor vehicle traffic.

(b) A State Government or any authority authorised in this behalf by the State Government may, by notification in the Official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Schedule, designate certain roads as main roads for the purposes of the driving regulations made by the Central Government.

(2) Traffic signs placed or erected under sub-section (1) for any purpose for which provision is made in the Schedule shall be of the size, colour and type and shall have the meanings set forth in the Schedule, but the State Government or any authority empowered in this behalf by the State Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the State Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Schedule.

(3) Except as provided by sub-section (1), no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs placed or erected prior to the commencement of this Act by any competent authority shall for the purpose of this Act be deemed to be traffic signs placed or erected under the provisions of sub-section (1).

(4) A State Government may, by notification in the Official Gazette, empower any police officer not below the rank of a Superintendent of Police to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading or which in his opinion is likely to distract the attention or concentration of the driver.

(5) No person shall wilfully remove, alter, deface, or in any way tamper with, any traffic signs placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case within twenty-four hours of the occurrence.

(7) For the purpose of bringing the signs set forth in ¹[the First Schedule] in conformity with any International Convention relating to motor traffic to which the Central Government is for the time being a party, the Central Government may, by notification in the Official Gazette, make any addition or alteration to any such sign and on the issue of any such notification, ¹[the First Schedule] shall be deemed to be amended accordingly.

117. Parking places and halting stations.—The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

118. Driving regulations.—The Central Government may, by notification in the Official Gazette, make regulations for the driving of motor vehicles.

119. Duty to obey traffic signs.—(1) Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by mandatory traffic sign and in conformity with the driving regulations made by the Central Government, and shall comply with all directions given to him by any police officer for the time being engaged in the regulation of traffic in any public place.

(2) In this section “mandatory traffic sign” means a traffic sign included in Part A of the Schedule, or any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device,

1. Subs. by Act 54 of 1994, s. 36, for “the Schedule” (w.e.f. 14-11-1994).

word or figure and having a red ground or border) placed or erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 116.

120. Vehicles with left hand control.—No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left-hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

121. Signals and signalling devices.—The driver of a motor vehicle shall make such signals and on such occasions as may be prescribed by the Central Government:

Provided that the signal of an intention to turn to the right or left or to stop—

(a) in the case of a motor vehicle with a right-hand steering control, may be given by a mechanical or electrical device of a prescribed nature affixed to the vehicle; and

(b) in the case of a motor vehicle with a left hand steering control, shall be given by a mechanical or electrical device of a prescribed nature affixed to the vehicle:

Provided further that the State Government may, having regard to the width and condition of the roads in any area or route, by notification in the Official Gazette, exempt subject to such conditions as may be specified therein any motor vehicle or class or description of motor vehicles from the operation of this section for the purpose of plying in that area or route.

122. Leaving vehicle in dangerous position.—No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

123. Riding on running board, etc.—(1) No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

(2) No person shall travel on the running board or on the top or on the bonnet of a motor vehicle.

124. Prohibition against travelling without pass or ticket.—No person shall enter or remain in any stage carriage for the purposes of travelling therein unless he has with him a proper pass or ticket:

Provided that where arrangements for the supply of tickets are made in the stage carriage by which a person has to travel, a person may enter such stage carriage but as soon as may be after his entry therein, he shall make the payment of his fare to the conductor or the driver who performs the functions of a conductor and obtain from such conductor or driver, as the case may be, a ticket for his journey.

Explanation.—In this section,—

(a) “pass” means a duty, privilege or courtesy pass entitling the person to whom it is given to travel in a stage carriage gratuitously and includes a pass issued on payment for travel in a stage carriage for the period specified therein;

(b) “ticket” includes a single ticket, a return ticket or a season ticket.

125. Obstruction of driver.—No person driving a motor vehicle shall allow any person to stand or sit or to place anything in such a manner or position as to hamper the driver in his control of the vehicle.

126. Stationary vehicles.—No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver’s seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

127. Removal of motor vehicles abandoned or left unattended on a public place.—¹[(1) Where any motor vehicle is abandoned, or left unattended, on a public place for ten hours or more or is parked in

1. Subs. by Act 54 of 1994, s. 37, for sub-section (1) (w.e.f. 14-11-1994).

a place where parking is legally prohibited, its removal by a towing service or its immobilisations by any means including wheel clamping may be authorised by a police officer in uniform having jurisdiction.]

(2) Where an abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the ¹[public place], or its physical appearance is causing the impediment to the traffic, its immediate removal from the ¹[public place] by a towing service may be authorised by a police officer having jurisdiction.

(3) Where a vehicle is authorised to be removed under sub-section (1) or sub-section (2) by a police officer, the owner of the vehicle shall be responsible for all towing costs, besides any other penalty.

128. Safety measures for drivers and pillion riders.—(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear ²[protective headgear conforming to the standards of Bureau of Indian Standards]:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.—“Protective headgear” means a helmet which,—

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.

130. Duty to produce licence and certificate of registration.—(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgment issued by such officer or authority in respect thereof and thereafter produce the licence within such period, in such manner as the Central Government may prescribe to the police officer making the demand.

³[(2) The conductor, if any, of a motor vehicle on any public place shall on demand by any officer of the Motor Vehicles Department authorised in this behalf, produce the licence for examination.]

⁴[(3) The owner of a motor vehicle (other than a vehicle registered under section 60), or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any other officer of the Motor Vehicles Department duly authorised in this behalf, produce the certificate of insurance of the vehicle and, where the vehicle is a transport vehicle, also the certificate of fitness referred to in section 56 and the permit; and if any or all of the certificates or the permit are not in his possession, he shall, within fifteen days from the date of demand, submit photo copies of the same, duly attested in person or send the same by registered post to the officer who demanded it.

1. Subs. by Act 54 of 1994, s. 37, for “highway” (w.e.f. 14-11-1994).

2. Subs. by s. 38, *ibid.*, for certain words (w.e.f. 14-11-1994).

3. Subs. by s. 39, *ibid.*, for sub-section (2) (w.e.f. 14-11-1994).

4. Subs. by s. 39, *ibid.*, for sub-section (3) (w.e.f. 14-11-1994).

Explanation.—For the purposes of this sub-section, "certificate of insurance" means the certificate issued under sub-section (3) of section 147.]

(4) If the licence referred to in sub-section (2) or the certificates or permit referred to in sub-section (3), as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates or permit within such period in such manner as the Central Government may prescribe, to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

131. Duty of the driver to take certain precautions at unguarded railway level crossing.—Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.

132. Duty of driver to stop in certain cases.—(1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as ¹[may for such reasonable time as may be necessary, but not exceeding twenty-four hours]—

²[(a) when required to do so by any police officer not below the rank of a Sub-Inspector in uniform, in the event of the vehicle being involved in the occurrence of an accident to a person, animal or vehicle or of damage to property, or]

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

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and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 184 give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

133. Duty of owner of motor vehicle to give information.—The owner of a motor vehicle, the driver or conductor of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the State Government, give all information regarding the name and address of, and the licence held by, the driver or conductor which is in his possession or could by reasonable diligence be ascertained by him.

134. Duty of driver in case of accident and injury to a person.—When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, ⁴[by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and

1. Subs. by Act 54 of 1994, s. 40, for "may reasonably be necessary" (w.e.f. 14-11-1994).

2. Subs. by s. 40, *ibid.*, for clause (a) (w.e.f. 14-11-1994).

3. Clause (c) omitted by s. 40, *ibid.* (w.e.f. 14-11-1994).

4. Subs. by s. 41, *ibid.*, for "and if necessary, convey him to the nearest hospital" (w.e.f. 14-11-1994).

render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

¹[(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

- (i) insurance policy number and period of its validity;
- (ii) date, time and place of accident;
- (iii) particulars of the persons injured or killed in the accident;
- (iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section the expression “driver” includes the owner of the vehicle.]

135. Schemes to be framed for the investigation of accident cases and wayside amenities, etc.—

(1) The State Government may, by notification in the Official Gazette, make one or more schemes to provide for—

- (a) an in depth study on causes and analysis of motor vehicle accidents;
- (b) wayside amenities on highways;
- (c) traffic aid posts on highways; and
- (d) truck parking complexes along highways.

(2) Every scheme made under this section by any State Government shall be laid, as soon as may be after it is made, before the State Legislature.

136. Inspection of vehicle involved in accident.—When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the State Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination:

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned ²[after completion of the formalities to the owner, driver or the person in charge of the vehicle within twenty-four hours].

137. Power of Central Government to make rules.—The Central Government may make rules to provide for all or any of the following matters, namely:—

- (a) the occasions on which signals shall be made by drivers of motor vehicles and such signals under section 121;
- (b) the manner in which the licences and certificates may be produced to the police officer under section 130.

138. Power of State Government to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 137.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;

1. Ins. by Act 54 of 1994, s. 41 (w.e.f. 14-11-1994).

2. Subs. by s. 42, *ibid.*, for “without unnecessary delay” (w.e.f. 14-11-1994).

- (b) the installation and use of weighing devices;
- (c) the maintenance and management of wayside amenities complexes;
- (d) the exemption from all or any of the provisions of this Chapter of fire brigade vehicles, ambulances and other special classes or descriptions of vehicle, subject to such conditions as may be prescribed;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving downhill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of foot-paths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be, or may be, prescribed.

CHAPTER IX

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING INDIA

139. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely:—

- (a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of India to any place outside India or to persons temporarily proceeding out of India to any place outside India and desiring to drive a motor vehicle during their absence from India;
- (b) prescribing the conditions subject to which motor vehicles brought temporarily into India from outside India by persons intending to make a temporary stay in India may be possessed and used in India; and
- (c) prescribing the conditions subject to which persons entering India from any place outside India for a temporary stay in India may drive motor vehicles in India.

(2) For the purpose of facilitating and regulating the services of motor vehicles operating between India and any other country under any reciprocal arrangement and carrying passengers or goods or both by road for hire or reward, the Central Government may, by notification in the Official Gazette, make rules with respect to all or any of the following matters, namely:—

- (a) the conditions subject to which motor vehicles carrying on such services may be brought into India from outside India and possessed and used in India;
- (b) the conditions subject to which motor vehicles may be taken from any place in India to any place outside India;
- (c) the conditions subject to which persons employed as drivers and conductors of such motor vehicles may enter or leave India;
- (d) the grant and authentication of travelling passes, certificates or authorisations to persons employed as drivers and conductors of such motor vehicles;
- (e) the particulars (other than registration marks) to be exhibited by such motor vehicles and the manner in which such particulars are to be exhibited;
- (f) the use of trailers with such motor vehicles;
- (g) the exemption of such motor vehicles and their drivers and conductors from all or any of the provisions of this Act [other than those referred to in sub-section (4)] or the rules made thereunder;

(h) the identification of the drivers and conductors of such motor vehicles;

(i) the replacement of the travelling passes, certificates or authorisations, permits, licences or any other prescribed documents lost or defaced, on payment of such fee as may be prescribed;

(j) the exemption from the provisions of such laws as relate to customs, police or health with a view to facilitate such road transport services;

(k) any other matter which is to be, or may be, prescribed.

(3) No rule made under this section shall operate to confer on any person any immunity in any State from the payment of any tax levied in that State on motor vehicles or their users.

(4) Nothing in this Act or in any rule made thereunder by a State Government relating to:—

(a) the registration and identification of motor vehicles, or

(b) the requirements as to construction, maintenance and equipment of motor vehicles, or

(c) the licensing and the qualifications of drivers and conductors of motor vehicles,

shall apply—

(i) to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) or under sub-section (2) apply; or

(ii) to any conductor of a motor vehicle to whom any rules made under sub-section (2) apply.

CHAPTER X

LIABILITY WITHOUT FAULT IN CERTAIN CASES

140. Liability to pay compensation in certain cases on the principle of no fault.—(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of ¹[fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of ²[twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

³[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]

1. Subs. by Act 54 of 1994, s. 43, for “twenty-five thousand rupees” (w.e.f. 14-11-1994).

2. Subs. by s. 43, *ibid.*, for “twelve thousand rupees” (w.e.f. 14-11-1994).

3. Ins. by s. 43, *ibid.* (w.e.f. 14-11-1994).

141. Provisions as to other right to claim compensation for death or permanent disablement.—

(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to ¹[any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter)] in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

142. Permanent disablement.—For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving—

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

143. Applicability of Chapter to certain claims under Act 8 of 1923.—The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in sub-section (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

144. Overriding effect.—The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

CHAPTER XI

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions.—In this Chapter,—

(a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972, (57 of 1972) and any Government insurance fund authorised to do general insurance business under that Act;

(b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

1. Subs. by Act 54 of 1994, s. 44, for “any other right (hereafter)” (w.e.f. 14-11-1994).

(c) “liability”, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140;

(d) “policy of insurance” includes “certificate of insurance”;

(e) “property” includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile- stones;

(f) “reciprocating country” means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter;

(g) “third party” includes the Government.

146. Necessity for insurance against third party risk.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

¹[Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).]

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking;

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.—For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

1.Ins. by Act 54 of 1994, s. 45 (w.e.f. 14-11-1994).

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily¹[injury to any person, including owner of the goods or his authorized representative carried in the vehicle]or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

1. Subs. by Act 54 of 1994, s. 46, for "injury to any person" (w.e.f. 14-11-1994).

148. Validity of policies of insurance issued in reciprocating countries.—Where, in pursuance of an arrangement between India and any reciprocating country, any motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 147 but subject to any rules which may be made under section 164, such policy of insurance shall be effective throughout the route or area in respect of which, the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy)¹[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled

1. Ins. by Act 54 of 1994, s. 47 (w.e.f. 14-11-1994).

to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expressions “material fact” and “material particular” means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so at what premium and on what conditions and the expression “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.—For the purpose of this section, “Claims Tribunal” means a Claims Tribunal constituted under section 165 and “award” means an award made by that Tribunal under section 168.

150. Rights of third parties against insurers on insolvency of the insured.—(1) Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor’s rights against the insurer in respect of that liability shall,

notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

151. Duty to give information as to insurance.—(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

152. Settlement between insurers and insured persons.—(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

153. Saving in respect of sections 150, 151 and 152.—(1) For the purposes of sections 150, 151 and 152 a reference to “liabilities to third parties” in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of sections 150, 151 and 152 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

154. Insolvency of insured persons not to affect liability of insured or claims by third parties.—Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 150 shall, notwithstanding anything contained in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 147; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 150, 151 and 152 on the person to whom the liability was incurred.

155. Effect of death on certain causes of action.—Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

156. Effect of certificate of insurance.—When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate

157. Transfer of certificate of insurance.—(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

¹[*Explanation.*—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance

1. Ins. by Act 54 of 1994, s. 48 (w.e.f. 14-11-1994).

and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

158. Production of certain certificates, licence and permit in certain cases.—(1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce—

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving licence; and

(d) in the case of a transport vehicle, also the certificate of fitness referred to in section 56 and the permit, relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving licence and permit referred to in sub-section (1) to a police officer, he shall produce the said certificates, licence and permit at the police station at which he makes the report required by section 134.

(3) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression “produce his certificate of insurance” means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 146.

¹[(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.]

159. Production of certificate of Insurance on application for authority to use vehicle.—A State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 146 does not apply.

1. Subs. by Act 54 of 1994, s. 49, for sub-section (6) (w.e.f. 14-11-1994).

160. Duty to furnish particulars of vehicle involved in accident.—A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any damaged in such form and within such time as the Central Government may prescribe.

161. Special provisions as to compensation in case of hit and run motor accident.—(1) For the purposes of this section, section 162 and section 163—

(a) “grievous hurt” shall have the same meaning as in the Indian Penal Code (45 of 1860);

(b) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) “scheme” means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of ¹[twenty-five thousand rupees];

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of ²[twelve thousand and five hundred rupees].

(4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

162. Refund in certain cases of compensation paid under section 161.—(1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the tribunal, court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such tribunal, court or other authority shall,—

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

1. Subs. by Act 54 of 1994, s. 50, for “eight thousand and five hundred rupees” (w.e.f. 14-11-1994).

2. Subs. by s. 50, *ibid.*, for “two thousand rupees” (w.e.f. 14-11-1994).

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation.—For the purposes of this sub-section, an application for compensation under section 161 shall be deemed to be pending—

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

163. Scheme for payment of compensation in case of hit and run motor accidents.—(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that—

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

¹[**163A. Special provisions as to payment of compensation on structured formula basis.**—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

163B. Option to file claim in certain cases.— Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both.]

164. Power of Central Government to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter, other than the matters specified in section 159.

1. Ins. by Act 54 of 1994, s. 51 (w.e.f. 14-11-1994).

- (2) Without prejudice to the generality of the foregoing power, such rules may provide for—
- (a) the forms to be used for the purposes of this Chapter;
 - (b) the making of applications for and the issue of certificates of insurance;
 - (c) the issue of duplicates to replace certificates of insurance lost, destroyed or mutilated;
 - (d) the custody, production, cancellation and surrender of certificates of insurance;
 - (e) the records to be maintained by insurers of policies of insurance issued under this Chapter;
 - (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter;
 - (g) the furnishing of information respecting policies of insurance by insurers;
 - (h) adopting the provisions of this Chapter to vehicles brought into India by persons making only a temporary stay therein or to vehicles registered in a reciprocating country and operating on any route or within any area in India by applying those provisions with prescribed modifications;
 - (i) the form in which and the time limit within which the particulars referred to in section 160 may be furnished; and
 - (j) any other matter which is to be, or may be, prescribed.

CHAPTER XII

CLAIMS TRIBUNALS

165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140¹[and section 163A].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

- (a) is, or has been, a Judge of a High Court, or
- (b) is, or has been, a District Judge, or
- (c) is qualified for appointment as a Judge of a High Court¹[or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

1. Added by Act 54 of 1994, s. 52 (w.e.f. 14-11-1994).

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

¹[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

²* * * * *

³[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims

1. Subs. by Act 54 of 1994, s. 53, for sub-section (2) (w.e.f. 14-11-1994).

2. Sub-section (3) omitted by s. 53, *ibid.* (w.e.f. 14-11-1994).

3. Subs. by s. 53, *ibid.*, for sub-section (4) (w.e.f. 14-11-1994).

Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

170. Impleading insurer in certain cases.—Where in the course of any inquiry, the Claims Tribunal is satisfied that—

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

171. Award of interest where any claim is allowed.—Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

172. Award of compensatory costs in certain cases.—(1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act, may in any case where it is satisfied for reasons to be recorded by it in writing that—

(a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular, or

(b) any party or insurer has put forward a false or vexatious claim or defence,

such Tribunal may make an order for the payment, by the party who is guilty of mis-representation or by whom such claim or defence has been put forward of special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees.

(3) No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such mis-representation, claim or defence as is referred to in sub-section (1).

(4) Any amount awarded by way of compensation under this section in respect of any mis-representation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation in respect of such mis-representation, claim or defence.

173. Appeals.—(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

174. Recovery of money from insurer as arrear of land revenue.—Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled

to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

175. Bar on jurisdiction of Civil Courts.—Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

176. Power of State Government to make rules.—A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:—

- (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
- (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
- (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
- (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
- (e) any other matter which is to be, or may be, prescribed.

CHAPTER XIII

OFFENCES, PENALTIES AND PROCEDURE

177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

178. Penalty for travelling without pass or ticket and for dereliction of duty on the part of conductor and refusal to ply contract carriage, etc.—(1) Whoever travels in a stage carriage without having a proper pass or ticket with him or being in or having alighted from a stage carriage fails or refuses to present for examination or to deliver up his pass or ticket immediately on a requisition being made therefor, shall be punishable with fine which may extend to five hundred rupees.

Explanation.—In this section, “pass” and “ticket” have the meanings respectively assigned to them in section 124.

(2) If the conductor of a stage carriage, or the driver of a stage carriage performing the functions of a conductor in such stage carriage, whose duty is—

- (a) to supply a ticket to a person travelling in a stage carriage on payment of fare by such person, either wilfully or negligently,—
 - (i) fails or refuses to accept the fare when tendered, or
 - (ii) fails or refuses to supply a ticket, or
 - (iii) supplies an invalid ticket, or
 - (iv) supplies a ticket of a lesser value, or

(b) to check any pass or ticket, either wilfully or negligently fails or refuses to do so, he shall be punishable with fine which may extend to five hundred rupees.

(3) If the holder of a permit or the driver of a contract carriage refuses, in contravention of the provisions of this Act or rules made thereunder, to ply the contract carriage or to carry the passengers, he shall,—

- (a) in the case of two-wheeled or three-wheeled motor vehicles, be punishable with fine which may extend to fifty rupees; and

(b) in any other case, be punishable with fine which may extend to two hundred rupees.

179. Disobedience of orders, obstruction and refusal of information.—(1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall, if no other penalty is provided for the offence be punishable with fine which may extend to five hundred rupees.

(2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

180. Allowing unauthorised persons to drive vehicles.—Whenever, being the owner or person in charge of a motor vehicle, causes, or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

181. Driving vehicles in contravention of section 3 or section 4.—Whoever, drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

182. Offences relating to licences.—(1) Whoever, being disqualified under this Act for holding or obtaining a driving licence drives a motor vehicle in a public place or in any other place, or applies for or obtains a driving licence or, not being entitled to have a driving licence issued to him free of endorsement, applies for or obtains a driving licence without disclosing the endorsement made on a driving licence previously held by him shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both, and any driving licence so obtained by him shall be of no effect.

(2) Whoever, being disqualified under this Act for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place or applies for or obtains a conductor's licence or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect.

¹[**182A. Punishment for offences relating to construction and maintenance of vehicles.**—Any person who contravenes the provisions of sub-section (3) of section 109, shall be punishable with a fine of five thousand rupees for any subsequent offence.]

183. Driving at excessive speed, etc.—(1) Whoever, drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine which may extend to one thousand rupees.

(2) Whoever, causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to three hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub-section, with fine which may extend to five hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical device.

1. Ins. by Act 54 of 1994, s. 54 (w.e.f. 14-11-1994).

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without contravening the speed limits referred to in section 112 be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

184. Driving dangerously.—Whoever, drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

185. Driving by a drunken person or by a person under the influence of drugs.—Whoever, while driving, or attempting to drive, a motor vehicle,—

¹[(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or]

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle.

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

186. Driving when mentally or physically unfit to drive.—Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for the first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

187. Punishment for offences relating to accident.—Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

188. Punishment for abetment of certain offences.—Whoever abets the commission of an offence under section 184, section 185 or section 186 shall be punishable with the punishment provided for the offence.

189. Racing and trails of speed.—Whoever without the written consent of the State Government permits or takes part in a race or trial of speed of any kind between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

190. Using vehicle in unsafe condition.—(1) Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person

1. Subs. by Act 54 of 1994, s. 55, for clause (a) (w.e.f. 14-11-1994).

knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air- pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

(3) Any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the provisions of this Act or the rules made thereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be punishable for the first offence which may extend to three thousand rupees, or with imprisonment for a term which may extend to one year, or with both, and for any second or subsequent offence with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

191. Sale of vehicle in or alteration of vehicle to condition contravening this Act.—Whoever being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter VII or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter VII or any rule made thereunder shall be punishable with fine which may extend to five hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

¹[**192. Using vehicle without registration.**—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

192A. Using vehicle without permit—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the court may for reasons to be recorded, impose a lesser punishment.

1.Subs. by Act 54 of 1994, s. 55, for section 192 (w.e.f. 14-11-1994).

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.]

193. Punishment of agents and canvassers without proper authority.—Whoever engages himself as an agent or canvasser in contravention of the provisions of section 93 or of any rules made thereunder shall be punishable for the first offence with fine which may extend to one thousand rupees and for any second or subsequent offence with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

194. Driving vehicle exceeding permissible weight.—¹[(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.]

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

195. Imposition of minimum fine under certain circumstances.—(1) Whoever having been convicted of an offence under this Act or the rules made thereunder commits a similar offence on a second or subsequent occasion within three years of the commission of the previous offence, no court shall, except for reasons to be recorded by it in writing, impose on him a fine of less than one-fourth of the maximum amount of the fine impossible for such offence.

(2) Nothing in sub-section (1) shall be construed as restricting the power of the court from awarding such imprisonment as it considers necessary in the circumstances of the case not exceeding the maximum specified in this Act in respect of that offence.

196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

197. Taking vehicle without authority.—(1) Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Provided that no person shall be convicted under this section if the Court is satisfied that such person acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

(2) Whoever, unlawfully by force or threat of force or by any other form of intimidation, seizes or exercises control of a motor vehicle, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) Whoever attempts to commit any of the acts referred to in sub-section (1) or sub-section (2) in relation to any motor vehicle, or abets the commission of any such act, shall also be deemed to have committed an offence under sub-section (1) or, as the case may be, sub-section (2).

1. Subs. by Act 54 of 1994, s. 57, for sub-section (1) (w.e.f. 14-11-1994).

198. Unauthorised interference with vehicle.—Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

199. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

200. Composition of certain offences.—(1) Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186,¹[section 189, sub-section (2) of section 190]; section 191, section 192, section 194, section 196 or section 198 may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

201. Penalty for causing obstruction to free flow of traffic.—(1) Whoever keeps a disabled vehicle on any public place, in such a manner, so as to cause impediment to the free flow of traffic, shall be liable for penalty up to fifty rupees per hour, so long as it remains in that position:

Provided that the vehicle involved in accidents shall be liable for penalty only from the time of completion of inspection formalities under the law.

²[Provided further that where the vehicle is removed by a Government agency, towing charges shall be recovered from the vehicle owner or person in-charge of such vehicle.]

³[(2) Penalties or towing charges under this section shall be recovered by such officer or authority as the State Government may, by notification in the Official Gazette, authorise.]

202. Power to arrest without warrant.—(1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

1. Subs. by Act 54 of 1994, s. 58, for “section 189” (w.e.f. 14-11-1994).

2. Ins. by s. 59, *ibid.* (w.e.f. 14-11-1994).

3. Subs. by s. 59, *ibid.*, for sub-section (2) (w.e.f. 14-11-1994).

¹[(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.]

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

203. Breath tests.—²[(1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorised in this behalf by that Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185:

Provided that requirement for breath test shall be made (unless, it is made) as soon as reasonably practicable after the commission of such offence.]

(2) If a motor vehicle is involved in an accident in a public place and a police officer in uniform has any reasonable cause to suspect that the person who was driving the motor vehicle at the time of the accident, had alcohol in his blood or that he was driving under the influence of a drug referred to in section 185 he may require the person so driving the motor vehicle, to provide a specimen of his breath for a breath test:—

(a) in the case of a person who is at a hospital as an indoor patient, at the hospital,

(b) in the case of any other person, either at or near the place where the requirement is made, or, if the police officer thinks fit, at a police station specified by the police officer:

Provided that a person shall not be required to provide such a specimen while at a hospital as an indoor patient if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) If it appears to a police officer in uniform, in consequence of a breath test carried out by him on any person under sub-section (1) or sub-section (2), that the device by means of which the test has been carried out indicates the presence of alcohol in the person's blood, the police officer may arrest that person without warrant except while that person is at a hospital as an indoor patient.

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

(5) A person arrested under this section shall while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.

(6) The results of a breath test made in pursuance of the provisions of this section shall be admissible in evidence.

Explanation.—For the purposes of this section, “breath test”, means a test for the purpose of obtaining an indication of the presence of alcohol in a person's blood carried out, on one or more specimens of breath provided by that person, by means of a device of a type approved by the Central Government, by notification in the Official Gazette, for the purpose of such a test.

204. Laboratory test.—(1) A person, who has been arrested under section 203 may, while at a police station, be required by a police officer to provide to such registered medical practitioner as may be produced by such police officer, a specimen of his blood for a Laboratory test,—

(a) it appears to the police officer that the device, by means of which breath test was taken in relation to such person, indicates the presence of alcohol in the blood of such person, or

1. Subs. by Act 54 of 1994, s. 60, for sub-section (2) (w.e.f. 14-11-1994).

2. Subs. by s. 61, *ibid.*, for sub-section (1) (w.e.f. 14-11-1994).

(b) such person, when given the opportunity to submit to a breath test, has refused, omitted or failed to do so:

Provided that where the person required to provide such specimen is a female and the registered medical practitioner produced by such police officer is a male medical practitioner, the specimen shall be taken only in the presence of a female, whether a medical practitioner or not.

(2) A person while at a hospital as an indoor patient may be required by a police officer to provide at the hospital a specimen of his blood for a laboratory test:—

(a) if it appears to the police officer that the device by means of which test is carried out in relation to the breath of such person indicates the presence of alcohol in the blood of such person, or

(b) if the person having been required, whether at the hospital or elsewhere, to provide a specimen of breath for a breath test, has refused, omitted or failed to do so and a police officer has reasonable cause to suspect him of having alcohol in his blood:

Provided that a person shall not be required to provide a specimen of his blood for a laboratory test under this sub-section if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of such specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) The results of a laboratory test made in pursuance of this section shall be admissible in evidence.

Explanation.—For the purposes of this section, “laboratory test” means the analysis of a specimen of blood made at a laboratory established, maintained or recognised by the Central Government or a State Government.

205. Presumption of unfitness to drive.—In any proceeding for an offence punishable under section 185 if it is proved that the accused, when requested by a police officer at any time so to do, had refused, omitted or failed to consent to the taking of or providing a specimen of his breath for a breath test or a specimen of his blood for a laboratory test, his refusal, omission or failure may, unless reasonable cause therefor is shown, be presumed to be a circumstance supporting any evidence given on behalf of the prosecution, or rebutting any evidence given on behalf of the defence, with respect to his condition at that time.

206. Power of police officer to impound document.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code (45 of 1860), seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgment given under sub-section (3).

(3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgment, whichever is earlier:

Provided that if any magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned

to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgment.

207. Power to detain vehicles used without certificate of registration permit, etc.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

208. Summary disposal of cases.—(1) The Court taking cognizance of any offence (other than an offence which the Central Government may by rules specify in this behalf) under this Act,—

- (i) may, if the offence is an offence punishable with imprisonment under this Act; and
- (ii) shall, in any other case,

state upon the summons to be served on the accused person that he—

- (a) may appear by pleader or in person; or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge and remit to the Court, by money order, such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify, and the plea of guilt indicated in the money order coupon itself:

Provided that the Court shall, in the case of any of the offences referred to in sub-section (2), state upon the summons that the accused person, if he pleads guilty, shall so plead in the manner specified in clause (b) and shall forward his driving licence to the Court with his letter containing such plea.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified by the Central Government by rules for the purposes of this sub-section, the Court shall, if the accused person pleads guilty to the charge and forward his driving licence to the Court with the letter containing his plea, make an endorsement of such conviction on his driving licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1), or as the case may be, sub-sections (1) and (2), no further proceedings in respect of the offence shall be taken against him nor shall he be liable, notwithstanding anything to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

209. Restriction on conviction.—No person prosecuted for an offence punishable under section 183 or section 184 shall be convicted unless—

- (a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or
- (b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by

registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing, in this section shall apply where the Court is satisfied that—

(a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.

210. Courts to send intimation about conviction.—Every Court by which any person holding a driving licence is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, shall send intimation to—

(a) the licensing authority which issued the driving licence, and

(b) the licensing authority by whom the licence was last renewed,

and every such intimation shall state the name and address of the holder of the licence, the licence number, the date of issue and renewal of the same, the nature of the offence, the punishment awarded for the same and such other particulars as may be prescribed.

CHAPTER XIV

MISCELLANEOUS

211. Power to levy fee.—Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.

212. Publication, commencement and laying of rules and notifications.—(1) The power to make rules under this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

(3) Every rule made by any State Government shall be laid, as soon as may be after it is made before the State Legislature.

(4) Every rule made by the Central Government under this Act, every scheme made by the Central Government under sub-section (1) of section 75 and sub-section (1) of section 163 and every notification issued by the Central Government under sub-section (4) of section 41, sub-section (1) of section 58, sub-section (1) of section 59, the proviso to sub-section (1) of section 112, ¹[sub-section (4) of section 163A] and sub-section (4) of section 213 shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, scheme or notification or both Houses agree that the rule or scheme should not be made or the notification should not be issued, the rule, scheme or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or

1. Ins. by Act 54 of 1994, s. 62 (w.e.f. 14-11-1994).

annulment shall be without prejudice to the validity of anything previously done under that rule, scheme or notification.

213. Appointment of motor vehicles officers.—(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under sub-section (3), such officer as may be empowered by the State Government in this behalf shall also have the power to,—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept:

Provided that,—

(i) any such search without a warrant shall be made only by an officer of the rank of a gazetted officer;

(ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;

(iii) where the search is made without a warrant, the gazetted officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed;

(e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any court;

(f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under section 94 of that Code.

214. Effect of appeal and revision on orders passed by original authority.—(1) Where an appeal has been preferred or an application for revision has been made against any order passed by an original

authority under this Act, the appeal or the application for revision shall not operate as a stay of the order passed by the original authority and such order shall remain in force pending the disposal of the appeal or the application for revision, as the case may be, unless the prescribed appellate authority or revisional authority otherwise directs.

(2) Notwithstanding anything contained in sub-section (1), if an application made by a person for the renewal of permit has been rejected by the original authority and such person has preferred an appeal or made an application for revision under this Act against such rejection, the appellate authority or, as the case may be, the revisional authority may by order direct that the permit shall, notwithstanding the expiration of the term specified therein, continue to be valid until the appeal or application for revision is disposed of.

(3) No order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority, as the case may be, that such error, omission or irregularity has, in fact, occasioned a failure of justice.

215. Road Safety Councils and Committees.—(1) The Central Government may, by notification in the Official Gazette, constitute for the country a National Road Safety Council consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

(2) A State Government may, by notification in the Official Gazette, constitute for the State a State Road Safety Council consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

(3) A State Government may, by notification in the Official Gazette, constitute District Road Safety Committee for each district in the State consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

(4) The Councils and Committees referred to in this section shall discharge such functions relating to the road safety programmes as the Central Government or the State Government, as the case may be, may, having regard to the objects of the Act, specify.

216. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

217. Repeal and savings.—(1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by sub-section (1) of the repealed enactments,—

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act;

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with the provision of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under sub-section (6) of section 41 of this Act is issued;

(e) any scheme made under section 68C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of section 100 of this Act;

(f) the permits issued under sub-section (1A) of section 68F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provision, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactments may be recovered in the manner provided by or under this Act, but without prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

¹**[217A. Renewal of permits, driving licences and registration granted under the Motor Vehicles Act, 1939.**—Notwithstanding the repeal by sub-section (1) of section 217 of the enactments referred to in that sub-section, any certificate of fitness or registration or licence or permit issued or granted under the said enactments may be renewed under this Act.]

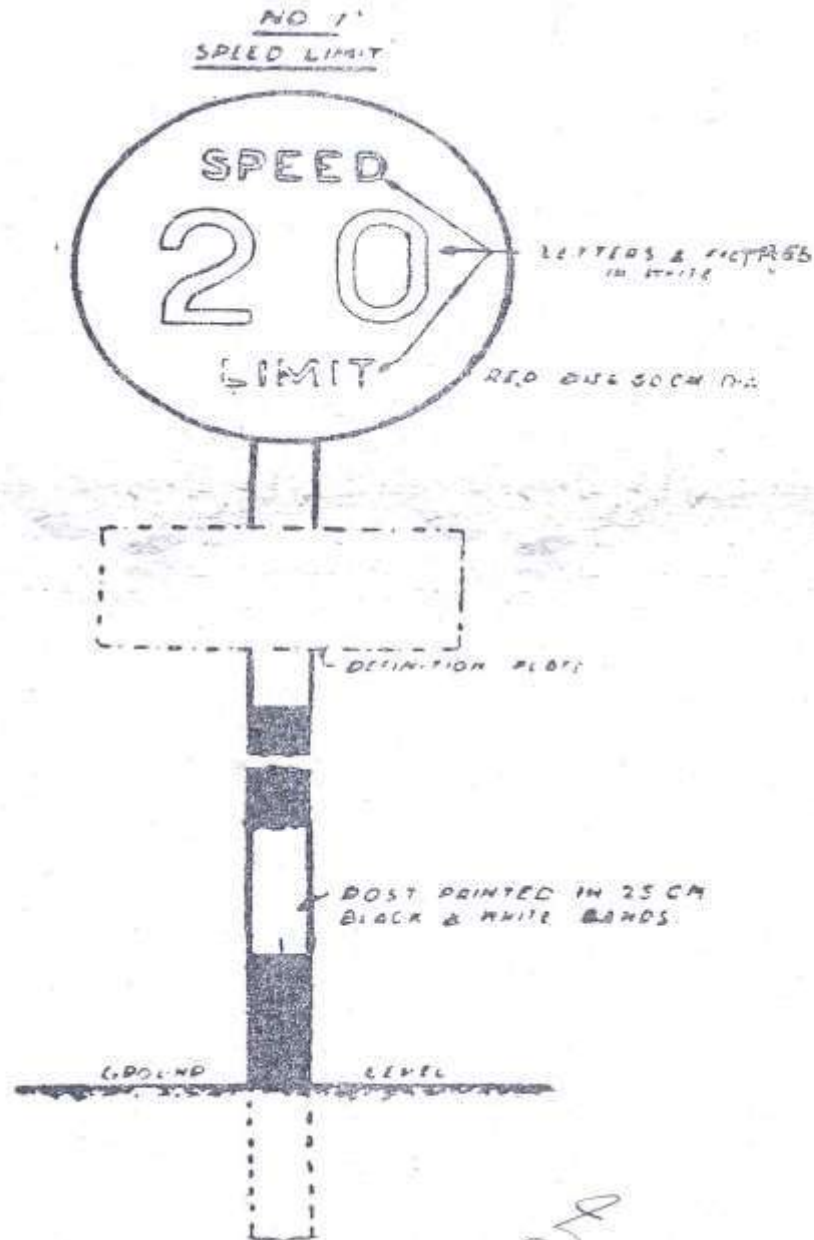
1. Ins. by Act 27 of 2000, s. 5 (w.e.f. 11-8-2000).

¹[THE FIRST SCHEDULE]

(See sections 116 and 119)

TRAFFIC SIGNS

Part A.—Mandatory Signs



Notes—(1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.

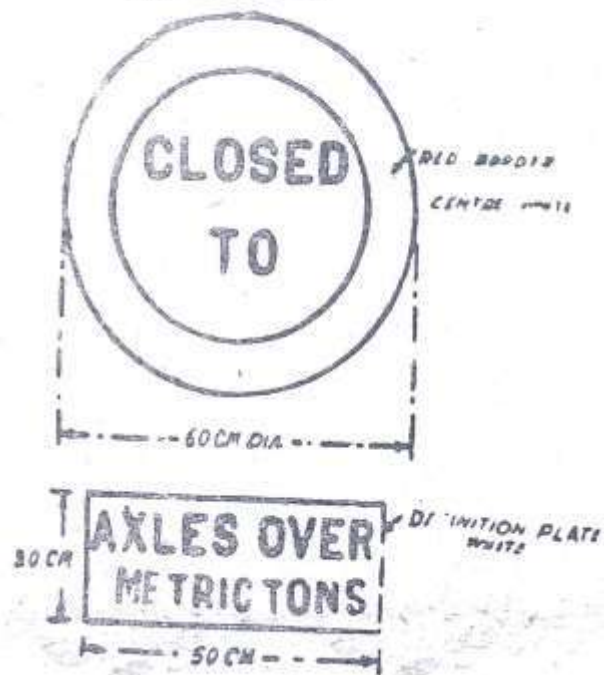
(2) The general design of the post is given for guidance.

(3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle, the class or classes will be specified on the “definition plate”. Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies, will be specified on the “definition plate”.

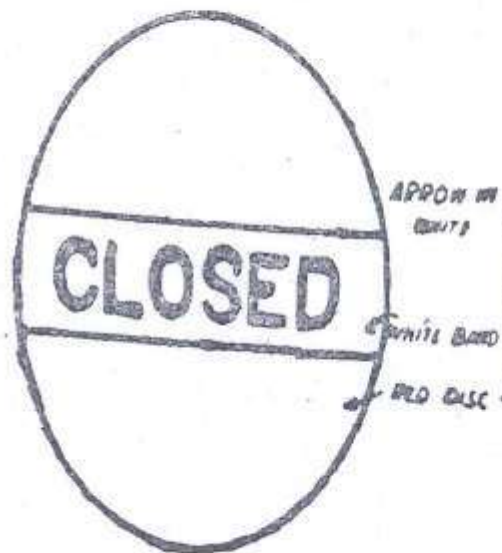
(4) The paints to be used on the traffic signs should be of reflecting kind.

1. The Schedule renumbered as the First Schedule thereof by Act 54 of 1994, s. 63 (w.e.f. 14-11-1994).

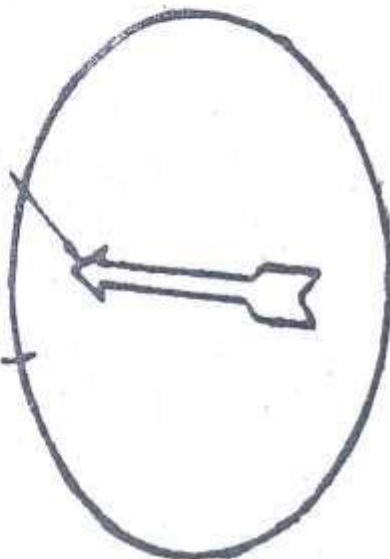
NO. 2
WEIGHT LIMIT



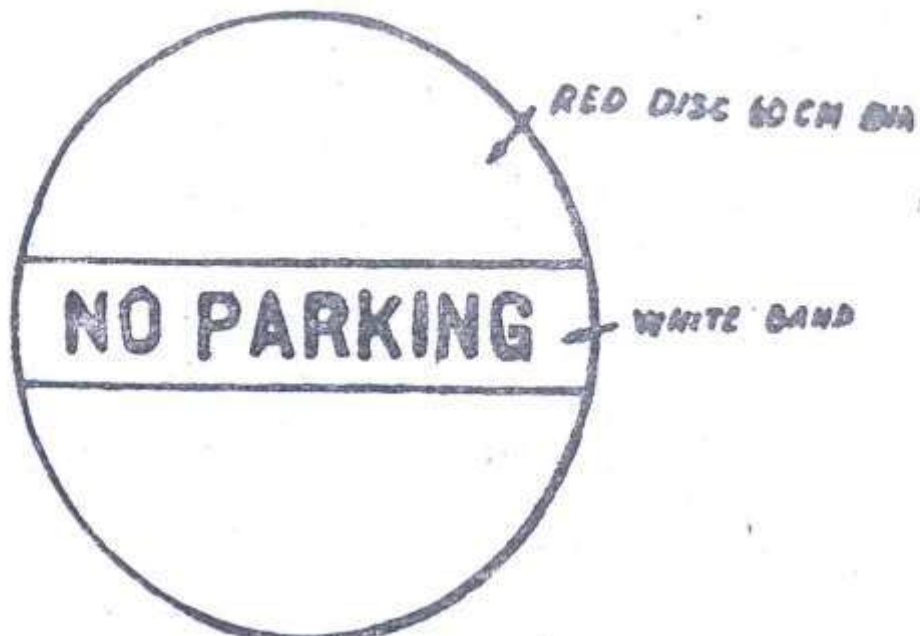
NO. 3
TOTAL PROHIBITION



NO. 4
DIRECTION SIGN

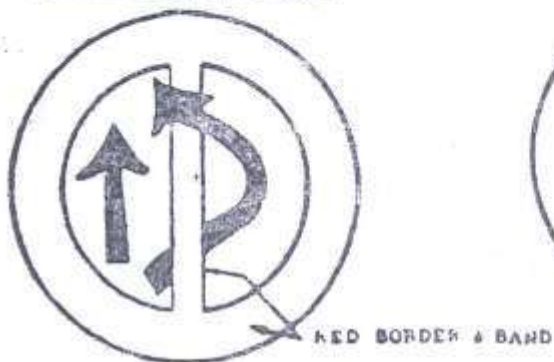


NO. 5¹
NO PARKING



Note.—Sign NO.5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in sign No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.

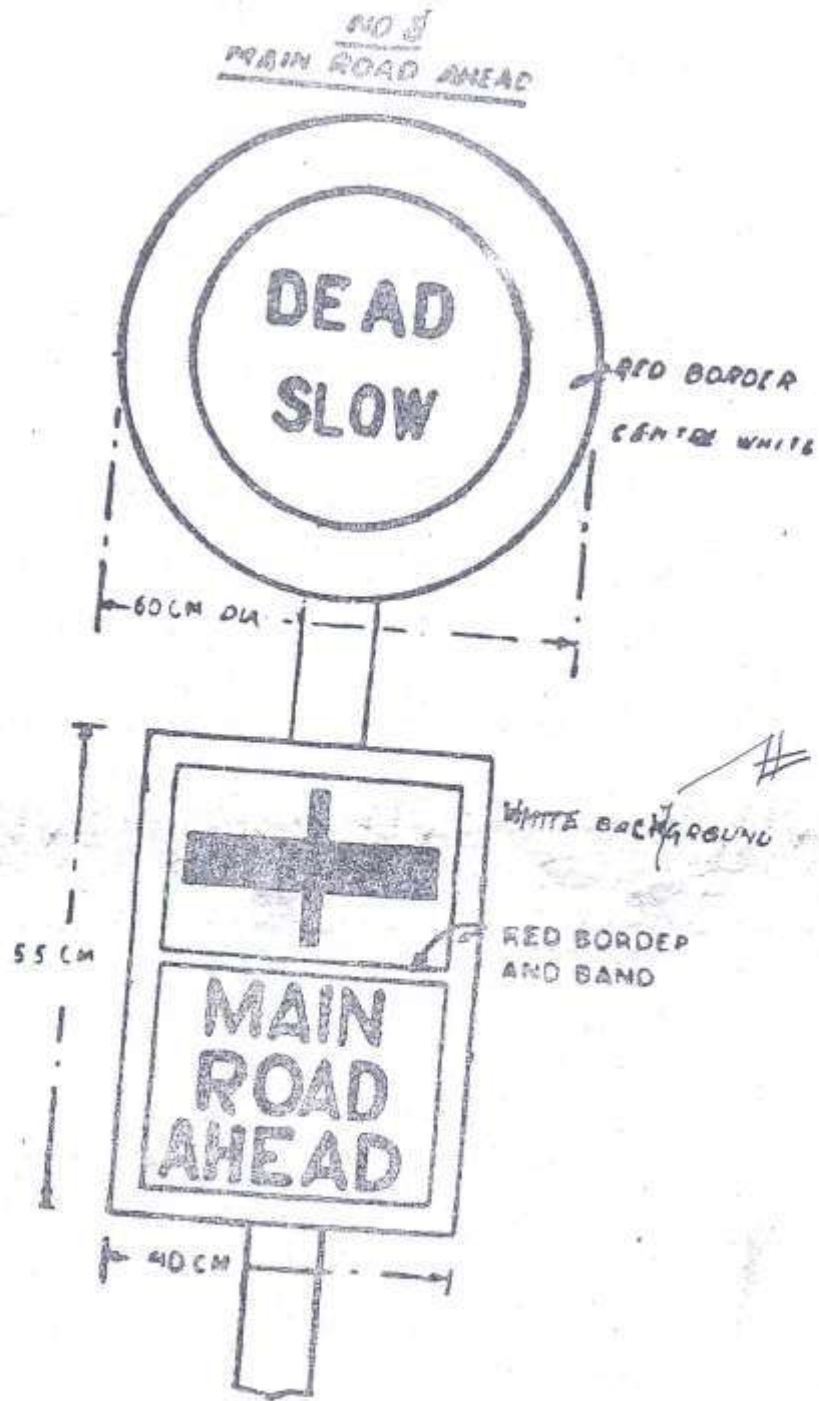
NO. 6
OVERTAKING PROHIBITED



2 (NO. 7)
USE OF SOUND SIGNALS PROHIBITED

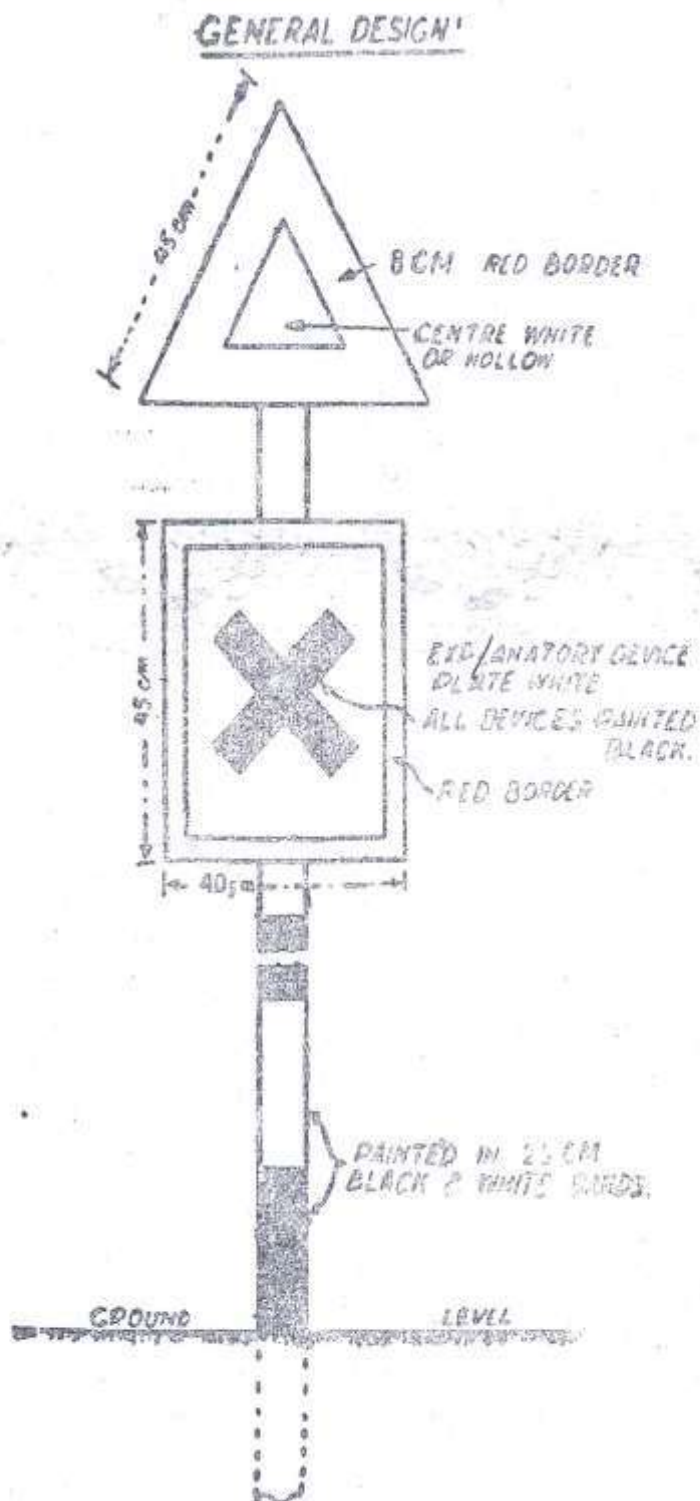


Cross and border—Red
Background—White
Device—Black.



Part B.—Cautionary Signs

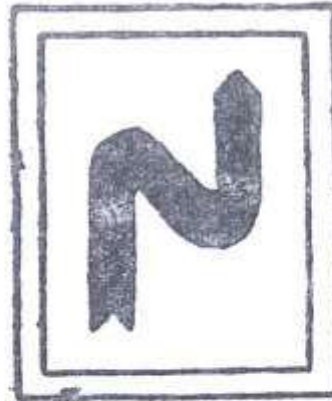
The signs of this Part shall be used in conjunction with a red triangular plate, the centre of which shall be either bollow or painted white, in the manner indicated in the general design reproduced below.



NO. 1
ROUGH ROAD



NO. 2
ZIG-ZAG (RIGHT)



ROAD BORDER

NO. 2
ZIG-ZAG (LEFT)

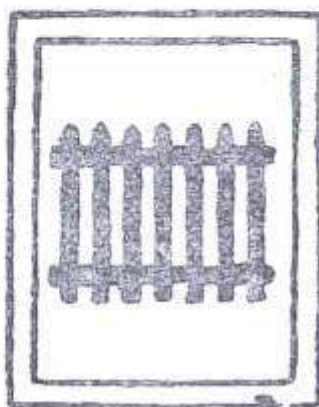


ROAD BORDER

NO. 3
CROSS ROADS

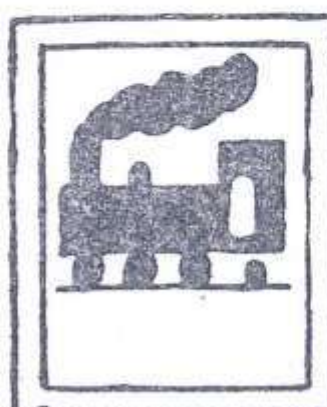


NO. 4
LEVEL CROSSING
(GUARDED)



ROAD BORDER

NO. 5
LEVEL CROSSING
(UNGUARDED)



NO. 5
RIGHT TURN



NO. 6
LEFT TURN



RED BORDER

NO. 7
SCHOOL

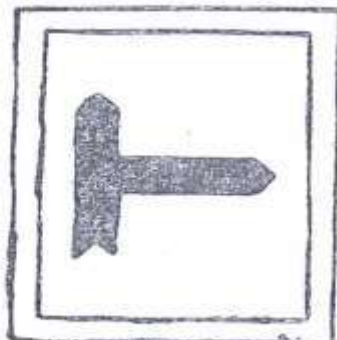


NO. 8
DEAD END CROSS ROAD



RED BORDER

NO. 9
SIDE ROAD (RIGHT)

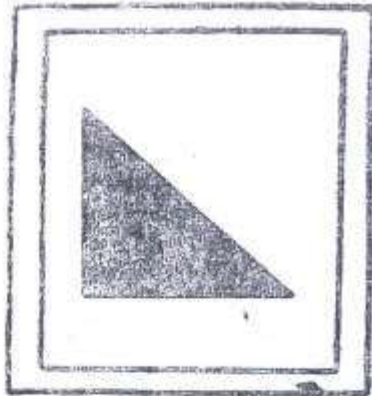


NO. 9
SIDE ROAD (LEFT)

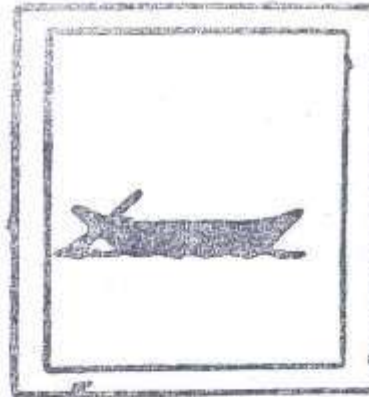


RED BORDER

NO. 10
STEEP HILL



NO. 11
FERRY



RED BORDER

NO. 12
HAIR PIN BEND (RIGHT)

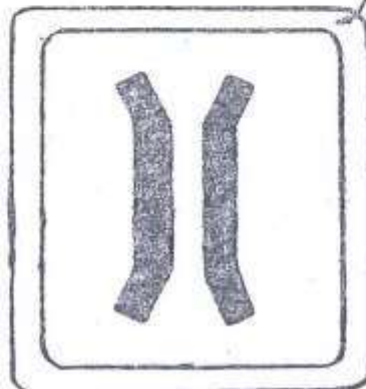


NO. 12
HAIR PIN BEND (LEFT)



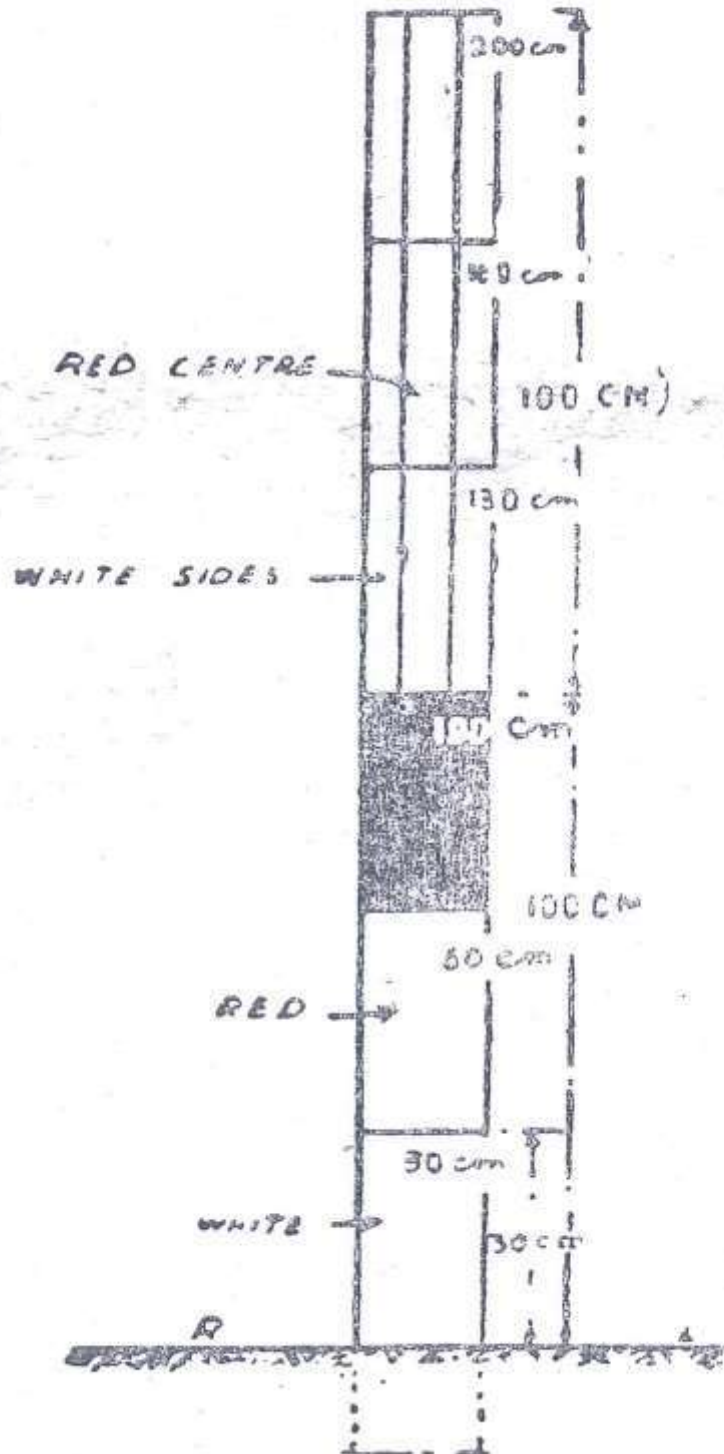
RED BORDER

NO. 13
NARROW BRIDGE

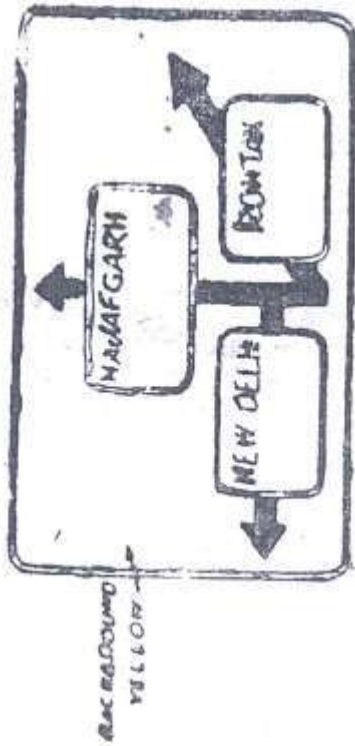


RED BORDER

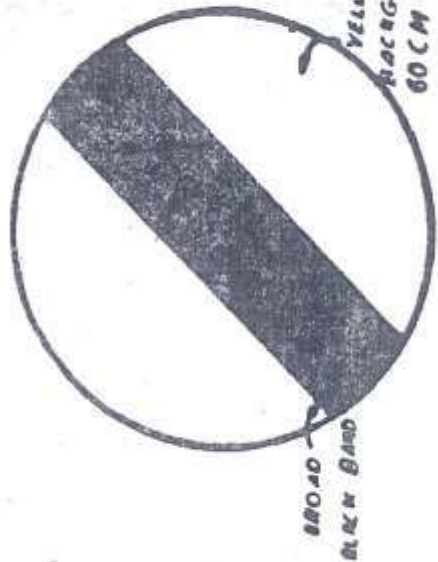
NO. 1
FLOOD GAUGE
SIDE ELEVATION



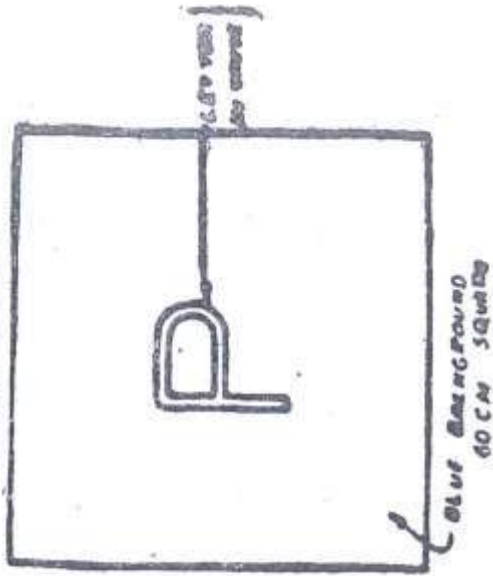
NO. 2
ROAD JUNCTION APPROACH



NO. 3
END OF SPEED LIMIT



NO. 4
PARKING SIGN



¹[THE SECOND SCHEDULE
(See Section 163 A)

SCHEDULE FOR COMPENSATION FOR THIRD PART FATAL ACCIDENT/INJURY CASES CLAIMS

1. Fatal Accidents:

Annual Income		Rs. 3000	Rs. 4200	Rs. 5400	Rs. 6600	Rs. 7800	Rs. 9000	Rs. 10200	Rs. 11400	Rs. 12000	Rs. 18000	Rs. 24000	Rs. 36000	Rs. 40000
AGE OF VICTIM	MULTIPLIER	RUPEES IN THOUSANDS												
compensation in case of death														
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Up to 15 yrs.	.....15	60	84	108	132	156	180	204	228	240	360	480	720	800
Above 15 yrs. but not exdgd. 20 yrs.	.....16	57	79.8	102	125.4	148.2	171	193.8	216.6	228	342	456	684	760
Above 20 yrs. but not exdgd. 25 yrs.	.....17	54	75.6	97.2	118.8	140.4	162	183.6	205.2	216	324	432	648	720
Above 25 yrs. but not exdgd. 30 yrs.	.....18	51	71.4	91.8	112.2	132.6	153	173.4	193.8	204	306	408	612	680
Above 30 yrs. but not exdgd. 35 yrs.	.....17	50	67.2	86.4	105.6	124.8	144	163.2	192.4	192	288	384	576	640
Above 35 yrs. but not exdgd. 40 yrs.	.....16	50	63	81	99	117	135	153	171	180	270	360	540	600
Above 40 yrs. but not exdgd. 45 yrs.	.....15	50	58.8	75.6	92.4	109.2	126	142.8	159.6	168	252	336	504	560
Above 45 yrs. but not exdgd. 50 yrs.	.....13	50	50.4	64.8	79.2	93.6	108	122.4	136.8	144	216	286	432	480
Above 50 yrs. but not exdgd. 55 yrs.	.....11	50	50	54	66	78	90	102	114	120	180	240	360	400
Above 55 yrs. but not exdgd. 60 yrs.	.....8	50	50	50	52.8	62.4	72	81.6	91.2	96	114	192	286	320
Above 60 yrs. but not exdgd. 65 yrs.	.....5	50	50	50	50	50	54	61.2	68.4	72	108	144	216	240
Above 65 yrs.	.....5	50	50	50	50	50	50	51	57	60	90	120	180	200

NOTE: The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1 /3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.

2. Amount of compensation shall not be less than Rs. 50,000.

3. General Damages (in case of death):

The following General Damages shall be payable in addition to compensations outlined above:

- (i) Funeral expenses -- Rs. 2,000/-
- (ii) Loss of Consortium, if beneficiary is the spouse -- Rs. 5,000/-
- (iii) Loss of Estate -- Rs. 2,500/-
- (iv) Medical Expenses—Actual expenses incurred before death supported by bills/vouchers but not exceeding -- Rs. 15, 000/-

4. General Damages in case of Injuries and Disabilities:

- (i) Pain and Sufferings
 - (a) Grievous injuries -- Rs. 5,000/-
 - (b) Non-grievous injuries -- Rs. 1,000/-

1. Ins. by Act 54 of 1994, s. 64 (w.e.f. 14-11-1994).

(ii) Medical Expenses—Actual expenses incurred supported by bills/vouchers but not exceeding —Rs. 15,000/- as one time payment

5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

PLUS either of the following:—

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement /Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

6. Notional income for compensation to those who had no income prior to accident:—

Fatal and disability in non-fatal accidents:—

(a) Non-earning persons

—Rs. 15,000 p.a.

(b) Spouse

—Rs. 1/3rd of income of the earning/surviving spouse.

In case of other injuries only "general damage" as applicable.]