CIVIL RULES AND ORDERS OF THE SUPREME COURT OF BANGLADESH HIGH COURT DIVISION, DACCA.

Volume I.

PART I—RULES RELATING TO THE CIVIL PROCEDURE CODE.

CHAPTER I

COURT-HOURS, CAUSE LIST, PLEADINGS, PETITIONS, ETC.

I. General.

1. (i) The ordinary hours of sitting for all Courts on week days except Saturdays, shall be from 10-30 a.m. to 4-30 p.m. and on Saturdays from 10-30 a.m. to 1-30 p.m.

(ii) On week days (except Saturday) there shall ordinarily be an interval (not exceeding half an hour) at about 1-30 p.m. On Friday there shall be a break of one hour and a half from 12-30 p.m. to 2 p.m.

(iii) During the month of Ramazan, Courts may rise at 3-30 p.m. on week days and at 1-30 p.m. on Saturdays.

(iv) Judicial Officers shall not close their Courts even for half a day except on the days indicated in the list of Holidays prescribed under section 15 of the Civil Courts Act, 1887, without the previous permission of the Supreme Court, High Court Division. In case of emergency, instructions in General Letter No. 13 of 1935 should be followed.

2. The Judicial work of the day shall be taken up punctually at the hour prescribed by the above rule *i.e.*, at 10-30 a.m. and shall have precedence over all other works. In no circumstances are presiding Judges to permit their administrative or departmental work to interfere with the strict observance of this rule.

Note :—By "Judicial work" in this rule is meant the actual trial of cases or proceedings fixed for, or which come up for hearing on the day, or hearing of interlocutory masters arising out of them.

3. The hearing of a case taken up before the closing hour of the Court may be continued for a short period after that hour, but no new case should be taken up after the hour that the Court is timed to rise.

4. Administrative or departmental work should be done either before the sitting, or after the rising hour, or after the disposal of the day's judicial work (*vide* Note to rule 2) on the Bench, should it occur earlier. On days when the administrative work to be done is heavy, presiding Judges may rise half an hour earlier for the purpose.

5. The presiding Judge shall insert in the Diary [Form No. (R) 12] with his own hand (i) his hour of arrival in office, (ii) the hour at which he takes his seat for judicial work, (iii) the hours between which administrative work is done, and (iv) the hour of rising.

6. (1) The working hours in every Judicial office shall ordinarily be from half an hour before, till half an hour after, the sitting hours as fixed by rule 1 (i).

2. It is the duty of every Judge to insist on the punctual attendance of all members of the establishment at the hour prescribed by this rule, on the entry in the Attendance Register of the hour of arrival and departure of each member, and on the prompt and regular despatch of all official business for which any and every member is responsible.

Note.—(a) The Sheristadar is generally responsible for seeing that ministerial officers attend punctually at the prescribed hour, and, that they commence work promptly and do not leave before the hour fixed. The P. O. or the Sheristadar may detain any employee beyond the fixed hour.

As to the more important duties of the Sheristadar, *see* rule 871.

(b) The Attendance Register should be examined punctually at 10-05 a. m. by the Sheristadar, who should note in red ink the fact of any officer's late attendance. The Attendance Register should be laid everyday before the presiding Judge for his signature.

(c) Any ministerial officer arriving more than ten minutes after the above hours should be asked to sign the Attendance Register in the Sheristadar's presence and to see the presiding Judge at his chamber during the midday recess.

7. No judicial work (*ex-parte* or otherwise) involving trial of cases or hearing of petitions shall be done in chambers or at the residences of judicial officers.

8. Without the consent of parties, and in the absence of urgent necessity, no civil trial should proceed on Sundays or gazetted holidays:

Provided that on such days, the Court shall not refuse to do any act or make any order urgently required which may with propriety be done or made out of Court.

9. The District Judge may direct that during the Civil Court Vacation, a special officer with sufficient pecuniary jurisdiction shall deal with applications for execution of decrees which are extremely emergent in their nature and that such decrees be transferred for execution to such officer's file immediately before the closing of the Courts for the holidays by the Courts which passed them.

10. Plaints, memoranda of appeals, original petitions and applications for execution of decrees must be presented during the Court hours specified in rule 1(i).

Explanation—"Original petition" means a petition whereby any proceeding other than a suit or appeal or a proceeding in execution of a decree or order is instituted in a Court.

11. Parties should, where practicable, file pleadings, applications, etc., and affidavits preferably type-written.

12. A diary in the prescribed form No. (R) 12 to be called the "Diary of the Court of at " shall be maintained by each Civil Court in the following manner :—

(1) Each case fixed for any day shall be entered in advance immediately upon a date or adjourned date being fixed, each such entry showing the purpose for which it is set down on each date.

Note—The purpose should be indicated by suitable headings written in red ink, *e.g.*, for filing deficit Court-fee., final disposal at first hearing ascertaining whether suit will be defended, filing written statement, Settlement of issues. Compliance with orders regarding discovery, admission, etc. Investigation of pauperism, Substitution of heirs, Compromise, Hearing of interlocutory application (state nature), Commissioner's report, Filing award, Settling the final or peremptory date of hearing, Peremptory hearing, Argument, Judgment, Orders, etc., etc.

When fresh summonses have to be issued for non-service, death of party or other reasons, such cases are to be entered under the heading "For issue of process" or "For appearance of defendant" as the case may be.

(2) The topmost heading should be "For peremptory hearing" and under each heading should be grouped separately each class of cases in their chronological order according to the dates of their institution.

Note—In determining the age of a case, no account should be taken of the date of its restoration or receipt on remand or by transfer.

(3) Appeals and Miscellaneous cases should also be shown in the Diary in the above manner. Execution cases should be noted last of all, also arranged according to their class and in chronological order.

(4) The Diary will be so arranged as to mark a clear division between defended and undefended cases. Cases on the undefended list should also be shown under suitable headings as above grouped separately class by class and arranged in their chronological order.

Note 1—When a defendant fails to appear on the first date fixed and service of summons is proved, the case, if not disposed of for any reason on that day, will go to the undefended list of the adjourned date in the Diary.

Note 2—In this connection *see* paragraph 7, Civil Suit Instructions Manual.

(5) Progress made in each case shall be shown briefly under each date as also the reason for adjournment and at whose instance.

(6) The number of witnesses examined in each case shall appear in the appropriate column.

(7) A running total in red ink shall be inserted from day to day with the object of showing the total number of witnesses examined during each quarter of the year, a new serial number for them being started at the beginning of each quarter.

(8) An Officer who on any day performs criminal duties in addition to his work as a civil judicial officer, shall note in the Diary for that day how his time has been distributed between these two classes of work, fractions below one quarter of a day being disregarded.

(9) The presiding Judge shall insert with his own hand in the appropriate place the hours of attendance, etc, as required by rule 5 and the hour of sitting or rising, if unusually late or early on any day, shall be accompanied by a short note, explaining the reason for such late or short sitting.

(10) The Diary shall be signed each day by the presiding Judge after a careful scrutiny on completion of all the entries therein.

Note 1—All the above instructions contained in the clause of this rule are intended to be most rigidly followed and are not to be allowed to be reduced to a formality. In particular, details required by sub-rule 9 (*vide* rule 5) shall be representative of actual facts.

Note 2—As to maintenance of Diary and proper arrangement of cases, *see* further paragraph 21, Civil Suit Instructions Manual, 1935.

13. (1) A Daily Cause List in the prescribed Form No. (M) 2 shall be posted in some conspicuous part of every court-house for the information of the parties, their Advocates and the public. Cases and appeals shall be shown in the order in which they appear in the Diary. Execution and Miscellaneous cases may be shown either in the same list or separately. The list shall be prepared and posted not later than 1 p.m. on the working day preceding that to which the list relates. For the purposes of this list, a case is sufficiently indicated by its number, year and class.

Note—Judgments ready for delivery should be notified on the Cause List for the day.

(2) At the close of the day, entries should be made in the Daily Cause List showing in addition (a) the results of all cases disposed of, (b) dates or adjourned dates fixed during the day of cases not disposed of, and (c) any order requiring specific action.

Note 1—Lists shall remain posted for three days after which they shall be filed in office. At the end of each quarter, the lists of the previous quarter shall be destroyed.

Note 2—Owing to the difficulties known to be experienced in maintaining the lists as laid down above, the Supreme Court (High Court Division) favour the maintenance of a register in the same form in which the necessary entries shall be made from day to day and signed by the presiding Judges as indicated above. The register shall be laid at some conspicuous place in the Court-room everyday at the specified hours for inspection by parties and Advocates.

14. A Register in the prescribed Form No. (R) 37 shall be maintained in every Court showing the processes, process-fees and other costs due from the parties and the latest date of filing. It shall be daily written up by the clerks concerned and signed by the presiding Judge below the last entry for each day and laid at some conspicuous place in the court-room between the hours of 1 and 5 p.m. for inspection by parties or their Advocates.

15. For sealing judgments, writs, decrees, processes, sale certificates, certificates of non-satisfaction of decrees and copies, etc., the regular seal of the Court shall be used, by all judicial officers. In any other connection, smaller seals as supplied should be used.

Note 1—The utmost care is to be exercised over the custody of the above and of all other seals in the possession of a Court, including the date seal.

Note 2—A name seal, if in use, shall remain in the personal custody of the presiding Judge, whose name it bears, and shall either be used with his own hand or by someone in his immediate presence under his direction.

16. No document or proceeding required to be presented to or filed in Court which is sent by post or telegraph shall be received or filed in Court. If a cover is found to contain such a document it should be returned with a note of the reason for returning it. The Court has, however, a discretion to accept, if sent by post, a document not required to be presented to or filed in Court.

2. Pleadings, Petitions and Affidavits.

A.—PLEADINGS, PETITIONS, ETC.

17. All pleadings, memoranda of appeals, original petitions, affidavits, vakalatnamas, applications and papers of a similar character presented to the Court shall be—

(1) Written type-written or printed fairly and legibly on foolscap water-marked paper, known as "Pie" "or cartridge" or "demi" paper, obtainable from the Treasury and sold by all licensed stamp vendors, one side of the paper only being used and a quarter margin together with at least one and a half inches of open space being left at the top and bottom of each sheet.

Note—Pleadings and other papers which are written illegibly or cannot be easily read should be returned to be written legibly (G. L. No. 13 of 1919 and G. L. No. 3 of 1931). In case the supply position of Cartridge papers becomes unsatisfactory the instructions laid down in Circular Letter No. 2366-79-G, dated 15th April, 1952 may be followed.

(2) Verified strictly in the manner prescribed by Or.6, r. 15, C.P. Code, where verification is required;

(3) couched in proper language;

(4) dated and signed by the person presenting and also, where necessary, by such other person as may by law be required to sign them;

(5) signed by the scribe or typist who shall state the capacity in which he writes or types them and if he is the registered clerk of a legal practitioner his registered number also.

Note 1—A mukhtar is not permitted to sign pleadings.

Note 2—As to striking out and amendment of pleadings, *see* paragraphs 14 and 15, Civil Suit Instructions Manual, 1935.

18. The registered address for service filed with every pleading (whether by the plaintiff or the defendant) under Or. 6, r. 14-A shall state the following particulars:—

(1) the name of street, lane or section and number or the house (if any);

(2) the name of the town or village ;

(3) the post office ;

(4) police-station ;

(5) the district.

19. All petitions requiring judicial investigation or determination unless filed with an affidavit in support thereof should be verified in the manner prescribed by Or. 6, r. 15.

20. Every interlineation, erasure or correction in a petition or pleading shall be initialled by the party or recognized agent or Advocate presenting it. In case of and affidavit, such authentication shall be made by the initials of the Commissioner concerned. Numbers should be expressed in figures, and when Bengali or other local dates are given in any pleading, petition, affidavit, etc., they should ordinarily be followed by the corresponding English dates.

21. (1) In every pleading, petition, etc., names of parties should bear consecutive numbers and a separate line should be allotted to the name and description of each person.

(2) These numbers should not be changed, and in the event of death of a party during pendency of the suit or proceeding, his heirs or representatives, if more than one, should be shown by sub-numbers. Where fresh parties are brought in they are to be numbered consecutively to the plaintiffs or defendants, as the case may be, already in the suit. Where any party whose name is entered in the register of suits dies or fresh parties are added, the necessary correction should be made in the Register forthwith.

22. The Court should satisfy itself as to the identity of every person presenting a pleading, affidavit or petition, who is not an advocate or mukhtar or registered clerk.

23. (1) Every petition or pleading shall state concisely and clearly :—

(a) the facts, matters and circumstances upon which the applicant relies;

(b) the matter of complaint, if any, and the specific relief sought or the prayer made ;

but not arguments or any irrelevant matter.

Note—Petitions containing argumentative matter (*e.g.*, quotations and discussions of the effect of certain sections of Acts, or of certain rulings of the Supreme Court, High Court Division, etc., etc.,), or things which are irrelevant to the matter in hand should be returned to applicants without any order except an endorsement that the application is returned for non-compliance with the provisions of this rule.

(2) Applications in regard to distinct subject-matters shall be made in separate petitions.

(3) A petition must not contain more than one prayer or one series of alternative prayers of the same kind.

(*Illustration*—Application may be made by one petition for warrant of arrest against a recusant witness or a proclamation for his appearance or a notice to show cause against fine for non-appearance, but not for local investigation, or a commission to examine a witness, or for amendment of plaint.)

(4) An original petition shall in addition to the particulars required by law also state the Act and section or rule or other authority under which it is presented.

(5) Every interlocutory application or petition filed in a suit or proceeding in which the amount or value the subject-matter is less than Tk. 50 shall display clearly, preferably in red ink, the fact that it is so valued by a note to that effect in its top left hand margin, in order to enable a proper check to be made of the court-fee paid.

24. In contested original suits, no written statement, list of documents, or application which the Judge may consider material, shall ordinarily be filed unless copies thereof have previously been served on the Advocate for each set of parties whose interests are not joint. Provided that if, for any reason, copies cannot be so served, they may be filed in court together with the original written statement, list or application. Advocates served with such copies shall give a receipt on the original written statement, list or application. The copies shall be authenticated by the signatures of the Advocates of the parties on each page on the bottom left hand margin.

25. It should be clear in every plaint how the valuation has been calculated. Where this is not so or where it appears to the officer receiving and examining the plaint that there is manifest undervaluation, the plaint shall be placed before the presiding Judge for orders.

Note—Where the sufficiency of the valuation is not apparent on the face of the document, the procedure to be observed is that laid down in Julekha Bibi v. Danis Mohammad, 33 C. W. N. 952 (G. L. No. 1 of 1930).

See also paragraph 4 of the Civil Suit Instructions Manual, 1935.

26. Written statements and petitions in suits or cases fixed for the day must be filed at latest within fifteen minutes of the time fixed for the sitting of the Court in rule 1(i) and all other petitions and documents by such hour, not beyond 12 noon, except papers the occasion for the filing of which arises during the trial. Petitions and documents presented after the prescribed hour shall not be accepted unless good cause is shown for the delay.

B—AFFIDAVITS.

27. All Sheristadars shall be *ex-Officio* Commissioners of affidavits in respect of matters and causes arising within, and subject to the jurisdiction of, the respective Courts in which they are employed.

Note—In single Munsifis during the temporary absence of the Sheristadar the next senior-most ministerial officer shall be ex-officio Commissioner until the return of the Sheristadar to duty, unless the Court otherwise directs.

28. District Judges when appointing Commissioners to administer oaths on affidavit in exercise of the powers vested in them under section 139, clause (c) of the C.P. Code, should carefully satisfy themselves that they are trustworthy and efficient. (Notification, dated the 1st July, 1881, Calcutta Gazette of the 6th July, 1881, Part 1, page 694).

29. (1) Every affidavit to be used in a Court of Justice shall be entitled "In the Court of at " naming such Court.

(2) If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it must also be entitled in the cause.

(3) If there be no cause in Court, the affidavit shall be entitled " In the matter of the petition of.....".

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

31. Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such manner as shall serve to identify him clearly; and where necessary for this purpose, the affidavit shall contain his full name, age, father's name, profession or trade and true place of residence, and shall be subscribed either with his signature in his own hand or his finger-impression.

32. Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his knowledge, and such facts shall be stated in separate paragraphs.

33. When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" (or "make oath") "and say".

34. Every affidavit should clearly express how much is a statement of the declarant's knowledge and how much is a statement made on his information or belief and must also state the source or ground of the information or belief with sufficient particularity.

Note—In affidavits under Or. 32, r. 3(3), the officer before whom such affidavits are sworn should *see* that the words "and that he (she) is a fit person to be so appointed" are always inserted (G. L. No. 13 of the 6th April, 1932).

35. (1) When a particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression "I am informed" and if such be the case, should add "and verily believe it to be true;" and he must also state the source or ground of the information or belief, and the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he received such information. When the statement rests on facts disclosed in documents or copies of documents, procured from any Court of Justice or other source, the declarant shall state what is the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

(2) Documents in the possession of the deponent or his principal (other than those on the records of the case) referred to by affidavit shall be annexed to the affidavit and marked in the same manner as exhibits admitted by the Court and shall bear the certificate which shall be signed by the Commissioner before whom the affidavit is made.

Note—Ammukhtarnamas of persons signing on behalf of the parties are exempted from the provisions of clause (2) of this rule.

36. Except under the special orders of the Court, no document being an exhibit to an affidavit or verified petition or the materials for any application shall be given back unless the document be an original document, in which case it may be taken back on an order of the Court, a certified copy being retained.

37. Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by someone known to him, and the Commissioner shall state at the foot of the affidavit (a) the name and description of the person identifying and (b) the time and place of the making of the affidavit. He shall also, for the purpose of identification, mark and initial any exhibits referred to in the affidavit.

38. Where the declarant is a purdanashin woman, she shall be identified by a person to whom she is known and before whom she is accustomed to appear unveiled and such person shall at the foot of the affidavit certify that the declarant was identified by him and sign his name thereto, and shall also prove such identification by a separate affidavit.

Note—The affidavit of identification is exempt from court-fee, *vide* rule 620 (2) (iv).

39. (1) The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if such person state that he has not read the affidavit or appears not fully to understand the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Commissioner shall read and explain, or cause some other competent person to read and explain in his presence the affidavit to the person proposing to make the same in a language which both he and the Commissioner understand.

(2) When an affidavit is read, translated or explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant seemed perfectly to understand the same at the time of making the affidavit and make his signature or finger-impression in the presence of the officer; otherwise the affidavit shall not be used in evidence.

40. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous and may order the costs of any application to strike out such matter, if granted, to be included in the costs payable by the offending party.

41. In administering oaths and affirmations to declarants, the Commissioner shall be guided by the provisions of the Oaths Act, X of 1873. The provisions of rules 350 and 351 apply, *mutatis mutandis*, to affidavits under the present rules, and the following forms are to be used :

Oath.

I swear that this my declaration is true, that it conceals nothing, and that no part of it is false. So help me God.

Affirmation.

I solemnly declare that this my declaration is true, that it conceals nothing, and that no part of it is false.

42. The following forms of affirmation and certificate shall be used by the Commissioner appointed to administer oaths or affirmation :—

(I) Affidavit on solemn affirmation.

(*Cause title.*)

I A.B., son of C.D., and a of the caste, of years of age, (state occupation) residing at do solemnly and sincerely affirm (or make oath and say) as follows :—

1.

2.

3.

Solemnly affirmed [(or sworn) at the office of (the Court) of the Munsif of] this .....day of 19 at (state hour) before me. } (Signed) A. B.

(Signed)

Sheristadar of the said Court.

(2) Certificate under rule 39 when declarant is unacquainted with the language of the affidavit, or is blind or illiterate.

Solemnly affirmed (or sworn) at the office of (the Court of the the Munsif of.....) this.....day of.....19... at (state hour) before me, the contents of this affidavit (or solemn affirmation) (and the exhibits therein referred to) having been first truly and audibly read over to the declarant in Bengali, (or being blind), who appeared perfectly to understand the same, and made his finger-impression thereto (or signed the same) in my presence.

The declarant is personally known to me or identified by (state name and address) who is known to me. } (Signed) A. B.

(Signed)

Sheristadar.

(3) Certificate under rule 35 to be endorsed on an exhibit to an affidavit.

(Short cause title)

This is the exhibit marked "A" referred to in the affidavit of A. B. sworn (or affirmed) before me this.....day of.....19 .....

(Signed)

Sheristadar.

43. The attention of Courts is drawn to the provision of Or. 18, r. 4, that witnesses are to be examined in open Court. The power under Or. 19, r. 1 to order any particular fact or facts to be proved by affidavit or the reading of an affidavit of any witness at the hearing, should be exercised only in special circumstances, or, as that rule declares, "for sufficient reason" which should always be specified in the order; there can be no general order for the admission of affidavits in suits or appeals.

44. The Courts should be careful to enforce Or. 19, r. 3, and except in interlocutory applications (*See* Or. 19, r. 2), to confine the use of affidavits to such facts as the declarant is able to prove of his own knowledge, and to refuse statements founded on mere belief.

45. In allowing costs of affidavits, the Court should have special regard to the circumstances in which they were admitted. The costs of an affidavit made for the convenience of a party or his witness, or which is defective, or which unnecessarily sets forth matters of hear say or argumentative matter, or copies of or extracts from documents, shall not form costs in the case and be charged against the opposite party. [*See* Or. 19, r. 3(*2*).]

46. No affidavits shall be sworn before any Commissioner after 12-30 p.m. without the order of the Court.

CHAPTER 2

PRESENTATION, REGISTRATION, ETC., AND EXAMINATION OF PLAINTS.

47. Ordinarily the Sheristadar or in his absence the officer acting as a Sheristadar shall be authorised to receive plaints.

48. Every plaint brought for presentation shall have affixed to the top left hand corner of its first page, a slip of paper in the following form, with the particulars required written on it excepting the filing number which should be left blank :—

No. .....
Class of suit .....
Plaintiff .....
Defendant .....
Value of suit .....
Advocate .....

Note—It should be particularly noted that additions made by the Supreme Court (High Court Division) to Schedule I of the C. P. Code require that every plaint shall be accompanied by the necessary number of its copies, draft forms of summons, and fees for the service thereof, [Or. 7, r. 9(1-A)], and a statement of the party's address for service (*see* rule 18 and Or. 6, r. 14-A).

49. (1) Immediately on receipt of a plaint, a serial (consecutive) number shall be marked on it to indicate the sequence of filing, the same number being simultaneously noted on the attached slip of paper. The slip shall then be detached, stamped and made over to the person presenting the plaint, then and there. These numbers shall be quoted in all papers that may be filed hereafter in connection with the plaints so long as they are not registered.

Note—All plaints shall be marked with filing number on the same day they are filed and the slips attached shall be delivered forthwith.

(2) All such plaints shall be entered at once in the prescribed register No. (R) 12-A called the Filing Register in the order in which they have been filed.

Note—A separate volume shall be opened for each class of suits from the beginning of January each year. The number in the Filing Register will be the same as the number in the General Register of suits.

50. All plaints presented must, on being received be registered (*i.e.*, entered in the Register of Suits) in the same order as they appear in the Filing Register, irrespective of their possible rejection (under Or. 7, r. 11) or return (for amendment or presentation to proper Court).

51. Every plaint shall ordinarily be registered on the day it is received and should it be found impossible, for any reason, to register it within 24 hours of its receipt, the fact shall be reported to the presiding Judge of the Court concerned.

Note—Simultaneously with the registration of a plaint and the fixing of the first date, the suit should be entered in advance in that day's page of the Diary of the Court under the heading appropriate to the purpose for which the first date is fixed.

52. As soon as possible after registration of the plaint, the first date fixed for the suit and the purpose for which it has been fixed shall be entered in columns 5 and 6 of Filing Register [Form No. (R) 12-A].

53. The first dates fixed for appeals and all petitions (excluding execution petitions) that require registration shall be entered in a register in Form No. (M) 1-Daily Register. Entries shall be made therein from day to day until the Form is exhausted. If the same register is used for miscellaneous cases, appeals, etc., they should be grouped separately under the different heads. The presiding Judge shall put his dated signature below the last entry for each day. The register shall be laid at some conspicuous part of the Court room everyday by the sitting hour for inspection by the parties and the Advocates.

Note—Form No. (M) 1—Daily Register of Petitions and Appeals Registered shall be destroyed after three months.

54. The date of filing shall be stamped on a plaint as soon as it is filed.

55. (1) On presentation or receipt of a plaint, the Sheristadar of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining, among other things—

(*i*) whether the plaint bears full court-fee stamps in accordance with the valuation put upon it;

(*ii*) whether it has been properly signed and verified (Or. 6, rr. 14 and 15);

(*iii*) whether it complies with the requirements of Or. 7, rr. 1, 2, 3, 4, 6, 7 and 8;

(*iv*) whether it is accompanied by the necessary copies of plaint and process-fees and draft forms of summons (amended Or. 7, r. 9(1-A);

(*v*) whether the documents attached to the plaint (if any) are accompanied by a list in the prescribed form [Or. 7, r. 9(1), *see* also r. 9(4)];

(*vi*) whether it is accompanied by the party's address as required by Or. 6, r. 14-A and contains the necessary particulars (*vide* rule 21) ;

(*vii*) whether in the case of minor plaintiffs and defendants the requirements of Or. 32, rr. 1 and 3 have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian *ad litem* of the minor defendant(s) has been filed;

(*viii*) whether the suit is within the pecuniary and territorial jurisdiction of the Court;

(*ix*) whether the vakalatnama has been properly accepted and endorsed the Advocate [*vide* rule 822, and in particular sub-rule (6) of the rule], and whether in the case of illiterate executants, the provisions of rules 821 and 822 (4) have been complied with.

(2) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected.

(3) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reason. It will then be for the Judge to deal with the matter.

Note 1—*See* also paragraphs 1, 2 and 3 of the Civil Suit Instructions Manual, 1935.

Note 2—As to appearance of defendant and filing of written statement, *see* paragraphs 9 to 11, Civil Suit Instructions Manual, 1935.

Note 3—As to the procedure to be followed in cases where there are one or more minor defendants (*see* rule 124 chapter 6.).

CHAPTER 3

SERVICE OF PROCESSES AND WORK IN THE NAZARAT.

1. Processes and their service.

A.– GENERAL.

56. In every process and order (of whatever description) issued by a judicial officer, for whatever purpose it may be issued or made, the name of the district and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such a manner that they may be easily read.

57. All processes, notices, copies of plaints, and other documents filed in Court (with the exception of exhibits) shall be written or typed on durable paper of foolscap size. If carbon copies are filed,they must be distinct and legible.

Note—As to paper for pleadings, petitions, etc., *see* rule 17 (1).

58. The hour of attendance to be entered in every summons or processes issued by a Court shall be the hour fixed for the sitting of the Court unless the Court otherwise directs.

59. When the question of requiring de carriere and honorary foreign consular officers to attend Court as witnesses arises steps may be taken to minimize any inconvenience that may be felt by them by fixing a time convenient to them for recording their evidence, or where it will appear to the Court that personal attendance will occasion inconvenience to them,by issuing a commission when it is applied for.

60. Processes should ordinarily issue in the language of the Court ; but where processes are sent for service to a Court where the language is different, they should be accompanied by a translation into the language of such Court or into English, certified by the transmitting Court to be correct. Where the return of service or report stating the reason for non-service is in a language different from that of the issuing Court it shall be accompanied by an English translation similarly certified.

61. Processes issued to foreigners should be in English.

62. Persons on whom processes are to be served or executed shall be described in as full a manner as possible, so as to identify them clearly, *i.e.*, by a statement of name, father's name (if possible), occupation, address and such further particulars as will facilitate identification and service.

Note—In the case of service or execution of processes in large towns, the name of the street, lane or section and the number of the house (if any) should be given.

63. (1) With their applications for issue of processes, parties shall file process fees wherever necessary under the law and the required number of printed forms filled up in a bold, clear and easily legible handwriting leaving the hour and date of appearance and of issue of process blank. Such forms are available free on application to the officer appointed by the Court.

Note—Every application for issue of summons to witnesses shall state clearly whether it is to be served by the party himself or through the agency of the Court. As all summonses to witnesses are ordinarily to be made over for service first to the party applying therefor, a party praying for service by the Court shall state the special circumstances necessitating such mode of service [Or 16, r. 7-A (iii)].

(2) The parties or their Advocates shall sign legibly all processes, notices etc., in the left bottom corner, and will be held responsible for the accuracy of the information entered therein.

(3) When orders for the issue of process are passed by the Court, the date and hour fixed for appearance will be inserted in the form and the process will be dated by an officer of the Court before the processes are signed.

(4) The presiding officer may, in his discretion, direct in any particular case that the forms of process be entirely filled up in the office of the Court.

64. A party who desires the attendance of any witness before the Court, or a Commissioner appointed to take evidence, shall file a list of the persons whose attendance he requires, stating the full name, residence and occupation or description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case specifying the date and description of the document so as to identify it. In the case of a witness who has to be served through Court, he shall with such list also deposit in Court the prescribed fees for service of summons and the total amount of the other expenses to which the said person is entitled and in the case of an expert or scientific witness his compensation as determined by the Court.

B—SERVICE AND EXECUTION OF PROCESSES.

65. All summonses and processes, other than warrants of arrest, of attachment of movable property and processes copies of which are required by law to be affixed at the Court house of the issuing Court issued by the courts at district headquarters or by the Supreme Court (High Court Division) which have to be served within the jurisdiction of the outlying munsifis in the district, shall be forwarded by the office to the Courts of the Munsifs concerned and not ordinarily served by peons from district headquarters. The outlying Courts will have the processes served through their respective process serving establishment and return the same direct to the issuing Courts.

Note 1—Process-serving peons will draw only the actual rail, bus or steamer fare of the lowest class of accommodation, without any daily or halting allowance for journeys in connection with the execution or service of processes (Government of Bengal, Judicial Department, letter No. 1738J., dated the 27th February, 1936) instead of levying them from the parties concerned.

Note 2—For journeys on duty otherwise than in connection with the service of processes the process-serving peons will get such travelling allowance as is admissible under S. R. 78 (*vide* Fundamental and Supplementary rules page 254, 1951 Edition).

66. The presiding Judge of any superior Court may for sufficient reason direct on the application of the party applying for any particular process, which should ordinarily be sent for service to an outlying Court that it be served or executed by a special process-serving peon from headquarters.

67. A Civil Court seeking to serve a process in the Chittagong Hill-Tracts shall send with the process a letter in English addressed to the Deputy Commissioner explaining the nature of the suit. The feess for service as prescribed must at the same time be forwarded in cash.

68. A summons issued under Or. 5,r.21 shall ordinarily be sent to the Court of the Munsif within whose jurisdiction the person to be served resides, with a covering letter or an endorsement signed by the presiding Judge.

C—METHOD AND PROOF OF SERVICE.

69. Service should always be personal wherever practicable (Or. 5,r.12) and the Courts ought not in *ex-parte* cases to act upon anything short of personal service until they are satisfied that personal service could not reasonably be effected.

Note 1—Personal service shall be deemed to include all cases in which the process is delivered or tendered to the person concerned or his agent empowered to accept on his behalf whether accepted or refused, including service under Or. 5 rr. 13 and 14, Or. 29, r. 2 , and Or. 30, r. 3 and all cases under Or. 5, r. 15, of the C. P. Code in which the process is accepted by an adult male member of the family of the person to be served who is residing with him and a receipt granted.

Note 2—The signature required under Or. 5, r. 16, should in the case of illiterate persons be held to mean the thumb impression. Process-serving peons out on duty, should therefore be supplied with printer's ink, etc., for taking such impressions.

70. (1) A party shall not ordinarily be required to supply an identifier for the purpose of serving a summons or notice or any other process on a defendant, respondent, witness or other person whether issued by any subordinate Court or the Supreme Court or received from courts outside its jurisdiction, and the serving officer shall serve the summons, notice or porocess after due enquiry as to the identity of the person on whom, or the house or property where, the same is served. The serving officer shall serve in the presence of at least two independent local residents and he shall, whenever possible, obtain the endorsement by signature or thumb impression of those persons on the original process and, where he is unable to serve the process, he shall whenever possible, obtain the endorsement by signature or thumb impression of at least two persons of the locality.

Note 1—There being no legal obligation upon a plantiff, decree-holder or appellant to supply an identifier for service of any process, no process-serving peon shall return unserved any notice, process or summons merely because no identifier could be had at the place of service He must make every possible endeavour to find out the person on whom or the house or property where the process is to be served.

Note 2—Chaukidars and Dafadars have been directed by the authorities to give all the information at their disposal and to render any help of which they are capable to all process-serving peons of civil courts in the matter of execution of processes generally and particularly of the identification of persons to be served with them. Whenever a Chaukidar or a Dafadar is near at hand, he is required to witness the actual service or execution of the process and then to sign the prescribed form of verification of service as a token of his having done so. (*vide*, Circular Nos. 5059-5063-L. S. G., dated the 3rd November, 1934 and Assam Government Circular Letter No. 2747-48 G. J., dated the 25th June 1935). The serving officer shall after writing his report at the place of service obtain from him a verification of service in the form printed upon the back of the process.

Note 3—The Nazir should personally scrutinise all cases in which the peon reports that he could not find the person on whom or the house or property where the service was to be made and he should bring all cases in which the peon appears to be at fault to the notice of the Judge-in-charge.

(2) If it appears to the Court that sufficient information is not given as to the identity and place of residence of the person on whom, or the house or property where a process is to be served, or if the Court is satisfied from the declaration of the serving officer or upon his examination on oath (if necessary) that the person to be served or the house or property could not be identified after due diligence and enquiry it may ask the party concerned to supply an identifier.

71. A notice or process shall be served by delivering a copy of it to the person addressed. If the person is literate, he shall be required to sign the original as an acknowledgment of receipt. If he is illiterate, his thumb impression should be taken on the original process.

72. If the person addressed or his agent or an adult male member of his family or other person on his behalf refuses to receive the process or refuses to sign or give his thumb impression but wants to retain the copy, it shall not be made over to him and he shall be informed verbally of the nature of the process. In either case service shall be effected and proved in the manner prescribed in Or. 5, r. 17. and it should also be proved that the party was informed that the document tendered was a summons or notice and that he was made acquainted with the nature and contents thereof.

73. If the person addressed is absent from his residence at the time of attempted service and there is no likelihood of his returning there within a reasonable time and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, sevice shall be effected in the manner directed in Or. 5, r. 17. It should be proved according to the circumstances of the case by the declaration of the serving officer and, if necessary, by the affidavit or solemn declaration of some other person or persons (if any) acquainted with the facts that the person was absent from his residence at the time of attempted service and that there was no likelihood of his returning within a reasonable time and that there was no agent empowered to accept service, nor any other person on whom service could be made ; and in any case that the house on the outer door or some other conspicuous part on which a copy of the process was affixed, was the ordinary residence or place of business of the person addressed at the time when it was so affixed. The Court may also proceed under Or. 5, r. 19.

74. If the service is made under Or. 5, r. 15, it should be proved in like manner that the person was absent from his residence at the time of attempted service and there was no likelihood of his returning within a reasonable time, and that the person, to whom the process was delivered was an adult male member of his family and was actually residing with him at the time of such service. It is to be noted that a servant is not a member of the family within the meaning of this rule.

75. If the service is made under Or. 5, r. 14, it should be proved in like manner that the summons or notice could not be served on the defendant or respondent in person and that he had no agent empowered to accept the service and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the suit.

76. If the return of service is under Or. 5, r. 20, it should be proved in like manner that the house, upon the door or other conspicuous part of which a copy of the process was affixed, was the house in which the defendant or respondent is

known to have last resided, or carried on business or personally worked for gain, or that the service was made in all respects in conformity with the order for substituted service, which should accompany the process. It should also be proved in like manner how long and until what time the defendant or respondent resided in the house, and what has become of him.

Note—In the case of service under Or. 5, rr. 14, 15 and 17, it must also be proved that proper and reasonable efforts were made to find out the person to be served. For instance, the serving officer should go to the place or places and at the times at which it was reasonable to expect the person would be found and mere temporary absence of the person does not justify the serving officer in affixing a copy of the summons on the door of the persons' house. The process should again be taken to his house to be served upon him when the inquiries made show that he is likely to be at home and to be found there.

77. If the person addressed has no place of residence and he cannot be found or if he is dead, these facts shall be stated in the report together with the names and addresses of at least two persons from whom the facts are ascertained. If the person addressed has ceased to live at the place, his present address, if available, and the source of imformation should be reported.

78. If the service is made under Or. 5, r.12, on an agent, it should be proved that such agent was empowered to accept service under Or. 3, rr. 2, 5, 6, Or. 27, r. 2, or sec. 85(I) C. P. Code or by virtue of appointment for that purpose in writing. The party causing the service to be effected must, in both the last mentioned cases furnish the necessary proof (*vide* rule 82 post) to this effect. It is a matter of which, ordinarily speaking, the serving officer would have no knowledge.

79. If the service is made under Or. 29, r. 2, it should be proved that the summons or notice was left at the registered office of the Company or if there is no such office at the place where the Company carries on business, or that it was delivered to any Director, Secretary or other principal officer.

80. In the case of Railway Administrations or Companies, in addition to service in the usual way, a copy of the summons should be sent by post under Or. 29, r. 2(b) : provided that if the summons is sent by registered post, service in the usual way may be dispensed with.

81. If the service is made under Or. 30, r. 3(b) it should be proved that the person on whom the summons was served had at the time of service the control or management of the partnership business.

82. The Court should in all cases obtain the proof which is above described as requisite either by the declaration of the person by whom the service was effected, and, if necessary, by the affidavit or solemn declaration of some other person or persons (if any) who may have accompanied the serving officer for identifying the party to be served or otherwise assisting or directing the serving officer or verification in the form printed upon the back of the process, and made, at the place of the service, by a Chaukidar, Dafadar or local villager present thereat ; or, if deemed necessary, by the examination in Court as witnesses of such persons as the Court may think fit to examine.

Note—Attention is invited to Or. 5, r. 19-A, C. P. Code, under which a declaration made and subscribed by a serving officer shall be received as evidence of the facts as to the service or attempted service of the summons.

83. In case of any doubt, the Court shall make enquiry under Or. 5, rule 19 and order such service as it thinks fit. The Court will have the discretion to order service by directing the issue of summons or notices or any other processes by means of registered post with "acknowledgment due". This should be resorted to specially in the case of minors or *pardanashin* women on whom personal service is not generally possible or when all attempts at personal service on any person have been unsuccessful or the Court is not satisfied about the due service.

84. (1) If the process is addressed to more than one person, the report shall describe the manner of service on each person.

(2) Process-serving peons must invariably note the date, hour and exact place of service of each individual process and also the sequence in which processes are served on different persons to be served in the same case and on the same occasion,in their reports and declarations.

(3) Every peon must immediately after completion of any duty connected with a process write clearly with his own hand at the place of service and in the presence of witnesses (if any), his report of service or failure of service.

(4) Every report of service or non-service shall comply strictly with the directions in these rules and in Form No. (P) I-A, Volume II, and the declaration in proof of service shall be recorded in legible writing in the manner laid down in Form No. 11, Appendix B, Schedule I, Civil Procedure Code, as amended by the Supreme Court (High Court Division).

N. B.—Instructions for the guidance of process-serving peons and returning officers—

(a) If the process-serving peon is personally acquainted with the person to be served, the fact should be stated. If he is not so acquainted, it should be stated how he satisfied himself about the identity of the person.

(b) It should be seen that the name of the person who accepts service corresponds exactly with the name given in the process. Where the signature in token of acceptance differs from the name given in the process, the discrepancy should be explained.

(c) Where the process is served on some person other than the person named therein, who accepts the process on his behalf, it should be stated whether such person is an adult, and whether he is living with and is undivided from the person on whose behalf he accepts service.

(d) Where service is accepted by an agent it should be stated whether such person is duly authorised to accept service.

(e) Where a person refuses to accept the process the grounds thereof, if any, and the names of the persons witnessing the refusal should be given.

(f) Where a process is affixed owing to the absence of the individual named therein, it should be stated, if possible, both when he left home and when he is likely to return. The attempts made to find out the person to be served should also be stated (*see* Note under rule 76).

(g) When personal service is not possible on *pardanashin* women, an attempt should be made to serve on some responsible male member of the family.

Note—see also the instructions in G. L. No. 9 of 1935.

85. When the summons or notice which has been served is the summons or notice of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should retransmit the summons or notice to the Court by which it was issued, together with (1) the Nazir's return, (2) the declaration or deposition of the serving officer and the affidavit or solemn declaration or deposition of the witnesses (if any) relative to the facts of service, (3) the record of such Court's proceedings with regard thereto (Or. 5, r. 23), and (4) in a case where any of these documents is in a language different from that of the district from which the process issues, an English translation of such document.

D—ADDITIONAL RULES RELATING TO THE SERVICE OF NOTICES, ETC., ISSUED BY THE SUPREME COURT (HIGH COURT DIVISION).

86. On receipt of the proceedings of the Supreme Court (High Court Division) transmitting the notices of appeal, application, etc., the lower court shall cause their service without the payment of any further fee and without any further action by the Appellant: provided that the appellant or applicant or some one employed by him may, in any particular case if he so desires, accompany the serving officer for the purpose of facilitating the service of the process.

87. The date fixed for the hearing of the case and the time allowed for service and return of the process to the Supreme Court shall be specified in the notice.

88. The lower Court shall issue all notices, etc., immediately on receipt thereof and in their returns of service, shall in every instance insert (a) date of receipt of notice; (b) date of delivery to the serving officer; and (c) date of receiving it back from him.

89. It shall be the duty of the lower Court to cause the notice to be served in sufficient time before the date fixed, and if such service be impracticable, to state, when returning it to the Supreme Court the reasons thereof. The lower Court shall satisfy itself that a valid service has been made or that there has been a failure of service and shall certify such opinion with the reasons in case of failure of service. The certificate shall be accompanied by the return of service or of failure to serve the notice and the declaration of the serving officer specifying the fact and mode of service or the reason for non-service.

90. Notice for service on respondents or opposite parties residing in any district other than that from which the appeal, application, etc., comes, shall be sent by the Assistant Registrar-in-Charge to the proper Court in the district in which such notice is to be served. If, however, the opposite party or any of the parties to be served resides in the same district but outside the jurisdiction of the Court from which the appeal, application, etc., comes, the notice shall be sent for service to the Court within whose jurisdiction the party resides if known, if not known, then to the Court from which the appeal or application comes, directing the latter to forward it to the proper Court within the jurisdiction of which the notice is to be served. The Court which serves any notice shall in every case make its return of service or of the failure of service (as the case may be) direct to the Supreme Court and shall be guided by rules 86, 88 and 89,

E—SERVICE ON PERSONS IN CIVIL AND MILITARY EMPLOY.

91. Attention is invited to the provisions of Or. 5, rr. 27 and 28 and Or. 15, r. 8, regarding service of summons on public officers or soldiers in military employ, or servants of railways or local authorities. In such cases, a reasonable time should be allowed for the making of arrangements for the relief of the persons summoned and to enable them to appear themselves or to appoint a representative or make such other arrangement as may be necessary.

Note 1—In case of officers of Bangladesh Naval, Military or Air Force or Bangladesh Marine Service, the provisions of Or. 5, r. 28 should be followed.

Note 2—In the cases set out in this rule and in Note 1, the process should be sent under cover, or, in the appropriate cases, by letter, in the manner provided by Or. 5, r. 30.

Note 3—The attention of all Civil and Criminal Courts in Bangladesh is invited to the following rules, which have been approved by the Government, relative to the dress of military officers and soldiers appearing before Civil or Criminal Courts (other than Courts established under military law) :—

(1) An officer or soldier required to attend a Court in his official capacity should appear in uniform with sword or side-arms. Attendance in an official capacity includes attendance—

(*a*) as a witness when evidence has to be given of matters which came under the cognizance of the officer or soldier in his military capacity;

(*b*) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command.

(2) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform.

(3) An officer or soldier shall not wear his sword or side-arms if he appears in the character of an accused person or under military arrest, or if the presiding Judge of the Court thinks it necessary to require the surrender of his arms in which case a statement of the reasons for making the order shall be recorded by the presiding Judge, and, if the military authorities so request, forwarded for the information of the Commander-in-Chief.

(4) Fire-arms shall under no circumstances be taken into Court.

Note 4—When issuing processes to employees of the Income-Tax Department care should be taken to see that such processes are served through their respective official heads, mentioned in the list below :—

1. Commissioner of Income-Tax ..	His personal Assistant (Gazetted Officer). Ministerial and other establishments of Commissioner's office.
	All Assistant Commissioners of Income-Tax, Income-Tax Officers and Assistant Income-Tax Officers (Gazetted Officers).
2. Assistant Commissioner of Income-Tax of a Range.	Executive Officers, Ministerial and other establishments in his own office and Executive Officers attached to Income-Tax Offices in his Range.
3. Income-Tax Officer of an Income-Tax district.	Ministerial and other establishments in his office.

2. Arrangement and Distribution of Work in the Nazarat.

92. (1) Process-serving peons must be required carefully to attend to the directions of the Code and the Supreme Court (High Court Division) rules as to the service of processes. It shall be particularly impressed upon them that wherever practicable, the service must be personal service as defined in note 1 under rule 69 *ante*.

(2) It shall be the duty of the Nazir—

(i) to explain to the process-servers the directions in these and other rules in vernacular and to point out the manner in which various kinds of processes are to be served and returns are to be verified ;

(ii) to see that processes are promptly sent out for service and fairly distributed amongst the process-servers, and that a fair average of work is attained by each process-server ;

(iii) to see that as far as possible on an average not less than 20 days in a month are spent by each peon in the mufassil in the service of processes ;

(iv) Carefully to scrutinize the diary of the peon and every return submitted by him each time he returns from a journey after service of process, or the reasons given for failure of service and to report to the Judge-in-charge of the Nazarat all cases of unreasonable delay in service, misconduct, neglect, or improper discharge of duty for such disciplinary action as the Judge-in-charge may think fit and proper.

Note 1—Some of the common faults that require close scrutiny are :

(a) Delay in service of processes so as not to allow sufficient time to the person served to appear prepared on the date fixed.

(b) Delay in service necessitating an adjournment in order that the fixed number of days may intervene between service of summons or notice and hearing,

(c) Delay in submission of Diary.

(d) Return of processes unserved on the plea of want of time.

(e) Return of processes unserved on the plea that no identifier could be had or that the person to be served could not be found.

(f) Writing of service report after return from journey and not at the scene of Service.

(g) Small percentage of personal service.

(h) False or collusive report.

Note 2—To the Judge-in-charge of Nazarat at every station has been delegated the exercise of disciplinary powers over the process-serving peons.

93. All Nazirs will be held responsible to the presiding Judge of each Court at every station for the due and regular service of all processes entrusted to them for service by themselves and their subordinates.

Note 1—Service or execution of processes by Nazir or Naib-Nazir can only be allowed under special circumstances when the court is satisfied by affidavit or otherwise that there has been previous resistance and that execution will not be effected by ordinary peons without danger to the public peace. Deposit of pay of the officer is not required in such cases.

Note 2—Processes (other than those referred to in rule 65) received for service from places outside the jurisdiction of the Nazarat concerned should be entered in the process register in red ink and it shall be particularly seen that such processes are promptly served and returned to the issuing courts in sufficient time before the hearing dates.

Note 3—The calculation of the percentage of personal service of processes should be based on the number of processes actually served as this method is obviously a better criterion of a process-server's success than a calculation based on the number of processes to be served.

94. Every Nazir shall maintain for the jurisdiction for which he is the proper officer for service of processes :—

(i) a list of all places within a five-mile radius of his office ;

(ii) a list of all places outside such five-mile radius.

Note—A map showing the villages and thanas in the area under the jurisdiction of the Courts and their distances from each other and from the headquarters should be hung in every Nazarat.

95. Processes for service at places within the five-mile radius shall ordinarily be sent out every working day (whenever necessary) and should ordinarily be returned on the next day and not later than the day following.

Note—The District Judge may, in his discretion, suspend the operation of this rule in respect of service of processes in villages which lie within the five mile radius but outside the town area during the period from the 1st May till the commencement of the Civil Court vacation.

96. The Nazir shall divide the area outside the five-mile radius into convenient beats or circles where processes should be sent at regular intervals and shall make the best possible arrangements for the prompt service of processes of each beat. The boundaries of the circles and the fixation of the intervals may be varied from time to time as experience dictates. He should also prepare a statement showing on what days process-serving peons are sent out for service in any particular beat and how long the process-serving peon is supposed to be away on that particular beat.

Note 1—The statement should be in the following form :—

Illustration.

Beat No. 9.—Processes issue every Tuesday. Process-serving peon returns after 8 days.

Note 2—The distribution of processes on the beat system will of course have to be departed from in cases of urgent processes or in cases where there is an accumulation of processes for a particular beat.

97. Returnable dates should not be fixed at random, but sufficient time should be allowed so that the processes for one trip may all be served and returned a reasonable time before the dates fixed in the cases concerned. In fixing dates, the distance to be travelled, the season of the year, the conditions of the locality, the number of processes made over at a time, etc., should be taken into consideration.

Note—When a peon entrusted with the service of several processes finds that there is no reasonable chance of his being able to serve all the processes in the same trip and to return them in sufficient time before the due dates, he should at once send back by post the processes that cannot be served, so that the Nazir may give out such processes to other peons for service if there is sufficient time before the hearing dates. Or, when a peon finds that he cannot return to headquarters before the returnable dates because he has to serve other processes, he should return the processes that he has already served by post before the returnable dates so that the work of the Courts concerned may not suffer.

98. To equalise the work of process-serving peons a certain amount of short beat work as well as a certain amount of long beat work should be given to each peon and there should also be, as far as possible, equality in the number and kind of processes distributed. The Judge-in-Charge of Nazarat should as often as time permits and at least once a month have the processes distributed under his personal supervision.

Note—It shall be particularly seen that all peons to whom processes have been distributed for service leave their headquarters immediately on receipt of processes.

99. (1) Processes received in the office must be made over to the Nazir, if possible, on the same day on which they are filed and not later than two days after their receipt.

Note—*See* also paragraph 5, Civil Suit Instructions Manual, 1935.

(2) Processes under Or. 16, r. 7-A for service by the parties must be returned to them or their advocates after scrutiny and entry of expenses fixed by the Court (under Or. 16,r. 2) for payment to the witness, date, etc., and signature within three days of their filing.

Note—In order that there may be no delay parties or their advocates should in their turn also apply for and obtain the processes within the prescribed time. The signature with date, of the party or advocate taking delivery of the processes applied for should be taken on the application.

100. Processes are ordinarily to be issued to peons in the order in which they come back from the mufassil. Later processes for a particular beat are not to be issued to the exclusion of processes for that beat filed earlier. The latter are only excluded, if necessary, by processes marked "Urgent" by the Court.

101. It shall not ordinarily be lawful for the Nazir to keep back processes for any period longer than may be necessary to admit of a sufficient number accumulating for a particular beat. Subject to this, the Nazir shall arrange for the distribution of processes outside the five- mile radius as often as possible in every week or at such other regular intervals as may be necessary, according to the direction of the Judge in charge of Nazarat.

102. As far as possible, all processes other than warrants of arrest for persons residing in the same beat, shall be served by one process-serving peon and not by several, whether issued by the same or by different Courts, provided that their number is not unusually large. No process-serving peon should ordinarily be given processes for service in a locality where his home is situate or his relations reside.

103. The above rule does not apply to processes marked "Urgent". The presiding Judge of any Court may for any sufficient reason at any hour of the day transmit a process for emergent execution to the Nazir and it shall be his duty on receiving such process to make immediate arrangements accordingly.

Note—For processes applied for and ordered to be executed as emergent, the fee will be ordinary fee and half as much again. The offer to pay extra fee shall not of itself, be sufficient ground for granting an urgent process. The Court should be satisfied that there is a real cause for urgency.

104. (1) The Judge in-charge of the Nazarat shall send to every Court at the station a copy of the list of beats or circles showing the names of villages in each beat, on what days peons are sent out for service in each particular beat or circle and how long they are supposed to be away on that beat (*vide*, rule 96.) so that processes for service within a particular beat may be sent to the Nazarat in proper time.

(2) The beats shall be fairly distributed between the peons on the establishment and to each peon shall be allotted a number of beats according to the distance, situation and accessibility of the villages comprising each beat. To equalise the work of peons, fresh distribution of beats among them should be made at such intervals as the Judge-in-charge may direct.

105. Processes made over to the Nazir for service must be returned by him to the issuing Court, as soon as possible, after they are received back from the peons so as to reach such Court for scrutiny in sufficient time and at least two clear days before the date fixed for hearing of the case or matter.

Note.—When processes are returned unserved a considerable time before the date fixed for hearing, it shall be the duty of the Nazir to give out the process for re-service if there is sufficient time before the hearing.

See also paragraph 5, Civil Suit Instructions Manual, 1935.

106. The following processes may be executed by special Peons:

(i) Warrant for arrest of a person.

(ii) Warrant for attachment of movables.

(iii) Any other process ordered by the Court either *Suo Motu* or otherwise to be so executed.

Note.—More than one peon may be deputed for the execution of any process where there is such a direction of the Court to that effect.

107. When not employed in serving processes, process-serving peons should be employed in miscellaneous work in the Courts and offices.

Note 1.—As to employment of process-serving peons in miscellaneous work, *see* also Bengal Judicial Resolution No. 3384 J of 31st october, 1903 reproduced in "Guide to Laws and Orders in Force in Bengal," 1925, Volume X, page 48.

Note 2.—No process-serving peon shall be employed in doing clerical work for the office.

Note 3.—Process-serving peons when on duty in Court and out on process-serving work, must always wear and display their standard badges.

Note 4.—Process-serving peons must report themselves to the Nazir and make over to him the diary and all process with which they were entrusted for service immediately on return to headquarters from a journey. The Nazir must *see* that this rule is strictly obeyed by each peon and report cases of non-compliance to the Judge-in-charge.

Note 5.—(a) During the interval between return to headquarters and departure for service of processes, peons must attend office punctually at the hour prescribed in rule 6 ante when a roll—call shall be taken everyday and perform such miscellaneous duties as may be assigned to them.

(b) When signing the Attendance Register everyday, the Judge-in-Charge should from time to time ascertain whether all peons at headquarters have actually come to Court and taken up the duties assigned to them and also inspect the process-registers and diaries in order to see whether the peons who were to have returned from mufassil have come back within the due date.

108. (1) So far as budget allotments permit the Nazir at district headquarters shall be deputed once a month for at least three days in the interior to verify either before or after the disposal of cases a certain proportion of the returns of processes issued by the Civil Courts in district to be fixed by the District Judge. The selection of processes should be made after calling for a report from the Courts of processes which are regarded as suspicious. He shall go to different locality on each occasion and also invariably verify processes when he goes to the mufassil on business for other purposes.

(2) During the Nazir's absence on such duty, the senior Naib-Nazir or a clerk shall be appointed as cashier on the condition laid down in the note to rule 748, but no application will be entertained for increase of staff on this account.

CHAPTER 4

FOREIGN PROCESSES.

Service in places outside Bangladesh.

109. Reciprocal arrangements may be made between Bangladesh and foreign countries about service of summons/notices on defendents/respondents in civil proceedings and processes may accordingly be sent to those countries for service.

110. The Government of Bangladesh has entered into such a reciprocal arrangement with India. Under this arrangement the summons/notice is served through the respective High Commission, Ministry of Foreign Affairs, Ministry of Law and the District Judge within whose territorial jurisdiction the defendant/ respondent resides and after service the return comes upwards.

111. A notification [No. JI/3L-I/73-SOL-I/3688 dated the 10th December, 1975] was issued by the Government of Bangladesh [Ministry of Law (Solicitor)] declaring that the provisions of sec. 29 of the Code of Civil Procedure, 1908, shall apply to all civil courts in India.

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

CHAPTER 5.

PRODUCTION OF PUBLIC DOCUMENTS AND RECORDS.

113. (1) Attention is invited to r. 10 of Or. 13 which states the law as to the production of Court-records. The principle of sub-rule (2) of that rule may well be applied to other public records.

(2) Affidavits under Or. 13, r.10(2) setting forth the necessity for production of records are required to show not merely that the record is material to the suit, but how it is material ; also that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy or in what way the production of the original is necessary.

114. Subject to any provision of the law to the contrary, the originals of public and municipal records should not be called for when duly authenticated and certified copies of the same are admissible in evidence and will serve the purpose for which the records are required.

Note—All subordinate Courts should take special care to prevent the unnecessary production in Court of public documents as defined in section 74 of the Evidence Act, 1872 or documents forming part of public documents or in public custody. When such documents are called for, the Court calling for them shall state the circumstances which render the production of the documents necessary. When, however, the Collector or other public officer in charge of the documents, has been summoned under Or. 16 rr. 1 and 6, of the C. P. Code, to produce in Court a certain document, it will be his duty to send it to the Court; but such officer may at the same time, in person or by letter addressed to the Court, object to the production of the document under section 123 or section 124 of the Evidence Act (1 of 1872), stating the grounds of such objection. On an objection being made, it shall be the duty of the Court to consider and decide according to law if it should compel the production of such document.

115. (1) When the Collector or other public officer in charge of documents has been summoned under Or. 16 rr. 1 and 6 to produce in Court a certain document or record, or when the Court has sent a requisition for a record from any Court or officer under Or. 13, r. 10, it shall ordinarily be sent by registered post. If, however, owing to excessive weight or any other special reason, the documents or records cannot be sent by registered post, they should be sent by rail or by any other means of transport.

(2) It is not intended to prohibit the practice of sending records by a special messenger when such a course is considered advisable, e.g., when the document to be sent is a State document of importance, etc., etc.

Note 1—When a record is sent to a Court by an officer or messenger, or when a Government servant has to bring the record and appear as a witness to prove custody or to depose to any fact in his official capacity in private cases, he should get actual travelling expenses under rule 619 (3) (b) [*See* also, note 1 to rule 619 (7).]

Note 2—When a non-gazetted or other Government servant of any rank is despatched as a messenger with any record or document from one Court or office to another at the same station, the actual expenses incurred, if any may be charged to Government as contingent expenditure, provided the head of the office certifies that the charge was unavoidable [*vide* Bengal Audit Manual, Chapter VI, Rule 417 (14) of 1937.]

116. When any public document (not being the record of a suit or of a judicial proceeding) or a document in public costody has been produced in Court in compliance with a summons, and the officer from whose custody it has been produced, desires its prompt return, the Court shall, after the document has been inspected or put in evidence, as the case may be, cause it to be returned with the least practicable delay to such officier, after the preparation of such copy as the

Court may require under Or. 13, r. 5(2) unless its detention is considered to be necessary till the delivery of the judgment. The expense of preparing such copy shall be borne by the party adducing the prarticular document as evidence.

Note—As to documents called for from private persons, *see* rule 411.

117. When a record is called for, except by superior judicial authority or by a Civil Court acting under Or. 13, r. 10, the Court or officer calling for it shall state the circumstances which render its production necessary. The Judge may decline to forward it if in his opinion no sufficient grounds are shown. it is improper and inconvenient that records of Courts of Justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarlily to obtain copies of the requisite papers.

Note 1—Civil Judges of every grade should exercise a careful discretion in acting under the provisions of Or. 13, r. 10.

Note 2—For form of letter calling for records under Or. 13, r. 10, *see* Form No. (M) 10, volume II.

Note 3—In all cases when an original record is called for from the Supreme Court, (High Court Division), the Court calling for the record should state clearly the reasons which make its production necessary, and forward with the requisition a certified copy of any document forming part of part 1 of the Supreme Court record specified in rules 7 and 9 of Chapter XIV, Rules of the Supreme Court of Bangladesh (High Court Division) Vol-I. (to be returned with the document called for when the requisition is complied with) except with regard to the following documents, in which instances, certified copies may be dispensed with :—

(*i*) applications for substitution, addition or removal of parties and the affidavits filed therewith,

(*ii*) applications for the return of documents from the records of civil or criminal cases, and

(*iii*) memorandum of appeal and the memorandum of cross-objections in civil cases and the memorandum of appeal (or petition or revision, or letter of reference) in criminal cases, when these have been printed in the paper-book of the case.

In regard to papers forming part II of the Supreme Court Record, no certified copy need be sent unless otherwise instructed.

Note 4—When a record or document is requisitioned from the Supreme Court (High Court Division), Appellate Side, on the application of a party under Or. 13, r. 10, a searching-fee of Tk. one shall be realised in court-fee stamps in addition to the fee prescribed under article 1A, Schedule II, Court-fees Act.

118. When, in the course of proceedings in a Criminal Court, it becomes necessary to refer to the contents of records deposited in another Court, the ordinary procedure is to require copies of the necessary papers to be filed. It frequently happens, however, that in the course of a criminal trial the production of an original record becomes necessary. In such cases the Court where the record is deposited shall comply with the requisition of the Criminal Court requiring its production. Judges or Magistrates making such requisitions are, however, required to state therein that the production of the original is necessary, and the reason of the necessity. If the Court receiving the requisition is of opinion that the reason given for requiring the production of an original record, instead of a copy, is insufficient, it should nevertheless comply with it, reporting the matter for the consideration of the Supreme Court (High Court Division).

119. Whenever public documents or records received from any Court or Office are no longer required, they shall be returned immediately.

120. The attention of all Courts is drawn to the following Government Resolution No. 1538, dated the 13th May, 1891, regarding the production of Post Office records, issued by the Director-General of Post Offices :—

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

CHAPTER 6.

GUARDIANS AD LITEM OF MINOR DEFENDANTS AND RESPONDENTS.

A—IN ORIGINAL SUITS.

121. (1) Where there are both major and minor defendants and there is no appearance, the guardian, with a view to obtain instructions in the case, should communicate with the natural guardian of the minor and ordinarily with the major defendants by registered post-card in which the subject-matter of the suit should be briefly stated.

Note 1—If an advocate is appointed in case where there are both adult and minor defendants having the same interest, the advocate who represents the former should ordinarily be appointed guardian *ad litem* of the latter.

Note 2—When the plaintiff is allowed to sue in forma pauperis the guardian *ad litem* of minor defendants (where necessary) should be an officer of the Court.

Note 3—Where the number of major defendants is numerous, the guardian should seek the Court's instruction as to how many and which of them he should communicate with.

(2) Where the sole defendant is a minor, the aforesaid communication should be addressed to his natural guardian, and in any case where the interests of the minor require, may be addressed to persons other than those who are actually parties to the suit.

(3) If no response is received to the communication mentioned in sub-rules (1) and (2) or if the response is not helpful and the guardian is unable to have a personal interview with the defendants or their agents, he should report the fact to the Court in writing, with a statement of the circumstances, and apply for leave to go to the locality for necessary enquiry.

(4) The guardian's report on such local enquiry, if permitted, should contain the following particulars :—

(a) Date and hour of departure for the locality.

(b) Mode of journey, *viz.*, whether by rail or steamer or boat or road.

(c) Date and hour of reaching the locality.

(d) The names of persons who indentify the minor.

(e) Age of the minor as stated by the minor's people and as estimated by the guardian.

(f) The names and residences of persons in whose presence the enquiry is held.

(g) Whether the minor has any defence.

(h) If there is defence what is the nature of it and what benefit is expected to accrue to the minor out of the defence.

(i) Whether the minor or his people are able and prepared to meet the costs of the defence, and if not, what is the probable amount of such costs.

(j) If no defence is filed, the reasons thereof together with the statements of the persons on whose report the decision is arrived at.

(5) In case the Court refuses to grant leave for local enquiry, the guardian will proceed according to the instructions of the Court given in each case.

(6) Where in response to the communication mentioned in sub-rule (2) or otherwise, the minor or his natural guardian, or any other persons on his behalf, come and *see* the guardian, his subsequent proceedings and report should conform as far as applicable to sub-rule (4) (g) to (j).

(7) The guardian's report mentioned in sub-rules (4) and (6) may contain such other facts as he may think necessary to bring to the notice of the Court.

(8) Where no response is received to the communication mentioned in sub-rules (1) and (2) and no local enquiry is also ordered by the Court, it shall be the duty of the guardian on a careful scrutiny of the plaint and examination of the record of the suit, if necessary, to find out if there are any *prima facie* defects or legal defences therein as may inure to the benefit of the minor and to bring the same to the notice of the Court in his report. He should in all cases certify in his report that he has taken all possible care in this respect and if he does not find any material for contest shall state that he sees no ground for contest.

(9) In petty rent suits and money suits the Court shall exercise stricter vigilance before granting leave to the guardian *ad litem* to go to the locality for enquiry.

B.—IN APPEALS.

(10) The foregoing rules will apply *mutatis mutandis* to the guardians of minor respondents, subject to the following rules.

(11) If no response is made to the registered postcard mentioned in sub-rule (1), the guardian should, before applying for leave to go to the locality, similarly communicate with the advocate who conducted the case in the lower Court on behalf of the minor or his predecessor-in-interest, and ascertain from him if possible, the probable cause of the non-appearance of the minor, reporting the result to the Court.

(12) If the step taken under the last preceding sub-rule does not elicit any satisfactory results, the guardian should consult the record and submit a report to the court in which he should state whether in his opinion the judgment and decree of the lower Court can be supported and if such opinnion is in the affirmative, why he should not argue the case himself before the Court. A written note on the merits of the case should accompany the report and he should in all cases follow the instructions in sub-rule (8) and append the certificate referred to therein.

(13) An amount estimated to cover the actual travelling and halting expenses of the guardian, not exceeding the scale laid down by rule 122, will be required by the Court to be deposited by the party at whose instance the guardian is appointed before an order is passed for a local enquiry mentioned in sub-rule (3). The amount so deposited or so much of it as may be found due will be paid out to the guardian when he has submitted his report mentioned in sub-rule (4).

(14) The fee prescribed by the Supreme Court (High Court Division) and the actual postal charges for communication mentioned in sub-rules (1), (2) and (11) will be deposited into Court before appointment of guardian *ad litem* and paid to the guardian on submission of his report.

Note,—As to fees for guardians *ad litem*, *see* rule 631.

122. The rate of travelling allowance to be allowed to the guardian, both in the case of an original suit and of an appeal, shall be his actual fare each way according to the class by which persons of his rank and station in life would ordinarily travel with a daily fee not exceeding Tk. 10 for the days he may be away from the headquarters excepting the days on which the guardian is actually travelling.

Note.—Where the journey is by any kind of conveyance by road or water regard should be had to the scale laid down in rule 619 (3) (b).

123. (1) In a case where there are one or more minor defendants, the plaintiff may, by leave of the Court, file with the plaint a list of persons with their addresses, whom he has reason to believe to be the most suitable to act as guardian *ad litem* and simultaneous notices specifying a time within which such person should appear, may be issued upon them.

Note. 1—The term "its own officers" include advocate ordinarily practicing in the Court.

Note. 2—Summonses on the adult defendants and notices on the persons referred to above should issue simultaneously and issue of summonses on the former should not be deferred till the appointment of guardian *ad litem*.

(2) The Court shall proceed to appoint guardian *ad litem* after hearing any objection that may be urged by any of the persons served with notices. No person shall, without his consent, be appointed a guardian to the suit.

Note 1—After appointment of guardian *ad litem* summons in the suit be served on the guardians only.

Note. 2—Fresh summons need not be served on guarian *ad litem* when such guaridan is himself a defendant in the suit and has been served with summons in his capacity as a party.

CHAPTER 7.

FIXING OF DATES AND ADJOURNMENTS.

124. (1) The presiding judges should personally attend to the fixing of dates for peremptory hearing. The number of cases fixed for each day of peremptory hearing and other purposes should be restricted to such a number as after making allowance for unavoidable postponements, the Court may reasonably expect to be in a position to deal with.

Note. — A careful scrutiny of section B of the monthly statement will enable the District Judge to have an idea as to how far this rule is being followed.

(2) As far as practicable, all cases should be brought to trial in order of their age no matter what may be their comparative length or complexity.

Note—The rule as to the hearing of cases in chronological order may be relaxed in case of suits of an urgent nature, the speedy disposal of which is required for the convenience of litigants.

125. On the date finally fixed for the hearing of a suit, the trial shall begin and the evidence of witnesses shall be recorded from day to day until the trial is completed. Under exceptional circumstances, adjournment may be given after recording reasons necessitating such adjournment. This rule does not prohibit the taking up of other cases for passing such routine orders as will occupy a short time only or the disposal of cases which are expected to take only a short time.

Note.—The Supreme Court does not issue judicial orders by telegram,and the action to be taken by a Court in regard to telegrams said to have been received by a party or his legal adviser communicating the substance of and order of the Supreme Court is one for the discretion of the Court. A Court if informed by a responsible advocate that for instance a proceeding pending before it has been stayed by the Supreme Court, may in its discretion grant a short adjournment sufficient to allow the authoritative orders being received by post. But no adjournment can be demanded as of right on the strength of a private telegram.

126. Adjournment is a matter entirely in the discretion of the Court which should be exercised judicially on a consideration of the interests of all the parties and the particular circumstances of the case.

127. Except where an adjournment is granted with the consent of all parties concerned or where an adjournment is necessitated by the business of the Court or due to the insufficiency of notice, the party desiring an adjournment should be ordered to pay adjournment costs.

Note. 1—Receipt showing the payment of adjournment costs to the party concerned must be filed on the day the payment is made.

Note. 2— If the party is not available, the cost may be deposited in Court. Such deposit shall be treated as peremptory receipt.

128. It is of utmost importance that frequent and unnecessary postponement and attendance of witnesses should be consistently discouraged. The District Judge will call for and scrutinise some of the records of the cases before any of his subordinates who appear, from their explanation regarding long pending cases or otherwise, to be wanting infirmness in the matter.

Note.—When Government servants appear as witnesses, Courts should, as far as possible, give precedence in the matter of hearing to cases in which such witnesses appear, or discharge or give preference in the order in which witnesses are examined, to such witnesses, them after recording their evidence, if it be of a formal nature.

129. Arguments should be heard immediately after the evidence is closed and a case should not as a rule be adjourned for arguments after all evidence has been given, unless it is long and complicated. If any adjournment is necessary, reasons should be recorded by the presiding Judge and it should never be for any but a very brief period.

Note. 1—Arguments when once commenced shall be heard from day to day and throughout the day until completion. The rule is not observed by devoting only a small portion of each day to the purpose.

Note. 2—It ought not be necessary to require the Advocates to submit written notes of their arguments. It is the duty of the Judge to take such notes of the arguments as he thinks fit. If, in some exceptional case, it becomes necessary for the Judge either to require or to receive notes of the Advocates' arguments, such notes ought not to be submitted to the Judge by the Advocate on one side without being first submitted to the Advocate on the other side (*see* G.L.No. 7. of 1934, dated the 7th March, 1934).

CHAPTER 8

PREPARATION FOR TRIAL, FRAMING OF ISSUES AND RECORDING OF EVIDENCE.

1. Use of Rules relating to Discovery, Inspection, Admission, etc.

130. Presiding Judges should make themselves thoroughly conversant with the rules relating to Discovery, Inspection, etc., and the Supreme Court (High Court Division) desire it to be understood that henceforward definite and systematic attempts should be made to apply them in all suitable cases. The co-operation of the Bar is essential but if the Bar or the litigants will not appreciate the great advantage of these provisions, presiding Judges should themselves take the initiative and regard it as a part of their ordinary duty to make use of section 30, C. P. Code which gives express and clear powers to the Court to make orders in these matters of its own motion. One powerful instrument for impelling the parties to action is to make stringent and unfailing use of the salutory provisions of Or. 12, r. 2 that when a party has refused or neglected to admit, the subsequent costs of proving the documents should be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs ; and that no costs of proving the documents should be allowed unless the notice mentioned in that rule is given, except where the omission to give notice is, in the opinion of the Court, a saving of expense.

Note— In forming an estimate of the merit and general efficiency of judicial officers, their ability to make a systematic and intelligent use of these rules will be taken into consideration, and the District Judge should in his Inspection Report note whether the provisions referred to are being systematically and effectively made use of.

131. (1) The main provisions of the Code regarding admissions, Interrogatories and discovery are :—

(a) the law permits the administration of interrogatories by a party to his opponent to obtain admissions which will facilitate the proof of the case of the party who delivers the interrogatories (Or. 11, rr. 1—11).

(b) further, a party may, by notice in writing, call upon the other party to admit for the purpose of the suit only (Or. 12, r. 2) any documents (Or. 12, r. 4) and any specific facts mentioned in the notice.

(c) any party may apply to the Court for an order directing any other party to make discovery on oath of the documents which are or have been in his possession relating to relevant matters (Or. 11, r. 12) and after the affidavit or documents is made by the other party in pursuance of such order, every party is entitled at any time to give notice to any other party to produce for inspection the documents referred to in the affidavit or in the pleadings (Or. 11, r. 15).

Note 1—In order to facilitate the use of the above provisions, the presiding Judge should *see* that the mandatory provisions of Or. 7, r. 14, requring the plaintiff to produce the document on which the suit is based and the filing of a list of other documents relied upon in support of the claim are strictly complied with at the time of presentation of the plaint. The production of all documentary evidence by both parties at the first hearing as required by Or. 13, r. 1 must also be insisted upon and the penal provisions of Or. 13, r. 2 strictly applied in plain cases of default.

(2) The above steps in connection with Discovery, Inspection, etc., should of course be taken before the case comes on for hearing, but it is not practicable or desirable to lay down inelastic rules as to the exact stages when they should come

in. They may be taken at the time of settling issues or immediately after—in a few cases even before according to the facts and circumstances of each case. In small and undisputed cases, there will be no difficulty. In the less important cases, there will be very litle.. But in the larger and more complicated cases it will be usually advisable, after the documents have been lodged in Court, to allow at least one date and more if necessary, before issues are framed for Admissions, discovery, Interrogatories or the like and to fix, if necessary, one or more dates after the issues have been framed for the completion of this preliminary work.

Note 2— On the subject of Discovery, Inspection, etc., *see* further, paragraph 13, civil Suit Instructions Manual, 1935.

2. Issue.

132. (1) Issues must be framed by the presiding Judge himself after reading the plaint and the written statement and after such examination of the parties as may appear necessary. It may also be necessary to look at the documents produced by either party (Or. 14, rr. 1, 3). Parties or their advocates may make suggestions as to the issues to be framed, but it is illegal to leave the framing of issues to them. If the issues are written at the dictation of the Presiding Officer, a certificate to that effect should be appended.

In framing issues, the Court shall proceed as follows :—

(a) Every material proposition of fact and every proposition of law which is affirmed by the one side and denied by the other shall be made the subject of a separate issue.

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

(c) Every issue of law shall be so framed as to indicate, either by a statement of admitted or alleged facts, or by reference to the pleadings or some document mentioned therein, the precise question of law to be decided.

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

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

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

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

(2) When the Court is of opinion that there are issues of law going to the root of a case, it may raise such issues only and try them first (Or. 14, r. 2, C. P. Code). In this connection, *see* also Or. 15, r. 3, C. P. Code under which some of the issues framed can be tried at the first hearing when the Court is satisfied that the argumentor evidence that the parties can at once adduce is decisive of

the matter in dispute. Issues regarding valuation of suit and similar issues may conveniently be disposed of at a very early stage of the suit without keeping them for trial along with the other issues affecting the merits of the case.

Note— As to framing of issues, *see* also paragraph 12, Civil Suit Instructions Manual, 1935.

3. Recording of Evidence.

133. When the evidence is not taken down in writing by the presiding Judge, the memorandum required by Or. 18, rr. 8 and 13 shall be made by him and should he be unable to make the memorandum himself, the procedure laid down in Or. 18, r. 14, shall be strictly followed. The presiding Judge's memoranda should always be made in a clear and legible manner.

Note. 1— As to the procedure when evidence is dictated to a person, *see* promoda Vs. Harish, I.L.R. 55 Cal. 1084.

Note. 2— As to "opening " of a case before trial, *see* paragraph 22, Civil Suit Instructions Manual, 1935.

134. The use of a typewriter for recording depositions and memoranda of evidence is strongly recommended, provided the typing is done by the presiding Judge himself, a certificate is given that this has been done and he signs or initials each page as soon as he completes it, except in the case referred to in Or. 18, r. 14.

Note.— Judicial officers using their own Tupe-writers for official works will get free supply of Type-writer ribbons. (*Vide* Judicilal Department Letter No. 6023-J., dated the 18th July, 1938.).

135. (1) Parties shall file in the respective Courts (and not with the Nazir) their list of witnesses who are in attendance to give evidence on their behalf not later than 10-20 a.m. Lists presented after the prescribed hour shall not be accepted unless the Court is satisfied that there was sufficient reason for failure to present them within time.

(2) The omission of the name of a witness from the list filed shall be no bar to his being examined, if presented for examination at the trial, porvided that a regular petition for leave to examine is filed showing sufficient cause of the delay in attendance, but nothing shall be allowed to any witness on account of his expenses for the day's attendance, if he is neither entered in the lists nor actually examined, unless he can satisfy the Court that his attendance was delayed by unaviodable circumstances.

Note. 1— Advocates signing and filing their list of witnesses should satisfy themselves that the witnesses named therein are actually present in Court. The Court may, in any particular case, if it so desires, get the list verified by one of its own officers.

Note. 2—This rule in no way affects the obligation on the part of witnesses to attend punctually at the time for which they are summoned (*vide* rule 58 *ante*).

Note. 3—The scale laid down in rule 619 should be the rate at which witnesses costs are recoverable.

CHAPTER 9

JUDGMENT, DECREE AND COSTS.

1. Judgment.

136. Attention of Courts is drawn to the provisions of Order 20 rules 1to5 and section 53 C- P. Code regarding the preparation and pronouncement of judgments. The Court shall be guided by the instructions in the following rules.

137. Unless a typewrier is used, all judgments, proceeding, and depositions should be written in a clear and legible hand, one quarter margin of every sheet being left blank. Long judgments should not be recorded on the order sheet.

Note.—Under no circumstances, one side of used up papers should be used for recording depositions.

138. Judgments should be written in language plainly to be understood. They shall not be too long and too laboured. The case should be stated in a few words so as to bring out its nature. The details of contest are found in the issues. The concise statement of the case should set out all the materisl averments of the pleadings and decision on each of the points for determination should be distinctly noted. Similarly, the grounds of decision should be set forth as concisely as is consistent with the introduction and elaboration of all important matters. (*See* also Order 20, rules 4, 4(2) and (5) and Order 41, rule 31 C.P. Code).

Note. 1— If a vernacular word is used, its nearest English equivalent should be added in brackets(See G.L. No. 5 of 1934, dated the 24th February, 1934).

Note. 2— Bengali or local dates should generally be followed by their English equivalents within brackets.

139. Witnesses should be described in the judgment not merely by their numbers but by their names as well. The names should be given not necessarily on each occasion of reference, but sufficiently to denote the person meant.

140. Judgments should be pronounced in open Court and dated and signed in open Court at the time of pronouncing it. (*See* also rules 1 and 3, order 20 C.P. Code.)

Note. —Long periods should not elapse between the hearing of argument and the delivery of judgment.

141. Every Judge proceeding on leave or transfer must write judgments in all cases and appeals heard up to and including the stage of arguments, unless the inability is due to illness or sudden making over of charge. In such cases, the Judge should before his departure, submit a statement in form No. (S) 3 with reasons in the remarks column for not being able to write judgment.

Note.—District and Additional District Judges should submit the statement to the Supreme Court (High Court Division) and Subordinate Judges and Munsifs to the District Judge.

142. The judgement may be written during Court hours only after the days judicial works have been finished.

143. Judgement in *ex-parte* cases shall state specifically and explicitly which of the reliefs are granted and against which of the defendants.

144. Judgment shall state specifically whether any or what interest (including interest pendente lite) is allowed and also whether interest is to run only on the sum recovered under the decree or both on that sum and costs.

145. Every Judge hearing or deciding a suit, proceeding or appeal shall note in the final order or judgment and decree,the powers or special powers (if any) exercised by him in disposing of such suit, proceeding or appeal.

146. (1) Shorthand-typist may be employed by judicial officers of all grades to record judgment provided that a certificate is attached by the presiding Judge that it had been recorded at his dictation and is correct and each page is attested by his signature.

Note.—Stenographers when not employed on the works of Courts to which they are attached, may usefully be lent to other officers of the station who require their services.

(2) When a type-writer is used by the Judge himself he should append a certificate to that effect and attest each page by his signature.

147. When a judgment is not written by the Judge himself with his own hand, each page of it shall be attested by his signature and the judgment shall bear a certificate that it was written at his dictation, in his presence and that it is correct.

148. The ordering portion of the judgment in an original suit should set out the reliefs granted and in an appeal, the modification (if any) made in the original decree explicitly and with particularity and precision.

Note 1— The practice of reserving judgment without fixing any specific day for its delivery and pronouncing it on any day not previously fixed and intimated by recording an order then and there that parties or their Advocates do take notice that judgment will be delivered on that date, is not a compliance with the rule in the Code and must be discontinued.

Note 2— If the judgment is not ready on the day fixed, it should be adjourned to another fixed date of which due notice should be given to the parties or their Advocates.

Note 3— Dates for cases adjourned for judgment shall be entered in column 2 of the Daily Cause List [Form No. (M) (2)].

149. Every District and Additional District Judge shall submit monthly to the Supreme Court (High Court Division) a statement in the prescribed Form No. (S) 3 on or before the 15th of the month next succeeding the month to which it relates showing the cases and appeals that he has heard in which arguments have not been heard and judgments have not been delivered, and every Subordinate Judge and Munsif shall submit a similar statement to the District Judge.

150. The Supreme Court (High Court Division) has noticed with disfavour that some Judicial Officers use abbreviated form of words such as plff. for plaintiff. defdt. for Defendant, D.L. for disputed land, C.L. for case land, etc., while recording depositions and writing out judgment. This practice should be discontinued.

151. Difficulty having been frequently experienced in reading the evidence of witnesses, the attention of all Judicial Officers is called to the necessity of carefully writing such evidence in a legible manner.

152. In the cases of records forwarded to the Supreme Court (High Court Division) in which, from any cause, the evidence has been indistinctly or illegibly recorded typed copies of such evidence should be submitted with the record of the case.

153. It is imper ative that final judicial orders in all classes of cases or proceedings, or orders requiring judicial discretion or discrimination should invariably be written or typed by the presiding judge himself.

2. Drawing up of Decrees.

154. Decrees shall ordinarily be drawn up in the language of the Court.

155. Decrees should be prepared with great care and attention. The defective drafting of decrees by ministerial officers, which are passed mechanically, is the cause of various troubles in execution. Attention is drawn to Or. 20, r. 7, which requires the Judge to satisfy himself, before signing the decree, that it is in accordance with his judgment.

Note—All decrees should be checked by the sheristadar before it is signed by the Presiding Officer. All complicated decrees should be drawn up by the sheristadar himself.

156. In drawing up a decree, the following instructions shall be observed :—

(1) A decree must agree with the judgment and be not only self-contained, so that it may not be necessary to refer to any other document or paper for its understanding and execution, but also be precise and definite in its terms.

(2) A decree (*ex-parte* or otherwise) shall specify clearly and distinctly the nature and extent of the relief granted, what each party affected by it is ordered to do or forbear from doing and other determination of the suit (Or.20,r.6). Every declaration of right made by it must be concise yet accurate; every injunction, simple, definite and plain.

(3) If a decree is affirmed on appeal, the terms thereof shall be recited so as to make the appellate decree complete in itself. If a decree is varied or modified, the relief granted in lieu of or in modification of that originally granted shall be fully and accurately set out. If a decree is reversed, the relief granted to the successful party shall similarly be stated.

(4) In a decree, the decretal amount shall be written both in figures and words.

Note 1— Petitions of compromise, maps prepared by the direction of, or accepted by, the Court and similar papers necessary to illustrate or explain the terms of the order passed shall be attached to and form part of the decree and shall be signed by the Judge.

Note 2— Concise but definite particulars of the claim as stated in the pleading and the date of institution of the suit shall appear at the commencement of the decree. It is not necessary to transcribe the whole of the pleading into the decree.

Note 3— It shall not be necessary to include the memorandum of appeal in the decree of the appellate Court.

Note 4—Where different valuations are put for purposes of jurisdiction and for payment of court-fees, both values should be stated in the decree. The amount claimed as mesne profits should be separately shown. In the case of an appellate decree, the valuation as given in the decree of the first Court should also be embodied.

Note 5—Interest, if any, allowed by the Court should be clearly shown in the decree and also the period for which and the rate to which interest has been allowed. It should also be clearly stated therein whether interest is to run on the decretal amount or both that amount and costs.

Note 6—As regards the proper form of decree when a compromise goes beyond the subject-matter of the suit, the directions of the Judicial Committee in the case of Hemanta Kumari *V.* Midnapore Zemindari Co. Ltd., (24 C. W. N. 177 P. C.), should be followed. It has been laid down there that "a perfectly proper and effectual method of carrying out the terms of section 375, C. P. Code (now Or. 23, r. 3) would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject-matter of the suit, or it could introduce the agreement in a schedule to the decree; but in either case although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement" (per Lord Buckmaster in *ibid*).

157. The registered address for service filed by a party under Or. 6, r. 14-A, or such address after subsequent change, if any shall be entered in the decree or formal order and not the address as given in the plaint. The following note shall be made in the decree or formal order below the names and addresses of the parties and the note shall be signed by the clerk drawing up the decree or formal order:-

"The addresses given above are the addresses for service filed by the parties with the exception of.....who did not appear or omitted to file their addresses."

158. In suits where a preliminary decree is followed by a final decree, a final decree shall be drawn up in terms of the final judgment. Final decrees being adjudications completely disposing of suits and conclusively determining the rights of the parties shall, excepting final decrees in mortgage suits, be full and complete in themselves, so as to be capable of being understood and executed without any reference to preliminary decree.

Note—Decrees passed under Or. 34, C. P. Code should be drawn up in accordance with the new forms substituted under sec. 8 of the Transfer of property (Amendment) Supplementary Act, 1929 (XXI of 1929) and embodied in Appendix D to the C. P. Code.

159. Decrees shall show properly the names of parties added, substituted or expunged in the course of the suit. In the case of a decree after a remand, it shall show the substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court. (See also rule 313.)

160. Decrees shall ordinarily be prepared within seven days of the date of the receipt of the record in the office after delivery of judgment. For the purpose of exercising a check upon the work of the Bench Clerk and the decree-writer, the former shall, before he sends the records to the office, note the date of such despatch in the margin of the order-sheet against the order recording the delivery of judgment.

Note—As far as possible decrees should be prepared in the order of the dates of disposal of cases.

161. (1) As soon as a decree has been drawn up and before it is signed, a notice shall be posted on the notice board in the prescribed Form No. (M) 5, stating that the decree has been drawn up and that the parties or their Advocates may within three working days from the date of the notice peruse the draft decree in the office during the hours fixed by the Court for the purpose. The parties or

their Advocates shall be given facilities to examine the original record when perusing the draft decree. If the draft decree has been correctly drawn up, it shall be signed by the party or Advocate perusing it. If the party or Advocate considers that there is a clerical or arithmetical error in the draft decree or that the draft decree is at variance with the judgment, he shall point out the error or variance to the sheristadar, who shall either make the necessary correction himself or obtain the orders of the Court. The decree shall then be signed by the presiding judge.

Note 2—Form No. (M) 5, Notice of decree drawn up shall be destroyed after 3 months from the date of publication of the notice.

(2) The Judge signing the decree shall make an autograph note stating the date, month and year on which the decree was singned and initial the corrections or alterations.

Note 1—Advocates are responsible for seeing that decrees are correctly drawn up and that costs are rightly calculated.

162. (1) Decrees or formal orders in the nature of decrees need not be drawn up under the Code in all cases, even though the orders concerned may be adjudications upon rights claimed or defences set up ; for instance, final orders under Or. 9, rr. 9 and 13 ; Or. 21, rr. 2, 58, 91, 92, 99, 100, 101 ; Or. 41, rr. 19, 21, 23 ; Or. 47, r. 1, C. P. Code ; and interlocutory orders made during the course of a suit or execution proceeding. If, however, any such order is capable of execution or affects execution by reason of adjustment of costs to be paid by one party to the other, it is desirable that a formal order showing the result of the case and containing a concise expression of adjudication be drawn up in the order sheet. If costs have to be paid by one party to the other, such costs should be shown in the order sheet as well as the names both of the party by whom they are to be paid and also of the party who is to receive the same, so that the latter if desirous of executing the order may not be compelled to take a copy of the judgment.

(2) No decrees or formal orders are required to be drawn up in the case of interlocutory orders made during the course of a suit or execution proceeding.

163. In suits for money including suits upon mortgage, in suits for specific movables, in suits for accounts and in suits for arrears of rent, no decrees need be drawn up if—

(i) neither party has to recover anything, unless the presidigng Judge otherwise directs ;

(ii) the claim is satisfied after judgment but before decree is drawn up.

Note—In the cases falling under clause (i) of this rule, a formal decree should be drawn up if, after contest, and not in consequence of an agreement between the parties, a suit is dismissed without costs.

3. Costs.

164. Costs in decrees should be very carefully calculated. A party who has been awarded costs in the judgment or order shall be allowed all such costs, charges and expenses, as shall appear to have been necessary or proper for the attainment of justice or for defending his rights ; no costs shall be allowed which appear to the Court to have been incurred or increased unnecessarily or through procrastination, negligence or mistake.

(2) Proper and necessary costs should exclude expenses like the following, unless the Court specifically directs otherwise :—

(i) Court-fee stamps on all applications dismissed or not allowed or not pressed.

(ii) Court-fee stamps on all unnecessary or defective applications or applications to suit the convenience of a party such as, for adjournment of hearing, for time to file written or other statement or to take some step, for showing cause in case of any default or omission, for withdrawing a claim, for amendment of any pleading or petition, etc., etc.

(iii) Expenses of affidavits improperly or unnecessarily incurred (see rule 45).

(iv) Expenses of filing and proving all unnecessary document or documents which the other party was not previously called upon to admit by notice (Or. 12, r. 2) or of exhibiting all unreasonable interrogatories (Or. 11, r. 3).

(v) Process-fees for serving persons dismissed from the suit, or found by the court to have been unnecessarily impleaded, or the claim against whom has been dismissed, withdrawn or not prosecuted.

(vi) Charges incurred in procuring the attendance of unnecessary witnesses.

Note—When the claim in a suit valued at above Tk. 50 is decreed in part, reducing the value below Tk. 50, court-fees on all necessary applications should be calculated at the proper amount payable on the reduced value.

165. Where "proportionate costs" are allowed, such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim when "corresponding costs" or " costs according to success" are decreed, the assessment is to be made as if the suit had originally been brought at an amount representing the value of the successful part of the claim.

166. Under section 35A, C. P. Code (inserted by section 2 of Act IX of 1922), compensatory costs for false or vexatious claims or defences can be awarded by Courts under certain circumstances there set out.

CHAPTER 10

EXECUTION OF DECREES.

1. General.

167. (1) Execution of decrees or orders should receive as much attention as original suits and appeals and every presiding Judge should see that the processes of the court are not abused and that the reliefs available under decrees are obtained by applicants and cases are disposed of as speedily as possible. The Supreme Court (High Court Division) consider that much time can be saved and abuses of the processes of Courts can be checked if a certain amount of personal attention is given by the presiding Judge to execution cases and proceedings arising out of them.

(2) All cases of fraud, negligence, suppression of processes and resistance to execution should be carefully scrutinised by every Judge with a view to his punishing the offenders and taking such steps as may be necessary to prevent their recurrence.

(3) Close supervision and control should be exercised by District Judges over the execution of decree business pending in all Courts subordinate to them and any officer who habitually neglects this branch of work or disposes of it perfunctorily or with unreasonable delay, should be reported to the Supreme Court (High Court Division).

Note 1—In awarding costs in execution and miscellaneous cases care should be taken to *see* that costs which should justly have been borne by the decree-holder are not charged against the judgment-debtor (*see* also rule 164).

Note 2—As to execution of decree, *see* also paragraph 35, Civil Suit Instructions Manual, 1935.

168. All applications for execution, whether subsequently rejected or not, shall be entered in a register in form (R) 5 as soon as they are filed. They shall have affixed to the top left hand corner a slip of paper as in rule 48 on which has been written the name of the first decree-holder seeking execution and of the first person against whom execution is sought and of the filing advocate. This slip will be dealt with as in rule 49. Checking of execution applications as required by Or. 21, r. 17 and other rules should be done with care and attention. While it is necessary to be satisfied that all essential and material particulars are correctly embodied, it should at the same time be impressed upon the ministerial officers authorised to receive applications that they are not to be returned on frivolous or vexatious grounds.

Note—See also paragraph 35(5), Civil Suit Instructions Manual, 1935.

169. The filing of a copy of the decree along with the execution petition is not compulsory, but if it is not possible to verify the correctness of the particulars in the application for execution from the Court register, etc., the Court may require the applicant to produce a certified copy [Or. 21, r. 11(3) C. P. Code].

170. Every application for execution shall set out fully and accurately the particulars necessary under Or. 21, rr. 11-14, C. P. Code, and the whole of the relief which the applicant requires at the time of presenting the same and also state distinctly the mode in which the assistance of the Court is sought. The Court shall not grant any relief not claimed by the execution petition, but should insist on the applicant setting out accurately the reliefs which he does claim. In particular, interest, if any, subsequent to decree should be correctly calculated and the

total amount for which execution is prayed should be entered in column 11 of Form No. (J)47, Vol. II. Columns 2 and 2(a) of this form should reproduce the names of parties as found in the decree, and also show below, the name or names of persons substituted in place of the original parties.

Note 1—The attention of the courts is drawn to the provisions of section 3(1) of the Provident Funds Act (XIX of 1925) under which a compulsory deposit in any Government or Railway Provident Fund shall not be liable to attachment.

Note 2—(A) The following allowances payable to any public officer in the service of the Government or of cantonment authority, or of the port authority of a major port are exempt from attachment by order of a Court, namely :—

(1) All kinds of travelling allowances,

(2) All kinds of conveyance allowances.

(3) All allowances granted for meeting the cost of—

(a) uniforms ; and

(b) rations.

(4) All allowances granted as compensation for higher cot of living in localities considered by Government to be expensive localities,

(5) All house-rent allowances.

(B) The following allowances payable to any public officer in the service of the Government are exempt from attachment by order of a court, namely :—

(1) All kinds of travelling allowances.

(2) All kinds of conveyance allowances.

(3) All allowances granted for meeting the cost of—

(a) uniforms ; and

(b) rations.

(4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities.

(5) All house-rent allowances.

171. Every application for execution shall ordinarily be brought up before the presiding Judge for orders on the next day after it is presented and not later than the second working day following the day of its presentation with all defects and objections to the application, if there are any, noted thereon by the ministerial officer in charge of the file, unless the Court itself extends the time for the purpose and if a searching-fee of forty paisa (*vide* rule 534(1) (b), has been paid by means of a court-fee stamp affixed to the application, information available in the office which will enable the defects to be remedied shall also be noted on the back of the application.

172. If the officer whose duty it is to check Applications for execution has reason to believe that the amount with interest (if any) due upon the decree, or other relief granted thereby, or any cross-decree, is not correctly entered, he will refer to the Court for the correct amount and execution will issue for the amount as stated by the Court subject to any objection by the decree-holder or applicant for execution.

173. Every application for attachment of movable property in the possession of the judgment-debtor under Order 21, Rule 10, C.P. code shall be accompanied by payment into Court of the costs of issuing the process for attachment and if so required, custody fee as well as fee for the coming and going of the process-serving

peon [*vide* rule 604 (2), Note 1] for so many days as the Court shall order. The costs of issuing the proclamation of sale under Order 21, Rule 66, shall be paid in to Court , as soon after the attachment is made, as the Court may direct.

Note—If the decretal amount for which execution is sought does not exceed twenty taka, neither the custody fee nor the fee for the coming and going of the process-serving peon shall be levied.

174. Upon the hearing of the execution petition, the Court shall ascertain whether the provisions of the Code and these rules have been complied with, and shall determine whether notice thereof is to be served on any person. If the petition is admitted, the Court shall adjourn the further hearing to a fixed day, and the applicant shall (unless otherwise provided elsewhere) within three days or such other period as may be fixed by the Judge , bring into Court the fees prescribed for issue of processes, the required number of processes duly filled up, and, if the application is for the arrest of the debtor, the subsistence moneys fixed by the Judge under Or. 21, r. 39(1) (see rule 223 post). At the adjourned hearing, the Court may, if the prescribed fees, processes and subsistence moneys have been put in, order process to issue; or in the case of default, may extend the time for payment and filing of processes, or dismiss the petition. Provided that the Court may, if it thinks fit, on admitting the petition, in any case in which the prescribed fees, etc., and subsistence moneys have been paid, order process to issue forthwith.

175. Where an application is made under Or. 21, r. 15, by one or more of several joint decree-holders, unless a written authority signed by the other decreeholders, for the applicant to execute the decree and to receive the money or property recovered, is filed in Court, the Court may give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not joined in the application; and may also in its discretion give notice of any application for payment or delivery to the applicant, of any money or property recovered in execution, or may make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Note—The cost of such notice shall be borne by the decree-holders applying for execution or applying for payment, as the case may be.

176. (1) Each peon entrusted with a warrant for execution of a decree for money shall be given by the Nazir a duplicate carbon receipt-book in the proscribed Form No. (A) 31 bearing a distinguishing number, containing a number of receipts and their duplicate carbon copies serially numbered and preceded by the Book Number, the total number being certified on the cover by the Judge in charge of accounts.

(2) The Nazir shall keep a register in which he shall enter all duplicate carbon receipt-books received by him, showing (a) the date of receipt, (b) the serial number of each book, (c) the number of receipts it contains, (d) the name of the peon to whom the book is issued, (e) the number of process in the process register, (f) nature and number of case, (g) the date of issue, (h) the peon's signature for it, (i) the date of return and (j) the Nazir's signature. A separate duplicate carbon receipt-book is to be issued to each peon, and no new book shall be issued to him until the one already issued is exhausted and returned. The Nazir shall keep all blank or exhausted books under lock and key.

Note—The register prescribed above shall be preserved for three years from the date of the last entry in it.

(3) The peon receiving any payment shall give a receipt therefor and shall obtain the signature or thumb impression of the payer to the declaration of payment on the counterfoil and shall in his service report invariably mention the number and date of the receipt granted. In the case of illiterate payers, the peon shall make every endeavour to obtain the signature of a literate witness on the back of the counterfoil. He shall also sign legibly the entry in the counterfol. The receipts should be written legibly and all alterations must be duly attested. The amount realised by the peon must be paid into Court immediately after his return to the station and a carbon counterfoil attached to the process concerned. The Nazir shall, on the return of any process (for the recovery of money) by a peon, whether executed or not, scrutinise the service report with the duplicate carbon receipt-book, and if accurate, initial the counterfoils, and shall not make over any other process to such peon till he has done so. The Nazir shall record the return of the counterfoil (or of the unused form, as the case may be) in the register of receipt. If the receipt has been used, the Nazir shall send the counterfoil with the service-report to the Court concerned, to be filed with the record of the case. Defects or suspicious circumstances should at once be reported to the Court.

(4) After each trip, the peons should deposit their duplicate receipt-books with the Nazir who should keep them under lock and key in the office. They should be reissued to the peons when going out again for service of processes which involve the realization of money, a note being made of the date in the register of receipts when this is done.

Note—It shall be the duty of the Nazir to explain clearly to the peons the directions contained in this rule and to satisfy himself every time a peon returns the processes and the receipt-book that its several provisions have been strictly complied with.

177. An order under Or. 21, r. 24, appointing an officer to sign processes for execution shall be in writing. Processes for attachment of movables, delivery of possession of immovable property and warrants of arrest should be signed by the presiding Judge himself.

178. When no action is taken by the plaintiff or the defendant in respect of any attached property in the custody of the Nazir which has been attached before judgment under Or. 38, r. 7 within six months of the disopsal of the suit in which such attachment has taken place, the property may, after notice to the parties, be sold by order of the Court and the sale-proceeds credited to Government.

2. Payment and Satisfaction.

179. If the person entitled to immediate receipt of money or his duly authorised agent and the payee are both present in Court and payment is applied for, the money may, with the leave of the Judge be passed at once direct from the one to the other. In such case, the Court shall record an order in the case, for payment to the person so entitled who shall forthwith file an acknowledgment of receipt signed by him and satisfaction *pro tanto* of the decree or order, if any, in pursuance of which the money is paid, shall be entered.

Note 1—Care must be taken to see that no officer of the Court receives or becomes in any way responsible for the money, and that no receipt for it is given by the Court or any officer of Government.

Note 2—Payment shall not be directed to be made to the advocate of the applicant unless his vakalatnama contains an express authority for the purpose or a separate instrument distinctly confers on him the authority to receive payment (*see* rule 824).

180. Except when payment is made to the decree-holder under the last preceding rule, all moneys recovered by an officer of the Court or received by the officer conducting a sale shall be paid into Court in manner prescribed. Such moneys will only be paid out of Court on an application made for that purpose in writing.

181. (1) The attention of the Courts is drawn to the provisions of Or. 21, r. 1(2) (a) which require that when money payable under a decree is paid into Court, notice of such payment shall be given to the decree-holder or the person in whose favour the order is made. Such notice is to be issued in Form No. (P) 19 in the manner contemplated in Or. 21, r. 1(2) (b) after payment of the necessary costs.

Note 1—The chalan tendering the money or the forwarding letter when money is remitted by money order (*see* rule 183) shall be accompanied by a sheet containing particulars regarding the number of suit or proceeding, date of decree or order and amount payable under it, due date in the case of instalment, name of the decree-holder or other person entitled to the money and his full postal address.

Note 2—Notice issued in Form No. (P) 19 should be noted in the suit registers.

(2) The person depositing the money has the option to cause notice to be served in the usual way by bringing into Court the necessary process-fees and the forms of notice.

182. When payment under a decree is made out of Court or it is otherwise adjusted in whole or in part under Or. 21, r. 2(1), a certificate in the form given below shall be presented to the Court without any formal written application. Such certificate need not be stamped. Should the certificate accompany a formal written application, such application must be stamped under the Court-fees Act; but the stamp shall not be charged as costs against the judgment-debtor. The form of the certificate shall be as follows:—

In the.....Court of the.....At .....

....Plaintiff,

Versus.

....Defendant.

Suit No. .....of 19..

Certificate by decree-holder under Or. 21 r. 2(1), C.P. Code. I....., decree-holder, certify to the Court payment or adjustment in the following terms of the amount of Tk.....in the above suit by .....on the..... Date:.....Decree-holder.

Note 1—The certificate must not contain any extraneous matter or anything in the nature of a prayer. If it does, it should then be treated as an application.

Note 2—The payment or adjustment shall be noted in the appropriate column of the Register of Suits.

183. Unless it appears to the Court that the personal attendance of the party is necessary, money payable in satisfaction of a decree or order may be transmitted to the Court by postal money-order or in Government universal currency notes. In such case, the payer shall, before transmitting the money, send to the Court concerned, in a pre-paid registered cover, a schedule containing full particulars regarding the intended deposit, and state the manner in which the money is to be sent.

Note—The schedule referred to shall state the name(s) of person(s) on whose behalf the money is sent, name(s) of person(s) to whose credit the amount is to be placed, number of suit, appeal or matter, or execution case (if any), the decree or order in pursuance of which the payment is made, or the reason for the payment, and the several sums (Principal, costs and interest) and the total amount thereof and such other information as may be necessary.

184. The money-order or the cover and the amount shall be received by the Nazir under the order or the presiding Judge of the Court concerned who will have the requisite chalans prepared and the procedure laid down in the rules in Part VI regarding the deposit of collections made by an officer of the Court (rule 654 et seq.) shall then be followed and the money duly entered in the Accounts and paid into the Treasury.

185. When the decree-holder or other person entitled to any money deposited into Court in satisfaction of a decree or order has, in his execution petition or otherwise requested that the money be forwarded to his address by money-order and, if after audit of the application it is found that there is no objection to the payment of money, the Court may order the payment by money-order less postal commission and the value of the court-fee stamp as required by law. The money in deposit shall be withdrawn by the Nazir in the usual manner and sent forthwith by postal money-order.

Note 1—The application for payment should contain particulars sufficient to trace the deposit, *e.g.*, number of case and names of parties in it, date of decree or order and date of deposit (if known), amount to be paid, etc.

Note 2—The payment of decretal amount to the Court (*vide* rule 183) or to the decree-holder or other person entitled to it by means of money order (*vide* rule 185) should be encouraged.

Note 3—If the application for payment is required by law to be stamped, the necessary amount should be deducted from the sum withdrawn and the Nazir will attach to the application a court-fee stamp of that value and have it punched.

Note 4—The Judge-in-Charge should see that necessary entries are made in the Account books before and after withdrawal and that the money is actually remitted by money-order.

186. Two registers shall be maintained in the following forms in manuscript showing the receipt of decretal amounts from judgment-debtor, etc., and payment to decree-holders, etc., by money-order. The Judge-in-charge shall initial each entry in the registers and see that the amount received is paid into the Treasury and that withdrawn from the Treasury is remitted to the decree-holder with the least possible delay.

(1) Register showing the receipt of decretal amount by Money-Order.

Date of receipt.	From whom received.	Particulars of receipt.	Amount received.			No. and date of chalan by which the money is paid into the treasury.	Initial of the Judge-in-charge.	Space for affixing money-order coupons.
			Principal.	Incidental charges.	Total.			
1	2	3	4	5	6	7	8	9

(2) Register showing the remittance of decretal amount by Money-Order.

Date of remittance.	To whom remitted.	Particulars of remittance.	No. and date of payment order by which the money is withdrawn from the treasury.	Amount remitted.			Date of receipt of acknowledgment.	Initial of the Judge-in-charge.	Space for affixing money-order receipts and payees acknowledgments.
				Principal.	Incidental charges.	Total.			
1	2	3	4	5	6	7	8	9	10

3. Attachment.

A.—Attachment of Immovable property

187. Every application for attachment and sale of immovable property shall in addition to other pariculars required by law or any rule, contain a description of the property sufficient to identify it, its area and annual rent and shall also state clearly and specifically the nature and extent of interest of the judgment-debtor, where the lands are situate within an area for which a record-of rights has been finally published, it shall further contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights and of the area and rental according to such record.

Note—Courts should insist on strict compliance with the requirements of this rule. The particulars should be carefully checked in the office and when there is non-compliance execution petitions are liable to be rejected or returned.

188. Every application for an order for sale of immovable property shall, in addition to the verification and the particulars required by Or. 21, r. 66(3) state everything known or believed by the person verifying the same to exist which relates to the nature, or affects the value, of the property to be sold, and shall further state that he is not possessed of any further information regarding it.

B.—Attachment of Movable Property and Live-stock

189. (1) When property is made over to a custodian under Or. 21-A, rr. 3(a) and 5, the schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by—

(a) the custodian and his sureties ;

(b) the attaching officer ;

(c) if willing, the person whose property is attached and made over ;

(d) two respectable witnesses.

(2) One copy will be made over to the person whose property is attached, one copy will be made over to the custodian and one copy will be retained by the attaching officer to be filed with the record.

190. Whenever attached property is kept in the village or place where it is attached under sub-clause (b) of Or. 21-A, r. 3, a schedule of the property shall be drawn up by the attaching officer in duplicate and dated and signed by the attaching officer, two respectable witnesses and the person whose property is attached. A copy of the list shall forthwith be sent to the Court and the other copy shall be made over to the person whose property is attached.

191. When any property is taken back from a custodian, he shall be given a receipt for the same.

192. The officer deputed to attach movable property shall be furnished with a certificate endorsed on the writ stating the period for which the fees and charges required under rule 597(2), Art. 3 of the Court-fee rules have been paid.

193. When the property seized under Or. 21, rr. 43 to 45 is in the opinion of the attaching officer of a value not exceeding twenty taka, he shall infrom the judgment-debtor or in his absence any adult male member of his family that it will be sold at once without the issue of any sale proclamation under Or. 21, r. 66. If, however, the decree-holder or the judgment-debtor or any person acting on behalf of either of them in their absence, objects to such a course, the attaching officer shall refer the matter to not less than three respectable adult persons of the locality of whom a member of the local union council if then available, should be one and if the decision of the majority be that the value does not exceed twenty taka, it shall be final and the attaching officer shall forthwith sell the property by

auction after giving to intending purchasers such reasonable notice as is possible under the circumstances of the case. If the value determined exceeds twenty taka, the attaching Officer shall deal with it as prescribed under Or. 21-A, C. P. Code, and supplemented by the rules of this Chapter.

Note—When property is sold under the provisions of this rule, no percentage or poundage, as prescribed in Article 7, Rule 597(2) shall be levied.

194. Whenever attached property is kept in the village or place where it is attached and the judgment-debtor gives his consent in writing to the sale of the property without awaiting the term prescribed in Or. 21, r. 68, the attaching officer shall receive the same and forthwith forward it to the Court for orders with an accurate list of the attached property.

195. When attached property is made over to a custodian and such person enters into a bond, it shall be brought by the attaching officer and shall form part of the record. The bond shall be stamped with the court-fee stamp of taka one. If the stamp is not available locally, the attaching officer shall realise the required value in cash and make it over to the Nazir with the bond who shall attach the bond with necessary court-fee stamp.

196. The attaching officer shall be provided with a separate receipt book of the kind prescribed by rule 176 of this Chapter and a receipt shall be given by him for all sums paid to him under these rules. The amount realised must immediately on return to the headquarters be paid into Court and dealt with in the manner laid down in the Account Rules.

197. If necessary costs are paid by the decree-holder to the attaching officer and the attached property is removed to the court-house under Or. 21-A, r. 4, C. P. Code, the attaching officer shall file in Court a memorandum of the expenses attending the removal supported by vouchers. Any surplus left in his hands shall be paid into Court. If, however, the decree-holder be available when the attaching officer files the memorandum of expenses attending the removal, any surplus left in his hands may instead be refunded to the decree-holder who shall give a receipt for the same.

198. The Nazir will from time to time inspect livestock brought to Court under r. 5, of Or. 21-A, and satisfy himself that the animals are being properly fed and cared for and report to the Court if they are ill or undernourished.

199. A register should be maintained by the Nazir in the prescribed Form No. (R)20 showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R)21 for ordinary movables and livestock attached in execution cases.

4. Sale.

200. (1) Subject to the proviso in Or. 21, r. 43, sale of property in execution of decrees in Courts (not being Courts of Small Causes) shall commence on a certain day in each month to be fixed by the District Judge for Courts at headquarters. For Courts at outlying stations, the sale dates in each month shall be fixed by the District Judge in consultation with the presiding judges of those Courts or any of them as he may think fit.

(2) It will be in the discretion of the District Judge to divide the Courts at headquarters into as many groups as may be convenient for the speedy completion of sales. The days fixed for the sales of each Court or group of Courts may be consecutive or otherwise according to the number of sales to be held on each day and care must be taken to fix sale dates of each Court or group of Courts at such intervals that all sales advertised for a certain day are completed on that date.

(3) Sale dates of outlying Courts should be fixed on the same principle and where there is more than one Court in the same station, sale dates of all the Courts should not ordinarily be fixed for the same day.

Note—Sales must start punctually at 12 noon (no sale should ordinarily be fixed on Fridays) and every endeavour should be made to complete the sales on the dates fixed in the sale proclamations. Prospective purchasers cannot be expected to attend Courts from day to day and take their chance not knowing when a sale will actually take place. Judicial sales being an important function of the Courts it is very desirable that presiding Judges should from time to time have the sales conducted in the Court room in their immediate presence. Only in this way can the reputation of Courts and purity in the conduct of sales be assured. A sale in execution is a sale by the Court and "it has been laid down again and again that in sales under the direction of the Court it is incumbent on the Court to be scrupulous in the extreme and very careful to see that no taint or touch of fraud or deceit or misrepresentation is in the conduct of its ministers" (per Lord Macnaghten, in Kala Mia *v.* Harpernik, I. L. R. 36 Cal. 323, P. 334, P. C.).

201. All cases in which property, except property of the nature specified in the proviso to Order 21, rule 43 or rule 208 of this Chapter, is to be sold at each place of sale, shall be entered in lists for each place in the prescribed form No. (M)4, separate lists being maintained for cases relating to movable property and for those relating to immovable property. Such lists shall be prepared by the office and after they have been approved and signed by the presiding Judge sent to the Nazir who shall, at the conclusion of the sale, every-day, return lists to the presiding judge for inspection.

Note—Form No. (M) 4, List of cases in which sales are to be held, shall be destroyed after six months.

202. At the stated hour, which shall be 12 noon, upon each fixed date the sales shall be commenced, and shall be carried on in the order stated in the list above-mentioned, unless otherwise directed by the Court. No sale shall continue after sunset but the sales shall be held from day to day and throughout the day, and until the lists are finished ; provided that this rule shall not interfere with the adjournment of any particular sale according to law, (Or. 21, r. 69).

Note—The officer conducting a sale within the precincts of a court-house has no power to adjourn a sale (Or. 21, r. 69), and in the event of the sales fixed for the day not being completed on that day for want of time or any other reason, the order of the Court concerned must be taken in each case and recorded in the order sheet of each execution case postponing the date till the next day or to any other specific day and hour as may be directed by the Court.

203. The Court may, if it so desires, and if circumstances justify it adjourn the sale to a date within the month.

204. The same days shall not ordinarily be fixed for the sale of both movable and immovable property.

205. Except as regards property of the kind mentioned in rule 208, sales in execution of decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court, or by such other person as the Court may appoint in this behalf, in the immediate presence of the presiding Judge. Where this is not possible sales may be held in another place within the Court premises to be selected by the presiding Judge : provided that the Court executing the decree, may if it sees fit, for reasons to be specified in writing, direct, in the interest of the parties, that the sale be held at any other time and place within its jurisdiction, and when acting under this last mentioned proviso, shall except for good reasons to the contrary, give preference as regards choice of time and place to the wishes of the judgment-debtor.

Note 1—An order appointing an officer or other person to conduct a sale under Or. 21, r. 65, shall be in writing.

Note 2—When sales at district hea dquarters are not held in the immediate presence of presiding Judges in their own Courts, they may be held at any other place in the Court premises determined by the District Judge in consultation with the presiding Judges of other Courts, or any of them as he thinks fit.

Note 3—The person conducting the sale is only a recorder of bids. All bids must be placed before the presiding Judge who shall note acceptance or rejection. No sale is complete till the Court formally accepts the same.

206. When a Court does not accept a bid or orders for resale, the reasons therefor shall be recorded.

207. When leave to bid is necessary under Or. 21, r. 72, C. P. Code in cases in which the Court may consider that the applicant should not be allowed to bid for less than a sum to be fixed it shall be competent to the Court for reasons to be recorded, to give leave to bid at the sale, only on condition that the applicant's bid shall not be less than the amount so fixed by the Court, which amount shall as far as practicable, be determined with reference to the probable market-value of the property or of the lot or lots into which the property is divided for sale.

208. All sales of livestock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets which have not been brought to Court, shall, unless the Court otherwise directs, be held at such market in the neighbourhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospects of good prices and to the saving of expense in conveyance and carriage.

209. If it appears to the Court that immediate sale of movable property in the custody of the Nazir is necessary, *e.g.*, by reason of its being perishable, it may authorize him to sell the same by public auction and may give such directions as to date and place of sale and manner of publishing the same as the circumstances of the particular case demand.

210. The proceeds of a sale effected in execution of a decree will only be paid out of Court on an application made for that purpose in writing.

211. (1) When a decrée-holder applies for leave to purchase under Or. 21, r. 72 no order to set off the purchase-money against the amonnt of the decree shall be made on that application. If a decree-holder auction-purchaser desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

(2) Upon the hearing of such petition, the costs of execution including the poundage fee shall be added to the decree and in cases in which the amount of the purchase-money exceeds the amount of the decree and such costs, the decree-holder auction-purchaser shall pay into Court the sum of 25 per cent. on the balance of the purchase money after deducting the amount of the decree and of such costs and shall pay the balance at the expiration of fifteen days in accordance with Or. 21, r. 85, C. P. Code.

212. When a sale is set aside under Order 21, rule 91, C. P. Code, the entire purchase-money including the amount deducted for payment of the poundage fee, should be ordinarily refunded to the auction-purchaser.

213. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Arms Act (XI of 1878) are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Deputy Commissioner of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the said Act.

214. Whenever the Civil Courts may have occasion to sell, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station they shall, on confirming the sale, forward a copy of the sale certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

215. When after the confirmation of a sale of immovable property an application is made for a certificate of sale and the requisite stamped paper is filed, a draft shall be made in the prescribed form and the original prepared from the draft.

Note 1.—If the connected record has been despatched to the district Record Room under the rule for the periodical transmission of records, the Court should call for it for preparation of the sale certificates and no cost is leviable from the party for transmission of the record (*see* rule 615).

Note 2.—Applications for sale certificate need not bear any court-fee stamp. If no stamps are filed with the application for sale certificate, the application should be rejected. If the application is filed with insufficient stamps, reasonable time shall be allowed to file the deficit and on failure to make up the deficiency within the time allowed, the application shall be rejected. In all cases of rejection, the stamps originally filed with the application shall be returned to the applicant whose dated receipt shall be taken in the remarks column of (R) 31.

Note 3—For form of certificate of sale of land, *see* Form No. (J) 52, Vol. II.

Note 4—Sale certificates prepared shall be notified as soon as they are ready for delivery, in a register in Form No. (M) 5 with necessary modifications. The entries shall be signed by the presiding Judge and the register shall be placed at some conspicuous part of the court room for information of all concerned.

216. (1) Judicial officers should instruct their subordinates to insert in all certificates of sale of immovable property as accurate a description of the property sold as the nature of each case will permit, and must insist on the date on which the sale became absolute being invariably noted therein (Or. 21, r. 94).

(2) The following particulars should be inserted in every case :—

(i) The "addition" (as defined; section 2 of the Registration Act, 1908), of the person who is declared to be the purchaser;

(*ii*) particulars sufficient to identify the property, as required by section 22(2) of the same Act;

(*iii*) the name of each registration sub-district in which any part of the property is situate.

(3) Where necessary the following particulars may be given in a schedule to the sale certificate :—

(*i*) Whether the property sold is subject to incumbrances; if so, the nature of the incumbrances. This must be in accordance with what is stated in the sale proclamation.

(*ii*) Area.

(*iii*) Boundaries.

(*iv*) The amount of revenue payable for the same.

(*v*) If there has been a record-of-rights, then the cadastral survey number of the property sold.

Note.—In order that full and necessary particulars of the kind stated in the rule may be incorporated in the sale certificate, the Court should insist on their being furnished in the schedule attached to the execution petition and in the sale proclamation (*see* rule 187).

(4) The description given of the property in the certificate of sale must correspond with that given in the sale proclamation prepared under Or. 21, r. 66 of the Code.

217. After the sale certificate has been prepared from the draft under rule 215 *ante*, both shall be carefully compared. If they are found to agree, the sale certificate shall be made over to the party applying for it and draft shall be certified to be a true copy and forwarded to the Registry Office without delay. On each copy, the amount of stamp duty paid on the original certificate under Article 18 of Schedule I of the Stamp Act, 1899, must be noted. Under Article 24(a) of the same schedule, such copies are not themselves required to be stamped. In their preparation, however, forms printed on paper of a uniform size, on having a margin for binding, must be used.

218. (i) For the purpose of forwarding copies of sale certificates to the Registry Office, the Civil Courts shall use Form No. 7.

Note.—No applications for copies of sale certificates shall be entertained by Civil Courts. If such copies are required, an application may be made for the purpose to the Registry office.

(ii) Copies of sale certificates shall ordinarily be sent in batches accompanied by a single form; if necessary, use should also be made of the reverse of the top half of the form for noting particulars of the copies despatched.

(iii) Copies of sale certificates, with the prescribed form duly filled in, shall, in the case of courts located at the same station as the Registry Office, be sent by peon and in other cases by unregistered post.

Note.—Acknowledgments of the receipt of copies of sale certificates sent to the Registry Office shall be numbered and noted in column 12 of the register (R) 31, they shall then be filed in serial order on a new file and made up ultimately into yearly bundles which shall be preserved for three years.

219. Each Court shall maintain a register in the prescribed Form No. (R) 31 in which only those applications for sale certificate which have been filed with the requisite stamps or with insufficient stamps shall be entered in serial order.

Note.—This register shall be examined at least once a week by the presiding Judge, who should particularly *see* that no undue delay is made in calling for records from the Record Room or in the preparation of sale certificates, and the fact of such examination having been made together with such instructions or remarks as may appear necessary shall be entered by him.

5. Arrest, Imprisonment and Release.

220. No employee of Jail, Post, Telegraph, Police and Railways departments shall be liable to arrest in execution of a decree or order of a Civil Court unless 7 days' previous notice has been given to the employees' superior officers.

Note.—The Court issuing the warrant shall send a notice in writing to the immediate official superior of the person to be arrested, before the warrant is entrusted for execution.

221. Whenever a person who has been arrested under a civil warrant appears to be too ill to be removed from his residence or other place where he may be found after his arrest and before he is brought to Court, the officer who has arrested such a person shall forthwith report the matter to the Court and shall remain with the prisoner and retain him in his custody until the order of the Court is obtained under Section 59(2) C.P. Code.

222 (1) In determining the question whether the maximum period of imprisonment should be six months or six weeks, no account should be taken of interest accruing subsequent to the date of the decree nor of execution costs nor of any amounts already realised. The question depends solely on whether the amount due on the date of the decree (i.e. the amount decreed, including interest up to the date of the decree, and the costs of the suit, if any) is more or less than Tk. 50.

(2) All Civil Courts, when committing judgment-debtors to prison, shall in future for the information of the jail authorities enter the amount due on the date of the decree and the interest and costs of execution subsequent to decree separately in the warrant (Form No. 14, Appendix E, C. P. Code).

(3) Order 21, r. 39 declares that the amount disbursed by a decree-holder for the subsistence of the judgment-debtor shall be deemed to be costs in the suit, and shall, therefore, be recoverable as such, but that the judgment-debtor shall not be detained in jail or arrested on that account. The amount of such allowance cannot, therefore, be legally included in the warrant for the debtor's detention.

223. When a judgment debtor is committed to the civil prison in execution of a decree, the Court in fixing the amount of monthly allowance for his subsistence, should take into consideration only the class of the prisoner and not his race or nationality. The following scale has been approved by the Supreme Court (High Court Division) as a guide to the discretion of Courts in fixing the amount for the individual case. It is not to be treated as a rigid scale.

3rd Division (Includes persons of the day-labourer class and of similar status and mode of living)—From Tk. 4·00 to Tk. 5·00, per head per day.

2nd Division (Includes persons of the artisan class and of similar status and mode of living)—From Tk. 5·00 to Tk. 7·00 per head per day.

1st Division (Includes persons superior to those of the 2nd Division in status and mode of living)—From Tk. 7·00 to Tk. 8·50 paisa per head per day.

224. Attention is invited to Article 181 of the Articles of War (Act V of 1869), which exempts persons belonging to the Army from arrest for debt.

225. Warrants for release should not be despatched by a Court after sunset, or, if so despatched, should be endorsed with instructions for release as early as possible next morning.

Note 1.—The above provisions apply to witnesses arrested under a warrant and detained in the civil prison.

Note 2.—Release orders under clauses (ii) and (iii) of the proviso to sec. 58(1) of C. P. Code, of a person imprisoned in a civil prison shall be in Form No. (P) 28, Vol. II.

6. Resistance to Execution (Anticipated and Actual).

226. (1) A decree-holder praying for police help in execution shall state in his application the full reasons thereof, supported, if required, by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of police help. If upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be affected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of police of the district for such police aid as the latter may be able to give in the execution of the writ. It is to be understood that police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

(2) The requisition to the Superintendent of police should state in brief the need for such aid, number and rank of men required, the nature of the process and

the place where it is to be executed. It will be for the Superintendent of police to offer the help sought and the party concerned shall be ordered to deposit such costs for the service as the Superintendent of Police may require under the rules of the department.

Note.—Police aid shall not be requisitioned or taken in effecting the arrest of judgement-debtors unless it is clear that no other means will possibly achieve the required result.

227. (1) When a process-serving peon or other officer in execution or service of any process entrusted to him (e.g. writ of attachment, warrant of arrest, etc.) is resisted or obstructed by the judgment-debtor or any other person ; or when property duly attached or the person duly arrested is illegally snatched away from his custody by any of them, he shall immediately send a report to the Court concerned from the place of occurrence.

(2) If the Court upon a consideration of the facts disclosed in the process-server's declaration on affidavit (when called for) supplemented, if necessary, by the examination on oath of the process-server or any other person alleged to have been present at the occurrence, is of opinion that a criminal complaint is necessary in the interest of justice, it shall make complaint accordingly, carefully observing the provisions of sections 195(1) (a) and 476, Cr. P. Code.

(3) If the case is of sufficient importance and the Court is of opinion that a competent lawyer should be engaged for the prosecution for the ends of justice and better conduct of the case, it should write to the District Judge who will then, if considered necessary, move the proper authority for the purpose.

(4) The Court should, after the termination of the criminal case (if any), make a request to the Criminal Court to forward a copy of the judgment with a view to see whether there has been any adverse finding or comment against the conduct of the peon concerned, necessitating the taking of disciplinary action.

7. Execution by another Court.

228. (1) The provisions of cl. (c) of Or. 21, r. 6, should be strictly followed by the Court sending a decree for execution to another Court under section 39, C. P. Code.

(2) An application for the transmission of a decree to another Court for execution shall be made by a verified execution petition and shall state in addition to the particulars set out in cl. (a) to (i) inclusive, of Or. 21, r. 11(2), any facts relied on by the applicant to bring the case within the terms of section 39 and Or. 21, r. 5, and shall specify the Court to which transmission of the decree is sought.

229. Decrees sent to the Supreme Court (High Court Division) for execution under section 39, and certificates communicating the result of execution proceedings to the Supreme Court (High Court Division) under section 41 of the Code shall be accompanied by covering letters.

230. When a decree is to be sent for execution to a Court at another station within the same district it shall be addressed to the judge in charge of the Nazarat (unless the name of the particular Court is stated in the application for transfer) where there are more Courts than one, and it shall be the duty of that Court to make it over to the Court within the local limits of whose jurisdiction it is to be executed without the necessity of any application in this behalf.

231. If after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer, apply for execution thereof, the Court to which the decree has been sent shall certify the fact to the Court which passed the decree and shall return the decree to that Court.

Note.—When a decree is executed, the certificate as to the result of execution proceedings required by section 41, C. P. Code, shall be sent by the transferee Court with promptitude.

232. Every Court shall maintain a register in the prescribed Form No. (R) 22 showing the decrees transferred to another Court for execution and those received from other Courts. The register shall be in two parts, one for decrees transferred to other Courts and the other for decrees received from other Courts.

233. A Civil Court seeking to execute a decree in the Chittagong Hill Tracts shall sent, with the decree, a letter addressed to the Deputy Commissioner, Chittagong Hill Tracts, at Rangamati, and a copy of the judgment. The fees for execution prescribed by the Supreme Court (High Court Division) must at the same time be forwarded in cash.