CHAPTER 11

COMMISSIONS

1. General.

234. Courts must issue commissions with promptitude and see that they are speedily executed. District Judges should at the time of their preriodical inspection satisfy themselves that this is done.

235. (1) Every application for the issue of a commission shall state :—

(a) the grounds thereof and shall unless the Court is otherwise satisfied be suported by an affidavit ;

(b) the value of the suit or subject-matter ;

(c) the length of time that the execution of the commission is likely to occupy ;

(d) the estimated expenses ;

(e) the details regarding the locality where the commission is to be executed and its distance from the Court; and

(f) in the case of commission for local investigation or for inquiry into accounts, mesne profits, etc., the specific points on which the inquiry is desired.

(2) If the application is granted, the Court shall, after consulting the parties or their Advocates, estimate the probable duration of the execution of the commission and fix the amount of commissioner's fees, travelling expenses, etc., and direct payment thereof into Court within a specified time, and the commission shall not issue unless the sum fixed by the Court is paid in full within the time limited therefor : provided that the Court may from time to time direct that any further sum be brought into Court by any party.

(3) When the estimate is exceeded, the Court should enquire into the cause of delay and disallow any charges of the commissioner which it finds unreasonable.

Note.—Commissioners should not be paid by, nor should they accept directly from the parties any money on account of fee, travelling expenses, etc. All such amounts must be paid into Court and commissioners should draw their fee, travelling allowance and other expenses from the Court in the usual way.

236. (1) Before issuing a commission the Court shall—

(a) call on the party at whose instance the Commission is granted to supply copies of the pleadings or abstracts thereof (if by reason of the length of the pleadings the court permits the filing of abstracts) and issues for the use of the commissioner ;

(b) satisfy himself that all interrogatories, cross-interrogatories, maps, papers, etc., necessary for the execution of the commission and the costs ordered to be paid, have been put in.

(2) Strict compliance with the orders regarding deposit of commissioner's fees in respect of every commission should be insisted on and except on very good grounds, the time once fixed for the purpose should not be extended.

Default of compliance with the order to pay costs, etc., and to file necessary papers and documents within the time limited therefor should be punished by cancellation of the order for issue of commission.

237. (1) Every order for the issue of a commission shall appoint a date allowing sufficient time for its execution and return. It must be made clear to the commissioner that the commission is to be returned executed by the date so fixed.

(2) If for any reason the commissioner finds that the date fixed for the execution and return of the commission is likely to be exceeded, he should apply for an extension of time setting forth the grounds thereof, before proceeding with the execution of the commission, or its further execution as the case may be.

238. Commissions should not be executed piecemeal or at intervals. When the work of a commission has once begun, it shall be continued from day to day and throughout the day until it is completed, unless an adjournment is necessary in exceptional circumstances in which case the commissioner should at once inform the court and seek its directions.

Note 1.—A day's work consists of six hours.

Note 2.—Much of the delay in the execution of commission is due to the fact of the work being taken up at intervals, or of not working full hours each day, or the granting of unnecessary adjournments.

Note 3.—This rule must not be taken to mean that in big commissions, the work may not be divided among several commissioners.

239. When the commission is executed to the satisfaction of the Court, the commissioner should get the fees or remuneration fixed by the Court, but where the commission is not executed at all or not fully or satisfactorily executed, or the work turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid or to make any other order in the matter which it thinks just and proper in the circumstances.

Note.—The remuneration of a commissioner is to be determined by the Court issuing the commission (*see* Or. 26, r. 15) and the District Court has no jurisdiction in the matter (panchanon *v.* Madhu Sudan, 23 C. W. N. 295 and Jogesh Chandra *v.* The Chairman of Barangagore Municipality, 31 C. W. N. 99 .).

240. The diary [Form No. (M) 6] of the commissioners and the bills submitted by them should be scrutinised and passed for the amounts allowed as early as possible after submission of report. If the work is a long one and it cannot be determined whether it has been done satisfactorily and what remuneration would be proper without hearing evidence at the trial and the objections to the report of the commissioner, if any, the Court may allow a reasonable sum to be drawn from the money in deposit before the conclusion of the trial. In the case of a commission involving prolonged work, the Court may permit the Commissioner to withdraw from time to time such sum as may appear necessary and reasonable on account of fee, travelling expenses, etc. All such payments before the completion of the work and the final settlement of the bill shall be subject to the condition that if the commission is found not to have been executed satisfactorily, or if the work turns out to be less than was expected, the commissioner shall refund such sum as may be directed by the Court.

241. Whenever transmission by post is necessary for issue of a commission, whether to a Court or to an Advocate, the papers are to be sent and returned by registered post and the cost of so doing should be realised from the parties.

242. Sufficient time should be given to the commissioners to enable them to finish their work by the date fixed and the Court should insist on the submission of the report within the time fixed for the purpose. A commissioner failing to submit his report by the due date should invariably submit on or before that date an explanation to the Court concerned together with such other application as he may have to make for extension of time. If no explanation is submitted, the Court should call for it.

Note 1.—It will be found most useful under the above circumstances to secure the personal attendance of the commissioner, when this can be done without undue inconvenience.

Note 2.—When an extension of time is applied for, the Court must scrutinise the reasons carefully before allowing it. If it appears that repeated prayers for extension of time are due to dilatoriness, inefficiency or neglect of duty on account of preference being given to other work, the Court will consider the question of ordering the return of the commission for appointment of a fresh commissioner.

Note 3.—If the explanation is found to be unsatisfactory, it should be taken into consideration at the time of settling his bill for the work and the commissioner should be given to understand that he should not expect any more commission unless commissions are executed with promptitude.

243. All instances of dilatoriness and negligence or unsatisfactory work should be noted in the appropriate column of the Register of Commissions [Form No. (R) 34] and commissions should not be given to persons whose work is found to fall below a reasonable standard of efficiency or punctuality. In suitable cases a report should be made to the District Judge for removal of name from the list of commissioners or such action as may be considered proper.

244. In order that District Judges may satisfy themselves that commissions are being fairly distributed and promptly and efficiently executed, a half-yearly statement should be submitted to the District Judge by each subordinate Court showing the particulars required to be entered in the Register of Commissions.

Note 1.—Loose forms of the Register of Commissions [No. (R) 34] should be used for the purpose of submitting the statement.

245. Selection of commissioners must in all cases be made by the presiding Judge himself and the order of appointment written by his own hand. Every care should be taken to ensure a fair and equitable distribution of commissions. (*See*, rule 270).

246. Great care should be taken by the Courts issuing commissions to make the fees as little onerous as possible to the parties in the suit.

2. Commissions to Examine Witnesses.

247. (1) Whenever application is made for the issue of a commission to examine witnesses, the Court, in exercising its discretion upon the particular circumstances of the case, should require to be satisfied on the following points :—

(*a*) That the application is made *bona fide*, *e.g.*, that it is not part of an endeavour to put a particular witness out of the way.

(*b*) That it has been made in reasonable time so as to avoid unnecessary delay.

(*c*) That the issue upon which the evidence is required is one which the Court ought to try.

(*d*) That the witnesses to be examined can give evidence material to the issue.

(*e*) That there is good reason why they cannot be examined in Court in the usual way.

(2) The Court will regard such application with greater strictness if made by a plaintiff who has chosen his tribunal than if made by a defendant who is, or whose witnesses are, ordinarily resident outside the Court's jurisdiction.

(3) The considerations detailed in this rule are specially important when the Court is asked to cause evidence to be taken in a foreign country.

Note.—For fees of Commissioners, *see* rule 621.

248. Every order directing the issue of a commission for the examination of a witness under Or. 26, r. 4 (*see* also sec. 76, C. P. Code) shall state whether the commission is to be addressed to a Court or to an Advocate.

249. Whenever the post is to be used for the issue of a commission, whether to a Court or to an Advocate, the papers are to be sent and returned by registered post. The cost of doing this will be part of the regular cost of the commission. When the papers are transmitted to the Court or Advocate otherwise than by post, such precautions as are possible shall be taken against the loss of any part of the papers. The packet may also be insured for any value which the party places in it, if the party deposits the costs accordingly. Such costs will not form part of the costs of the commission.

250. Commissions addressed to a Court for the examination of witnesses resident beyond the jurisdiction of the Court issuing the commission ought ordinarily to be directed to the Munsif's Court within whose jurisdiction the witness resides.

251. If the fees received with a commission from a Court, are insufficient to cover the cost of returning the papers by registered post and also, where the commission is issued by post to an Advocate or other commissioner, the cost of transmission by registered post to and from the commissioner, the issuing Court should be asked to remit the additional fee required before the commission is executed.

252. Commissions under Or. 26, r. 4(2) for the examination of witnesses resident beyond the local limits of the Court's jurisdiction should be issued to the Court within whose jurisdiction the witness resides and not to an Advocate of that court, unless the parties agree to a commissioner from among the Advocates of the issuing Court.

253. If the commission is to issue to an Advocate, the commission shall be transmitted together with the fee, to the Court, in which the commissioner is practising as an Advocate.

254. The Court or officer receiving a commission issued to an Advocate, shall immediately deliver it to him unless he refuses to act or cannot be found. In such cases, either the writ should be sent back to the Court which issued it, or further instructions should be obtained without delay regarding the appointment of a fresh commissioner or the manner of execution.

255. On receipt of a commission issued under Or. 26, r. 4, for the examination of a witness, the commissioner should determine, where he will proceed

to execute it, *i.e.*, whether (1) at the residence of the witness, or (2) at some convenient locality in the neighbourhood of the court, or (3) if the commissioner be a judicial officer, whether the witness shall attend in the Court or in the premises of the Court of such officer, proper arrangements being made, if necessary, for due privacy. As a rule a person to be examined by commission should attend the commissioner at the particular time and place specified in notice issued; but discretion should be exercised in the examination of those whose attendance is ordinarily excused, such as women, persons unable to be removed from their houses owing to old age, sickness or other bodily infirmity, or persons of rank exempted by an order under sec. 133, C. P. Code, from personal attendance in Court. In such cases the commissioner should endeavour to discharge his duty with due regard to the special circumstances and condition of the particular witness. Where the commissioner is a judicial officer, however much he may desire to examine a witness at his or her residence, it may often be absolutely impossible for him to do so without neglecting other and more important public duties but when the commissioner receives remuneration for his services, he should be prepared to meet the conveniance of the witness as far as possible and reasonable. No commissioner can delegate the performance of his duties as such to another person.

Note 1.—A *pardanashin* woman has no right to be examined on commission as a witness at a place of her own choice or where she happened to be at the time of the issue of the commission (Kshitipati *vs.* Dharani, I. L. R. 48 Cal. 448).

Note 2.—The mere fact that evidence has been previously taken on commission is no reason whatever for its being used in evidence unless the witness is proved to be too ill to give his evidence in Court at the trial or is absent for sufficient reason (Satish *vs.* Satish, 28 C. W. N. 327 P. C. Phanindra *vs.* Pramatha, 32 C. W. N. 128).

256. (1) Every writ of commission to examine a witness should limit a number of hours as being sufficient for the purpose and, beyond the time so fixed, the commissioner shall not sit without further order from the Court.

(2) While evidence should not as a rule be excluded by the commissioner on debatable grounds, he is nevertheless responsible for preventing abuse of the right of cross-examination and for keeping it within reasonable limits. Whenever it appears to him that cross-examination is being needlessly prolonged or other abuse of process is taking place, he should stop proceedings and bring the matter to the notice of the Court for directions.

(3) When a party fails to appear on the day and at the hour fixed for examination or applies for time, the commissioner should proceed *ex parte* if he is of opinion that adjournment is sought on frivolous or unreasonable grounds.

Note.—When issuing a commission the commissioner's attention should be specially drawn to the several provisions of this rule.

257. A commissioner shall return the papers to the Court through which he received them, whether this be the issuing Court or not. Proper precautions shall be taken against the loss of any part of them, and if, it is necessary to send them by post, they shall be registered.

3. Commissions and Letters of Request from and to Foreign Countries.

A.—TAKING OF EVIDENCE FOR FOREIGN TRIBUNALS.

258. Subordinate Courts are not concerned with applications to take evidence for foreign tribunals as such applications have under O. 26, as amended

by Act X of 1932 to be made to the Supreme Court (High Court Division) and subordinate courts have only to carry out any directions which the Supreme Court (High Court Division) may give.

Note.—Foreign consular officers and other persons sometimes apply direct to subordinate Courts to take such evidence in disregard of the procedure. They should be referred to the terms of Or. 26. Care should be taken in any such correspondence with officers of Foreign States to address them properly and with ceremonious politeness.

B.—TAKING OF EVIDENCE IN FOREIGN COUNTRIES FOR COURTS IN BANGLADESH.

259. (1) On principle, the most strictly proper method for the Courts of one country to adopt in order to obtain evidence in another is the method of Letter of Request (Commission rogataire) addressed to the proper Court in the foreign country.

(2) The Code provides for this by sec. 77, Or. 26, r. 5 and Form 8 in Appendix H. It should be noted that to purport to appoint a foreign Court a Commissioner, is altogether misconceived.

260. The issue of Commission or Letter of Request to foreign and Commonwealth countries should follow diplomatic channels.

In countries where the Government of Bangladesh have diplomatic representatives of their own, such documents should be routed through those diplomatic representatives but in countries where the Government of Bangladesh have not yet appointed a diplomatic representative, the issue of such documents should be between the foreign office of the country concerned and the Ministry of Foreign Affairs of the Government of Bangladesh.

The Letters of Request, etc., should be canalised through the "Ministry of Law, Government of Bangladesh."

Note.—Method of preparation of documents.

(1) Letters of request and accompanying documents should be sent together in a parchment paper cover down the left hand side, the ends of the silk, tape or thread with which they are sewn being brought out on to the front cover, and the ends sealed down with a Government seal.

(2) The letter of request and accompanying documents should be in the following order :—

(*a*) Letter of request.

(*b*) Index in English [if not included in (a)]. This must be complete, that is to say, every document in the bundle and which follows the letter of request must be separately specified together with its serial or page number and either every document must bear a serial number corresponding to the number opposite that document in the index or the whole bundle of documents following the letter of request must be paged consecutively. Moreover, all numbers appearing at the top of any page of the documents other than the number (if any) assigned to that page by the index should be deleted.

(*c*) Narrative [if not included in (a)] including, where necessary, an explanation of the reasons for the institution of two suits for the same amount.

(*d*) Interrogatories, cross-interrogatories and re-interrogatories. These should contain the same description of witnesses as appears in the letter of request.

(*e*) Other documents (in chronological order) accompanying the letter of request.

(*f*) Translations of (a) to (e) inclusive where necessary arranged in the same order and each one of them properly certified by an official of the Court as true translations.

(*g*) Duplicates of (a) to (f) inclusive and not excluding telegrams arranged in the same order and each Court as true copies.

261. Under Or. 26, r. 15, the Court should in all cases require a deposit for the expenses of executing the commissions or Letter of Request in the foreign country and should see that the sum is paid into Court before issuing the Commissions or Letter of Request. The amount and the fact that it has been paid should be stated in the letter forwarding the documents for transmission.

262. Ordinarily, the only proper method for the transmission of Letters of Request is by the official diplomatic channel. They are to be sent to the Supreme Court (High Court Division) for transmission to Government.

4. Commissions for local investigation.

263. (1) The responsibility of ordering an inquiry under Or. 26, r. 9, rests entirely with the Court before whom the case is pending. Such Court may order such inquiry when it deems a local investigation to be necessary or proper for the purpose of elucidating the matters in dispute or of ascertaining the amount of mesne profits or damages or annual net profits. A commission for local investigation is to issue only when such investigation cannot be conveniently conducted by the Judge in person and when the matter in issue cannot be determined by taking evidence in the ordinary way.

(2) When an application is made for the issue of a commission for local investigation, the Court in exercising its discretion upon the particular circumstances of the case should require to be satisfied on the following points :—

(*a*) that the application is made *bona fide*, *e.g.*, that it is not the intention of the applicant to protract the litigation and to harass the other party by putting him to needless expenses ;

(*b*) that the application has been made at the earliest opportunity;

(*c*) that the nature of the case calls for the particular mode of inquiry;

(*d*) that the importance of the case warrants that expense being imposed on the parties; and

(*e*) that such inquiry may not be attended with a delay which will counterbalance the advantage to be derived from it.

Note.—As to the contents of an application for commission for local investigation, *see* rule 235. On the subject of local investigation, *see* also paragraph 17, Civil Suit Instructions Manual, 1935.

264. In order to secure a more careful observance of the above principles and the other directions in this Chapter, the following general rules are prescribed :—

(1) When a subordinate Civil Court, either of its own motion or on the application of a party, directs a local inquiry, the order for such inquiry shall be drawn up by the presiding Judge himself and shall contain the following matters :—

(*a*) Whether that inquiry is directed by the Court *proprio motu* or upon application, and if upon application, from which party.

(*b*) What the points are which require elucidation or ascertainment in that particular way.

(*c*) Why such matter could not be proved or ascertained in the ordinary way by producing documents at the proper time and witnesses at the trial.

(*d*) The instructions given to the Commissioner.

(2) In all orders of investigation by a commissioner under Or. 26, r. 9, these rules shall be cited as well as the section or Order or Rule of the Code.

(3) The District Judge shall certify in his annual report the mode in which his subordinates have complied with these rules.

265. If the enquiry is ordered, a proceeding should be drawn up in the prescribed form No. (J) 38, clearly and specifically defining the points on which the report of the Commissioner is required, and upon which it is to be evidence; and those points ought usually to be excluded which can conveniently and ought under the law to, be substantiated by the parties by evidence at the trial

(2) The commissioner's duties should be strictly limited by the order to the points thus defined and he must confine his inquiry to those points and report on them only, without undertaking any other work at the request of the parties. It should be remembered that the Court has no power to delegate to the commissioner the trial and determination of any issue in the case between the parties.

Note 1.—The proceedings should be drawn up under the personal supervision of the presiding Judge and should contain a statement of the commissioner's duties with precision and particularity. When boundaries have to be refixed or maps have to be relaid, the description and names of the maps or chittas to be used and the particular work to be done in connection therewith should be specifically stated. Clear directions should be given as to the starting point of the inquiry. Commissioners should be instructed that the work of survey shall, where practicable, be connected with such permanent marks as may exist in the vicinity and that the map prepared shall show the permanent marks, the boundary of the disputed land, the boundaries of adjacent lands so far as may be necessary and the position of the settlement, revenue, that and other survey lines if such position can be determined with sufficient accuracy, and such lines are relevant to the dispute.

Note 2.—When fixing the date of return of the commission, due regard should be paid to the nature of the case, the quantity of work to be done and in the case of survey work to the season of the year and the condition of the property to be surveyed. If on receipt of his commission he is of opinion that the time allowed is insufficient, he should at once refer the matter to the Court for orders stating the extra time required and must not postpone his application until the time allotted is about to expire. If the representation appears to be reasonable, additional time may be allowed, the parties being duly informed of the revised date.

Note 3.—When a commission is cancelled or withdrawn by the Court for dilatoriness or unsatisfactory work, or for any improper conduct on the part of a commissioner, or when adverse remarks regarding the commissioner's work or conduct are made in the Court's order or judgment, the fact should be noted in the appropriate column of the Register of Commissions,

266. Except as otherwise provided, no person other than advocates who have obtained a certificate of proficiency in surveying after passing the pleaders' Survey Examination held by the pleaders' Survey Examination Board at Dacca, shall be enrolled in the list of persons qualified to execute survey commissions and all commissions for local investigation which require a knowledge of surveying shall be issued only to such advocates. (For rules for the examination of advocates for certificates of proficiency in surveying, *see* government of Bengal Judicial Department, Notification No. 3888-J., dated the 18th April, 1938).

Note 1.—When a commission has to be executed which requires the survey of a very large area in which the use of theodolite is essential, it should be issued to a Technical adviser trained in theodolite work attached to a District Settlement or to an Assistant Settlement Officer attached to the Office of the Director of Land Records and Surveys, Bangladesh, or to a professional surveyor with similar qualifications. There is no need to apply to the Director of Land Records in such cases unless the services of a Technical Adviser or an Assistant Survey Officer are required.

Note 2.—Hints and instructions for the guidance of commissioners in carrying out a theodolite traverse (with separate detail survey by plain table and chain, etc.), and in making field measurements with chain and compass will be found in a book issued for the purpose.

Note 3.—In the case in which the tracing of boundaries in undulating or hilly country is necessary or in the case of mines, or in irrigation cases, in which the use of level is necessary or in cases involving the measurement and valuation of house property, or in other intricate cases the commission should be issued to a thoroughly qualified and experienced professional person holding the required degree in surveying or engineering or other equally qualified person with special expert knowledge of the local conditions and duties he will be required to perform in connection with the execution of the commission.

Note 4.—List showing the magnetic declination for the districts in Bangladesh in every year may be had from the Supreme Court (High Court Division) upon application through the proper Court.

267. (1) For each district there shall be a fixed number of persons determined by the Supreme Court (High Court Division) for the execution of all survey commissions arising within it. The number shall be fixed with due regard to the average number of such commissions issued during the last three years and stated separately for (a) the district headquarters and (b) the outlying stations. The number fixed for each station shall be such that all commissions be executed without unreasonable delay and at the same time the number of commissions allotted to each commissioner should be sufficient to earn for him a dependable income every year from this source.

Note 1.—Those advocates who are prepared to give preference to the execution of commissions over their ordinary professional work should only be enrolled in the list of commissioners and busy practitioners who have neither inclination nor sufficient time to devote to such work should ordinarily be excluded.

Note 2.—If there is no survey-passed advocate in a station where his services are required, the commission should go to a survey-passed advocate of the nearest station but travelling expenses will be allowed from the former station.

Note 3.—The Courts at each station should, in the first instance, issue commission to commissioners listed for that station. If the hands of such commissioners are full and the number of commissions at one time is such that execution by the commissioners for that station will not be effected without unreasonable delay or if there are no persons listed for that station, the Court concerned will issue commission to persons listed for nearest station in the District. It is realised that when a Court is obliged to appoint a commissioner from the list of the nearest station, it will not be possible to know whether such commissioner is otherwise fully occupied. Courts may in their discretion make enquiry from the Senior Munsiff or the District Judge of the nearest station and request that a name may be suggested.

(2) The list shall consist of two panels, called panel I and II.

(a) Panel I shall contain the names of survey-passed advocates only arranged in the order of their seniority according to the year of their

passing the survey examination and of the places where each such advocate is practising.

Note 1.—Advocates who pass the examination and practical test in all instruments including the theodolite in particular and hold class I certificates will be separately listed in Panel I as Class I advocate commissioners and the rest as Class II and the former should always be chosen for relays or surveys requiring theodolite work. (For rules for the examination of advocates for certificates of proficiency in surveying *see* Government of Bengal, Judicial Department, Notification No. 3888-J., dated the 18th April, 1938).

Note 2.—If the number of survey-passed advocates is more than the total number fixed for the stations in a district, selection should be made from persons without much general practice, the number in excess being placed in a list 1(b) supplementary to Panel I which becomes Panel I(a). Advocates in the supplementary list [Panel I (b)] should be given survey commissions whenever the services of persons in Panel I (a) are not available on account of their being engaged in commission work or for other reason, or when they have already been given a good amount of work. Persons in Panel I (b) will always have preference over persons in Panel II.

Note 3.—Persons in Panels I and II who on account of infirmity or sickness are unfit for outdoor work and are unable to perform their duties promptly and efficiently, and persons above the age of fifty-five who are similarly incapable should not be entrusted with commissions. Advocates whose professional engagements do not leave sufficient time for undertaking such work and who in consequence make delay in execution of commissions should also be excluded. The names of such infirm or busy practitioners should be reported to the Supreme Court (High Court Division) for being removed from the list.

(b) If the number of survey-passed advocates available as yet be insufficient to make up Panel I, there should be a temporary list called Panel II to fill up the remaining number from the advocates who took the training prescribed by the pleaders' Survey Examination Board but did not sit for, or could not pass, the examination.

Note 1.—In special cases, thoroughly efficient amins or overseers whose educational qualification is not ordinarily below that of Intermediate pass standard and who also passed the final examination of any recognised school of surveying or engineering may be included in Panel II, if their work in connection with the execution of survey commissions has been found to be consistently good.

Note 2.—An example of a special case would be the local condition in Chittagong where there are maghi dags without any map.

(c) Advocates included in Panel II should give an undertaking in writing to pass the survey examination within three years of their enrolment and on failure to do so their names will be liable to be struck off panel II unless the period is extended by the Supreme Court (High Court Division) for special reasons.

(3) As the number in Panel I (a) increases whether by transfer of names from Panel I(b) or from Panel II as the advocates in that Panel pass the survey examination, or by addition of newly passed survey advocates, or by the transfer of survey-passed advocate from one place to another, there should be a corresponding reduction of the number in Panel II, provided that in no case should the number in Panel I be allowed to exceed the number fixed for the district without the sanction of the Supreme Court (High Court Division).

268. (1) In cases where there is no vacancy in the lists of survey commissioners and applications for enlistment from unpassed survey advocates and others are received by the District Judge, such applications should be disposed of by him without reference to the Supreme Court (High Court Division). In cases where a vacancy exists in the list and applications in respect thereof are received by the District Judge, the applications should be forwarded by him to the Supreme Court (High Court Division) with a statement in Form No. (S) 7C and with his suggestion for filling it. When advocates who have passed the examination held by the pleaders' Survey Examination Board (*vide* Rule 266) apply for enlistment,

their applications shoiuld also be forwarded by the District Judge to the Supreme Court (High Court Division) similarly with a statement in the prescribed form and with his suggestion for effecting a corresponding reduction in Panel II if there are Panel II survey-commissioners in his district.

(2) District Judges are required to submit to the Supreme Court (High Court Division) in Form No. (S) 7C a return at the end of every quarter showing the changes necessary in the list of persons to whom commissions for local investigation requiring a knowledge of surveying may be issued. Even if there be no changes in the list, the return should be submitted blank. An up-to-date list of survey-commissioners should be submitted with the Fourth Quarterly Statement.

(3) The Suppreme Court (High Court Divisio") will from time to time issue revised printed lists of persons approved for Panel I and Panel II and the District Judge should with his annual report furnish all particulars that may be necessary for the revision of the lists, *viz.*, the names of newly passed advocates who have applied for enrolment, the names of advocates in Panel II who have passed the survey examination, the names of persons in the list who are unfit on account of age or infirmity, or who are too busy to undertake commission work [Note 3 to rule 267(2)], the number of survey commissions issued during the preceding three years, the remuneration allowed to the commissioners, etc. The District Judge should in his annual report also mention the names of commissioners whose work has been found to fall below a reasonable standard of efficiency or punctuality or to be otherwise unsatisfactory [*see* also rule 808(16)].

269. Courts issuing commissions should always make a personal selection of the person to be appointed as a commissioner and ordinarily all commission work arising within the jurisdiction of a Court should be given to the commissioner attached to the station where the Court is situated. Advocates of one station should not ordinarily be employed in commission work outside the jurisdiction of the Courts at the station, nor should the advocate of one executive district be entrusted with commission work in another executive district. [*see*, note 2, rule 267(1)].

270. (1) Great care should be taken to see that commissions of all kinds are allotted to persons in the list in strictly fair order so as to ensure equitable distribution of work and remuneration.

(2) Every commission issued by the Courts at district headquarters or in the outlying stations should be entered forthwith in a common register to be maintained at each station showing (a) the name of the Court and No. of the case; (b) date of issue of commission ; (c) nature of work to be done ; (d) name of commissioner ; (e) date fixed for return with extensions, if any, as they are granted ; (f) probable number of days the work may occupy ; (g) date of actual return, and (h) the remuneration fixed.

(3) Every Court at a station should before selecting a Commissioner call for and consult thes common register in order to ensure a fair distribution of work and remuneration among all the commissioners. A commissioner should not have in his hand at one time more than such a number of commissions as can be executed with reasonable promptitude.

Note 1.—In order to enable a proper check to be made of the equitable distribution of work and remuneration as also of the number of commissions in the hands of a commissioner at one time, a sufficient number of pages of the Register should be set apart for each commissioner in list with a name index giving reference to the pages of the book.

Note 2.—The Supreme Court (High Court Division) have had occasion to hear many complaints regarding the appointment as survey commissioners of advocates and other persons not qualified under the rules and uneven distribution of commissions, and in future these rules should be strictly followed. The principle of distribution should be that survey passed advocates in Panel I (a) and (b) should be kept fully occupied throughout the year with commission work. It is only when they have too much work and their services are not available without an unreasonable amount of delay that it will be open to the Court to give commission to the persons in Panel II.

Note 3.—The District Judge should make a careful scrutiny of the half-yearly returns and also satisfy himself at the time of periodical inspection by an examination of the Register of Commissions and records that these rules are being strictly followed and commissions are being distributed in strictly fair order.

271. A party has no right to suggest the employment of a cheap agency for the execution of commission work. Fees may be kept down in petty cases or cases which do not require much labour, but where work requiring technical skill has to be done and courts have to employ men whose training in such work is specialised and whose report deserves to be treated with due consideration, the parties must be prepared to pay such person his proper remuneration.

Note.—For expenses of commissions, *see* rule 621 and in particular Notes 1 and 2 thereto.

272. As soon as possible after the completion of his work the commissioner shall submit his report to the Court issuing the commission together with his diary [Form No. (M)6] maintained from day to day in the prescribed form.

Note.—Field books should be inked in by the commissioner before the report is submitted.

273. The Court shall consider the objections, if any, of the several parties to the report of the commissioner and may accept the report or any portion of it or pass such orders as it thinks fit under Or. 26, r. 10(3).

274. Commissions for partition or for ascertaining mesne profits or damages, or commissions in execution proceedings may be given to advocates who have not passed the survey examination unless a thorough knowledge of surveying is essential for the execution of such commissions.

5. Commissions for taking accounts.

275. The provisions of Or. 20, r. 16 as also Or. 26, r. 11 clearly indicate that before an order can be made for appointment of a commissioner, the examination or adjustment of accounts, or the taking of accounts must be found necessary by the Court. When it is decided to issue a commission, definite lines of the commissioner's work should be laid down and his duties should be stated with precision and particularity. The commissioner is neither an arbitrator nor a Judge, and the determination of any issue in the case between the parties cannot be delegated to him. The commissioner is to place himself as an assistant to the Court so as to explain the account and give to the Court all the information which the accounts give in order to enable the Court to decide, unless he is also ordered to report under Or. 26, r. 12(1) his own opinion on the points referred to for his examination.

276. (1) If in any suit or matter it is necessary to take an account, the order or interim decree of the Court shall contain the following directions as far as in the opinion of the Court issuing the commission they are adapted to the requirements of the case :—

(a) The nature of the account to be taken.

(b) The date from which and the date to which the account is to be taken.

(c) The name of the party by whom a statement of account is to be filed.

(d) The periods within which the statement of account, objection and surcharge are to be filed.

(e) The date on which the commissioner is to submit his report.

(f) Any other matter on which the court may think it necessary to give, or the commissioner may desire to obtain, its instructions.

(2) The statement of account shall be in the form of a debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(3) The statement of an objection to an account or to the report of a commissioner, shall specify the items to which objection is taken by reference to their number in the account or report, or the date of the item and page of a particular book of account.

(4) The statement of surcharge shall specify the amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

(5) The statement of objection or surcharge shall also state (a) the grounds of each objection and surcharge and (b) the balance if any, admitted or claimed to be due ; and it shall be verified by the affidavit of the party concerned or his agent.

(6) If any party fails to file his statement of account or objection and surcharge, within the period allowed, the commissioner shall report the fact to the Court, and on the application of the defaulting party, the Court may extend the period or direct the commissioner to proceed *ex parte* as regards such party or direct any other party to file a statement of account, or the court may proceed to decide the suit forthwith on the evidence before it. Evidence shall not be admitted with respect to an objection or surcharge not included in a statement of objection or surcharge.

(7) If the commissioner is unable to submit his report within the time fixed by the Court he shall apply to the Court for an extension of the time giving reasons thereof and the court may extend the time or cancel the commission and appoint a new commissioner.

(8) When the case before him is ready for hearing, the commissioner shall, after reading the statements filed before him and after examining the parties, if necessary, ascertain the points on which the parties are at issue and require them to produce their documentary or oral evidence on such points.

(9) After the evidence has been duly taken and the parties have been heard, the commissioner shall submit his report together with a statement in the form of a diary of the proceedings heard before him each day. If he is empowered under Or. 26, r. 12(1) to state his opinion on the matter referred to him he shall append to his report schedules setting out (a) the contested items allowed or disallowed, (b) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due and (e) name of the party by whom it is due.

277. When the report is received the court shall fix a date within which the parties are to file their objections, and after considering the objections, if any, the court may act upon the report or a portion of it or pass such orders as it thinks fit under Or. 26, r. 12(2).

278. When a person is directed to file his accounts periodically the court shall fix the dates in each year before which his statement of account and balance are to be filed and on which the same will be considered.

279. In order to ensure greater efficiency in the quality of the work, commissions for examination and adjustment of accounts under Or. 26, r. 11 should be restricted to a small number of persons who are considered by the Courts to be specially qualified for such work. The number of persons to whom account commissions are to be limited should be determined with due regard to the average number of such commissions issued by the Courts at a station during the last three years.

Note 1.—For each station a list shall be prepared of account commissioners by the senior most judicial officer in consultation with the Judges of other Courts and sent to the District Judge for his approval. It may not be necessary to have in the list more than 2 to 4 persons in outlying stations and a few more at Sadar. The list should be revised from time to time and the number adjusted according as the amount of work increases or falls.

Note 2.—Every account commission issued by the Courts at a station should be entered forthwith in a common register kept for the purpose of fair distribution showing (a) the name of the Court and the number of the case, (b) date of issue of the commission, (c) name of the commissioner, (d) date fixed for return with extensions, if any, as they are granted, (e) probable number of days the work may occupy, (f) the date of actual return and (h) the remuneration fixed, which the Court should consult in order to secure fair distribution before issuing the commission.

Note 3.—*See*, rule 270 (1) and (3) and Note 1 thereto.

Note 4.—Where the accounts to be examined are intricate or are kept in a way common to mercantile establishments or companies, or where auditing of accounts is necessary, the Court may appoint a qualified auditor or person having special qualification.

CHAPTER 12

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

280. All suits in Civil Courts, for the prosecution or defence of which persons in the service of the Government, officers in the Army or soldiers have obtained leave of absence, shall be disposed of by such Courts as soon as they are ripe for hearing, irrespective of the order in which they may stand in the register and as speedily as may be consistent with the due administration of Justice.

281. In every case in which the Government Advocate appears for the Government as a party, or for the Government as undertaking, under the provisions of Or. 27, r. 8, C. P. Code, the defence of a suit against a public officer in the service of the Government he shall, in lieu of a Vakalatnama, file a memorandum on unstamped paper signed by him, and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following from :—

Title and particulars of the suit.

I, A. B. Government Advocate, appear on behalf of Government, Respondent (or etc.) in the suit; or, on behalf of the Government which, under Or. 27, r. 8, has undertaken the defence of the suit, Respondent (or etc.) in the suit.

Note.—In every case in which the Government Advocate shall appear on behalf of any officer in the service of the Government, other than cases in which the Government has, under Or. 27, r. 8, undertaken the defence of the suit, such advocate shall file a Vakalatnama in the same manner as any other advocate.

282. No civil Judicial authority shall pay out money to Government Advocates or persons acting on behalf of the Government in any suit, unless they produce an authority in writing from the Collector or other officer representing the Government, directing them to apply to the Court for such money.

CHAPTER 13.

INCIDENTAL PROCEEDINGS.

1. Ex parte Injunctions.

283. As a general rule notice should invariably be given to the other side before granting an injunction. An exception may, however, be made and *ex parte* injunction granted, except in the case of sale of goods for default in payment, at the stipulated time, of a debt in respect of which the goods were pledged with any bank, where it appears that the object of granting injunction would be defeated by the delay. In such circumstances it is, however, necessary that the Court should record an order expressly dispensing with the notice, with reasons for the same.

It is important to note that the discretion given to the Court to issue an *ex parte* injunction is an exception to the general rule and needs, therefore, to be exercised with greatest care and discrimination. There must be clear proof of imminent and irreparable injury and the Court should also satisfy itself that by no reasonable diligence could the applicant have avoided the necessity of applying behind the back of the other party.

2. Arrest or attachment before judgment, withdrawal of suits and compromise or adjustment of suits.

284. In dealing with applications for arrest or attachment before judgment (Or. 38, rr. 1, 5), withdrawal of suits and compromise or adjustment of suits (Or. 23, rr. 1, 3), the courts should be guided by the instructions contained in the Civil Suit Instructions Manual.

Note.—As to arrest or attachment before judgment, *see* paragraph 30, Civil Suits Instructions Manual, 1935, and as to compromise and withdrawal of suits, *see* paragraphs 32 and 33, *ibid.*,

3. Appointment of Receivers.

285. No Civil Court officer should be appointed a receiver except with the sanction of the District Judge, which should only be given in petty cases where the duties of the receivership cannot interfere with the officer's ordinary work, and in no case shall remuneration be given to an officer so appointed.

CHAPTER 14.

APPEALS AND REMAND.

286. All memoranda of appeal in the subordinate appellate Courts shall be presented in open Court either by the party in person or his "recognized" agent, within the meaning of that term in Or. 3, r. 2, Or. 27, r. 2, and section 85, C.P. Code or by a duly appointed advocate.

Note.—Valuations for purpose of jurisdiction and for payment of court-fee shall be separately shown.

287. (1) In every case in which the *memorandum* is presented by an advocate, the grounds of appeal shall be drawn and signed by an advocate, who, at the foot of the *memorandum* of appeal, shall subscribe the following statement:—

"I certify that I have examined the papers supplied to me, and that, in my opinion, there are good grounds, as above set forth, for this appeal ; and I undertake to appear and support the appeal before the appellate Court".

(2) If an appeal is presented by a party in person, or his "recognized agent" and an advocate is afterwards engaged, he shall before being allowed to appear to support the appeal, subscribe and file a memorandum containing the above certificate.

(3) This rule shall apply *mutatis mutandis* to the memorandum of cross-objection.

288. The attention of Appellate Courts is drawn to the provisions of section 6(2) of the Court Fees Act (as inserted and enacted by and in Bengal Act I of 1936) relating to the receipt of memoranda of appeal which are filed with insufficient court fees.

289. All memoranda of appeal presented, which on examination, are found to comply with the requirements of Order 41, Rule 1 of the Code of Civil Procedure, shall be entered in the Register of Appeals [Supreme Court (High Court Division) Forms Nos. (R) 6(i) to (iii) and (R) 8] irrespective of their possible rejection or return, for failure on the part of appellants to pay the deficit court fees demanded by the Court.

Note.—As to Court-fee leviable in appeals against order rejecting plaints, *see* G. L. No. 19, dated the 5th September, 1933.

290. When an appeal is presented after the expiry of the period of limitation, it should not be admitted without due notice to all parties concerned, so as to secure, at the stage of admission, the final determination of any question of limitation affecting the competency of the appeal.

291. The date for hearing an appeal shall be fixed so as to allow sufficient time to every respondent to give notice of any objection he may intend to take to the decree as required by Or. 41, r. 22 of the C. P. Code.

292. Appeals should not be transferred to a Subordinate Judge's Court until they are ready for hearing. Notices should be issued and all other preliminary work done by the office of the District Judge. (*See* rule 761).

293. Every effort should be made to prevent, as far as possible, any accumulation in the appellate file. It is highly unsatisfactory that any regular appeal shhuld remain undisposed of after a year from its being filed.

294. It is the duty of the District Judge to watch closely the disposal of appeals to keep arrears down to a minimum and to see that old appeals are not allowed to lie about untouched in any Court while later appeals are being disposed of. If frequent transfer of batches of appeals, immediately after the service of notice on parties, is resorted to, without a proper inspection of the state of files of the different appellate Courts, there is every possibility of the appellate files of those Courts becoming congested and later appeals being disposed of in some Courts while older appeals remain pending in other Courts.

295. Ordinarily appeals when ready for hearing should be transferred one day during the latter part of each month to the different appellate Courts at the station after inspection of the files of all such Courts and the number transferred should not be more than such as each Court can be reasonably expected to dispose of in the next succeeding month or months. The appellate Courts may also well be asked to send their requisition for appeals before each transfer, indicating the number of each class of appeals that they expect to be able to dispose of within the next one or two months.

Note.—More appeals should not be transferred to a Court so long as a sufficient number of cases already transferred remains undisposed of.

296. Appellate Courts should, after receipt of appeals by transfer, arrange their files in the way they think best and with a view to their being heard and disposed of, so far as possible, in chronological order.

297. If the day's work is thrown out for some reason and any appellate Court finds enough time to dispose of one appeal or more, he should send for the required number from the District Judge from the list of ready appeals fixed for that day.

298. If, on account of accumulation of arrears, any court is regularly engaged in disposing of appeals, there can be no objection to the transfer to that Court of batches of appeals at more frequent intervals and *pari passu* with the rate of disposal there : provided that the pending list of the Court is watched by the District Judge to see that appeals are not accumulating in that Court while later appeals are being disposed of by other courts.

299. In order to keep a watch over the disposal of appeals, a pending list should be kept and put up regularly before the District Judge both of all appeals pending and also of those pending in each individual Court in their serial numbers, and on disposal the number should be crossed off.

300. It is desirable that the District Judge should personally attend to the transfer of appeals which should ordinarily be made from the common stock by rotation and according to their age. The observance of a strict numerical sequence is designed to prevent the resort to any undesirable selective process of transfer but appeals which, for any reason, require quicker disposal (*e.g.* cases by or against local bodies, *viz.*, on matters of franchise, election, sanitary or education board, etc.) may be taken out of turn for distribution.

301. Appeals against interlocutory orders which hold up the progress of suits or proceedings in lower Courts, should be given precedence over all civil work other than that of a specially urgent nature and every endeavour should be made to dispose of such appeals quickly. A separate list should be kept of these appeals so that they may not be lost sight of.

Note.—In this connection attention is invited to foot-note No. 2 of the Register showing the cases of which proceedings have been stayed [Form No. (S) 9].

302. If, on an inspection of the pending files of each Court, it is found that older appeals are long pending in some Court or Courts, the files of the appellate Courts should be equalised from time to time by withdrawing such appeals and retransferring them to Courts having a lighter file.

303. As soon as ready appeals are transferred or withdrawn and re-transferred to the different appellate Courts in batches, the District Judge shall notify the transfer in a list in form (M) 1, suitably modified, with a note that further details regarding such appeals will be found in the list (M) 1 of the transferee Court. The District Judge shall, at the same time, send a copy of his list to the Secretary of the local Bar Association for information to the advocates concerned. The receiving Courts shall enter these appeals in form (M) 1 on the date of receipt.

304. The Supreme Court (High Court Division) desire it to be understood that when there is not much pressure of Sessions work it is the duty of a District Judge to do as much civil appellate work as possible. It is only in this way that District Judges can judge the qualifications of their subordinate officers. District Judges, in stations where there are Additional District Judges, should be in a better position to take up more civil appellate work, but all District Judges should note in their annual reports any reasons which have prevented them from complying with these instructions.

Note.—In this connection, *see* also rule 913.

305. The rules above are not intended to fetter in any way the discretion of the District Judge to deal with special or peculiar situations in such a manner as he may consider fit and proper.

Note.—When a District Judge desires to retain all appeals in his file posting a sufficient number of ready appeals on the daily Cause List for distribution among the other appellate Courts whenever they may find time to hear one or more of them, he should apply to the Supreme Court (High Court Division) for permission to try or continue the system.

306. The above rules apply *mutatis mutandis* to miscellaneous appeals. Every attempt should be made by all appellate Courts to dispose of such appeals with greater speed. It is highly unsatisfactory that any miscellaneous appeal should remain undisposed of after three months from its being filed. Many of these appeals hold up the progress of pending execution and other cases in lower Courts or cause revival of cases prolonging their duration and they should therefore be disposed of within the least possible time. It is desirable that District Judges should keep in their own files and dispose of as many miscellaneous appeals as possible.

Note.—In this connection attention is invited to foot-note No. 2 of the statement prescribed in Form No. (s) 9 showing the cases of which proceedings have been stayed.

307. It being necessary that copies of the original Court's Judgment and decree should be filed with memoranda of second appeals in the Supreme Court (High Court Division), the lower appellate Courts should see that they are returned without delay on application by the parties concerned.

Note.—It should be realised that such papers have to form part of the appeal in the Supreme Court (High Court Division) and in order to obviate waste of time advocates should *see* that clients contemplating the filing of second appeals make application for the return of the Judgment and decree as early as possible after disposal of the appeal (G. L. No. 12, dated 24th March, 1932).

308. Cases in which findings are called for by the Supreme Court (High Court Division) should take precedence over all civil work other than a specially urgent nature. Applications are not infrequently made by District and Subordinate Judges for extension of the time allowed for the submission

of findings required by the Supreme Court (High Court Division) under Or.41, r. 25. The Supreme Court (High Court Division) do not desire to prevent Judges from applying for extension of time if good cause can be shown in support there of. But otherwise findings must be submitted by the day named in the order of the Supreme Court (High Court Division). In no case should an adjournment of the date of hearing be granted beyond the day fixed by the Supreme Court (High Court Division) for return of findings without previous sanction. If owing to neglect of parties, a finding cannot be arrived at within the time fixed, the fact should be intimated.

Note.—This rule applies equally to cases sent under Or. 41, r. 25 by lower appellate Courts to trial Courts and should be strictly observed by the latter.

309. The Court to which reference is made under Or. 41, r. 25, for trial of issue, shall on returning its findings, certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case at the retrial, with a view to such costs being provided for in the decree that may be finally passed by the Supreme Court (High Court Division) or the lower appellate Court.

310. When a suit is remanded, a statement of the costs incurred in the appellate Court is to be appended to its order, that the same may be charged to the losing party in the revised decree of the lower Court when costs are to follow the event.

Note.—There is a tendency in some appellate Courts to remand suits to the trial Courts without due regard to the provisions of the law and to the serious consequences which such orders entail in the shape of protraction and multiplicity of proceedings and of unnecessary trouble and expense to the litigants. Such tendency is disfavoured by the Supreme Court(High Court Division) and the lower Courts should give due regard to the provisions of law.

311. When a suit is remanded for retrial and it again comes up in appeal after the next trial, the number and date of the previous appeal should be quoted in the memorandum of the subsequent appeal.

312. (1) The appellate Court, when returning the record of a case to the lower Court either on remand or under Or. 41, r. 25, shall draw the attention of the lower Court, in the letter forwarding the record, to any substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court, and the lower Court shall in all cases check the entries and make the necessary alterations in its record and register of suits when the name of the deceased is to be found in it.

(2) In the case of appeals finally disposed of, all such amendments in the trial Court's records shall be made along with the necessary amendments in the appellate Court's records in the office of the appellate Court concerned. When the copy of the judgment and the decree (*vide* Order 41, Rule 37, Civil Procedure Code) showing the substitutions is received in the lower Court, that Court shall cause the necessary alterations to be made in the register of suits when the name of the deceased appears in it.

Note.—As to appellate decree *see* generally rule 154 *et seq.* and in particular rule 156(3) and note 3 thereto.

CHAPTER 15.

1. THE SMALL CAUSES COURTS ACT, 1887 (IX OF 1887)

313. It should be particularly noted that suits under the Small Causes Courts Act should be disposed of as expeditiously as possible and great caution should be exercised in the matter of granting adjournments. If a Small Cause Court suit is allowed to be dragged on for a long period like other suits on the original side, the very object of the enactment is defeated. It is highly unsatisfactory that a contested suit under the Small Cause Court procedure should remain undisposed of after three months from its being filed. Uncontested suits should be disposed of much earlier.

314. If a written defence is allowed to be filed, the defendant shall ordinarily file the written statement on the first day of appearance. In special cases a short adjournment may be granted for the purpose if a strong and genuine cause can be established for the omission, on such terms as to costs, etc., as the Court may deem proper.

Note—See, paragraph 8(4), Civil Suit Instructions Manual, 1935.

315. The following Rules of Practice shall be observed in Courts of Small Causes:—

(1) The summons shall ordinarily be served on the defendant seven clear days before the day on which the Court shall be held at which the cause is to be tried, unless the Court shall otherwise order, but a summons may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.

(2) The cause of action shall be transcribed from the plaint into the Small Causes Book, and the substance of the cause of action shall be entered in the Register Book; both books shall be in the forms of Primary Registers Nos. (R) 9 and (R) 10 A, Volume II.

(3) The substance of the evidence, the judgment, and the decree shall be entered in the Small Causes Book referred to above by the presiding Judge himself.

Note 1—In case of review or applications under Or. 9, rr. 3, 9 and 13, the substance of evidence and judgment or order shall also be entered in the Small Causes book. If necessary, separate foolscap sheets should be attached to the book.

Note 2—*See* also paragraph 8, Civil Suit Instructions Manual, 1935.

(4) In case in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, a very early date of hearing shall be fixed not exceeding fifteen days and the case should be disposed of as expeditiously as possible.

Note—For rules regarding the maintenance, etc., of records of Small Cause Court Suits, *see* rule 486 *et. seq.*

2. THE BENGAL WILLS AND INTESTACY REGULATION, 1799 (BENGAL REGULATION V OF 1799.)

316. The notice under section 7 of Regulation V of 1799, calling for claimants to the personal property of intestates, should be issued as soon as the property of the intestates is in the custody of the Magistrate, as delay in such matters is not advisable.

3. THE ADMINISTRATOR-GENERAL'S ACT, 1913 (III OF 1913).

317. Where a subject of a Foreign State dies in Bangladesh and it appears that there is no one in Bangladesh other than the Administrator General, entitled to apply to a court of competent jurisdiction for letters of administration of the estate of the deceased, letters of Administration shall, on the application to such court of any Consular Officer or such Foreign State, be granted to such Consular Officer on such terms and conditions as the court may, subject to the following rules, think fit to impose, namely :—

I. Where the deceased has not left in Bangladesh any known heir or testamentary Executor, by him appointed, the local authorities, if any, in possession of the property of the deceased, shall at once communicate the circumstances to the nearest Consular Officer of the Foreign State of which deceased was a subject in order that the necessary information may be immediately forwarded to persons interested.

II. Such Consular Officer shall have the right to appear, personally or by delegate, in all proceeding on behalf of the absent heirs or testamentary Executor or creditor of the deceased until they are otherwise represented.

4. THE GUARDIAN AND WARDS ACT, 1890 (VIII OF 1890).

318. Whenever the petition made under section 10 of the Guardian and Wards Act, 1890, states that the property of the minor consists of land or any interest in land, a copy of the petition shall be sent free of charge to the Collector of the district in which such property or any part of it is situate.

319. In uncontested proceedings under the Guardian and Wards Act, 1890, it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for the time being in force, that any particular fact or facts may be proved, or evidence upon any application may be given, by affidavit.

320. In cases where accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court shall observe the following rules as to the class of persons who should be appointed to examine the accounts and the scales of remuneration to be granted to them :—

(1) Where the net annual income of the Ward's property exceeds Taka two thousand the Court may appoint either (i) persons who are holders of certificates granted by the Government under section 144 of the Companies Act, 1913, or (ii) persons who are members of any institution or association who have been declared by the Government to be entitled to be appointed and to act as auditors of Companies throughout Bangladesh, or (iii) any legal practitioner who in the opinion of the Court is qualified in examining accounts.

(2) In a case where the net annual income does not exceed Taka two thousand, the Court may appoint either (i) any officer of the Court, or (ii) a legal practitioner who in the opinion of the Court is qualified in examining accounts.

(3) The amount of remuneration of the officer, or certified auditor or legal practitioner, as the case may be, will not exceed two per cent. where the net annual income is below Taka two thousand and in cases where

the income is above Taka two thousand the remuneration shall be two per cent. up to Taka two thousand and one per cent. thereafter and will be payable out of the funds of the ward's estate.

(ঘ) In a case where the estate is a very big one and the accounts are heavy, the Court may appoint any certified auditor and fix such remuneration as may be reasonable in the circumstances.

321. Monies belonging to wards shall not, without the leave of the District Judge, be invested in securities other than those mentioned in clauses (a), (b), (bb), (c) and (d) of section 20 of the Trusts Act, 1882, or be deposited in any Bank other than a Government Savings Bank.

5. THE SUCCESSION ACT, 1925 (XXXIX OF 1925), CONSOLIDATING THE SUCCESSION ACT, 1865, THE PROBATE AND ADMINISTRATION ACT, 1881, AND THE SUCCESSION CERTIFICATE ACT, 1889.

A.—Uncontested Probate and other Proceedings.

322. In uncontested proceedings under the Succession Act, 1865, the Probate and Administration Act, 1881, the Succession Certificate Act, 1889 (now the consolidated Succession Act, 1925), it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for the time being in force, that any particular fact or facts may be proved, or evidence upon any application may be given by affidavit.

Note—When a District Delegate, acting under section 288 of the Succession Act, 1925, returns the petition and any documents filed therewith to the person by whom the application was made, he should forward to the District Judge, and not to the Record-room, such other papers in connection with the application as may have been produced before him. (For classification of such papers, *see* Note 1 to clause (C) of rule 362.

B.—Government Regulations relating to the Preservation and Inspection of Wills under Section 294 of the Succession Act (Government of Bengal Notification No. 6064-J., dated the 18th August, 1933).

Custody and Preservation of Wills of which Probate or Letters of Administration with the Will annexed have been granted.

323. All original Wills presented to the District Judge or District Delegate, in accordance with the provisions of section 276, shall immediately upon the passing of the order of granting Probate or Letters of Administration under sections 289 and 290, be entrusted to the care of the head clerk or the chief ministerial officer of the District Judge's or District Delegate's Court, who shall be responsible for their safe custody.

324. The said officer shall, on the receipt of each original Will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and after the copy has been examined by him and found to be a true copy, he shall certify the copy to be a true copy. The said officer shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and

page of the register in which a copy of the Will is entered, shall be recorded in the annexed Form [No. (R) 11] :—

Name of testator.	Residence.	No. and year of register.	Page.	Date of removal and return	Note showing whether Probate or Letters of Administration have been granted or not.
1	2	3	4	5	6

Note 1—Every volume of the Register in which copies of Wills are made must be ruled and the pages numbered before it is taken into use, a note being made at the beginning of the volume of the number of pages it contains. Each copy should follow immediately upon that which precedes it, and should be written in a clear hand, corrections being written above the line and initialled by the officer who compares the copy with the original, and no erasures being permitted. All copies should be made immediately on receipt of the original, and should be compared with the original by the Sheristadar or head clerk, who should certify at the bottom of each page and at the end of the copy that such comparison has been made and that the copy is correct. Should the number of pages at the end of a Register be insufficient to include a copy of the Will which would ordinarily be inserted there, a fresh volume should be taken into use, and the blank sheets scored across, a note being added at the beginning of the volume "Pages to blank."

Note 2—Each volume of the Register should be legibly marked on the back with its own serial number, with the year to which it relates and with the serial numbers of the first and last copies contained in it.

325. The original Will shall, after being copied, be placed in a sealed cover (to be sealed in the presence of the District Judge or District Delegate), and the sealed cover containing the original Will shall be deposited in a fire-proof safe, which shall be kept in the office room of the head clerk or other officer aforesaid to whom the safe custody of the Will may have been entrusted. Where the Court has no iron safe, the Will may be placed in a small block tin box, the key of which shall remain with the District Judge or District Delegate; and the District Registrar or Sub-Registrar of the place shall, if the District Judge or District Delegate requires him, lock up this box in his fire proof safe, giving it to the District Judge or District Delegate, on his written demand from time to time.

Note 1—Each original Will shall have endorsed upon it the number and page of the volume in which its copy is entered, and shall be kept in a separate envelope marked outside with the same particulars and with the testator's name and the year of execution. Wills should be kept in the safe or box in their proper serial order.

Note 2—Whenever an original Will is removed from the custody of the officer responsible for it, a note of the date of the despatch and return should be made against the entry in the Index prescribed in rule 324, and for such entries sufficient space should be left in the form.

Note 3—In all cases when an original Will is removed from the custody of the officer-in-charge, he should note upon the envelope (which should be retained in its proper place) the date and place of removal, scoring out the entry, with a note of the date, on return. Careful examination should be made of all Wills so returned to ensure that no alterations have been made.

326. As soon as possible after the 31st December and not later than the 31st January of every year, each District Delegate shall transmit to the court of the District Judge all the original Wills in respect of which a grant of Probate or Letters of Administration have actually been made during the year, together with the register containing the copies thereof and the alphabetical index, and these shall then be preserved along with the Wills deposited in the Court of the District Judge subject to the same regulations as to custody, inspection, etc.

INSPECTION OF WILLS

327. The District Judge or District Delegate may upon an application in writing for inspection of the register and of any Will mentioned in such register, make an order permitting the inspection of the same; Provided that no such order shall be made unless in such application are setforth the names, residences and occupations of the applicant and of the person or persons, if any, to be present on his behalf at the inspection, and the reason for which an order of inspection is desired.

328. The order for inspection shall state the date on and the hours within which the inspection may be had. No inspection shall be allowed under these regulations otherwise than in the presence of the District Judge or District Delegate or of the chief ministerial officer of his Court or such other officer who may have charge of the Will as the District Judge or District Delegate shall direct. The officer present at the inspection shall be responsible for the Will not being taken out of sight during the inspection and also that no erasure or alteration or mark is made on it. No person inspecting a Will under these regulations shall be permitted during the inspection to have in his possession or have access to a pen and ink, but a person so inspecting may be permitted to make short notes in pencil on a silp of paper to be supplied by the officer present at the inspection.

329. The following fees shall be levied in court-fee stamps for the inspection of Wills :—

(i) For the ispection of an original Will, court-fee stamp of the value of Tk. 1·60.

(ii) For the inspection of a copy of a Will in the register, court-fee stamp of the value of 80 paisa.

C.—Supreme Court (High Court Division) Rules relating to the custody and preservation, production and copy of Wills in general.

330. All Wills as soon as they are filed in a Court for the purpose of being proved, shall be made over for safe custody, in the presence of the District Judge or District Delegate, either to the head clerk or to the *sheristadar* of the court, who shall give a receipt for them. The said officer shall, on receipt, copy or cause the Wills to be copied in the Register kept for that purpose and entered in the alphabetical index where a note shall subsequently be made showing, as to each Will, whether Probate or Letters of Administration with the Will annexed have been granted or not, as provided for in rule 324 *ante*.

331. All Wills of which Probate or Letters of Administration with the Will annexed are not granted shall be preserved in the manner indicated in rule 325 *ante*. Provided that when an application for Probate or Letters of Administration with the Will annexed is withdrawn, or dismissed for default or non-prosecution, the Will may be returned to the party filing it on his application except where there is any provision of the law requiring the Court to retain it. If any forgery is suspected, the court may keep the Will pending such action as it may deem proper.

332. No original Will after being placed in the fire-proof safe as provided for in rule 325 above shall be removed therefrom except under an order in writing of the District Judge or District Delegate made for the purpose of—

(1) its being produced in court on the hearing of the application for the purpose of which it was filed, or on the hearing of an application for the

revocation of a grant or Probate or Letters of Administration with the Will annexed, or on the hearing of a case in the District Judge's or District Delegates court in which it is necessary to put such Will in evidence;

Note—The Sheristadar or the head clerk of the court having custody of the Will shall personally produce the Will before the court on the day of hearing, and, if the Will has to be retained in court, shall take a written receipt from the Bench Clerk. The latter officer shall be responsible for the custody of the Will so long as it remains in the court.

(2) its being copied;

(3) an inspection of such Will;

(4) its being transmitted to the Court of the District Judge under rule 326 above;

(5) complying with the requisition under rule 333.

333. (1) Upon a requisition from any Court at a different station for the production of an original 'Will' in a case pending in such Court, the District Judge or District Delegate shall, whether the original 'Will' has been proved or not, forward the 'Will' in a sealed packet by registered post, with acknowledgment due, addressed to the presiding Judge of the Court making the requisition. When the court making the requsition is located at the same station as that of the District Judge or District Delegate, the 'Will' shall be sent in a sealed packet in the custody of a responsible officer to the said Court for production. The officer to whom an original 'Will' is so entrusted shall deliver the same to the Presiding Judge of the Court.

Note—When the record of a case, referred to in rule 362(c) post or an original 'Will' is called for in connection with an appeal or case pending in the Supreme Court (High Court Division), the District Judge or District Delegate shall, whether the original 'Will' has been proved or not, forward the same separately in a sealed packet by registered post, with acknowledgment due, addressed to the Deputy Registrar, Appellate Side, with reference to the requisition.

(2) The presiding Judge shall, on receipt of the 'Will' whether sent by post or through a responsible officer, take all necessary precautions for the safe custody and preservation of the 'Will' until he has returned the same in a sealed packet through the officer to whom it was entrusted for production, or by registered post, with acknowledgment due, to the District Judge or District Delegate in whose Court the 'Will' was filed for the purpose of the application for the grant of Probate or Letters of Administration.

Note—When the 'Will' is called for for production at the instance of a party in any Court, the District Judge or District Delegate shall not comply with the requisition for the same unless it is certified that a sum sufficient to cover all the necessary expenses for transmission and retransmission thereof has been deposited.

334. (1) Applications for a copy of an original Will shall be submitted to the District Judge or District Delegate, and such copy shall only be granted subject to the conditions which attach to the inspection of original Wills.

(2) For copies, the same fee as for inspection shall be levied in court-fee stamps (*vide* rule 329) in addition to the copying charges at the usual rate obtaining in the civil courts which shall be levied in the same way as such charges are levied under the copying rules in Chapter 24, Part IV.

335. All applications for copies or inspection of Wills and registers of Wills shall be entered in the Register prescribed by the Supreme Court High Court Division) for applications for copies,

336. In cases where the fees collected for inspection and copy exceed Taka 5 per mensem, District Judges or District Delegates may assign a moiety to the officer entrusted with the custody of the Wills, the balance being credited to Government. In cases where the collections do not average more than Taka 5 per mensem in one year, District Judges or District Delegates may sanction the payment to such officer of the full amount realised up to Taka 30.

Note—(a) The following certificate should be appended to each Bill in which the charges referred to in this rule are drawn :—

"Certified that the charges included in this bill have been drawn in accordance with the scale laid down by the Supreme Court (High Court Division), and that each court-fee stamp for which commission is drawn is defaced with the words 'Commission allowed'. Certified also that the fees drawn on previous bills (with the exception of those deducted above) have been disbursed to the proper person and his receipt taken in the acquittance roll filed in my office."

(b) As there is a separate Budget Allotment for the expenditure, the charges should be drawn on separate bills showing the allotment and expenditure up to date of each drawal. (A. G. B. No. T. M. 163, dated 6th May, 1892, and C. O. No. 16 of 18th August, 1892.)

337. (1) A register of caveats containing the following columns shall be maintained in manuscript in the office of the District Judge and the District Delegate:—

(i) Serial Number.

(ii) Date of filing the Caveat/Receipt of copy of caveat.

(iii) Name, description and residence of the caveator.

(iv) Name, description and residence of the testator.

(v) Action taken.

(vi) Remarks.

(2) In this register shall be entered all caveats lodged and all copies of caveats received under Sub-sections (2) and (3) of section 284, Succession Act, before application is made for the grant of Probate or Letters of Administration.

(3) Such caveats and copies shall be kept in a guard file and preserved in the office until the filing of a connected application for Probate or Letters of Administration. Upon the filing of any such application, the relevant caveat or copy shall be removed from the guard file and made part of the record of the proceeding relating to the application. When this is done, the fact should be noted in column 6 of the register.

D.—JURISDICTION OF SUBORDINATE JUDGES AND MUNSIFS.

338. The Courts noted below have been invested with the functions of a District Judge under section 388 (1) of the Succession Act, 1925, within the limits of the jurisdiction shown against their names.

Courts.	Local limits.
Bakerganj :	
The Senior Subordinate Judge of Barisal	.. Barisal Munsifi.
The Senior Munsif of Bhola	.. .. .. Own jurisdiction.
Pirojpur	Do.

Courts.	Local limits.
Bogra :	
Subordinate Judge of Bogra	Bogra Munsifi.
Chittagong :	
The Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Patiya	Patiya Munsifi.
Satkania	Satkania Munsifi.
Munsif of—	
Cox's Bazar	Own jurisdiction.
Fatickchary	Do.
North Raozan	Do.
South Raozan	Do.
Sandwip	Do.
Comilla :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Chandpur	Chandpur Munsifi.
Brahman Baria	B. Baria Munsifi.
Munsif of Nabinagar	Own jurisdiction.
Dacca :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Narayanganj	Narayanganj Munsifi.
Munshiganj	Munshiganj Munsifi.
Manikganj	Manikganj Munsifi.
Dinajpur :	
Senior Subordinate Judge of Dinajpur ..	Dinajpur Munsifi.
Munsif of Thakurgaon	Thakurgaon Munsifi.
Munsif of Panchagarh	Panchagarh Munsifi.
Faridpur :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of Madaripur	Madaripur Munsifi.
Munsif of—	
Bhanga	Bhanga Munsifi.

Court	Local limits
Goalunda	Goalunda Munsifi.
Gopalganj	Gopalganj Munsifi.
Chikandi	Chikandi Munsifi.
Jessore :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Narail	Narail Munsifi.
Magura	Magura Munsifi.
Jhenidah	Jhenidah Munsifi.
Khulna :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Bagerhat	Bagerhat Munsifi.
Satkhira	Satkhira Munsifi.
Mymensingh :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Kishorganj	Kishorganj Munsifi.
Netrokona	Netrokona Munsifi.
Munsif of—	
Sherpur	Own Munsifi.
Ishwarganj	Do.
Durgapur	Do.
Bajitpur	Do.
Jamalpur :	
Subordinate judge of Jamalpur	Jamalpur Munsifi.
Tangail :	
Subordinate Judge of—	
Tangail	Tangail Munsifi.
Noakhali :	
Senior Subordinate Judge	Sadar Munsifi.
Munsif of—	
Feni	Own Munsifi.

Courts	Local limits
Lakshipur	Own Munsifi.
Hatiya	Do.
Patuakhali :	
The Senior Subordinate Judge of Patuakhali ..	Patuakhali Munsifi.
The Senior Munsif of Bargona	Own jurisdiction.
Pabna :	
Senior Subordinate Judge of—	
Pabna	Sadar Munsifi.
Senior Munsif of—	
Sirajganj	Sirajganj Munsifi.
Kushtia :	
Subordinate Judge of—	
Kushtia	Kushtia Munsifi.
Munsif of—	
Chuadanga	Own Munsifi.
Meherpur	Do.
Rajshahi :	
Subordinate Judge	Sadar Munsifi.
Munsif of—	
Natore	Own Munsifi.
Noagaon	Do.
Nawabganj	Do.
Rangpur :	
Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Gaibandha	Gaibandha Munsifi.
Kurigram	Kurigram Munsifi.
Munsif of Nilphamari	Own Munsifi.
Sylhet :	
Senior Subordinate Judge	Sadar Munsifi.
Senior Munsif of—	
Habiganj	Habiganj Munsifi.
Moulvi Bazar	M. Bazar Munsifi.
Munsif of Sunamganj	Own Munsifi.

6. THE INSOLVENCY ACT, 1920 (ACT V OF 1920).

339. (1) The following rules may be cited as "The Insolvency Rules." The forms prescribed by these rules, with such variations as circumstances may require, shall be used for the matters to which they severally relate.

(2) Every insolvency petition shall be entered in the Register of Insolvency petitions [Form No. (R) 3] to be maintained in all Courts exercising Insolvency Jurisdiction, and shall be given a serial number in that Register, and all subsequent proceedings in the same matter shall bear the same number, except proceedings which have to be registered as Miscellaneous Judicial cases under the Note to clause 30 of rule 774.

(3) All insolvency proceedings may be inspected at such times, and subjete to such restrictions as the court exercising insolvency jurisdiction may prescribe, by the Receiver, the debtor, and any creditor who has proved, or any legal representative on their behalf.

Notices.

(4) Whenever publication of any notice or other matter is required by the Act or by these Rules to be made in an official Gazette, a memorandum referring to and giving the date on which such advertisement appeared, shall be filed with the record and noted in the order-sheet.

(5) Notice of an order fixing the date of the hearing of a petition under section 19(2) shall be published in the official Gazette and advertised in such newspapers as the Court may direct. A copy of the notice shall also be forwarded by the Court by registered letter to each creditor to the address given in the petition. The same procedure shall be followed in respect of notices of the date for the consideration of a proposal for composition or scheme of arrangement under section 38(1).

(6) Notice of an order of adjudication under section 30 may in addition to the publication in the official Gazette required by the Act, be published in such newspapers as the Court may direct. When the debtor is a Governmnt servant, a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under section 37(2).

Note—If the insolvent has no assets wherefrom the cost of the publication of the notice of the order made under sec. 43(1) can be met, the court should send the notice with a certificate to the effect to the Superintendent, Government Printing, Bangladesh, whereupon the notice will be published in the Dacca Gazette free of charge.

(7) The notice to be given by the Court under section 50 shall be served on the creditor or his advocate, or shall be sent by the court through the post by registered letter.

(8) The notice to be issued by the Receiver under section 64 before the declaration of a final dividend to the persons whose claims to be creditors have been notified, but not proved, shall be sent through the post by registered letter.

(9) Notices of the date of hearing of applications for discharge under section 41(1) shall be published in the official Gazette and in such newspapers as the presiding Judge may direct, and copies shall be sent by the court by registered post to all creditors whether they have proved or not.

(10) A certificate of an officer of the Court or of the Official Receiver or an affiidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted, accompanied by the post Office receipt, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

(11) In addition to the prescribed methods of publication, any notice may be published otherwise in such manner as the Court may direct, for instance, by affixing copies in the Court-house or by beat of drum in the village in which the insolvent resides.

Receivers.

(12) Every appointment of a Receiver shall be by order in writing signed by the Court. Copies of this order sealed with the seal of the Court should be served on the debtor, and forwarded to the person appointed.

(13) (i) A Court when fixing the remuneration of a Receiver should, as a rule, direct it to be in the nature of a commission or percentage of which one part should be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividends.

(ii) When a receiver realizes the security of a secured creditor, the Court may direct additional remuneration to be paid to him with reference to the amount of work which he has done and the benefit resulting to the creditors.

(14) (i) The Receiver shall keep a cash-book and such books and other papers as are necessary to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as the Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. These shall include costs incurred on journeys necessary to the proper administration of the estate. The costs of the audit shall be fixed by the Court, and shall be paid out of the estate.

(ii) Any creditor may apply to the Court for an order directing the Receiver to hold a local enquiry in order to ascertain whether the debtor has excluded any of his properties from his schedule. The Court may before passing such an order call upon the creditor to deposit the costs likely to be incurred by the Receiver on account of journeys made for the purpose and may thereafter direct that such deposit shall be a first charge on the assets after payment of the Receiver's remuneration as provided by sub-rule (13).

(15) Any creditor who has proved his debt may apply to the Court for a copy of the Receiver's Accounts (or any part thereof) relating to the estate, as shown by the cash-book up-to-date, and shall be entitled to such copy on payment of the charges laid down in the rules of this Court regarding the grant of copies.

(16) In any case in which a meeting of creditors is necessary and in any case in which the debtor proposes a composition or scheme under section 38, the Receiver shall give 7 days' notice to the debtor and to every creditor of the time and place appointed for such meeting. Such notices shall be served by registered post.

Proof of debts.

(17) A creditor's proofs should be in Form No. (M) 51 in Volume II, with such variations as circumstances may require.

(18) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others empolyed by the debtor, it shall be sufficeint if one proof for all such claims is made either by the debtor or by some other persons on behalf of all such creditors. Such proof should be in Form No. (M) 52 in volume II.

Procedure where the debtor is a firm.

(19) Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his own signature, *e.g.* "K. Rahman & Co., by A.R. Siddique, a partner in the said firm".

(20) Any notice or petition for which personal service is necessary, shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm within the jurisdiction of the Court, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

(21) The provisions of the last preceding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own.

(22) Where a firm of debtors file an insolvency petition the same shall contain the names in full for the individual partners. and if such petition is signed in the firm name the petition shall be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in the filing of the same.

(23) An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in that firm.

(24) In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs.

(25) The joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

(26) Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the adjudication order shall be annulled only so far as it relates to the estate, the creditors of which have confirmed the composition or scheme.

(27) If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And when any surplus shall arise upon the administration of the assets of such separate or independent firm , the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

Sale of immovable property of insolvent.

(28) If no Receiver is appointed and the Court, in exercise of its powers under section 58 of the Act, sells any immovable property of the insolvent, the deed of sale of the said property shall be prepared by the purchaser at his own cost, and shall be signed by the presiding Judge of the Court. The cost of registration (if any) will also be borne by the purchaser.

Dividends.

(29) The amount of the dividend may, at the request and risk of a creditor, be transmitted to him by post.

Summary administration.

(30) When an estate is ordered to be administered in a summary manner under section 74 of the Act the provisions of the Act and Rules shall, subject to any special direction of the Court, be modified as follows, namely :—

(i) There shall be no advertisement of any proceedings in the local official Gazette or in any newspaper.

(ii) The petition and all subsequent proceedings shall be endorsed "Summary Case."

(iii) The notice of the hearing of the petition to the creditors shall be in Form No. (P) 80, Volume II.

(iv) The Court shall examine the debtor as to his affairs, but shall not be bound to call a meeting of creditors, but the creditors shall be entitled to be heard and to cross-examine the debtor.

(v) The appointment of a Receiver will often not be necessary, and the Court may act under section 58 of the Act, in order to reduce the cost of the proceedings.

Costs.

(31) All proceedings under the Act down to and including the making of an order of adjudication shall be at the cost of the party prosecuting the same, but when an order of adjudication has been made, the reasonable costs of the petitioning creditor shall be payable out of the estate

(32) No costs incurred by a debtor of, or incidental to, an application to approve of a composition or scheme, shall be allowed out of the estate, if the Court refuses to approve the composition or scheme.

(33) Where no receiver being appointed the Court itself exercises all the powers of a receiver under section 58, and account in the accompanying form should be maintained to show all amounts received and disbursed :—

Debts Proved.	Date of chalan.	No. of chalan.	Amount received.	Disbursements.	Initial of Judge	Remarks
			Tk. P.	Tk. P.		

340. (1) The following rules may be cited as the Insolvency (Supplementary) Rules, 1940.

(A) Official Receivers.

(2) The Official Receiver shall charge such commission and furnish such security as the Government, in consultation with the District Judge, may direct.

(3) The Official Receiver shall be under the administrative control of the District Judge, who shall fix a time and place for the performance of his duties.

(4) Subject to the operation of these Rules, the provisions of Rule 339, Civil Rules and Orders, shall apply to the Official Receiver as to any other Receiver.

(5) The provisions of Rules 65—96, inclusive, of Order XXI, Civil Procedure Code, 1908, and of Rules 208, 209 and 213, Civil Rules and Orders, shall, *mutatis mutandis*, apply to all sales of property conducted by the Official Receiver who directly or indirectly shall neither bid at any such sale nor acquire an interest in any such property.

(6) The accounts of the Official Receiver shall be audited annually by the Accountant-General, Bangladesh, who shall submit an audit report through the District Judge to the Government and the cost of such audit shall be met by charging upon the gross annual realizations of such estate in the hands of the Official Receiver and audit fee to be fixed by the Government.

(7) (a) The Official Receiver shall maintain the following Registers :—

(i) Diary (Form No. 1)

(ii) Tour Diary (Form No. 2).

(iii) Register of Insolvency cases (Form No. 3).

(iv) Register of receipts and payments on account of immovable property (Form No. 4).

(v) Register of receipts and payments on account of movable property (Form No. 5).

(vi) Cash Book (Form No. 6).

(vii) Estates Ledger Account (Form No. 7).

(viii) Register of realizations and refunds on account of commission, travelling allowance and audit fees (Form No.8).

(ix) Dividend Register (Form No. 9).

(b) The Official Receiver shall issue printed and numbered receipts for all moneys realised by him, and shall, to facilitate the audit of his accounts, retain printed and numbered counterfoils of all receipts so issued.

(c) The Official Receiver shall, once in every half year, prepare an abstract of Estates Ledger Account balances, and the Sheristadar of the District Judge shall compare such abstract with the balances shown in the Official Receiver's Cash Book, and shall reconcile the difference, if any, between the abstract and the Cash Book balances.

(8) All moneyes realised by the Official Receiver shall be paid by him into the Government Treasury on the day of receipt if possible, or on the morning of the next working day; provided that money realised on tour shall be so paid not later than on the morning of the working day next following his return to head-quarters.

(9) Collections representing audit fees or the commission and travelling allowance fees of the Official Receiver shall be credited by chalan to such account as the Government may direct; and all other collections shall be separately credited by chalan to a personal ledger account to be opened in the name of the District Judge.

(10) (a) The Official Receiver shall draw his Commission and travelling allowance from the Government account by submitting in duplicate, for refunds of revenue, bills in form T.R. 12 annexed to the Treasury Rules (Refund of Revenue) and in Bangladesh Form No. 2445.

(b) Every such bill shall, before submission to the Treasury, be checked by the District Judge's Accountant, and sanction for such refund of revenue shall be accorded on each bill over the counter-signature of such authority as may be vested with the powers to sanction refunds of revenue by the Government in this behalf.

(c) One copy of every bill so countersigned shall be retained by the Official Receiver for the purposes of audit.

(11) (a) No expenditure above Tk. 25·00 from the personal ledger account shall be incurred except on the written order of the District Judge; and no expenditure shall be incurred for any estate without sufficient liquid assets to meet such expenditure, unless a creditor deposits the required amount.

(b) The Official Receiver shall, for the purposes of audit, maintain in manuscript form a record of the receipts and refund of every such deposit.

(12) All payments above Tk. 25·00 from the personal ledger account shall be made by cheque drawn by the District Judge .

(13) Dividends shall ordinarily be paid by cheques drawn in favour of creditors, but may be paid by cheques drawn in favour of the Official Receiver, who shall thereafter distribute the amount drawn, either in cash or by money-order.

(14) Cheques drawn in favour of creditors shall as soon as drawn be posted in the Cash Book and Estates Ledger Account and shall then be made over to the actual payees or their accredited agents, and in all cases in which a cheque is issued, the dated receipt of the recipient shall be taken on the order-sheet of the case record and also on a voucher which shall, for the purposes of audit, be retained by the Official Receiver in accordance with the order of entries in the Cash Book.

(15) The Treasury shall, in respect of the personal ledger account standing in the name of the District Judge, issue a pass-book in which entries shall be made twice in every month; and at the close of every month, the Sheristadar of the District Judge shall compare such entries with the entries in the Official Receiver's Cash Book , and shall reconcile the difference, if any, between the pass-book and the Cash Book entries.

(16) All cheques not cashed within ninety days of the date of issue shall be cancelled and stopped by the District Judge, and no fresh cheque shall be issued until the cancelled cheque has been returned by the payee.

(17) From the personal ledger account, the Official Receiver shall have a permanent advance of Tk. 100, or such lesser sum as the District Judge may, after consultation with the Supreme Court (High Court Division), direct and shall recoup expenditure from such advance by presenting bills and vouchers to the District Judge who, after checking the same, shall issue in favour of the Official Receiver a cheque for the amount passed.

(18) When the Official Receiver carries on any business belonging to a debtor, he shall keep a separate account of the trading, and shall incorporate in his Cash Book at the close of each week the net total receipts on account of such trading.

(B) Committees of Inspection.

(19) A Committee of Inspection shall consist of not more than five or less than three members (of whom two shall form a quorum), elected at a meeting conducted by the Receiver, who shall give fifteen day's clear notice thereof to those creditors who have proved their debts.

(20) A member of the Committee may resign his office by written notice delivered to the Receiver, and shall vacate it if he becomes insolvent or compounds or arranges with his creditors, or if he is absent from five consecutive meetings of the Committee, or if a majority of the insolvent's creditors who have proved their debts resolve that he be removed; and a vacancy occurring under this Rule shall be filed in the manner provided in Rule (19).

(21) No defect or irregularity in the election of any member shall invalidate any act done by him as a member in good faith.

(22) A meeting of the Committee may be called by the Receiver or by any member as required, and at least one meeting shall be held in every month.

(23) In the administration and distribution of the insolvent's assets the Receiver shall have regard to the directions of the Committee, and shall obtain its written consent before applying to the Court for leave to take action under section 59 or of the Act.

(24) The Receiver shall, when required, submit to the Committee the Cash Book and other requisite papers; and at the and of every three months the Committee shall audit the entries in the Cash Book end Estates Ledger Account, and shall append thereto an audit certificate signed by each member.

(25) No member of the Committee shall, except with the permission of the Court, either directly or indirectly, by himself or by any other person, purchase any part of the insolvent's estate, or derive any profit out of any transaction arising out of the insolvency, or receive from the estate any payment for services rendered or goods supplied by him in connection with the administration thereof; and the Court may disallow any such purchase, and may recover from a member any such payment or profit.

(26) When services of a special nature, as distinct from ordinary duties, have been rendered by a member of the Committee in connection with the administration of an estate, the Court may allow him such remuneration as it thinks fit.

(27) Any trading account maintained by the Receiver shall, at least once in every month, be submitted by him to the Committee, and shall be examined and certified by the Committee or by any member appointed by it for this purpose.

(C) Meetings of Creditors.

(28) A meeting of creditors convened under Rule 339 Civil Rules and Orders, to consider a composition or arrangement proposed under section 38 of the Act shall be presided over by the Receiver, who shall record and forward to the Court the decision arrived at. Where no Receiver has been appointed, the Court itself shall preside.

INSOLVENCY FORMS

FORM NO. 1.

Diary.

Attended Office at.....Date.....

Left Office at.....Day.....

Number of the insolvency case in the Official Receiver's register (the number of the case in the Court's Register should be given within brackets).	Object for which it is set down for the day.	Short note of the work done.	Realisations with sources of such realisations.	Number and date of the chalan by which amounts realised during the day are remitted to Treasury and the amount of the chalan.	Date to which it is adjourned if at all.	Remarks.
1	2	3	4	5	6	7

N.B.—At the end of each day the Official Receiver shall note in red ink the balance in hand of the imprest and the unremitted balance of the realisations for the day.

FORM NO. 2.

Tour Diary.

Date or dates if the journey extends over several days.	Details of journey including hours of departure from and return to the station.	Details of the case or cases in connection with which the journey is undertaken.	Short note of the work done in connection with each case.	Realisations with sources of such realisations.	Remarks.
1	2	3	4	5	6

N.B.—The amount entered in column 5 of this register shall also be shown in red ink in column 6 of the diary in Form 1.

FORM NO. 3

Register of Insolvency cases.

Serial No.	Serial number in the Court's register.	Name, father's name and address of the insolvent.	Date of vesting order.	Personalty.						
				(i) Debts due and other pecuniary claims bearing those mentioned in column (ii)						
				Serial No.	Name, father's name and address of debtor.	Nature of debt or claim.	Amount.	Realisation, if any.	Date of realisation.	Remarks.
1	2	3	4	5	6	7	8	9	10	11
							Tk. P.	Tk. P.		

Personalty.														
(ii) Securities and shares in joint-stock companies.									(iii) Money.					
Serial No.	Description.	Face value	In whose Possession.	If subject to the claim of third party, name and address of the party and the nature of the claim.	Market value of the debtor's interest.	Realisation.	Date of realisation.	Remarks.	Serial No.	In whose possession.	Amount.	Realisation.	Date of realisation.	Remarks.
12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
		Tk. P.			Tk. P.						Tk. P.			

Note.—Entries in this register in connection with cases where the Official Receiver is appointed interim Receiver should be made in red ink, and in the remarks column in all cases the dates of discharge of the Official Receiver as Receiver or interim Receiver should be noted.

Personalty.						Realty.											
(iv) Other movables.																	
Description of class of property and the number of items of each class.	In whose possession.	Value stated in petition.	Value realised	Date of sale.	Remarks.	Serial No.	Description	Extent.	Where situated.	Nature of insolvent interest.	Value of insolvent's interest, as stated in the petition.	Nature of encumbrances, if any, and the name and address of the owner of encumbering interest.	Annual income, if any.	Income realised with dates of realisation.	Price at sale.	Date of sale.	Remarks.
28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
		Tk. P.	Tk. P.								Tk. P.		Tk. P.		Tk. P.		

FORM No. 4.

Register of receipts and payments on account of immovable properties

(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's register No. 3 and also the Court's register of cases should be noted on the top of each of these pages.)

Receipts.

Number of items in column 6 of Register 3.	Description of property.	Tenant's name.	Annual rent.	Arrears of rent due at the beginning of the year.	Other dues, if any.	Particulars of receipt.						
						Rent.			Other dues.			
						Date of receipt.	Amount received.	Arrears still due.	Amount received.	Arrears still due.	Number of receipt.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13

Payments.

Landlord's name.	Annual revenue or rent due to superior landlord.	Arrear of rent due at the beginning of the year.	other dues.	Particulars of payment.								
				Rent.				Other dues.				
				Date of payment.	To whom paid.	Amount paid.	Arrears still due.	To whom paid.	Amount paid.	Arrears still due.	Number of voucher.	Remarks
14	15	16	17	18	19	20	21	22	23	24	25	26

N.B.—(1) Arrears columns number should be written up in red ink.

(2) When one estate has been fully administered an abstract of these accounts should be entered in red ink at the end and a copy of this abstract should be submitted to the Court , along with another abstract of the accounts in Register 5.

FORM No. 5.

Register of receipts and payments on account of movable properties.

(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's register and in the Court's register should be noted on the top of each such page).

No. of item in Register No. 3.	Date of receipt.	From whom received.	On what account received.	Amount.	Remarks.	Date of Payment.	To whom paid.	On what account paid.	Amount paid.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

N.B.—A summary of the accounts should be entered in red ink when the movables of any particular estate have been fully disposed of and a copy of this should be submitted to the Court along with the abstract of the accounts in Form No. 4 when the estate of the insolvent has been fully administered.

FORM No. 6.

Cash Book.

		1 Date.	
		2 Page number of the Estate's Ledger.	
		3 Number of receipt.	
		4 From whom received.	
		5 Particulars of receipts.	
		6 Government securities received or purchased (face value).	
		7 Permanent advance and its recoupment, if any.	Receipts.
		8 Amount withdrawn from Bank or Treasury.	
		9 Amount received from other sources.	
		10 Cash in Bank or Treasury.	
		11 Remarks.	
		12 Date.	
		13 Page number of the Estate's Ledger.	
		14 Voucher number.	
		15 To whom paid.	
		16 Particulars of payment.	
		17 Number of cheque issued, if any.	
		18 Government securities issued or sold (face value).	
		19 Payment out of the permanent advance.	Disbursements.
		20 Payment out of the amount withdrawn from Bank or Treasury.	
		21 Remittances to Bank or Treasury.	
		22 Payment out of the Bank or Treasury balance.	
		23 Remarks.	

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FORM No. 7.

Estate's Ledger Account.

(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's register and the Court's register should be entered on the top of each such page).

Receipt.				Expenditure.			
Date	Particulars of receipt	Amount.	Remarks.	Date	Particulars of expenditure.	Amount.	Remarks.
1	2	3	4	5	6	7	8
		Tk. P.				Tk. P.	

FORM No. 8.

Register of realisations and refunds on account of commission, travelling allowance an d audit fees.

Realisations by Official Receiver.						Refunds to Official Receiver.					
Number and date of receipt.	Details.	Amount. Commission.	Amount. Travelling allowance.	Amount. Audit fees.	Date and number of chalan.	Date.	Details.	Amount. Commission.	Amount. Travelling allowance	Amount. Audit fees.	Date and number of bill.
1	2	3	4	5	6	7	8	9	10	11	12
		Tk. P.	Tk. P.	Tk. P.				Tk. P.	Tk. P.	Tk. P.	
					By balance						

FORM No. 9.

Dividend Register.

(Several pages of this register should be allotted to each case and the particulars of the case with the name of the insolvent should be noted on the top of the first page).

Serial No.	Names of creditors	Amount of proved debt.	First dividend at per cent by order of the Court.	Final dividend at per cent by order of the Court.	No. and date of the money-order receipt if the amount is sent by money-order.	No. and date of cheque.	Signature of payee or his authorised agent.	Signature of attesting witness.	Remarks
1	2	3	4	5	6	7	8	9	10
		Tk. P.							

(Rule No. 13 of 1940, No. 397, dated the 10th December, 1940).

7. THE STAMP ACT, 1899 (II OF 1899).

341. When a Judicial Officer sees reasons to doubt the genuineness of a stamp filed before him, the stamp should be forwarded to the Collector of the district, who will examine it, and satisfy himself, if possible, as to its character reporting the result to the officer sending it. Care should be taken to retain an examined copy of any document bearing a stamp which may be forwarded to the Collector under the above orders.

342. In all cases in which the Civil Courts find any document which comes before them to have been stamped after its execution in contravention of law, they should give a copy of their judgment to the Government Advocate with a view to the prosecution, if necessary, by the Revenue authorities, of the parties concerned in such after-stamping.

343. In dealing with unstamped or insufficiently stamped instruments executed before the present Stamp Act came into force, the procedure to be adopted and the penalties to be levied should be regulated, not by the old Acts which have been repealed, but by the present Act.

344. The attention of all Courts is drawn to the provisions of section 38, Stamp Act, 1899, which require that when an instrument is impounded and admitted in evidence, an authenticated copy of it, together with a certificate stating the amount of duty and penalty levied, shall be sent to the Collector.

Note 1—Loose sheets of Form No. (R) 19 should be used when sending the certificate. A note should be made in the remarks column of the register maintained in Form No. (R) 19 showing when the certificate was sent to the Collector.

Note 2—As a question of revenue is involved, it should be seen that copies of impounded documents are sent to the Collector with all possible despatch and that the amount of duty and penalty levied is promptly realised and remitted to the treasury.

345. When submitting a reference to the Supreme Court (High Court Division) under section 60 of the Stamp Act, the District Judge shall at the same time forward a copy of the same to the Solicitor, Ministry of Law and Parliamentary Affairs, together with an expression of his opinion as to whether that officer should engage Counsel or Advocate to argue the matter before the Supreme Court (High Court Division).

8. THE REGISTRATION ACT, 1908 (XVI OF 1908).

346. In any case in which a registered document is discredited by the judgment of a Court on grounds connected with registration , such as false personation, forgery, want of execution, presentation or admission of execution beyond the statutory period, minority, idiocy or lunacy of the executant, such Court shall send a copy of its judgment to the District Registrar within whose jurisdiction the instrument was registered.

9. THE SPECIFIC RELIEF ACT, 1877 (I OF 1877).

347. (1) When any Court has passed a decree under section 39 of the Specific Relief Act, 1887, for the cancellation of an instrument under the Registration Act, or when an appellate Court reverses a decree which has been so passed and registered, the Court shall forthwith cause a copy of the decree to be forwarded to the Registering concerned.

(2) When an appellate Court reverses or when the Court of second appeal restores the decree of a Court of first instance of which a copy has been transmitted to the registering officer under the provisions of the Act abovementioned, it shall transmit a copy of its decree to the Registering Officer.

10. THE LUNACY ACT, 1912 (IV OF 1912).

Procedure to be followed by District Courts in sending lunatics to Mental Hospitals.

348. The attention of all Courts is invited to the rules relating to lunatics so found by inquisition under section 91 of the Lunacy Act. The relevant rules are as follows:-

76. Lunatics in respect of whom an order for detention in a Mental Hospital has been made under sections 46 or 67 of the Act shall be confined in the Mental Hospitals.

77. The provisions of rules 34, 42, 43 and 44 shall apply *mutatis mutandis* to the case of lunatics in respect of whom an order of detention in a Mental Hospital has been made by a District Court. The Court shall obtain and forward with every lunatic a certificate by a Medical Officer as required by Rule 44(i) (ii) and it shall also be responsible for all the entries in the descriptive roll.

34. The Magistrate shall make a searching inquiry into the previous history of a person alleged to be a lunatic, with a view to obtain every possible information regarding him, and shall furnish a fresh and complete history of each case, especially with reference to mode of life, state of health, and cause of insanity, all particulars being entered in the descriptive roll in Form C, annexed to these Rules.

42. A certificate of fitness to travel must be furnished by the Medical Officer who certifies the insanity of the patient.

43. The Magistrate who despatches a lunatic to an asylum shall make proper arrangements to ensure that the lunatic is provided with suitable food for his consumption during the journey to the Mental Hospital.

44. (1) The Magistrate shall send the following documents with every lunatic sent ot a Mental Hospital :-

(i) Reception order;

(ii) Certificate by Medical Officer in Form 3 in Schedule I to Act IV of 1912;

(iii) Descriptive roll in Form C, annexed to these rules;

(iv) Certificate of fitness to travel.

(2) If any document is not received, or if any defect or omission is discovered in any one of them, it shall at once be notified to the office, by whom the lunatic has been sent with a view to the prompt rectification of the error.

Note 1—Form C referred to above is reproduced as Form No. (M) 32 in Volume II.

11. THE COMPANIES ACT, 1913.

349. The rules made by the Supreme Court (High Court Division), from time to time, pursuant to section 246 of the Companies Act, 1913, apply to all District Courts subordinate to the Supreme Court (High Court Division), empowered under sub-section (1) of section 3, to exsercise all or any of the jurisdiction conferred by the Act.

Note—The rules now in force are shown in Appndix 7 to the rules of the Supreme Court (High Court Division) Original Side.

12. THE OATHS ACT, 1873 (X OF 1873).

350. (1) The following forms of oaths and affirmations are prescribed by the Supreme Court (High Court Division) under section 7, Act X of 1873 :—

(1) Oath for witnesses.

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

(2) Affirmation for witnesses.

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing and that no part of my evidence shall be false.

(1) Oath for interpreters.

I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, and explain. So help me God.

(2) Affirmation for interpreters.

I solemnly declare that I will well and truly interpret, translate, and explain all questions and anwers, and all such matters as the Court may require me to interpret, translate, or explain.

(2) The same form shall be used in criminal as in civil cases.

351. (1) Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

(2) In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

13. THE BENGAL ALLUVIAL LANDS ACT, 1920 (BENGAL ACT V OF 1920).

352. The following rules made under section 8 of the Bengal Alluvial Lands Act should be followed by all Courts :—

I. Attachment.

(1) The attachment of alluvial land under section 3 of the Bengal Alluvial Lands Act, 1920 (hereinafter referred to as "the Act") shall be made by an order in the form in Appendix 1 addressed to an officer not below the rank of a Collectorate Kanungo.

(2) Possession under the order of attachment shall be taken by erecting a long bamboo on the land in the presence of some of the chief inhabitants of the neighbouring villages including members of the Union Councils and Chaukidars. The order shall also be proclaimed at some place on, or adjacent to, the property by beat of drum or other customary method; and copies of the order shall be affixed at a conspicuous part of the property and a conspicuous place in the nearest inhabited village.

A copy thereof shall also be affixed in a conspicuous part of the office of the Subdivisional Officer or Collector.

II. Management.

(3) Pending a decision of the Court, under section 6 of the Act, the Collector shall cause to be prepared a list showing the names of all persons claiming to be in cultivating possession, disputed or otherwise, of particular lands within the attached area. If there be no dispute regarding the cultivation of any land, the person in possession shall be left undisturbed to cultivate that land and a temporary settlement made with him pending the Court's decision. If there be such a dispute, the land shall be settled temporarily in such manners as the Collector may direct.

(4) The settlements under sub-rule (3) shall be effected by the simple grant of permission to cultivate the land on condition of the payment of a certain rent, and on condition that the tenancy will terminate on the expiry of such period as may be fixed, not exceeding three years, or, if within such period the Collector cancels his order of attachment under sub-section (3) of section 3 or if, according to an order passed under section 6 of the Act by the Court, he puts any other person in possession, then on the date of such cancellation or of such possession being given.

(5) If the Collector appoints a Receiver for the attached land the powers, duties and liabilities of such Receiver shall be the same as those of a Receiver appointed under Order 40 in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908).

III. Demarcation, Survey and Preparation of a map.

(6) So far as practicable, the disputed area shall be clearly demarcated by permanent pillars.

(7) A survey of the boundary of the attached area, together, where necessary, with a survey of the internal detail of the area shall be made by means of a theodolite. Such survey shall, where practicable, be connected with such permanent marks as may exist in the vicinity.

(8) (1) The map prepared on the basis of such survey shall show—

(a) the boundary of the disputed land;

(b) internal boundaries where necessary;

(c) the permanent marks with which the survey was connected, where practicable;

(d) the boundaries of adjacent lands so far as may be necessary; and

(e) the position of the revenue, diara or other relevant survey lines if such position can be determined with sufficient accuracy, and such lines are relevant to the dispute.

(ii) The map so prepared shall be certified by the Collector to be a map prepared under section 4, sub-section (1) of the Act, and be signed by him.

IV. General Notice.

(9) The general notice inviting claimants to the attached land under section 5, sub-section (2) of the Act, shall be proclaimed at some place on, or adjacent to the property by beat of drum or other customary method. It shall also be served by affixing a copy of the notice at a conspicuous part of the disputed property and at a conspicuous place in the nearest inhabited village. A copy thereof shall also be affixed in some conspicuous place in the Court-house. The form of the General notice is given in Appendix II.

V.—Procedure in making a reference to the Civil Court.

(10) The reference to the Civil Court under section 5, sub-section (i) of the Act, shall include the following papers and statements :-

(a) the map prepared under section 4, sub-section (1) of the Act;

(b) a list of the names and places of residence of all persons claiming interest in the land;

(c) a statement of the amount of costs incurred under section 3 and section 4, sub-section (1) of the Act;

(d) a statement of the value of the land;

(e) a brief statement of the facts of the dispute so far as they are known to the Collector.

Note—Fees for initial notices, necessary for getting the parties before the court should be paid, in the first instance by the Collector, but court-fees on the reference itself, as if it were a plaint need not be paid by him.

VI. Delivery of possession under section 6 of the Act.

(11) Delivery of possession under section 6 of the Act shall be made by an order in the form given in Appendix III, addressed to an officer not below the rank of a Collectorate Kanungo. Possession shall not ordinarily be given until the crops sown and planted by the cultivating tenants have been gathered by them.

(12) Delivery of possession shall be made to, and a receipt taken from, the party to whom it has been adjudged, or to such person as he may appoint to receive delivery in his behalf. The order shall also be proclaimed at some place on, or adjacent to, the property by beat of drum or other customary method, and a copy of the order shall be affixed on a conspicuous part of the property;

Provided that, if there are several parties mentioned in the order, delivery of possession shall be deemed to have been made if the order is proclaimed and a copy of it is published in the above manner.

VII. Profits.

(13) The profits of management, during the period of attachment shall be made over to the party or his authorised agent, as adjudged by the Civil Court to be entitled to such profits.

Note—The form of the notice referred to in sub-rule 9 above is reproduced as Form No. (P) 81, Volume II.

14. THE COURT OF WARDS ACT, 1879 (BENGAL ACT IX OF 1879).

353. Officers presiding in the Civil Courts should send under cover to the Collector, or Deputy Commissioner, as the case may be, for transmission to the Court of Wards, all applications addressed to such Court, under section 10, Bengal Act IX of 1879, asking it to take charge of the properties of minors.

15. THE DIVORCE ACT, 1869 (IV OF 1869).

I. Supreme Court (High Court Division) Order under section 17 and General Instructions.

354. The following Order has been made by the Supreme Court (High Court Division) under section 17 of the Divorce Act, IV of 1869 :-

The time within which a decree of a District Judge may not, under section 17 of the Act, be confirmed shall be six months from the pronouncing thereof.

Note—The reference for confirmation should be made and the record of the divorce case should be sent by the District Judge to the Supreme Court (High Court Division) as soon as possible after the decree nisi is pronounced.

355. The attention of District Courts is drawn to the fact that in section 2 of the Divorce Act (IV of 1869) the second, third and fourth paragraphs have been repealed and new provisions substituted therefor by Act XXV of 1926 and that by Act XXX of 1927 the words "or respondents" have been inserted after the word "petitioner" in the first clause of the new paragraphs. The result is that—

(a) no relief of any kind can be given under the Act except where the petitioner or respondent professes the Christian religion;

(b) dissolution of marriage cannot be decreed except where the parties to the marriage are domiciled in Bangladesh at the time when the petition is presented;

(c) decrees of nullity of marriage cannot be granted except where the marriage has been solemnized in Bangladesh and the petitioner is resident in Bangladesh at the time of presenting the petition;

(d) no relief other than a decree of dissolution of marriage or of nullity of marriage can be given under the Act except where the petitioner resides in Bangladesh at the time of presenting the petition.

Note.—On domicile.—Ordinarily domicile of the parties means the domicile of the husband. Domicile does not mean 'residence' or even 'long residence.' Nor is it determined by the place in which the husband was born. The question of domicile is to be carefully enquired into on proper legal principles. Unless a proper finding is come to as to domicile upon sufficient evidence, the jurisdiction of the Court is not made out and the Supreme Court (High Court Division) will not confirm a decree for dissolution of marriage. Attention is drawn to the cases of Wright V. Wright (I. L. R. 58 Cal. 259), Stroud V. Stroud (I. L. R. 58, 1332) and Cresswell V. Cresswell (38 C. W. N. 255). Much delay and expense have been caused to parties by failure to observe these requirements.

II. Rules under section 17-A.

356. The following rules have been made by the relevant authority in exercise of the powers conferred by section 17-A of Divorce Act (as amended by Act XV of 1927):-

(1) These rules may be called the Divorce (Domiciled Parties) Intervention Proceeding Rules, 1928.

(2) In these rules, unless there is anything repugnant in the subject or context—

"Act" means the Divorce Act (IV of 1869);

"Officer" means an officer appointed under section 17-A of the Act to exercise the like right of showing cause that a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor;

"Advocate" means any person entitled to appear and plead for another in Court, and includes and Advocate and a vakil and "Proceeding" means a suit or Proceeding under the Act.

(3) (i) If any person during the progress of a proceeding or before the decree nisi is made absolute gives information to the officer on any matter material to the due decision of the case, the officer may take such steps as he considers necessary or expedient.

(ii) If, in consequence of any such information or otherwise, the officer suspects that any parties to the petition are or have been in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the Court, intervene and produce evidence to prove the alleged collusion.

(4) (i) When the officer desires to show cause against making absolute a decree nisi, he shall enter appearance in the proceeding in which such decree nisi, has been pronounced and shall, within a time to be fixed by the Court, file his plea setting forth the ground upon which he desires to show cause as aforesaid, and a certified copy of his plea shall be served upon the petitioner or person in whose favour such decree has been pronounced or his advocate. On entering an appearance the officer shall be made a party to the proceedings and shall be entitled to appear in person or by advocate.

(ii) Where such plea alleges the petitioner's adultery with any named person, a certified copy of the plea shall be served upon each such person omitting such part thereof as contains an allegation in which the person so served is not named.

(iii) All subsequent pleadings and proceedings in respect of such plea shall be filed and carried on in the same manner as in respect of an original petition under the Act, except as hereinafter provided.

(iv) If the charges contained in the plea of the officer are not denied or if no answer to the plea of the officer is filed within the time allowed or if an answer is filed and withdrawn or not proceeded with, the officer may apply forthwith for the rescission of the decree nisi and dismissal of the petition.

(5) Where the officer intervenes and shows cause against a decree nisi in any proceedings for divorce, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing as may seem just.

16. THE MONEY-LENDERS ACT, 1933 (BENGAL ACT VII OF 1933).

357. The following rules made under section 10 of the Money-lenders Act, 1933 (Bengal Act VII of 1933) are reproduced for information (Government of Bengal Notification No. 228 J., dated the 10th January, 1934):-

(1) The demand under sub-section (1) of section 7 for particulars concerning any loan or loans shall be made by a debtor to money-lender in Part I of Form No. (M) 56, annexed to these rules.

(2) on demand being made in the form prescribed in rule 1, the money-lender shall supply to the debtor the particulars concerning the loan or loans which are mentioned in part II of Form No. (M) 56 annexed to these rules.

(3) The application under sub-section (1) of section 9 for permission to deposit in the Court any sum of money due from a debtor to the money-lender in respect of any loan or loans shall be in writing and shall contain the following particulars:—

(a) the name and full address of the money-lender in whose favour the deposit is made;

(b) a recital that the debtor has sent the money by postal money-order to the money-lender and that the money-lender has refused to accept the same. (The amounts sent on account of principal and interest should be mentioned separately together with date of the remittance of the same).

The application shall be signed and verified in the manner provided in sub-rules (2) and (3), of r. 15 of Or. 6 in Schedule I to the Code of Civil Procedure, 1908, by the debtor or by his authorised agent.

(4) The application shall bear a court-fee stamp of Taka one as required by Article 1 (b) of Schedule II of the Court-fees Act, 1870, and shall further be accompained by printed forms of notice in Form No. (P) 85 annexed to these rules for service on the money-lender with process-fees payable in court-fee stamps according to the scale prescribed by the SupremeCourt (High Court Division) for service of summons on defendants. The blank spaces in Form No. (P) 85 shall be filled in by the debtor or by his authorised agent.

(5) If it appears to the Court, to which an application for permission to deposit under section 9 is made, that the applicant is entitled under that section to deposit the money, it shall receive the same and give a receipt in form No. (M) 57 annexed to these rules.

(6)The money-lender may apply for withdrawal of the money in form No. (A) 3 annexed to these rules, and the procedure in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits.

Note—The forms prescribed in the rules may be seen in Vol. II.

17. THE MONEY-LENDERS ACT, 1940 (BENGAL ACT X OF 1940).

358. The rules made by the Government of Bengal under section 44 of the Money-lenders Act, 1940 (Bengal Act x of 1940) are reproduced below . (Government of Bengal Notification No. 4054 J. , dated the 10th December, 1940) ;-

The Money-lenders Rules, 1940.

1. These rules may be called the Money-lenders Rules, 1940.

2. In these rules, unless there is anything repugnant in the subject or context,—

(1) "Form" means a form appended to these rules;

(2) "section" means a section of the Act;

(3) "the Act" means the Money-lenders Act, 1940.

3. The principal Registrar shall exercise general supervision and control over Registrars and Sub-Registrars and Registrars shall exercise general supervision and control over sub-Registrars. Registrars are authorised under section 6 to hear appeals under sections 16 and 17 from the orders of Sub-Registrars functioning within their respective jurisdictions.

4. An application for appeal under section 5 shall bear a court-fee stamp of Taka 1.

5. A register of money-lenders referred to in section 7 shall be maintained in form I by Sub-Registrar. Every Registrar shall maintain one such register and the Principal Registrar shall maintain as many such registers as may be necessary to show in a consolidated manner the names of the registered money-lenders within their respective jurisdiction.

6. Every application for licence under section 11 shall be made in Form II.

7. (1) An application for licence on behalf of a firm shall be signed by all the persons constituting the firm or their representative or representatives duly empowered, or in the case where any such person is a minor by the person representing him in the business.

(2) Every such application shall be also verified, in the manner provided in the Code of Civil Procedure, 1908, for the verification of pleadings, by one of the persons signing the application.

8. Every application for licence shall be presented by the applicant personally or by an agent authorised in this behalf in writing by the applicant:

Provided that where there are more applicants than one for the licence any one of them may present the application.

9. Every application for a licence shall be accompained by an affidavit stating whether any Court has, at any time, made any order in relation to the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business, in regard to any of the matters mentioned in section 14.

10. (1) After making such enquiries as he thinks necessary the Sub-Registrar shall, if he finds that there is no reason to refuse the grant of the licence, direct the applicant to pay within a specified time a sum representing the fee specified in section 10 in court-fee stamps. These shall be affixed to the application and shall be duly punched and cancelled by the Sub-Registrar who shall put his initials and the date across each court-fee label.

(2) A record signed by the Sub-Registrar shall be kept of every enquiry referred to in sub-rule (1) and such record shall contain a brief memorandam of the substance of evidence taken, if any, and a summary of any conclusion regarding facts elicited during the enquiry.

11. After the applicant has paid in accordance with rule 10 the fee referred to in section 10 the Sub-Registrar shall grant him a licence in Form III.

Necessary entries shall then be made in the register maintained in the office of the Sub-Registrar. Two copies of such entries shall be sent twice every month to the Registrar having jurisdiction for record in the register kept in his office under rule 5. The Registrar in his turn shall send one such copy to the Principal Registrar for incorporation in the register kept in the office of the Principal Registrar.

A money-lender to whom a licence has been issued may, during the validity of such licence, secure as many duplicates of such licence as he may require from the Sub-Registrar who issued the original licence on payment of a fee of Taka. 2 only in court-fee stamps for each such duplicate.

A money-lender holding a licence may apply for renewal of his licence before the date on which it is due to expire.

12. When a Court requires the money lender under sub-section (2) of section 13 to pay any penalty imposed by it under that sub-section, it shall direct the money-lender to deposit in the Government treasury a sum representing the said penalty and to file the treasury chalan of such deposit within a time to be fixed by it.

In stations where there are no treasuries the deposit ordered under this rule may be accepted by the Court as a Government receipt and disposed of in accordance with the rules applicable to Government receipts in Civil Courts.

13. An application for removing a disqualification referred to in sub-section (1) of section 14 shall be made in form IV to the Secretary to the Government in the Ministry of Law and Parliamentary Affairs. A fee of Taka. 50 shall be deposited in the Government treasury and the receipt (chalan) thereof shall be forwarded with the application:

Provided that the Government may in any special case on previous application of the party remit any part of such fee, but the fee shall in no case be less than Taka 15.

14. (1) Every appeal under sub-section (3) of section 16 against an order of a sub-Registrar refusing a licence and every application under sub-section (5) of that section for revision of any decision of a Registrar shall be preferred in the form of a memorandum stamped as required under article 1 (b) of Schedule II to the Court Fees Act, 1870 (VII of 1870) and shall respectively be accompained by an attested copy of the order appealed against and of the decision for the revision of which the application has been made.

(2) As soon as any appeal is filed the Registrar shall cause notice of the same to be given to the Sub-Registrar against whose order the appeal is made, and shall call for the records of the case.

(3) An appeal shall not stay the operation of the order appealed against except so far as the Registrar may direct.

(4) When a memorandum of appeal is filed it shall be entered in a book to be kept for the purpose, to be called "Register of Appeals".

(5) The Registrar shall fix a day for hearing the appellant or his advocate and hearing him if he appears on that day, the Registrar shall give his decision. The Registrar may also give his decison if the appellant or his advocate does not appear on the day fixed. The decision may be for confirming, varying or reversing the order against which the appeal is preferred.

(6) The procedure laid down in sub-rules (2) (3), (4), and (5) shall apply *mutatis mutandis* to the hearing of applications for revision under sub-section (5) of section 16.

(7) A record shall be kept of the hearing of every appeal by a Registrar in the form of an ordinary Revenue miscellaneous case, while the record of the hearing of an application for revision by a competent Court shall be kept in the manner provided in the Supreme Court (High Court Division) Civil Rules and orders for the keeping of records in the case of miscellaneous appeals and miscellaneous cases in the Civil Courts.

(8) The provisions of this rule shall apply to appeals and revisions contemplated in section 17.

15. (1) Every order of cancellation of licence passed under section 17, and the substance of every order passed under sub-section (1), sub-section (3) or sub-section (4) of section 20 shall be entered by the Sub-Registrar in the register in which the licence affected has been entered, and intimation of all such orders shall be aslo given by the Sub-Registrar through the Registrar having jurisdiction to the Principal Registrar as early as possible.

(2) The Principal Registrar shall take steps to circulate the substance of any order passed under sub-section (1), or sub-section (3), or sub-section (4) of section 20 to other Registrars as soon as he receives it from the Court which passed the order, and shall also cause the same to published in such local newspaper or newspapers as may be selected by him. The Principal Registrar may also in particular cases publish the substance of such order in the Dacca Gazette.

16. Every application under section 11 or section 19 shall bear a court-fee stamp as laid down in Article 1(b) in Schedule II to the Court-Fees Act, 1870 (VII of 1870).

17. Every application for cancellation of licence under section 19 shall be in Form V and shall be signed and verified in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

18. The substance of the order referred to in sub-section (5) of section 20 shall be embodied in Form VI, Form VII or Form VIII, as the case may be. It shall be sent to the Principal Registrar and the Sub-Registrar concerned as laid down in the said sub- section. The Principal Registrar shall take necessary steps to circulate the substance of such orders periodically to all Registrars.

19. (1) The cash book, the ledger and the receipt book referred to in sub-section (1) of section 24 shall be maintained by the money-lender in Forms IX, X and XI, respectively. He may, however, add additional items to the Forms for his convenience.

(2) The statement showing details of the conditions of the loan and other information connected therewith under clause (a) of sub-section (2) of section 24 shall be delivered by a money-lender to a borrower in Form XII.

20. A copy of the account referred to in sub-section (1) of section 24 shall be admissible as evidence of the contents of such account if it is certified to be a true copy of such account, under the signature of the money-lender or his authorised agent, the signature being attested by the Chairman or any other member of a Union Council, or a Magistrate, Honorary or Stipendiary, or any gazetted officer of Government.

21. The statement of accounts which the money-lender shall, within two months of the commencement of each year, furnish each of his borrowers under sub-section (1) of section 25 or the statemnt to be supplied by the money-lender to his borrower under sub-section (2) of that section shall be in Form XIII.

22. A borrower shall pay to the Money-lender under the proviso to sub-section (3) of section 25 a fee of Taka 2 in order to obtain a subsequent copy of any document evidencing an agreement to secure re-payment of a loan advanced to the borrower, a copy of which has previously been furnished to him by the money-lender under the said sub-section. The fee shall be sent by postal money-order and the number and date of the postal receipt shall be mentioned in the demand in writing made by the borrower.

23. The statement of information to be supplied to an assignee under clause (b) of sub-section (1) of section 28 shall be in Form XIV.

24. (1) The notice to be given to the defendant by the plaintiff under sub-clause (ii) of clause (a) of sub-section (1) of section 34 shall be in Form XV.

(2) The notice to be given by the decree-holder to the judgment-debtor under sub-section (2) of section 34 shall be in Form XVI.

25. An application for review of decree made under sub-clause (ii) of clause (a) of sub-section (6) of section 36 shall bear a court-fee stamp as laid down in article 11 (a) (ii) of Schedule II of the Court-Fees Act, 1870 (VII of 1870).

26. The application to be made by a borrower under sub-section (1) of section 38 shall be made in Form XVII.

For the service of notice of such application on the lender under the said sub-section process fees shall be payable by the borrower in court-fee stamps according to the scale laid down by the Supreme Court (High Court Division) for service of summons on defendants, and no notice shall be issued unless such process fees have been paid (Appendix A).

27. (1) The application to be made by the borrower to a Court for permission to deposit a sum under sub-section (1) of section 39 shall be made in Form XVIII and shall bear a court-fee stamp of 0·75 poisha as required by Article 1 (b) of Schedule II to the Court-Fees Act, 1870 (VII of 1870).

(2) The Court shall thereupon cause notice of the deposit to be served on the lender under sub-section (2) of section 39 in form XIX for which process fees in accordance with the scale laid down by the Supreme Court (High Court-Division) for service of summons on defendants shall be charged (Appendix A).

(3) The lender may present a petition for the withdrawal of the sum in Form XX and the procedure to be followed in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits. Every such petition shall be accompanied by a verified statement on plain paper as required under sub-section (2) of section 39, and shall, except in cases in which the original deposit does not exceed Taka 25 in amount, be stamped with court-fees chargeable under the fourth paragraph of clause (a) or the second paragraph of clause (b) of Article 1 of Schedule II to the Court-fees Act, 1870 (VII of 1870), as the case may be.

28. The Government may provide such ministerial officer and member of lower subordinate services, as in its opinion may be required from time to time by the Principal Registrar and any Registrar and Sub-Registrar, and may regulate the conditions of employment of such staff and fix the salaries and allowances payable to them.

29. Every Sub-Registrar and Registrar shall keep an inspection book.

30. Every Sub-Registrar and Registrar shall at all times permit any officer authorised in this behalf by the Government to have access to all his books, proceedings and records.

31. Every Sub-Registrar shall maintain a register of applications for licence and for cancellation of licence in form XXI.

32. A register of fees and a register of miscellaneous applications shall be maintained by every Sub-Registrar and Registrar in Forms XXII and XXIII.

18. THE ARBITRATION ACT, 1940 (X of 1940)

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

(2) The forms prescribed by these rules shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require. Forms Nos. I, II and III referred to in the rules have been appended thereto, while Forms Nos. (J) 20, (J) 21 and (P) 9 will be found in Volume II, Civil Rules and Orders.

(3) Every application made to a Court under the Act shall be verified in the manner prescribed by Order VI, rule 15, Code of Civil procedure, 1908, or if the Court so directs, supported by an affidavit. The application shall be divided into paragraphs numbered consecutively and shall contain the name, description and place of residence of the petitioner and the opposite party, a statement in summary form of the material facts, the facts showing that the Court to which the application is presented has jurisdiction to deal with it, and the nature of the relief asked for and shall specify the persons liable to be affected thereby.

(4) Applications to the Court which are consented to by all the parties affected thereby shall be made with the consent of the parties endorsed thereon and signed by them.

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

(6) Every application under section 14(2) of the Act, for filing an award in Court, shall be in writing and the Court on being satisfied that the application is in order, shall cause it to be numbered and registered as a suit.

(7) Every application made to a Court under section 20 (1) of the Act shall be accompanied by the original arbitration agreement or if the same be not in the possession of the applicant, then by a copy thereof. The Court on being satisfied that the application is in order shall cause it to be numbered and registered as a suit.

(8) Every application under section 21 of the Act shall be made in Form No. II with due regard to the provisions of rule (4) above.

(9) The rules in Chapter 14 *ante* shall, so far as they are applicable, apply to appeals under section 39 of the Act.

(10) Form No. (P) 9, so far as it can be made applicable, shall be used with necessary modifications in issuing the notice required to be given by the Court under the Act, *e. g.*, sections 8(2), 14(2), 14(3), 20(3).

(11) Fees for the service of notices and processes issued by the Court shall be levied according to rule 604(2) post.

(12) The order of reference under sections 20(4) and 23 (1) of the Act shall be made in Form No. (J) 20 and the order of appointment of an Arbitrator or Umpire under sections 8(2) and 12 shall be made in Form No. (J) 21.

(13) In making an award under the Act, the Arbitrators or Umpire, as the case may be, shall use Form No. III for the purpose.

(14) With regard to the preservation, interim custody or sale of any goods which are the subject matter of a reference, Courts shall be guided by the relevant provisions of the Civil Procedure Code and of the rules in Chapter 10 *ante*.

APPENDIX

Form No. 1.

Special Case.

(Section 13(b) of the Arbitration Act , 1940)

District .....

In the Court of .....at.....

Suit/ Case No. of 19 .

In the matter of an Arbitration Agreement dated .....

the .....day .. of .....

Between

A.B. (Name, description and place of residence) or Plaintiff(s).

And

C.D. (name, description and place of residence) or Defendant (s).

The following special case is stated for the opinion of the Court:—

(state the facts concisely in numbered paragraphs)

The questions of law for the opinion of the Court are:—

First, whether .....

..... Secondly, whether .....

.....

X

Y

Dated the day of 19 .

Arbitrator (s) / Umpire.

APPENDIX

Form No. II.

Application for an order of Reference under Section 21 of the Arbitration Act, 1940.

District.....

In the Court of .....at .....

Suit No. .....of 19.

Plaintiff(s)

Versus

Defendant(s)

The petition of the above-named plaintiff(s) and defendant(s)

sheweth:—

1. This suit is instituted for (state nature of claim).
2. The matters in difference between the parties are (state matters of difference.)
3. The petitioners being all the parties interested have on the ..... day of ..... 19 .....agreed that the matters in difference between them shall be referred to the arbitration of (name, description and place of residece of the arbitrator or the manner as to the appointment of arbitrator agreed upon between the parties).
4. The petitioners therefore pray for an order of reference.

Signature of Petitioner.

Dated .....

FORM No. III.

AWARD

(Preamble as in Form No. 1)

Whereas in pursuance of an agreement in writing, dated
order of reference made herein on
the day of 19, and made
the following matters in difference
between the abovenamed A.B. and C.D. .,
the said A.B. and C.D. have referred to me/us, the
namely,
matters in difference between them concerning :—
(state matters in difference)/ have been referred to me/ us for determination.

Now I /we having duly considered the matters submitted to me/us do hereby make my/our award as follows:-

I/we award—

(1) that

(2) that

(Signed)

Arbitrator(s)/Umpire

Dated the day of 19 .

CHAPTER 16.

THE CLASSIFICATION OF RECORDS OF JUDICIAL PROCEEDINGS.

360. The records of judicial proceedings, whether suits or cases, are divided into five classes. The classification relates only to the preparation and the preservation or destruction of the record, and does not affect any other classification of suits or cases for the purpose of returns or statements.

361. Class I includes records of—

(a) Suits for or affecting immovable property other than suits under Or. 34, C.P. Code, 1908, for foreclosure, redemption or sale.

Note 1—Suits for setting aside decrees for khas possession of immovable property, and suits for enforcing the right of pre-emption under the Muhammadan Law, should be included in this class.

Note 2—Suits under section 9 of the Specific Relief Act, 1877, should be included, not in this class, but in Class III.

(b) Suits in respect of the succession to an office or to establish or set aside an adoption or otherwise determine the status of an individual.

(c) Suits relating to public trusts, charities, endowments, public or general rights or customs and other matters of public or general interest.

(d) Proceedings under the Divorce Act and suits for dissolution of marriage and for restitution of conjugal rights.

(e) Suits for perpetual injunctions and declaration of right in matters other than those specified above.

362. Class II includes records of—

(a) Suits for a declaration of a right to maintenance with or without a charge on immovable property or to determine the rate thereof.

(b) Cases under section 96 of the state Acquisition and Tenancy Act.

(c) Contested and uncontested suits and cases for probate and letters of administration and for the revocation of the same.

Note 1—The papers which the District Delegate, acting under section 288 of the Succession Act, 1925, forward to the District Judge, should be included in this class.

Note 2—The custody and preservation of a Will itself is provided for by rule 325 *et seq.* A Will which has been proved does not form part of the record within the meaning of this rule.

Note 3—Orders in an enquiry made at the instance of the Collector under clause 5 of section 19-H of the Court-fees Act VII of 1870 should be written on the order-sheet of the original cases to which they relate; and the papers of the proceedings will form part of the records of the original case.

(d) Cases under the Guardians and Wards Act, 1890, relating to the guardianship of minors and the administration of their property.

(e) Cases under the Lunacy Act, 1912, relating to the guardianship of lunatics and the case of their estates.

Note—An application by an executor or administrator or by the guardian of a minor or lunatic to sell, mortgage or otherwise dispose of property belonging to the estate, together with all the proceedings connected with it shall be kept with the record of the case.

(f) Cases for succession certificate under the Succession Act, 1925.

(g) Suits under Order 34, C.P.C., for foreclosure, redemption or sale.

(h) Cases, filed under section 143A of the State Acquisition and Tenancy Act, 1950.

363. (1) Class III includes records of—

(a) All suits and cases not already named under Class I or II excluding suits tried under the procedure prescribed for Small Cause Courts.

Note—Transfer proceedings under section 24, Civil Procedure Code, referred to in Note 2 to rule 387 post shall be included in this class. (Contra Note I to rule 474 post).

(b) Suits for specific performance of an agreement to sell immovable property or for cancellation of the deed of sale of immovable property.

(c) Suits for the recovery of arrears of maintenance.

(d) (i) Cases under Part VII of the Succession Act, 1925.

(ii) Cases under the Land Acquisition Act, 1894, Parts III, IV and VI.

(iii) Cases under the Land Registration Act, 1876, section 59.

(iv) Cases under section 83 of the Transfer of Property Act.

(v) Cases under the Insolvency Act, 1920.

(vi) Cases under the Bengal Wills and Intestacy Regulation, 1799, section 7, regarding the property of intestates, in which a claimant appears.

Note—If no claimant appears, the record should be regarded as miscellaneous non-judicial case for purposes of destruction.

(e) Application to sue in *forma pauperis*, if rejected.

(f) Applications under section 5 of the Religious Endowment Act, 1863 (XX of 1863) except contested cases which fall within clause (c) to rule 361 above.

(g) Such other cases as the Supreme Court (High Court Division) may, from time to time, direct to be included.

Note—Proceedings under the C. P. Code for the restoration of a suit or appeal, or for a review of judgment, are proceedings in the suit or appeal, and must form part of the record relating thereto.

364. (1) Class IV includes—

Proceedings in execution of decrees in suits belonging to Classes I, II and III.

Note 1—Under the law, all such proceedings are proceedings in the suit and they must be entitled as such; but for the purpose of the arrangement and ultimate disposal of the record each application for execution shall be treated as a separate case, the record of which shall include the papers on all matters connected with the execution from the date on which the application was presented until it is finally disposed of.

Note 2—Proceedings by which decrees are sent or transferred for execution are included under this general heading. In this connection *see* rule 781.

(2) Class V includes records of Miscellaneous Non-Judicial Case.

Note—Records of suits of the Small Cause Court class tried under the Small Cause Court procedure by judicial officers empowered under section 25, Act XII of 1887, shall be disposed of in accordance with the rules hereinafter provided for the records of the Courts of Small Causes (Chapter 21).

365. A separate record having its own order-sheet and containing appropriate papers or extracts from the original record should be started in proceedings under the Criminal Procedure Code arising out of a suit, appeal or execution case. A reference to the initiation and termination of the proceedings will be made in the order-sheet of the original suit, appeal or case and the record of the proceedings will be kept in the record-room with that of the original suit, appeal or case, annexed to that file thereof which under the rules is to be preserved for the shortest period.

CHAPTER 17.

THE ARRANGEMENT AND PREPARATION OF RECORDS DURING THE TRIAL.

1. THE DIVISION OF THE RECORD INTO FILES.

366. Every record under Class I shall consist of four files to be styled and marked, respectively, File A, File C1, File C2, File D.

367. File A shall contain—

(a) Table of contents

(b) The order-sheet.

(c) The plaint or application together with any schedule annexed thereto.

(d) The written statement of the defendant or the counter-petition.

(e) Memorandum of the issues.

(f) Judgment upon which preliminary decree (if any) is founded and such decree with the further directions (if any) given.

(g) Final order or judgment and the final decree.

(h) Award of arbitrators, petition of compromise, report of guardian *ad-litem* (if any) that suit would not be contested, Commissioner's return or report, map, field book (in matters relating to immovable property) referred to and given effect to in the decree, but not any portion of the evidence taken by such Commissioner.

(i) Copy of the judgment and decree of the appellate Court or Courts (if any).

Note—Registered address under Order 6, rule 14-A, should not be kept in this file.

368. File C1 shall contain—

(a) Table of contents.

(b) All the evidence, oral and documentary, upon which the subject matter of the suit is decided.

(c) Lists of documents admitted in evidence.

369. File C2 shall contain—

(a) Table of contents.

(b) All petitions and papers including those relating to proceedings incidental to the suit, not specified as included in any other file, and in cases where any defendant is proceeded against *ex-parte*, only the last summons on the basis of which due service was declared and *ex-parte* decree was passed against him and the return and the order thereon with the identifier's affidavit, if any.

Note.—The last summons, etc., referred to are to be transferred to C2 File from D file after a suit is disposed of.

370. File D shall contain—

(a) Table of contents.

(b) All summonses, processes, returns thereto, other than the last summonses on the absent defendants and return, etc., referred to in clause (b) of the last preceding rule, lists of witnesses, petitions relating to the attendance of witnesses or adjournments, petitions for extension of time by commissioners and guardians *ad-litem*, rubakaris calling for or sending papers or records and affidavits relating to matters mentioned in this rule and in rules 367-369.

371. Every record under Class II shall consist of two files to be styled and marked respectively File B and File C2.

(a) File B shall contain the papers specified and included in Files A and C1 of Class 1.

(b) File C2 shall contain all other papers.

Note 1—The record of a case under the Guardians and Wards Act or under the Lunacy Act shall not be divided into two files B and C2 but shall consist of a single file B.In cases where letters of administration are granted with a copy of the will annexed or the Court require security from an executor, the bonds shall be ordered to be retained permanently with a fly leaf containing the number and description of the case.

Note 2—The papers of the proceedings of an inquiry made at the instance of the Collector under clause 5 of sec. 19H of the Court-fees Act, 1870, should be kept in File C2.

372. Every record under Class III shall consist of two files, to be styled and marked respectively File C and File D.

(a) File C shall contain the documents on which the claim for relief is based, and all papers specified and included in File A, Class I, and in cases where any defendant is proceeded against *ex-parte* only the last summons on the basis of which due service was declared and *ex-parte* decree was passed against him and the return and the order thereon with the identifier's affidavit, if any.

Note—See the note to rule 369 above.

(b) File D shall contain all other papers.

373. (1) Every record under Class IV shall except as provided in sub-rule (2) consist of one file which shall contain all the papers relating to the case. It shall be styled and marked file 'C'.

(2) If the proceedings comprised in a Class IV record arose out of an application to execute a decree in a suit included in Class I, and a question is determined as to the construction of the decree, or its effect as regards all or any of the parties thereto, or if possession is given of immovable porperty in pursuance of the decree, the record shall be divided into two files, to be styled and marked, respectively, file B and File C.

(3) In cases falling under sub-rule (2) File B shall contain—

(a) Table of contents.

(b) The order-sheet.

(c) The application for execution.

When a question as to the construction, effect, or scope of the decree is raised and determined—

(d) The petition raising any question as to the construction or effect of the decree, any counter-petition.

(e) The judgment of the Court on such question.

(f) The copy of the judgment of the appellate Court or Courts (if any).

When possession of immovable property is given in pursuance of the decree—

(g) The Nazir's return of delivery of possession.

File C shall contain all other papers.

374. Every record under Class V shall consist of one file which shall contain all the papers relating to the case. It shall be styled and marked file D.

375. Security bonds filed by guardians in suits, cases and execution proceedings and those filed in cases under the Succession Act, 1925, not otherwise provided for shall be separated from the record to which they relate before the record is despatched to the Record-Room, and kept in a guard file, serially arranged, in the safe custody of the sheristadar of the court in which the bonds are filed. The sheristadar shall enter the necessary details of the bonds in an index to be maintained for the purpose and attached to the guard file. Such bonds shall be preserved for 25 years from the date of their execution.

376. (1) The record of an appellate Court shall be arranged in the same way as that of the Court of original jurisdiction, except that there shall be no C1 File in respect of Class I records, the papers which would belong to that file where additional evidence is taken being attached to the C2 File.

(2) The files shall be marked A,B,C,D, as in the Court of first instance according to the nature of the suit or case.

Note 1—The copies of the judgment and decree which accompany a memorandum of appeal should be placed with File C2 or D as the case may be.

Note 2—In case of Civil Appeals, except miscellaneous appeals, the certified copies of judgments and decrees filed with the memorandum of appeal should be returned to the appellants on their applying for them after the disposal of the appeals, since the original record is kept with the appellate record in the District Record-Room. In the case of appeals from the decision of Settlement Officers and civil miscellaneous appeals, the corresponding documents should not be returned, but should be retained with the appellate records.

377. The splitting up of the record and the distribution of the papers into the proper files must in all cases be made immediately after the first hearing and shall be continued from day to day as the case proceeds.

2. THE TITLE PAGE.

378. To each file of every record under Classes I,II,III,IV and V shall be prefixed a title page in the prescribed Form Nos. (J) 4 to (J) 10, Vol. II, showing the period of its preservation.

Note—No title page need be attached to record of cases referred to in rule 470 post, until these are called by some superior Court. Then the title page of the first file, according to classification, shall be attached.

379. The title pages shall be of different colours:-

File	A ..	..	.... White.
File	B ..	..	.... Red.
File	C, C1, C2	..	.... Yellow.
File	D ..	..	.... Green.

3. THE TABLE OF CONTENTS

380. Prefixed to every file there shall be a table of contents in Form No. (J) 12, Volume II.

381. (1) The table of contents (except column 2 thereof) shall be written up day by day as papers are filed and the case proceeds, and, except as otherwise provided, shall show the papers in the order in which they are filed. The pages in the file (exhibits excepted) shall be numbered consecutively, and column 2, which should be kept blank until, and filled in after, the file is complete, will give consecutive numbers of the pages. Column I will give the consecutive number of the different papers in the file irrespective of the numbers of pages which they contain.

Note—The sheristadar shall make the first entries in the table of contents in respect of the papers filed with a plaint or original petition or memorandum of appeal at the time of registration or cause them to be made by any of the ministerial officers in the office. Thereafter, the table must be written up from day to day by the Bench Clerk as each new document or paper is filed in the course of trial. Entries in respect of papers filed on days other than hearing days shall be made as they are filed by the clerk in charge of the record, who will also fill in column 2 when the file is complete.

(2) The transfer of any paper from one file to another shall be noted in the remarks column of the table of contents of both the files. A new number will be given in the table of the file to which the paper is transferred.

382. Exhibits are not to be shown in the table of contents. The list which is attached to them under the following rules will alone be shown in this table, and will bear serial and sheet numbers.

383. The lists, and the documents, referred to in them, shall not be attached to any file while the trial is proceeding. When the trial is over, the lists shall be numbered with their proper serial and sheet numbers, and shall be affixed to the file to which they belong, being in every case the last papers which are attached to it. The necessary entries in connection with such lists shall then be made in the table of contents.

4. THE ORDER-SHEET.

384. The order-sheet [Form No. (J) 13] shall contain all orders passed by the Court.

385. The name of the presiding Judge shall be written on the top of the order-sheet when a case is filed and when it is taken up by another Judge his name shall be similarly entered above the orders passed by him.

386. An order-sheet shall be attached to the record of every suit or case other than a suit under Small Cause Court procedure and all orders shall be recorded thereon.

Note 1—Orders shall never be written on petitions, returs, reports and other similar documents. The orders and the reasons thereof shall except as provided in rule 388 be recorded only in the order-sheet and the serial number therein with the date of the order passed and no more shall be noted at the head of the petition, report, etc,

Note 2—It is not intended to prohibit the writing of such routine orders a "Call for the record," "Put up with the record," etc., on petitions. If the record of the case to which such petition or other document relates is in the District Record-Room and it is necessary to send it there for being attached with the record, suitable order may be endorsed thereon. If in the special circumstances of a case it becomes necessary that immediate order should be passed on a petition, or any such document, the order must be transferred to the order-sheet at the earliest opportunity.

387. The order-sheet, being intended to show the course of a suit or case from first to last, shall also contain a note of every order made in the suit or case, and shall show the date of, and the proceedings at, every hearing. It is to be a faithful history of the case and all proceedings taken in it and at the same time it should be so drawn up as to show all the details of the case at one view, and yet be as concise as possible. It shall show, among other matters, the dates on which the plaint and written statements were filed, issues were recorded or amended, witnesses examined and their names in the order in which they are examined, the date of the delivery of judgment, of the signing of the decree, and of any application for review of judgment or amendment of the decree. It shall also contain a note of other proceedings and of the fact of any objection being made thereto, and if witnesses are in attendance when a case is adjourned, the fact shall be noted with an order to attend on the date their attendance may be required.

Note 1—Orders in proceedings under the C. P. Code, for the restoration of a suit or appeal, or for a review of judgment (*see* the last Note to rule 363), should be entered in the order-sheet of the main suit or appeal. A separate order-sheet should not be prepared. In all cases the order of an appellate Court calling for the record of a suit or appeal, should be recorded on a separate paper and reproduced on the order-sheet of the suit or appeal when the records have been received from the lower Court. If the orders thereon are lengthy, the instructions given in the following rule (380) should be followed.

Note 2—Records of proceedings for transfer arising out of applications under section 24, Civil Procedure Code, shall be retained in the Superior Court where the proceedings started. When such proceedings are disposed of, and the main record has been called for by the superior Court, the final order passed shall be reproduced in the order-sheet of the main record before its return to the lower Court. Otherwise the final order shall be communicated to the Court concerned for reproduction in the order-sheet of the main record.

388. (1) Orders, the reasons for which require to be recorded at length, shall not be written on the order-sheet, but a note of the order and of the date on which it was made, shall be entered in it.

(2) Orders directing anything to be done by parties or their advocates shall be signed then and there by the parties or their advocates.

Note 1—While every endeavour should be made to get the signature of the advocates concerned to important orders, their attention is drawn to the fact that it is not the duty of the officers of the Court to call upon the advocates to sign the orders issued, or to inform them of the nature of the orders passed. It is for the advocates to be present at the proceedings to make themselves acquainted with the orders passed. (Robert Watson *v.* Ambika Dassi, 4 C. W. N., 237, 238).

Note 2—Advocates should invariably append the date when signing orders and proceedings in token of their being communicated to them, but nothing should be written other than signature and date.

389. The order-sheet may be written by an officer of the Court at the dictation of the presiding Judge, who, however, shall sign as soon as possible after it is so written and be responsible for the correctness of the entries in it. Important order or orders which call for the exercise of judicial discretion or discrimination should always be drawn up in the presiding Judge's own hand. Time may be abbreviated by the use of rubber stamps for recording routine orders.

Note—A presiding officer's full signature should always appear against all orders written by him under the provision of this rule.

5. THE RECORD.

390. The pleadings, applications, and proceedings in every suit or case shall be attached as the trial proceeds to the file to which they belong as soon as possible after they are filed and shall be arranged in the order in which they are brought before the Court.

391. The depositions of witnesses shall be arranged in the order in which they are given. The examination of the parties recorded by the Court under Or. 10, C.P. Code shall precede such depositions. The depositions of witnesses examined by the Court shall be placed after the depositions of witnesses for the parties.

392. No record of any case or a portion of it shall for any purpose be removed from the Court building or sent to any person other than an officer of the Court except under an order in writing of the presiding Judge:

Provided that if any Judge requires a record at his residence, he may take charge of it.

Note—The taking of records and other Court papers by ministerial officers to their houses for the purpose of their work is strictly forbidden, and this practice wherever it exists should be at once stopped. Records removed from office may be lost, stolen, destroyed by fire or otherwise damaged.

6. DOCUMENTS.

393. The attention of the Courts is drawn to the provisions of Or. 7, rr. 9, 14, and Or. 13, rr. 1 and 2 regarding the production of documents. The Supreme Court (High Court Division) have reasons to believe that there is considerable laxity in the admission of documentary evidence in spite of the strict rules in Or. 13, rr. 1 and 2. Documents not produced in accordance with the requirements of Or. 13, r. 1, shall not be received at any subsequent stage unless good cause is shown to the satisfaction of the Court for the non-production thereof by affidavit or otherwise. Whenever documentary evidence is received at any subsequent stage in exercise of the discretion conferred by Or. 13, r. 2, the reason for so doing must be recorded in the presiding Judge's own hand.

Note—As to production of documentary evidence, *see* paragraph 26, Civil Suit Instructions Manual, 1935.

394. (1) All documents produced with the plaint or written statement or filed in Court by a party or witness at a later stage shall be accompanied by a list in Form No. 5 of Appendix H, C.P. Code [Form No. (J) 22, Vol. II].

Note 1—If any document be torn, worm-eaten or damaged in any other way, a clear note to that effect must be made in the list. The ministerial officer whose duty it is to receive the documents shall verify the items entered in the list and note the fact of verification in such a manner that no new item can be added to the list subsequently. Any peculiarity in the condition of any document about which there ought to be a special reference in the list shall be brought to the notice of the Judge.

Note 2—When documents consist of shop-books, collection-books or the like, the items or entries intended to be tendered as evidence at the trial and exhibited should be marked with "flags", at the time of filing them without which the Court may refuse to receive such books.

Note 3—Documents filed should bear at the top consecutive numbers in bold figures corresponding with the numbers in the list [Form No. (J) 22] to enable the officer receiving the documents to verify the items without loss of time.

(2) If any such documents cannot, by reason of their number, bulk or size be attached to the record or kept tied in a piece of cloth, or if convenience or safe preservation of the documents demands, in the opinion of the Court, that the

should be kept in a suitable box, a box of adequate size and properly labelled shall be provided by the person by whom or at whose instance they are filed. If the Court's order for the supply of such box be not complied with, the Court may refuse to receive the documents and the party filing or his advocate shall be bound to take them back.

(3) If the documents are kept in a box, the list mentioned in sub-rule (1) shall be furnished in duplicate, one copy of which shall be kept with the record and one copy in the box.

395. Should any document which has been partially erased or interlined or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings a note should be made of the fact and if the Court sees sufficient cause the document should be impounded under Or. 13, r. 8. If any document be presented which appears to have been executed on unstamped or insufficiently stamped papers, action should be taken under sections 33 and 35 of the Stamp Act, 1899.

396. If any document included in the list is referred to in the proceedings or shown to a witness before it is tendered in evidence and formally proved, it should immediately be marked for identification.

397. Every document "admitted in evidence" shall be detached from the list and annexed to a separate list in Form No. (J) 23, Volume II, after being immediately endorsed with the particulars stated in Or. 13, r. 4, and signed or initialled by the Judge in the manner required by that rule, and marked with an exhibit number.

Note—When a document of historical or antiquarian interest or an original record of the Supreme Court (High Court Division) is produced or tendered in evidence, the Court before which it is produced should make every possible endeavour to prevent its being defaced by endorsements or exhibit marks or by having the seal of the Court impressed upon it. If the presiding Judge will use his common sense, some means of avoiding such disfigurements will probably suggest itself. The parties will probably agree to a photographic copy being substituted for the original, or the document may be enclosed in a sealed cover, or in a locked and sealed box, the necessary particular being endorsed on the outside. If other means fail, careful measures should be taken for the safe custody of the document pending instructions from higher authority.

398. Documents admitted in evidence shall be marked with numerals 1, 2, 3, etc., and capital letters A.B.C, etc., according as they are admitted on behalf of the plaintiffs/petitioners or defendants/ opposite party and separate lists of the documents thus admitted shall be prepared by the Bench Clerk in Form (J) 23 and signed by the presiding Judge. The documents shall be entered in the lists in the order in which they are admitted and marked. If the capital letters are exhausted, double capitals shall be used.

399. (1) When there are two or more parties defendants, the documents of the first party defendant may be marked A1, B1, C1, etc., and those of the second A2, B2, C2, etc.,

Note 1—As to documents of historical or antiquarian interest *see* the Note to rule 397.

Note 2—In no case must exhibits be defaced in any way by judicial officers except in so far as the law permits, that is to say, by making them as exhibits filed in a specified case. For instance, particular passeges in a document must not be underlined. Again, in the case of a Will separate exhibit marks should not be placed against the name of each attesting witness. The signature when proved can easily be identified by description.

(2) (a) Where an exhibit forms part of a voluminous document, such as an account book, *khata*, etc., it should be clearly indicated by means of a slip of paper pinned to the sheet or page on which it occurs, the exhibit marks being noted on the slip.

(b) When an entry in an account book is admitted in evidence,the portion so admitted shall be clearly indicated by surrounding the same in red ink or chalk.

400. When documents are admitted at the instance of the Court and neither party is willing to accept them as evidence on his behalf, they shall be marked I, II, III, etc.

401. When a number of documents of the same nature are admitted, as for example , a series of receipts for rent, the whole series should be marked with the same numeral and small letters of the alphabet in brackets, when put in by the plaintiff/ petitioner [thus : 1(a), 1(b), 1(c), etc.], or with the same capital letter and numerals in brackets, when put in by the defendant/opposite party [thus: A(1) A(2), A(3), etc.].

402. If in a proceeding subsequent to the trial of the suit or on remand or by order of the appellate Court, further documentary evidence is admitted, exhibits shall be marked with numbers or letters consecutive to the number or letter on the last exihibit previously filed.

403. When an original document, after being marked for the purpose of identification, is returned and a copy thereof substituted under the provisions of Or. 7, r. 17, or Or. 13, r. 5, C.P. Code, a note of the return of the original shall be made in the lists referred to in the preceding rules.

404. (1) When a document included in the list in Form No. (J) 22, Vol. II, is tendered in evidence , it must , if rejected, at once be endorsed as prescribed by Or. 13, r. 6, and returned to the person tendering it who shall give a receipt in column 4 of the list.

(2) Documents produced by a party to the suit but not tendered in evidence, if not returned earlier, shall , at the conclusion of the trial, be returned to the person producing them or his advocate after he has signed the receipt for the same in the proper column of the list. An advocate is bound to take back any document produced by his client and to sign the receipt referred to above. Documents produced by persons who are not parties to the suit are dealt with under the provisions of rule 411 post.

Note 1—Parties or their advocates would do well to ask for and take back from the Bench Clerk or other officer in whose custody they may be, all unexhibited documents immediately after the hearing is finished. If they are not taken back or accepted when returned, the documents remain entirely at their risk.

Note 2—If any advocate refuses to take back a document returned to him, the presiding Judge may then giving him 7 days' notice arrange the destruction of the document without original recourse to the procedure in rule 409.

405. (1) No document shall be returned which by force of the decree or order of the Court has become void or useless, the rights of the party filing it being ompletely provided for by the decree or order.

(2) If by force of the decree the mortgage instrument has become void or useless for instance, in a case where the suit is upon a simple mortgage bond and the rights of the plaintiff under it are completely provided for by the decree, the return of the instrument will be unnecessary. It should however be returned where his title in any way still depends on the instrument, *e. g.* when the suit is brought upon a usufructuary mortgage on the ground that possession is withheld.

406. When a plaint is returned before any action is taken on it for filing in the proper Court, all the papers filed with it including the vakalatnama should also be returned to the person who filed it.

407. Great care should be taken that documents not admitted in evidence are not mixed up with the exhibits in the case. Unexhibited documents if not taken back by the parties or their advocates shall before the judgment is pronounced be removed from the record and placed elsewhere with a fly-leaf attached to them marked with the number and name of the suit and the name of the party or advocate filing the documents.They shall not be sent to the District Record Room but shall be destroyed at the end of six months from the date of the final order of the Court in the suit or proceding in which the documents were produced, after giving such notice to the parties or their advocates as the Court considers proper.

Note 1.—A complete list of documents etc., shall be prepared and entered in a book a month before the destruction showing the number and year of the case, name of person or advocate filing, nature of document, etc., and an intimation sent to the local Bar Association that the list is open for inspection. As the documents are destroyed the date of destruction should be noted in the remark column of the list.

Note 2.—Presiding Judges should *see* that all documents not taken back are listed at regular intervals and the list is put up before them and that the documents are destroyed without fail at the time prescribed by this rule.

408. The following note shall be entered at the foot of every copy of a decree granted to the parties or their advocates to a suitor case :-

"The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve as they will be destroyed at the time prescribed by the Supreme Court (High Court Division)".

Note 1.—The above note shall be penned through if there are no exhibits for return. In compromise decrees or other cases where no one is entitled to recover anything as costs, the schedule of costs should also be penned through.

Note 2.—Presiding Judges of outlying courts should *see* that exhibits are as far as possible returned to the parties or their advocates before the periodical despatch of records to the District Record Room.

409. (1) A private person, not a party to the suit, producing a document in Court in compliance with a summons, should be required to state in writing the address to which the document is to be returned, if not returned to him personally. If it is desired that the document should be returned to an advocate, a vakalatnama shall be filed along with the document.

(2) Where the document is not tendered or admitted in evidence it shall be returned at once to the person producing it either personally or by registered post.

(3) Where the document is admitted in evidence, a certified copy thereof shall be prepared and placed on the record, if not already there. The original shall then be returned to the person producing it personally or by registered post, or to his advocate unless the genuineness of the document is in controversy, in which case the original shall, unless the Court otherwise directs, be returned after the trial is concluded, or, in cases where an appeal lies, after sufficient time has been allowed for appealing, or if an appeal is preferred, after the determination thereof. The word "appeal" includes a second appeal where a second appeal lies.

(4) (a) In the case of voluminous documents, such as account books, etc., which cannot coveniently be returned by registered post, the person producing them shall, if they are not returned to him at once, be informed in due course by registered letter that he is at liberty to take them back, and that his reasonable travelling expenses will be furnished.

(b) This procedure shall also be adopted where the person producing the document states in writing at the time of production that the document is of value to him and that he will take it back personally.

(5) In cases where the person producing a document has any advocate or mukhtar authorised to take back documents on his behalf, the document may be returned under the foregoing rules to such advocate or mukhtar, unless at the time of production the person producing it states in writing that it should be returned to him personally or by registered post.

(6) (a) Before a document such as is referred to in sub-rule (1) is called for at the instance of a party to the suit, such party shall deposit a sum sufficient to meet such expenses as are likely to be incurred, including the cost of returning the document by registered post, the cost of preparing a certified copy under sub-rule (3) and in cases under sub-rule (4) the travelling expenses both ways of the person producing the document.

(b) In cases under sub-rule (4) the travelling expenses shall be transmitted to the person producing the document along with the registered letter therein referred to.

CHAPTER 18.

INSPECTION OF RECORDS NOT SENT TO THE DISTRICT RECORD ROOM.

410. No record or paper not deposited in the District Record Room shall be inspected by any person without the permission of the presiding Judge of the Court to whose file it appertains.

411. The Court may permit a party to the suit or his advocate or mukhtear to inspect the record of a pending case fixed for the day. No notes (other than such notes as are permitted by Note 2, rule 414) or extracts shall be taken from any portion of the record.

Note 1.—When the inspection of any original document is allowed in Court, the Bench Clerk in attendance should, for that purpose, make over to the legal practitioner concerned the document or the section of the file containing the document required for inspection. After inspection, he is required to replace it in its proper position in the file with his own hand. He must *see* that exhibited documents are not removed from the list with which they are annexed. He should also watch the inspection and be held responsible for the documents.

Note 2.—Inspection of record of a pending case fixed for the day should ordinarily take place in the office in the presence of the sheristadar before the sitting hour. The inspection should be allowed upon the same conditions as in Note 1.

412. The presiding Judge may either in his presence or in the presence of his sheristader allow inspection of records not sent to the District Record Room to public officers and advocates or mukhtears in the case subject to the general conditions laid down for inspection of records in the Record Room (*vide* rule 471, *et seq* post). He may, by general or special order in writing Prescribe upon what conditions and at what time and place such inspection may be allowed. No searching fee shall be levied. He should be careful that his orders do not interfere with the right to demand production of documents on notice and the consequent right to take copies which an opposite party enjoys under Or. 11, r. 15.

Note 1.—The permission of the presiding Judge may be obtained on a written application in Form No. (M) 36 which will be supplied free.

Note 2.—An advocate or mukhtear may read any document or record specified in his application the inspection of which has been allowed by the Court, but he shall take no notes other than such short memoranda (to be written in pencil on slips of paper to be provided by the of officer before whom the inspection takes place) of the date and nature of the document, names of parties, etc., as may be necessary to identify or describe the document or record in case a copy is required; but this permission does not extend to the taking of a copy of the proceedring or document, or any part thereof, or to making extracts therefrom. The inspection of a record and the taking of notes is a privilege the abuse of which should not be allowed The directions in this rule must be very strictly observed.

Note 3.—If in disregard of this rule, surreptitious copies of or extracts from papers in a record are allowed to be taken or furnished, the ministerial officer concerned shall be held responsible and severely dealt with, (*See* rules 521 and 591).

CHAPTER 19.

THE TRANSMISSION OF RECORDS TO THE DISTRICT RECORD ROOM.

413. The records of decided. contested and uncontested suits and cases of Classes I, II, and III, other than those referred to in rule 478, and the records of miscellaneous non-judicial cases and of cases belonging to Class IV, shall be forwarded to the District Record Room by judicial officers at headquarters in the course of the third month and by judicial officers at out-stations in the course of the sixth month next succeeding that in which they were decided or disposed of.

Note 1.—For the purposes of this rule, suits (including mortgage suits) in which preliminary decrees are made are not finally disposed of till proceedings on the preliminary decree are terminated by a final decree or otherwise :

Provided that when no proceedings are taken to obtain a final decree, the record shall be sent to the record room, in the case of mortgage suits, on the expiry of three years from the date fixed for the payment of the sum declared in the preliminary decree to be due, and in other cases, on the expiry of three years from the date of the preliminary decree.

Note 2.—Where final decrees are passed on compromise in mortgage suits, and there are instalments to be paid extending over three years, the records should be sent to the District Record Room when the final decrees are passed.

Note 3.—Records of suits dismissed on compromise, should be forwarded to the District Record Room under this rule for preservation and destruction there under Rule 474. Such suits do not come within the purview of Rule 478 (1) (iii).

414. District Judges shall fix the dates on which in the course of the month, the records from each Court, at headquarters and out-stations, respectively, shall be despatched to the District Record Room, the dates being so arranged as to secure an even distribution of work in the record room throughout the year.

Note—The orders passed by the District Judge under this rule, fixing the dates for the transmission of records, shall be copied and posted in the record room and in the offices of the Court to which they relate.

415. A notice exhibiting the dates for despatch of records to the District Record Room which have been fixed by the District Judge under rule 414 will be posted in a conspicuous part of the Court- room of the Courts concerned at least 10 days before the dates, a copy also being sent to the local Bar Association.

416. (1) Applications for copies of documents in such records will not ordinarily be entertained in the outlying Courts unless they are filed at least seven days before the date of despatch fixed by the District Judge under rule 414.

(2) In special cases the Court may entertain applications for copies filed with expedition fees up to and including the second day previous to the date of despatch.

Note.—These rules do not apply to applications for copies filed at Sadar.

417. (1) A separate list in Form No. (R) 32, Volume II, shall accompany the records of each of the five classes. In the case of records under Class IV, two lists shall be prepared, namely,

one of records which contain both B and C and another of the records which contain C files only. These lists should be of uniform size and shape and will be bound up in separate annual volumes for each class of record of the same Court, so as to constitute a catalogue of records in the record room to be preserved for the same period as the records to which they relate.

Note—Suits in which preliminary decrees have been passed should also be entered in the despatch list with a note in the remark column "To wait its term".

(2) The list required by this rule shall be prepared in duplicate by means of carbon paper and shall contain an entry of every suit or case (contested or uncontested) other than those referred to in rule 478 post, disposed of during the period to which the list relates. The duplicate copy shall be forwarded to the District Judge under a separate cover and will be returned to the issuing Court duly signed by the record-keeper who shall acknowledge that the records have been received.

Note 1.—Every list in Form No. (R) 32 shall be given a serial number by the issuing Court, and the duplicate carbon copy shall be preserved for one year from the date of despatch by the Court.

Note 2.—When a paper is sent by a Court to the District Record Room for being attached to any record, the record-room clerk concerned shall, after repunching the court-fee label (if any) attached to it, index it in the table of contents of the proper file.

(3) If any record included in the list is kept back for any reason the fact should be noted in the remarks column.

418. The records of cases referred to in rule 478 post shall be entered in a separate list in Form No. (R) 32 omitting columns 3, 4, 6, 7 and 8 kept in the respective Courts to which they belong and will be destroyed after one year from the date of final disposal unless there has been an order of restoration to file. When such destruction takes place, the fact should be noted in such list and in the Court's register against the entry for the particular case. The list referred to above shall be preserved for three years.

419. All registers which have to be permanently preserved shall, after 12 years from the date of the last entry therein, be sent to the record room with a list in Form No. (R) 33, Vol. II.

Note.—On receipt of the registers in the record room they should be checked with the list, shelved in the record room, and columns 6 and 7 of the list should be filled in.

420. The cost of carriage of records and registers sent to the Record Room shall be met by payment from the District Judge's contingent allowance, and the presiding Judge will give all necessary orders as to the mode of transmission.

CHAPTER 20.

DISTRICT RECORD ROOM.

1. RECORD ROOM ARRANGEMENT AND GENERAL DUTIES OF THE RECORD-KEEPER AND HIS STAFF.

421. The "record room" is a room set apart for the storage of decided cases, and the "Record-keeper" is the ministerial officer in immediate charge of such records.

Note.—The term "Record-Keeper" includes the ministerial officer who may be placed by the District Judge in-charge of the record-room in an outlying station, where there is any.

422. Whenever possible it should be arranged, that each record-room shall have only one combined entrance and exit, and that the record-keeper's table shall be so placed that no one can enter, or pass papers out of the record-room unseen by him.

Note.—Repunching peons should work near the Record-Keeper's table.

423. All outer windows, doors or openings in the walls of the record-room, and all inner and outer windows, doors or openings giving access from the record-room to any office or verandah which is not part of the record-room shall be protected by iron railings and wire-netting, in such manner as to render it impossible that papers should be passed through them, and the Record-Keeper shall, by periodical inspection, satisfy himself that the railings and netting are in good order.

424. The Record-Keeper must obtain and keep on his guard file a copy of the instructions issued by Government for the protection of buildings and records against fire, and he will be held responsible for ensuring that these instructions are carefully observed.

Note.—No smoking of any kind is on any pretence to be permitted in a Court, in any office room attached to a Court or in any part of the record-room or its annexes. The Bench Clerk or the Sheristadar of each Court or the Record-Keeper, or the ministerial head of the department concerned, as the case may be, will be responsible for seeing that this rule is strictly enforced, and bring at once to the notice of the Judge any infringement thereof.

425. The distribution of work among the clerks should be on a scheme to be approved by the Judge-in-Charge and so far as possible it should be arranged on the basis of the various Courts in the district, each clerk dealing with the records of the Court or Courts of which he is incharge and all matters connected with them. Each clerk shall be furnished with a duty card of his duties.

426. Any officer who permits the records of his office, or in his record-room, to fall into disorder, is under the orders of Government, held responsible for the expenses incurred in their rearrangement; and any officer receiving charge of an office or record -room, the records of, or in which, may be in disorder, or so unmethodically arranged as to prevent the ready production of papers when called for, and who shall fail to make a timely report of their state, will be similarly held answerable for the cost of time and arrangement.

[This rule, being rule 13, section XI, page 32, of the Board of Revenue, Records Manual, Bengal, has been approved by the Supreme Court (High Court Division).]

427. The following statements and reports should be maintained by every Record-Keeper and submitted to the Judge-in-Charge of the record-room :—

(i) A fortnightly progress report in the form reproduced as Form No. (M)47 in Volume II.

(ii) A statement to be submitted during the first week of each month, in the form reproduced as Form No. (M)37 in Volume II, showing the total number of records received from each Court for the preceding month.

For the accuracy of these reports the record-keeper should be held responsible.

428. A plan and index of the record-room shall be prepared by the Record-Keeper on the lines of the specimen plan and form of Index reproduced as Appendix B and as Form No. (M) 38, respectively, Volume II, and should be hung up in a conspicuous place in his office. The plan should indicate the position and serial number of the several racks and almirahs in each room, and the entrance to and number of each room. It should also include an end-section of the racks, showing the serial number of the several shelves in each. The information required for the "Index" should be set out below the plan, in alphabetical order, Court by Court.

429. This plan and index must be kept up-to-date, and should be corrected yearly after the periodical destruction of records has been carried out.

430. Wherever wooden racks exist, they should be replaced, as soon as funds can be provided, by steel racks of the standard pattern, from time to time prescribed by the Government and approved by the Supreme Court (High Court Division). In submitting plans for reconstituting a Record-Room by the substitution of steel for wooden racks, care should be taken:—

(i) that the racks, shall be so placed that the light from the windows falls between the racks;

(ii) that sufficient spaces are left for gangways between the racks;

(iii) that there is sufficient provision made for the access of light and ventilation; and

(iv) that the space between shelves is suitable (a) for the records and (b) for registers.

431. The rooms, racks, and shelves in the record room should be numbered conspicuously. The rack number should be fixed at the end of each rack nearest the passage way, and at a height where it can be easily read; the letters A and B should be marked to denote the left and right hand shelves of the rack, and this letter should follow and be used with, the shelf number. The reference in an index of the record-room, or in the despatch-list, will thus be "Room I, Rack I, Shelf I-A"—meaning the first shelf on the left hand side of Rack I.

432. An Index-sheet, typed or printed in foolscap size in Form No.(M) 39, Volume II, and pasted on a flat board, should be hung in a conspicuous place at the end of each rack.

433. Every almirah in the record-room should be clearly marked outside with a letter or figure, and the shelves therein should be numbered. A list showing its contents should be kept in each almirah.

434. A statement should be prepared and posted in every record-room showing shortly, but accurately, what staps are necessary in order to trace a record in the record-room.

435. The Record-Keeper shall maintain the following Registers:—

(i) Index Registers, that is, Bound Despatch Lists [rule 417(1)] which must be paged and indexed so as to show at what page or pages the various classes of records will be found.

(ii) An index of Index Registers, in Form (M) 42 Volume II. This should, if possible, be kept in the Record-Keeper's office.

(iii) The Register of records issued from the record-room [Form No. (R) 29, Volume II].

(iv) The Register of applications for the return of documents [Form No. (R) 30, Volume II]. This must be entered up daily and preserved for 12 years.

(v) The Register of requisitions for documents [Form (R)28, Volume II].

(vi) An attendance Register of the record-room staff, to be preserved for one year (*see* rule 765).

(vii) Register of applications for payment [Form No. (R) 38, Volume II].

436. The record-keeper shall also maintain an inspection guard file in the manner prescribed by Rule 941 and the Note thereto, post.

437. Registers not in current use and stored in the record-room, should be arranged on shelves vertically and should be labelled on the back of the volume. Suitable divisions should be made in the shelves, which should also be strengthened, if necessary, for their reception, by means of vertical battens, iron supports or wire divisions placed at suitable intervals.

438. The more important duties of the record-keeper are stated below. It should not be supposed that the enumeration of duties is in any way exhaustive. It has merely been thought desirable to set out in detail certain of a record-keeper's more important duties, but record-keepers must understand that they will be held responsible for the due and prompt performance of all duties connected with the management and supervision of the record-room which are prescribed by rules of the Supreme Court (High Court Division) :—

(1) The record-keeper should be provided with a sufficient number of copies of the rules relating to records for the use of himself and his subordinates, and he will be held responsible for keeping the same up-to-date.

(2) He should keep a register in which should be entered a description of all the office furniture in use in the record-keeper's office and record-room.

(3) The record-keeper is responsible for the condition of the record-room, the records, and the work done by the staff subordinate to him.

He must set an example of punctuality and neatness in his work, and see that the record-room and its offices are maintained in an orderly and tidy condition.

(4) The record-room and the offices appertaining to it must be dusted and swept out regularly everyday and the record-keeper will be responsible for the general cleanliness of the record-room and records.

(5) A plan of the record-room must be prepared.

(6) All rooms and racks are to be numbered.

(7) The Index Registers or Lists of records sent to the record-room must be completed by filling in columns 7, 8 and 9.

(8) All destruction should be entered in the Index Registers which should be indexed, bound, indexed on the back, and kept on end on shelves.

(9) The Record-Keeper must exercise proper personal supervision and control over the staff. He must make himself thoroughly acquainted with each man's work and check it frequently; this applies both to current work and the work in the record-room. He should know the distribution of records in the record-room, frequently inspect the Index Register (comparing the information in columns 7 and 8, with the actual position of the records), and should see that the entries in column 9 of the Index Register are correctly made. He should also be careful that the indexing of bundles is properly carried out. He should work with the idea in his mind that the eventual result of his inspections will be that he will have opened, inspected and correctly arranged every bundle of records in the record-room.

(10) Should, at any time, any additional establishment be appointed to the Record-Room, such staff shall work under the control and supervision of the Record-Keeper, who will be responsible for the proper division of work amongst them, and for drawing up and furnishing to each of them a statement of his duties.

(11) All members of lower subordinate services whose services may be required for removing and replacing records, or keeping the record-room clean, shall be admitted to the record-room only under the supervision and control of the record-keeper, or such member of his staff as he may appoint for that purpose and on such days and within such hours as he may direct by general or special order.

(12) The record-keeper must furnish each clerk with a written statement of his duties.

(13) The record-keeper must be careful to see that the Rules of the Supreme Court (High Court Division) relating to exhibits are properly carried out and that no unexhibited documents are received in the record-room.

(14) He will be held responsible for the regular issue of reminders to the lower Courts [and to the Supreme Court (High Court Division), where necessary] to return records.

(15) He will be held responsible that the Registers of records and documents removed from the record-room are properly maintained.

(16) He will be responsible that the current work is kept absolutely up-to-date. It is of the utmost imoprtance that this should be done, and at the very first sign of arrears, or of such a pressure of work as is likely to cause arrears, the matter must be reported at once by the record-keeper, through the gazetted officer in immediate charge of the record-room, to the District Judge.

(17) The record-keeper must submit regularly and in time the fortnightly Progress Reports. He must further take particular care that the figures inserted in this report are accurate.

(18) The record-keeper is responsible that all orders relating to the record-room are carried out. He is also responsible for keeping the lower Courts up to time in transmitting records to the record-room.

(19) He is responsible that all records, and bundles of records, are kept in their proper places on the racks, and must on no account permit them to be left lying about the gang-ways or floor of the office or record-rooms. All almirahs must be kept clean, and their contents in order, with a list of the contents in each almirah.

(20) The Record-Keeper's attention is called to the necessity for the careful and accurate preparation of returns, and until he has worked his staff up to a proper understanding of their responsibilities in returning accurate figures, he should check all figures himself.

(21) It is imperative that the record-keeper should insist that no unauthorised person enters the record-room or the offices appertaining thereto, and that he should see that his directions in this respect are duly carried out.

(22) The record-keeper should pay particular attention to the rules relating to the second triangular punching of Court-fee stamps. He should periodically inspect the punches to see that they are in good order.

(23) He should also carefully observe the rules relating to destruction of records and should satisfy himself that the destruction of records or portions of records, as the case may be, is periodically and punctually carried out.

(24) He is responsible that the Attendance Register of his office is properly and accurately written up.

(25) He must arrange that applications for copies shall be promptly complied with.

(26) He is responsible for the proper application of the rules relating to payment orders and attachment of moneys.

(27) The Record-Keeper should, on each working day, examine the contents of at least one bundle of records. He should open the bundle, see that the records are in order, that no documents are missing, that the repunching of stamps has been carried out, that the Rules and Orders of the Supreme Court (High Court Division) for the arrangement of records have been complied with, and that destruction has been carried out. When he has satisfied himself that the work in that bundle has been properly done, he will retie the bundle and initial it in red ink, at the bottom left hand corner of its outer label, placing the date of his inspection immediately below his initial. At the same time he will make a similar entry in the Index Register.

(28) Should it be found that any papers are missing that destruction is overdue, or that any suspicious circumstances are observable in connection with stamps, the fact should be reported to the District Judge through the Judge-in-Charge of the record-room.

(29) The record-keeper shall at once bring to the notice of the Judge-in-Charge any irregularities which he may discover in the records deposited in the record-room.

2. RECEIPT OF RECORDS IN THE RECORD-ROOM.

439. No record should be retained in a District Record-Room which does not find an entry in one of the prescribed record-room registers with the exception of Small Cause Court cases.

440. On the arrival of a batch of records in the District Record-Room, the record-keeper shall see :—

(1) that each record is stamped with a rubber stamp bearing the words "District Record-Room" the name of the district and the date ;

(2) that the record correspond in number and description with the entries in the despatch list ;

(3) that a second hole is punched with a triangular punch on each court-fee label distinct from the first and a note is at the same time made upon the title page of each record of the date on which the stamps on documents contained in it have been so punched;

(4) that the classification and arrangement under Chapters 16 and 17 of this part have been carried out; that the contents of each file correspond with the table of contents; that the papers bear the court-fee stamps shown in such table; that the stamps have been duly cancelled, and that the papers requiring court-fee stamps have been properly stamped;

(5) that every document in a record chargeable with stamp duty bears the full stamp prescribed by law.

Note 1.—The second or triangular punching of court-fee stamps, prescribed in this rule should be made on the day the records are received in the District Record-Room, and should not await the inspection or examination of records.

Note 2.—The Record-Keeper is personally responsible for the effective discharge of all the duties under this rule. The appointment of a special peon or other officer to punch stamps on or to examine records received into the record-room in no way absolves record-keepers from the duty of seeing that the stamps are duly punched and that there is no deficiency of stamp in any documents comprising a record.

Note 3.—District Judges and Judges-in-Charge of the record-room are reminded that in order to safeguard Government revenue, the provisions of this rule must be strictly observed.

441. If in the course of carrying out the duties enumerated in the preceding rule 440 the Record-Keeper finds that any stamp shows signs of having been tampered with, or discovers any deficiency, irregularity in cancellation or other circumstances exciting suspicion, he must at once submit a report to the Judge-in-Charge of the record-room.

Note.—The reports should be submitted separately for each record and should not be delayed until the examination of a complete batch of records is concluded.

442. The Record-Keeper shall enter the date of the receipt of the records, the date on which they were actually due, the dates on which they were examined and the total number of records in the space provided in the first sheet of the despatch list. Any material delay in despatching the records, or other irregularity or defect disclosed by his examination under rule 440 (including any omission by the parties or advocates to sign the notice attached to the decree requiring them to withdraw their documents) should be brought to the notice of the Judge-in-Charge not later than two days after the completion of examination.

Note 1.—Reports should be submitted jointly for each Court with reference to each batch of records received,

Note 2.—Reports under this rule, if forwarded for explanation to the Courts concerned should be submitted to the Judge-in-Charge on return, and when finally disposed of should be filed by the record-keeper in chronological order, and in a separate file for each Court.

Note 3.—Records in which there are minor or remediable defects or irregularities should not be sent back to the outlying Courts for being remedied, but they should be rectified by the record-keeper, *e.g.*, mistake in page numbering, ommission to enter a paper in the table of contents, inclusion in one file of a paper belonging to another file, etc., etc. If any entries are necessary they should be made and initialled by the record-keeper and attested by the Judge-in-charge.

3. ARRANGEMENT OF RECORDS IN THE RECORD-ROOM.

443. The records in a District Record-Room should be arranged court by court, different racks being allotted for the records of each court whenever the number and disposition of racks permit of this arrangement. When the records are placed in the racks, the component files should be grouped thereon according to the periods for which they must be preserved.

444. Separate sections of the racks should be provided for each group within which the files should be arranged according to the date of the decision of the case to which they relate. Thus the records of each Court should be grouped in the following way :—

Group No.	Class No.	Files.	Period of preservation.
1	Class I	A	For ever.
2	Class II	B	25 years.
3	Class IV	B	20 years.
4	Class I	C1, C2	12 years.
5	Class II	C2	12 years.
6	Class IV	C	12 years.
7	Class III	C	12 years.
8	Class I	D	3 years.
9	Class III	D	3 years.
10	Class V	D	3 years.

445. The records of each group should be made up into bundles of convenient size, provided that no bundles should contain the records of more than one year. The bundles containing the records of each group should be placed in juxtaposition in the spaces allotted in the racks to each group, care being taken to economise as much space as possible.

446. In the disposition of bundles on the racks regard should also be had to the daily work arising in the record-room, and the arrangement should be such as to facilitate access and minimise removal and displacement.

447. As the time for destruction of the records of a particular year arrives, the bundle or bundles for that year will be removed from the rack or section of a rack which they occupy, and the rack or section will then become available for the records of the incoming year.

448. Records forwarded to the District Record-Room will be opened out and made up into flat bundles of foolscap size. To the back and front of each bundle a flat board, or a piece of stout mill-board of foolscap size should be tied. Each bundle should not ordinarily exceed eighteen inches in depth but, in the case of iron racks of the old standard pattern, two bundles of a convenient size may be made up, so that the entire depth of the shelf may be fully utilised.

449. On the board in front of each bundle there shall be placed a label in Form No. (M) 41, Volume II, and the space showing the due date of destruction shall be filled in. The blank half of the form will be used for noting the removal of records from, and their return to, the bundle. On removal of a record, its number will be noted on the blank half with the date of its removal; and on its return the note will be crossed out. When the blank half of the form has been filled up, for the purpose of further entries a clean sheet of foolscap paper should be pasted over it, care being taken to make a note on this paper of all records taken out of the bundle which have not then been returned.

450. A wooden board, or tin-sheet index, 8" × 13", setting out, the Court and the class of records kept on each shelf of the record rack should be hung on the shelf by small screw hooks which can be removed when the position of the records is for any reason altered.

451. In record-rooms where the system exists of depositing records in cloth bundles, this system should be gradually replaced by the system of flat bundles laid down in these rules. Where records have already been deposited in cloth bundles, these bundles should be made up and indexed, in the manner required by these rules, the index on the cloth being re-written from time to time should it become illegible.

4. CUSTODY, REMOVAL AND TRANSMISSION OF RECORDS AND OF DOCUMENTS CONTAINED THEREIN.

452. No record of a decided case shall be kept elsewhere than in the record-room of the court of trial or in the District Record-Room.

Note.—Rule 413 prescribes the period after which records are to be sent to the District Record-Room.

453. No record deposited in the record-room shall be removed, or allowed to be removed, by the record-keeper, except for the use of the officers of the Court or with the sanction of the Judge-in-Charge of the record-room.

Note.—Rule 113 *et seq.* prescribe the mode of transmission of records and documents called for under Or. 13, r. 10 or in compliance with summons issued under Or. 16, rr. 1 and 6.

454. (1) All applications and requisitions for documents or records other than those received from the Copying Department (*see* next rule 455) shall on receipt be entered by the record-keeper(or by a clerk under his personal direction) in a register in Form (R) 29, Volume II, and then handed for compliance to the clerk-in-charge of the required document or record. The latter shall immediately enter the application in the register and bring the required document or record to the record-keeper, who shall then despatch it to the requiring Court, after noting compliance in column 8 of the register in Form No. (R) 29. On return of the record he shall note in column 9 of the register the date of such return.

(2) When a requisition is so defective that the record-room staff cannot comply with it, it should be returned to the requiring Court or officer with the

defects specifically noted and the reason for non-compliance endorsed on it and the record-keeper shall note the return in column 8 of the register in Form No. (R) 29.

Note 1.—A separate requisition shall be sent for every record or for any number of documents out of the same record called for by any Court.

Note 2.—A memorandum of removal with the date should also be made in the remarks column of the despatch list against the entry relating to a record removed.

Note 3.—Requisitions or applications for records should, at the time of registration under this rule, be stamped with a date stamp and numbered serially.

Note 4.—All actions necessary to comply with a requisition for a record including the preparation of the letters to accompany the record and advising the despatch in Forms Nos. (M) 12 and (M) 11.

Volume II, and the packing and despatch of the record, shall be taken by the record-keeper or a clerk in his office deputed for the purpose.

Note 5.—The memorandum of acknowledgment in Form No. (M) 12 from the receiving Court should, whenever possible, without causing undue delay, be enclosed with other communications sent by outlying Courts to the record-room at Sadar.

Note 6.—It shall be particularly impressed upon the Record-Keeper and his staff that requisitions for records must not be returned on frivolous grounds. If the particulars given are sufficient to identify a record or if there are means for finding out the record, it must be traced even though the description as given by the applicant may in some respects be inaccurate. A case described by its class, number, name of Court and month and year of disposal can be located even though the date of disposal be not always accurate.

Note 7.—Requisitions marked "Urgent" shall be immediately complied with.

Note 8.—As to the procedure for return of records to the record-room by the receiving Court, *see* instructions in G. L. No. 6, dated the 29th February, 1932.

Note 9.—Records or documents called for shall, except in the case of requisitions marked "Urgent" be despatched as soon as possible but in any case within a week from the date of receipt of the requisition. Defective application under sub-rule (2) shall be returned within three days of their receipt. Inspecting officers will particularly observed whether the several provisions of this rule are strictly followed.

Note 10.—In order that records may not remain out of the record-room for an unnecessarily long period, Courts should not ordinarily sent requisitions for records before a suit or case is fixed for peremptory hearing.

455. In complying with a requisition for copies of papers contained in a record, the Record-Keeper should not permit the entire record to be removed to the Copying Department, but only such documents as are specified in the application, unless the documents specified in the application constitute the entire record. Every application or requisition which necessitates the removal of papers from a record for the preparation of copies, or for any other purpose than return to the parties, shall, on receipt in the record-room, be entered by the Record-Keeper or a clerk to be specially deputed for the purpose, in a register in Form (R) 28, Volume II.

Note 1.—Entries relating to papers and documents removed in compliance with a requisition for information or for any purpose other than transmission to the Copying Department should be made in this register in red ink.

Note 2.—Clerks of the record-room establishment should bring to the notice of the Record-Keeper any delay on the part of the Copying Department in returning documents to the record-room. The Record-Keeper should take such steps as will secure their return and in case of unusual delay submit a report to the Judge-in-charge of the record-room for such action as he thinks proper.

456. (1) Applications for the return of documents from records in the District Record-Room shall be made to the Judge-in-Charge during the hours to be fixed by him and shall contain the following particulars:—

(i) Name of the Court to which the record containing the document appertains; (ii) nature, number and Year of suit, case or appeal in which the document was filed ; (iii) date of disposal of the original suit or case and of the appeal, if any; (iv) name of the party or person on whose behalf the document was filed; (v) name of the applicant and the capacity in which he makes the application ; (vi) description of the documents. The Judge-in-Charge will pass an order "Return if no objection" and transmit the applications to the record-keeper who shall enter them in the prescribed register [Form No. (R) 30].

(2) If there is no objection to the application being allowed, the record-keeper shall himself return the document ordinarily on the next open day but not later than the day following it during the time to be fixed by the Judge-in-Charge and obtain the dated signature of the person taking the document on the application as well as in the appropriate column of the register in acknowledgment of receipt. The application shall then be attached to the file which contained the document. If the applicant does not appear to take back the document within three days from the date of filing the application, the application shall be rejected.

(3) If the application has not been filed by the proper person, or is defective in respect of material particulars and the information given is not sufficient to enable the document to be traced by any other means, or there is any objection to the return of the document, the application with a report of the defects specifically noted on it shall be placed ordinarily on the next open day before the Judge-in-Charge who will pass appropriate orders. Such applications as cannot be complied with for any of the reasons above shall ordinarily be returned to the applicant by the Record-keeper on the same day but not later than the next following day to be re-filed after removing the defects. If the application is re-filed it shall be proceeded with as before. The date of re-filing the application shall be entered in red ink in column 2 of the register under its original serial number.

Note 1.—The Judge-in-Charge of the record-room should satisfy himself that documents or defective applications are returned within the time specified in the rule. It is recommended that he should from time to time have the documents or defective applications returned in his presence. The District Judge should at the time of inspection note whether the provisions of this rule are being followed.

Note 2.—The rejected application shall be collected in monthly bundles in chronological order and preserved for three months.

457. Whenever a record or a document from a record is removed from the record-room (otherwise than under rule 456) there shall be inserted in the place occupied by the record in its bundle or by the document in its record, as the case may be, a removal slip in Form (M) 43 on which shall be entered a full description of the record or document, and the purpose and date of its removal. Each such slip shall be initialled by the record-keeper. Where, however, a document or record is removed in compliance with a requisition from any Court, such requisition shall be used as a removal slip. When a record is removed for any purpose which would have the effect of transferring it to some other collection in the Record-Room by reason of an alteration in the date of disposal for purposes of destruction (*e.g.*, in connection with appeal, remand, petition of rehearing, restoration, review, etc., respecting the case) no such removal slip will be necessary.

Note 1.—This slip shall be used also when records are removed from their bundle, on receipt of an application for inspection under rule 473 post.

Note 2.—If the record removed is to be sent to another Court, the word "Removed" shall be stamped on its title page in bold type.

458. On return of a record or document removed under rules 455 and 457, an entry shall be made in Register (R) 28 and the document shall be returned to its proper place, the removal slip being kept for future use after cancellation of the entry.

459. The records of cases called for by the Supreme Court (High Court Division), on appeal from the judgments and orders passed therein, should be despatched within seven days from receipt of the requisition. In the event of any delay occurring in their despatch, a reply should be sent explaining the cause of the delay, and the probable date of their despatch.

Note 1.—Except in appeals from oringinal decrees cumbrous and bulky exhibits, *e.g.*, account books, Khatas, and the like, should not be sent to the Supreme Court (High Court Division) unless specially called for, but a note showing the nature of such exhibits should be made in the letter advising despatch of the records. It will be sufficient to note "Account Books (or whatever the papers may be) are not sent by reason of their bulk".

Note 2.—When exhibits such as are referred to in "Note I" above are sent to the Supreme Court (High Court Division) in connection with any appeal or reference, care should be taken to *see* that the instructions contained in rule 399 (2) *ante* have been complied with.

Note 3.—In every appeal from an interlocutory order made in a suit and coming under Order 43, rule 1(q), (r) and (s) copies only of the plaint, written statement (if any), order-sheet and the papers directly relating to the interlocutory proceedings in appeal should be sent if furnished by the parties and unless otherwise directed.

460. The following instructions should be observed in transmitting records from one Court to another:—

(1) If the two Courts are situated in the same station, the record should be despatched by hand properly packed with a peon book in which a serial number and date should be entered, and the signature of recipient should be taken. The serial number and date appearing in the peon book should be reproduced in the remarks column of the Register of records removed. If the requisitioning Court is situated in a different station, records should be sent by registered parcel post, the postage being paid by means of service stamps.

(2) Records relating to different cases should be packed in separate parcels: provided that if not inconvenient, such records may be packed in the same parcel but separately tied up.

(3) In the parcel containing a record should be enclosed a forwarding letter, and the cover of the parcel should bear the distinguishing number and date of that letter.

(4) A letter of advice should be forwarded simultaneously with the despatch of the parcel by post but separately and by ordinary letter post, and in it the number and date of the forwarding letter referred to in the preceding clause should be quoted.

(5) An acknowledgment should invariably be required from the Court to which a parcel containing a record has been sent, and in the event of none being received within a reasonable time, enquiry should be made to ascertain the cause.

Note 1.—All letters advising the despatch of civil records to the Supreme Court, High Court Division Appellate Side), and parcels containing such records, as also all returns of civil processes issued by the Supreme Court, High Court Division (Appellate Side), should be addressed to the Deputy Registrar of the Supreme Court, High Court Division, Appellate Side.

Note 2.—*See* Note 2 to rule 615.

Note 3.—The procedure in clause (1) of this rule is to be followed also where the District Judge sends for a record from the District Record-Room.

Note 4.—For forms of letter and acknowledgment referred to in this rule, *see* Forms No. (M) 12 and (M) 11, Volume II.

Note 5.—Acknowledgments of the receipt of records sent out should be numbered and noted in the Register of records removed; they should then be filed in serial order on a new file, and should be made up ultimately into yearly bundles.

Note 6.—When an acknowledgment of the receipt of a record is two days overdue, the record-keeper should issue a postcard reminder to the Court concerned making a note of the issue in the Register of records removed.

461. Whenever possible, without offending any rule as to the period of return, records requisitioned by Courts at outstations and ready for return should be included in the batches of ordinary disposed of records.

462. When a record is received back in the record-room, the following procedure should be observed :—

(1) The record should be carefully examined by the record-keeper to see that it is complete and in order. If the record-keeper notices that any document is missing or that the record discloses any other defect, he should at once report the matter to the Judge-in-Charge.

(2) An entry should be made in column 10 of the Register of records issued [Form No. (R) 29] and initialled by the clerk making it.

(3) The entry in the despatch list (R) 32 should be cancelled.

(4) Unless the record is dealt with under rules 465 and 466, the removal slip should be removed from the bundle, the entry upon it cancelled and the record restored to its place.

(5) If the record is not restored to its original bundle for any reason, a note should be made in the despatch list that it is kept with record No. of the of

Court.

(6) An acknowledgment in the prescribed form is to be sent with as little delay as possible.

Note—The above procedure, as far as applicable, is to be followed when documents sent to the Copying Department, are received back. The entry referred to in sub-rule (2) is to be made in the appropriate Register (R) 28.

463. (1) When an original record, which has been called for an ppeal, is received back in the record-room, together with the judgment and other papers relating to the disposal of the appeal in the Appellate Court, the original and the appellate record should be kept together. These records should be arranged according to the date of the appellate judgment. A note should be made in the remarks column of the bound list of records showing:—

(i) where the original record is to be found;

(ii) the date of the appellate judgment.

(2) The same procedure should be followed in the case of a record received back with an order for remand or re-hearing, a reference being made in the bound list, to the shelf on which the record is ultimately lodged.

464. Original records received back from the Supreme Court (High Court Division), together with the judgment of the Supreme Court (High Court Division) on appeal, should be kept together and indexed "Supreme Court (High Court Division) appeals". These records should be arranged according to the date of the final judgment of the Supreme Court (High Court Division). A note should be made against the various entries relating to the records in the remarks column of the despatch list, showing where the respective records may be found, and giving the date of the final judgment of the Supreme Court (High Court Division).

Note.—All records on receipt should be examined immediately and a report whether the records have been received back complete or whether any papers are missing, in excess or defective should invariably be made to the Supreme Court (High Court Division) in the prescribed form of Memorandum of Acknowledgment (Form No. M. 39 of the Rules of Business of the Judicial Department, Appellate Side, Supreme Court (High Court Division).

465. It is the duty of the Record-Keeper to see that records sent out are returned without undue delay. With this object he shall cause the serial number of records not returned to be brought forward and entered in red ink in the register of records removed before any entries are made relating to a new year. He should also cause to be prepared from this register a reminder list consisting of entries of all records which have been out of the record-room for more than three months. On the return of a record the entry relating to it prescribed by this rule should be struck out.

466. From time to time reminders should be issued by the Record-Keeper in respect of such records, and if they do not result in the return of the record, he should take the orders of the Judge-in-charge.

Note.—A note of all reminders issued should be made in the reminder list and in the remarks column of the Register of records issued [Form No. (R) 29].

467. Lists of records which have been sent to the Supreme Court (High Court Division) should be prepared by the Courts concerned at intervals of not less than six months. These shall be placed before the Judge-in-Charge with a view to securing the return of the records if the cases have been heard by the Supreme Court (High Court Division).

468. The above rules so far as they are applicable shall be followed in sending and in complying with requisitions for records in pending cases.

5. INSPECTION OF RECORDS IN THE RECORD-ROOM.

469. The Record-Rooms of Civil Courts are not open to the public, but public officers of the district, including sheristadars, may, with the permission of the Judge-in-Charge, be allowed to enter the record-room and to examine the record of any specified case free of any charge, provided that such entry is made in pursuance of a public purpose.

470. Advocates duly authorised by any person in that behalf may, on payment of the prescribed fee [*vide*, rule 536 (1) (a) (ii)], examine any specified record; but in doing so shall make no notes, other than short memoranda (to be written in pencil on slips of paper to be provided by the record-keeper) of the date and nature of the documents, names of parties, etc., as may be necessary to identify the document or record in case a copy is required. Except where otherwise expressly provided for in the rules regarding the Copying Department, he shall not be entitled to take a copy of the proceeding or document or record, or any part thereof or to take extracts therefrom.

Note 1.—A notice in the sense of this rule should be exhibited, in the office in which records are inspected. No legal practitioner shall be allowed access to the record-room or the offices appertaining thereto, otherwise than in accordance with this rule.

Note 2.—No person inspecting a record or paper shall make any mark on or in any respect mutilate any record or paper which is being inspected.

471. Every application for inspection shall be presented on a Printed Form (M) 36, Volume II, with the prescribed fee affixed to it to the Judge-in-charge of the record-room (or the officer designated by him for the purpose) between the hours of 10-30 A. M. and 4 P.M. on days other than Saturdays and between the hours of 10-30 A.M. and 12-30 P.M. on Saturdays. The application shall clearly state why the inspection of record or paper is desired.

472. Any person named in an order for inspection may make such inspection only on days on which the Court is open during such period as may be fixed by the District Judge between the hours of 10-30 A.M. and 4 P.M. on days other than Saturdays and between the hours of 10-30 A.M. and 12-30 A.M. on Saturdays. The inspection may be made on any day within ten days from the date of the order.

473. For the inspection of documents or records a separate table should be set apart, which should be kept quite clear and be so placed as to be in full view of the record-keeper. All inspections must be carried out on this table under the supervision of the record-keeper or of a clerk deputed by him for the purpose but on the responsibility of the record-keeper.

Note.—The officer watching the inspection should be held responsible for the documents. He should *see* that the record is handled with due care. As to general conditions regarding inspection, *see* rules 411 and 412.

6. THE DESTRUCTION OF RECORDS.

474. The following table shows the periods prescribed for the retention of the various parts of the records in the various classes of suit or proceedings:—

Nature of suit or proceedings	Number of years for which records are to be retained.					
	File A	File B	File C	File C1	File C2	File D
1. In suits or appeals under—						
Class I	Permanent.	..	..	12	12	3
Class II	..	25	..	..	12	..
Class III	..	..	12	..	..	3
2. In execution cases under—Class IV [decrees in suits of Class I which come under rule 373 (2)].	..	20	12	..	..	..
Class IV (decrees in all other suits of Classes I, II, III).	..	..	12	..	..	..
3. Class V—In miscellaneous non-judicial cases.	..	..	..	..	..	3

Note 1.—The record of a case under the Lunacy Act, 1912, shall be preserved forever, or till 5 years after the date of recovery or death of the lunatic, if such be ascertained.

Note 2.—As miscellaneous judicial cases connected with suits or cases are classed according to the nature of such suits or cases the records should be preserved under this rule according to their classification.

475. The above periods shall be calculated as regards suits or cases (of Classes I,II,III,) from the date of the final order or the decree of the Court of first instance, or in the event of an appeal from the date of the final order or decree of the appellate Court. In miscellaneous non-judicial cases, the period shall be calculated from the date of disposal.

476. In cases of Class IV such period shall be reckoned from the date on which the application for execution was finally disposed of by the Court executing the decree or by a Court of appeal, whichever is the later date. For the purposes of this rule, each execution record shall be dealt with separately, irrespective of any other application to execute the same decree or order.

Note.—When no steps are taken by the decree-holder in the Court to which a decree is transferred for execution and papers accompanying the decree along with the certificate under section 41, C. P. Code, are returned to the issuing Court under rule 231 they may be destroyed by the latter Court after three years if it is satisfied that execution is barred by limitation.

477. The period of preservation of the record of suit or case, where the decree or the order directs payment by instalments, shall commence from the date of the last instalment allowed by the Court.

478. (1) Notwithstanding anything contained in the foregoing rules, the record in the following cases shall be preserved for one year and shall consist of one file only unless the distribution of papers into proper files has already taken place before disposal:—

(i) Where the plaint or memorandum of appeal has been rejected.

(ii) Where the case has been dismissed for default under Or. 9, rr. 2 and 3.

(iii) Where the case has been dismissed on satisfaction before decree.

(iv) Where the plaint has been returned for presentation to the proper Court.

Note 1.—In case (ii) the file will be split up when an application for restoration is filed.

Note 2.—In cases where costs have been awarded by the final order, the record shall be treated as File C of Class III and shall be excluded from the operation of this rule ; accordingly such records shall be forwarded to the record-room under rule 413.

(2) On the record of every such case the ministerial officer-in-charge shall stamp or write conspicuously the words "Rejected" "Dismissed for default", "Satisfaction" or "Plaint returned", as the case may be.

479. Copies of plaints and written statements returned by advocate commissioners with their reports may be destroyed immediately after the disposal of a case.

480. Unreturned exhibits received in the record-room with the records transmitted therein shall be liable to destruction at the expiration of one year from the date of the final order of the last Appellate Court, if notice of appeal has been given to the Court in which the documents were produced.

Note.—This rule is to be read subject to the provisions of rule 401 *ante*.

481. Before arragement of the records in the record-room, the record-keeper shall cause a list to be prepared and entered in a book of all unreturned exhibits to be kept in the following form:—

Name of Court	Description and No. and year of case.	Nature of document.	Names of persons filing.	Name of advocate, if any.	Date of final order.	Due date of destruction	Remarks.

Note.—Cumbrous and bulky exhibits, *e. g.*, account books, khatas, and the like, which cannot be conveniently kept with the record should be preserved separately, *e. g.*, in almirahs, boxes, and bundles with a fly-leaf marked with the number and name of the suit and the name of the party or advocate filing the documents.

482. To enable the parties who have filed documents in Court to withdraw the same before destruction, a final notice shall be published in Form No. (p) 57, on the District Judge's notice board in January and July of each year stating that all documents filed in the suits (to be therein enumerated) will unless previously reclaimed be destroyed within one month from the date of the notice. Such notice shall contain the name of the Court, the number of the suit in which the document was filed, and the names of the parties and advocates. If the document was originally filed in any outlying Court, the notice should be sent for publication in that Court's office as well as at the District Judge's office.

Note.—This notice should, if possible, also be served upon the advocates and parties concerned at their last known address.

483. On the expiration of one month from the publication of the aforesaid notice, all unreturned documents will be destroyed without fail and the date of destruction should be noted in the remarks column of the list:

Provided that documents produced in Courts by Government officials or sent for from Courts or offices under Or. 13, r. 10, shall not be destroyed, but shall, if not previously returned, be transmitted to Courts or offices from which they came.

484. Destruction of records should be carried out quarterly, and the record-keeper shall in the first month of each quarter cause the B, C, and D, files which are due for destruction to be removed from their shelves for the purpose and submit a report of the fact to the Judge-in-charge who, on being satisfied that the work has been properly done, should give order as to the date of destruction. As each record is destroyed, the necessary entries should be made in column 9 of the bound lists. Entries as regards the class of records destroyed during the quarter should also be made simultaneously on the Index Board.

Note.—Entries in columns 1, 2 and 3 of the Index sheet for racks [Form No. (M) 39] shall be made at the time the records are shelved in the racks. The entry in column 4 should be made as the records are destroyed.

485. Useless records may be sold untorn, but confidential records or private documents, such as exhibits, not taken back or returned, should be destroyed by burning in the presence of the record-keeper.