

Sindh Chief Court Rules (Original Side)

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(ON THE ORIGINAL SIDE)

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THE SINDH CHIEF COURT RULES

(ON THE ORIGINAL SIDE)

PART I

GENERAL

CHAPTER I

PRELIMINARY

1. Short title. These rules may be cited as The Sindh Chief Court Rules (Original Side).
2. Commencement and repeal. (1) They shall come into operation on the expiry of thirty days from the date* of their publication in the official Gazette and shall apply also to all proceedings then pending.

(2) So much the rules of the Court of the Judicial Commissioner of Sindh as relates to matters provided for by under these rules is hereby annulled.
3. Definitions. In these rules, unless there is something repugnant in the subject or context,-
 - (1) "Chief Court" means the Chief Court of Sindh;
 - (2) "Chief Judge" means the Chief Judge of Chief Court;
 - (3) "Code" means the Code of Civil Procedure, 1908, as amended from time to time;

(4) "first hearing" includes the hearing of a suit for settlement of issues and any adjournment thereof;

(5) "interlocutory application" means an application in any suit, appeal or proceeding, already instituted in the Chief Court, not being a proceeding for execution of a decree or order;

(6) "Judge" means Judge of the Chief Court;

(7) "miscellaneous application" means an application whereby any proceeding is instituted including under rules 46-A, 58, 97 and 100 of Order XXI of the Code, a proceeding under section 7 of the Presidency-towns Insolvency Act, 1909, an appeal under section 8(2)(a) of that Act, and an analogous proceeding under the Indian Companies Act, 1913, but does not include a suit or an appeal or a proceeding in insolvency or a proceeding in execution of a decree or order;

(8) "Registrar (O.S.);" means the Registrar, Original Side;

(9) "verified" means verified in the manner provided by Order VI, rule 15 of the Code" and

(10) all other expressions used herein shall have the meanings prescribed by the Code or the General Clauses Act, 1897, as the case may be.

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

5. Service of notice. Except where otherwise provided by these rules, any notice directed to be given to any party on any interlocutory application shall be in writing, and may be served by the party or his advocate on the other party or his advocate personally or by sending the same by post in a registered prepaid cover to the address for service of the party or his advocate.

6. Use of forms in appendices. The forms given in the appendices with such modification as the circumstances of each case may require, shall be used for the purposes therein mentioned.

7. Alteration, etc. of rules in First Schedule to the Code. The rules contained in the First Schedule to the Code shall, so far as they are inconsistent with or contrary to these rules be deemed to have been thereby altered or superseded.

CHAPTER II

EXERCISE OF ORIGINAL CIVIL JURISDICTION

8. Holding of Court on Original Side. A Court for the exercise of the Original Jurisdiction of the Chief Court on its several sides may be held before one or more Judges.

9. Jurisdiction to be exercised by a Judge. Subject to the provisions of sub-section 1 of section 11 of the Sindh Courts Act, 1926, and of these rules and Judge may exercise all or any part of the jurisdiction vested in the Chief Court on its Original Side.

10. Reference to two or more Judges. If it shall appear to any Judge either on the application of the party or otherwise, that a suit or matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Judge who shall make such order thereon as he thinks fit.

11. Distribution of business. All suits and proceedings instituted on any of these several sides of the Civil Original Jurisdiction of the Chief Court, shall be heard before the Chief Judge, or such Judge or Judges as the Chief Judge shall from time to time nominate for that purpose.

12. Disposal of miscellaneous matters. The Judge or, if there be more than one, one of the Judges sitting on the Original Side from time to time nominated by the Chief Judge shall ordinarily sit once every week to hear miscellaneous matters.

13. Definition of miscellaneous matters. The following matters may be disposed of as miscellaneous matters:-

(1) rejection of plaints;

(2) application for arrest before judgment, for attachment before judgment and for appointment of a receiver;

(3) applications under rules 161, 165, 168, 170, 172, 173, 175 and 176;

(4) settlement of issues;

(5) applications to amend the plaint, petition or subsequent proceedings where the amendment sought is not formal, or applications to strike out any matter therein;

(6) applications for commissions to examine witnesses under O.XXVI, rule 4 (1) (a) & (c) of the Code;

(7) applications for leave to defend under O.XXXVII of the Code;

(8) attachment of property of absconding witnesses;

(9) applications under section 30 of the Karachi Small Causes Court Act, 1929, for removing suits into the Chief Court;

(10) applications by receivers, guardians and others relating to the management and disposal of the property;

(11) applications in all matters arising under the *** Companies Act 1*** Trustees Act, the Trustees and Mortgagees' Powers Act, 1*** Trusts Act, the Arbitration Act and generally in the matter of any Act, unless otherwise provided in the Act itself or by these rules;

(12) applications as to the guardianship and maintenance of infants;

- (13) inquiries in lunacy ordered to be taken before a single Judge;
- (14) inquiries directed by the Court as to the fitness of persons to act as trustees, receivers, and committees of lunatics;
- (15) inquiries as to the persons constituting a class;
- (16) inquiries with reference to infacts, wards and settlements;
- (17) inquiries as to settlement on a wife;
- (18) inquiries as to a scheme for charity;
- (19) matters referred by the Registrar (O.S.) and appeals against his order passed under these rules except those in execution proceedings;
- (20) applications for orders of production of prisoners and other under the Prisoners Act, 1900;
- (21) other interlocutory applications and any such matter as the Judge thinks fit to dispose of a miscellaneous matters, and such other applications as by these rules and directed to be so disposed of.

14. Disposal of applications by Registrar (O.S.). The Registrar (O.S.) shall dispose of all contested or uncontested applications or applications for consent orders of the following description:-

- (1) applications for admission of plaints;
- (2) applications for leave to verify plaints, written statement, petitions or any other proceedings in a suit or matter;
- (3) applications for leave of the Court to file a plaint when such leave is necessary;
- (4) applications under O.I., R.8 (i) for leave sue or defend on behalf of, or for the benefit of, all in the same interest;
- (5) applications for leave under O. II, sub-rule (3) of rule 3;
- (6) applications under O. II, R. 4, join causes of action in a suit for the recovery of immovable property;
- (7) applications for the admission or appointment of a next friend or guardian ad litem of a minor or a person of unsound mind or new next friends or guardians ad litem;
- (8) applications for fresh summons or notice and for short date summonses and notices;
- (9) applications for orders for substituted service of summons or notice;

- (10) applications for transmission of process for service to another Court, etc;
- (11) applications for orders regarding issue of summonses or notice and regarding service thereof;
- (12) applications for permission to withdraw a suit or application by consent, or where the other side has not appeared;
- (13) applications against a party in default to compel filing of written statement or affidavit or documents;
- (14) applications arising from the death, marriage or insolvency of parties to suits or petitions or from the assignment, creation or devolution of any interest, estate or title, pendente lite;
- (15) applications to amend plaint, petition or subsequent proceedings where the amendment asked for is purely formal;
- (16) applications for further and better statement of particulars under O. VI, R.5;
- (17) applications for leave to file further written statements;
- (18) applications for return of documents under O.XIII, R. 9 (i) of the Code;
- (19) applications for order for discovery and for orders concerning the admission, production and inspection of documents;
- (20) applications for leave to deliver interrogatories;
- (21) applications for order for execution of a decree or order for arrest of a judgment-debtor when such judgment debtor does not appear on the day of hearing fixed under the notice issued or on such day as the hearing thereof may be postponed to, or by attachment or sale, with power to order issue of notice under sections 74 and 145 and under O.XXI, rules 2, 16, 22, 34(2) 37 or 66(2) of the Code, or where notice is otherwise necessary or considered desirable;
- (22) applications for order for the transmission of a decree with the prescribed certificate, etc.;
- (23) applications for the execution of a document or for the endorsement of a negotiable instrument under O.XXI, R. 34;
- (24) applications for examination of judgment-debtor as to his property under O.XXI, R. 41;
- (25) applications for discharge from custody, subsistence money not being paid;
- (26) applications falling under section 52 of the Code;
- (27) applications for leave under O.XXI, R. 50, sub-rule (2) except where liability is disputed;

- (28) applications for the issue of proclamations of sale under O.XXI, R.66, and for direction as to the publication thereof under R.67;
- (29) applications for confirmation of sale and certificate of sale of purchaser of immovable property;
- (30) applications for possession under O.XXI, rules 95 and 96;
- (31) applications for special costs in connection with the attachment and/or sale of immovable property;
- (32) applications for special directions to the Nazir as to the service or execution of any process of the Court;
- (33) applications for order for withdrawal of attachment or for return of a warrant;
- (34) application for stay of execution under O.XXI, R. 26(1) and (2);
- (35) applications for order for payment of money realized in execution or otherwise deposited in Court including applications to share in assets realized under section 73, unless the case is on one of the cause lists for the day.
- (36) applications for commissions to examine witnesses under O.XXVI, rule 1, unless the suit is on one of the lists of causes for the day, and applications for de bene esse examination;
- (37) applications for extension of time under O.XXVII, R. 7, or by a party in default for further time to file written statement or affidavit of documents, and generally all applications for further time not otherwise provided for;
- (38) applications for statement of names and disclosure of partners' addresses and residence under O.XXX, rules 1 and 2;
- (39) applications for leave to issue execution under O.XXX, rule 9;
- (40) applications for leave to sue in forma pauperis and investigation as to the pauperism of petitioner for leave to sue or to appeal as a pauper;
- (41) applications for orders of reference to arbitration unless the suit is on one of the lists of causes for the day;
- (42) applications for order requiring a party to a suit or matter to produce and leave with the Registrar any document not in the English language in his possession for the purpose of being officially translated;
- (43) applications for return of exhibits;
- (44) applications for order for the production of records or documents in the Chief Court, Original Side, or accounts filed in such records, before any other Court;

(45) applications for an order for the issue of a precept to another Court for the production of a record of such Court or of notice or summons to a Public Officer for the production of public record or register;

(46) applications for the taxation and delivery of bills of costs;

(47) applications for production, inspection of a will or a copy thereof;

(48) all matters affecting procedure arising out of applications under the 1*** succession Act, 1925, the Court-fees Act, 1870, the 1*** Companies Act 1913, the *** Trustees Act, 1866, the Trustees and Mortgagee's Powers Act, 1866, 1*** Trusts Act, 1882 the Arbitration Act, 1940, the Guardians and Wards Act 1890, and generally in the later of any Act unless otherwise provided in the Act itself or by these rules:

Provided that-

(1) when the Registrar (O.S.) shall refuse any uncontested application under this rule, it shall, at the request of the applicant or his advocate, be referred to the Judge hearing miscellaneous matters or, if the application relates to a matter in execution proceedings, to the Judge hearing such matters; and

(2) the Registrar (O.S.) may refer to such Judge as aforesaid any matter which he considers to be a fit and proper one to be so referred by reason of its importance or difficulty or novelty or by reason of the order to be made thereon being appealable or for any other cause.

15. Appeal from the Registrar to a Judge. Any party desiring to have any question which has been decided by the Registrar (O.S.) referred to Court, may apply therefore within eight days from the date of the order complained of or within such further period as the Judge for sufficient cause may allow even after the expiry of the aforesaid period of eight days. Such application may be made by petition. Nothing in this rule applies to the provisions of rule 147.

16. Date to be fixed for hearing reference in Court. When a matter is referred to the Court under the first and the second proviso to rule 14 or when an application referred to in rule 15 is made, the Registrar (O.S.) shall fix a date for the hearing in Court and inform the parties or their advocates accordingly.

17. Costs of proceedings before Registrar (O.S.). Unless the Judge otherwise orders or the Registrar (O.S.) otherwise directs, the costs of all orders passed by and of all proceedings before the Registrar (O.S.) shall be costs in the cause.

18. Registrar (A.S.) to dispose of business in absence of Registrar (O.S.). In the absence of the Registrar (O.S.), the Registrar, Appellant Side shall, unless otherwise provided by these rules, perform all the functions required by these rules to be performed by the Registrar (O.S.), and in such cases the words "Registrar (O.S.)" in rules 14 to 17 above shall be construed to include the Registrar, Appellate Side.

19. Disposal of applications by the Deputy Registrar. The Deputy Registrar shall dispose of the following applications:-

(1) applications to record payments out of Court under O.XXI, rule 2(1) of the Code and also under rule 2(2) of the Code when no cause is shown; and

(2) applications for transfer or filing of decrees under O.XXI, rule 5, 7 and 8 of the Code.

CHAPTER III
THE ORIGINAL SIDE OFFICE
DATES AND CAUSE-LISTS

20. Registrar, (O.S.) to fix dates on every Saturday. (1) Every Saturday on which the office of the Court is open the Registrar (O.S.) or, in his absence, the Deputy Registrar shall sit at 12 noon to fix dates in suits or matters pending on the Original Side and shall for the purpose be attended by the Sheristedar or one of his assistants.

Dates in interlocutory proceedings in suits or matters shall be fixed by the Sheristedar concerned on every Saturday as aforesaid.

(2) All matters adjourned in Court during the week without dates shall be deemed to be adjourned to the following working Saturday for the purpose of dates being fixed.

21. Day for short causes. Short causes shall be set down for final disposal on such day as the Judge sitting on the Original Side shall appoint.

22. What are short causes. The following suits or matters shall be deemed to be short causes:-

(1) ex parte suits;

(2) undefended suits;

(3) suits in which written statement filed disclose no defence;

(4) suits under O.XXXVI (in which leave to defend has been granted);

(5) mortgage suits, rent suits, suits on bonds or acknowledgements;

(6) objections to commissioner's report;

(7) such other suits or matters as may, by special order of the Judge, be directed to be tried as short causes.

Any other suit or matter shall be deemed to be a long cause.

23. Transfer of short causes to long causes. Any short cause which the Judge before whom it is set down for final disposal does not think fit to try as a short cause, may be transferred to the long Cause List.

24. Days for execution proceedings, etc. Proceedings in execution of a decree or order and proceedings under Special Acts when set down for hearing in Court shall be set down for that purpose on such days and before such Judge as the Chief Judge may from time to time by general or special order prescribe.

Explanation.- The following applications and proceedings shall be deemed to be proceedings in execution for the purpose of this rule:-

- (1) all applications and proceedings under section 47 and O.XXI of the Code;
- (2) applications for leave to issue execution under O.XXX, rule 9;
- (3) all proceedings on the returns of writs or notices issued before or after judgment requiring cause to be shown;
- (4) all proceedings in execution referred by, or in appeal from the Registrar (O.S.).

25. Fixing of dates for final disposal. (1) Summary suits under O.XXXVII of the Code shall not be set down for hearing till the expiration of ten days from the date of service of summons. If an application for permission to defend is filed within the ten days, notice shall be given to the plaintiff or his advocate and the suit shall be set down for hearing of the application instead of for final disposal.

(2) Unless otherwise ordered, long causes in which the defendant has been duly served with summons but is called absent on the date fixed in the summons shall not be set down for final disposal:-

(a) until eight clear days from the service of the summons if the defendant or any of the defendants, as the case may be, resides within the local limits of the Chief Court;

(b) until fourteen clear days from such service if the defendant or any of the defendants, as the case may be, resides outside the local limits of the Chief Court but in India; and

(c) until such time in other cases as the Registrar (O.S.), may fix having regard to the place where the summons is to be served.

(3) In other long causes fifteen days at least shall ordinarily intervene between the settlement of issues and the date for final disposal.

26. Cases to be brought to trial in order of their age. Subject to rules 21 and 24 and to any special order in that behalf, in fixing dates for final disposal the Registrar (O.S.) or the Deputy Registrar, as the case may be, shall see-

(1) that cases are brought to trial in the order of their age irrespective of their length or difficulty; Provided that preference may be given so far as is reasonable, to-

(i) matters in which Government, public servants or soldiers are parties;

(ii) part-heard matters;

(iii) all matters the lack of decision in which is delaying decision in other proceedings; and

(2) that sufficient matters are set down for each day to secure that the day shall be fully occupied.

27. On order of transfer of Small Causes Courts suit being made, Registrar (O.S.) to send for records. When after an order for removing a suit from the Karachi Small Causes Court into the Chief Court has been made and security has been given, the Registrar (O.S.), shall send for the record of the proceedings from the Registrar, Karachi Small Causes Court and shall treat the suit as if it had been instituted on the Original Side.

28. Cause-List. (1) On the last working day in every week a list of suits, miscellaneous applications and interlocutory applications appointed to be heard on each day of the second following week shall be posted on a notice board of the Court, showing the day of the week and date, the number of suit or miscellaneous application, names of parties and the purpose for which they are fixed.

(2) Matters fixed for final disposal on any day of the week shall be entered in the list for that day according to the date of their registration, irrespective of their length or difficulty;

Provided that precedence may be given, so far as is reasonable, to,-

(i) matters in which Government, public servants or soldiers are parties;

(ii) part-heard matters;

(iii) commercial suits; and

(iv) petitions in Company matters when set down for hearing in Court.

(3) The cause-list shall be prepared under the directions of the Registrar (O.S.) or in his absence, of the Deputy Registrar, and signed by him.

(4) If there be more Judges than one on the Original Side, a separate cause-list for the board before each of the Judges shall be prepared and posted in the manner aforesaid.

(5) Unless the Judge otherwise orders, matters fixed for any day shall be called on the day in the order in which they stand in the cause-list.

29. General Cause List Book. (1) A General Cause List Book shall be maintained.

(2) The entries shall distinguish suits, execution applications and miscellaneous applications and shall give their numbers and years as registered.

(3) Interlocutory applications shall be entered under the number and year of the proceedings to which they relate and not as independent proceedings.

30. Sealing of summons, order, etc. The seal of the Court shall not be put to any writ of summons, warrant, order or other mandatory process unless the same be signed by the officer whose duty it is to prepare and make out the same.

31. Duties of Sheristedar. The Sheristedar shall perform the following duties:-

(1) sign memoranda and attest copies of documents filed therewith:-

(2) cancel court-fee stamps;

(3) grant summonses for witnesses not being summonses for the appearance of public officers or for the production of public records, and to sign all civil process;

(4) dispose of applications for the return of documents and other material objects in civil matters after the expiry of the period or disposal of appeal;

(5) dispose of applications by parties for copies and translation, and certify copies;

(6) sign registers and diaries and certify decisions and orders to lower Courts;

(7) be interpreter and attend on the Judge in Court;

(8) perform such other duties as are prescribed under these rules or as the Chief Judge may, from time to time, by general or special order direct.

32. Registers. The following judicial Registers shall be kept on the Civil Original Side by the such ministerial officer or officers as the Registrar (O.S.) may, subject to any order of the Chief Judge direct:-

(i) Register of Rejected plaints;

(ii) Register of Civil Suits;

(iii) Register of Documents filed in Civil Suits;

(iv) Register of Miscellaneous Applications;

(v) Register of Wills;

(vi) Register of Decrees received for execution from other Courts; and

(vii) Register of Execution Applications.

33. Arrangement of record in pending matters. The record of a regular suit shall be divided into the following four parts:-

- (i) main file;
- (ii) interlocutory file;
- (iii) process file; and
- (iv) execution file.

34. Contents of each file. (1) In the main file shall be filed in the following order the-

- (i) diary;
- (ii) plaint together with any schedule annexed thereto;
- (iii) order sheet;
- (iv) written-statement;
- (v) memorandum of issues;
- (vi) all the evidence, including the documents exhibited in evidence;
- (vii) application for reference to arbitration, the award of arbitrators, petition of compromise and report of the Commissioner, if any;
- (viii) judgment and decree; and
- (ix) copy of the judgment and of the decree of the Appellate Court or Courts, if any.

(2) In the interlocutory file shall be filed (i) the index and (ii) all petitions, affidavits and other documents not specified as included in any other file: Provided that all documents produced in a pending suit or matter shall, until exhibited in evidence, be deposited for safe custody in the safes in charge of the Record-Keeper.

(3) The process file shall contain-

- (i) the index;
- (ii) powers of attorney;
- (iii) summonses and other processes and affidavits relating thereto;
- (iv) applications for summoning witnesses;
- (v) letters, etc. calling for records, etc;

(vi) all other miscellaneous papers.

(4) The execution file shall contain-

(i) the diary;

(ii) the execution application;

(iii) the order sheet;

(iv) all processes and other papers connected with such execution proceedings.

35. Binding and title page. The splitting up of the record and the distribution of the papers into the proper files shall in all cases be done at the outset and shall be continued from time to time as and when they are received; papers in each file shall be paged separately.

The different files shall be kept together.

36. One file in miscellaneous applications. In miscellaneous applications there may be only one file with a title page prefixed to it. Immediately after the title page shall be filed the diary, the miscellaneous application, the order sheet and then other documents.

37. Diaries. Diaries shall be kept in Form No.1 in Appendix A by the Sheristedar or his assistant attending in Court. They shall be written legibly. The diary in the main file shall show a concise history of the suit or matter including the substance of the order passed on all interlocutory applications therein. The diary in execution proceedings shall contain a complete record of all proceedings in execution of a decree.

38. Order sheet. (1) The order sheet shall contain all orders passed by the Court at any hearing.

(2) Orders shall be written in the order sheet in English by the Judge with his own hand, except long orders or oral orders dictated by the Judge which may be typed and placed immediately after the order sheet: Provided that formal orders may be written by the Sheristedar or other officer attending the Court, but they shall be signed by the Judge.

(3) The order sheet shall also contain reference to the number of the page of the application, return, report or other similar document with respect to which an order is made.

(4) Except in the case of such routine orders as "call for the record" "put up with the record" and orders made in chambers, orders shall not be written on applications, returns, reports and other similar documents.

39. Removal of record from Court-house. No member of the establishment shall remove any official paper or record whatever from the Court-house without the special sanction of the Registrar (O.S.).

PART II
PROCEDURE ON THE ORIGINAL SIDE
CHAPTER IV
GENERAL PRACTICE AND PROCEDURE
Form of Proceedings

40. Proceedings how written. Every plaint, written statement, miscellaneous application, originating summons and like document presented to the Court-

(1) shall be correctly written, typewritten or printed fairly and legibly on durable white foolscap paper or other paper similar to it in size and quality, with an inner margin of about an inch and a quarter wide and with at least an inch and a half of open sheet being left at the top and the bottom of each sheet;

Cause title

(2) shall be entitled "In the Chief Court of Sindh" and shall state the jurisdiction (whether Original Civil, Testamentary or Intestate, Matrimonial etc.,) in which it is presented;

Paragraphs

(3) shall be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate allegation;

Dates

(4) where Indian dates are used, shall give the corresponding English dates; and

Application for translation of vernacular documents

(5) Where vernacular documents are attached or relied on shall be accompanied with an application for translation into English.

41. Names etc., of parties. (1) The full name, residence and description of each party and, if such is the case, the fact that any party sues or is sued in a representative character, shall be set out at the beginning of the plaint or miscellaneous application, and need not be repeated in the subsequent proceedings in the same suit or matter.

(2) Names of parties shall bear consecutive numbers and a separate line should be allotted to the name and description of each person.

(3) These numbers shall not be changed, and in the event of the death of a party during pendency of the suit or matter, his heirs or representatives, if more than one, shall be shown by sub-numbers. Where fresh parties are brought in, they may be numbered consecutively in the particular category in which they are brought in.

42. Authority to be stated. Every proceeding shall state immediately after the cause title the Act and section of the Act or other authority under which it purports to be made.

43. Draftman's endorsement. At the foot of every pleading and miscellaneous application there shall appear the name and signature of the person who handsrafted it and if the draftsman is not the advocate of the party presenting it also the signature of his advocate, if any, in token of his acceptance of the draft and responsibility therefore.

44. Particulars to be stated in address for service. The address for service required to be filed under rules 19 to 26 added to O.VII, rules 11 and 12 added to O.VIII, rule 38 added to O.XLI, rule 8 added to O.XLVI and rule 10 to O.XLVII shall state the following particulars:-

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

(ii) the name of the town or village

(iii) the post office; and

(iv) the taluka and district.

45. Initialing alteration, etc. Every interlineations, erasure or correction in any pleading, miscellaneous application, execution application or like document shall be initialled by the party or his recognized agent or advocate presenting it.

Vakalatnama

46. Form of Vakalatname. Vakalatnama shall be in Form No. 2 in Appendix A.

47. Execution and attestation of vakalatnama. Execution of a vakalatnama by a party shall in any case, where a party is illiterate, be by thereon and shall be attested by a person whose presence such thumb impression affixing his thumb-impression is affixed and who shall certify such fact on the vakalatnama under his signature.

48. Endorsement on Vakalatnama. (1) Every advocate filing a vakalatnama shall endorse thereon under his own signature the following particulars:-

(i) his acceptance and the date thereof;

(ii) his address for service; and

(iii) the name of the person from whom it is received.

(2) No Advocate shall be entitled to act under a vakalatnama which is not endorsed as herein provided.

49. Notice of change of advocate. A party desiring to obtain an order for change of his advocate on record in a suit or matter shall first give notice of his intended application for change to that advocate, and the fact of such notice having been served shall be stated in the affidavit in support of such application.

50. Notice of discharge to a client. An advocate on record in a suit or matter desiring to obtain an order for his discharge, shall first give notice of his intended application for discharge to his client and the fact of such notice having been served shall be stated in the affidavit in support of such application.

51. Advocate-General and Government Pleader not to file vakalatnama. The Advocate-General, the Government Pleader in the Chief Court or any other advocate appearing on behalf of the Secretary of State the Central Government, the Crown Representative, or the Provincial Government shall not be required to file a vakalatnama.

Affidavits

52. Ex-officio Commissioners. The Registrar, Appellate Side, the Registrar (O.S.), the Deputy Registrar, the Official Commissioner, the Nazir, the Deputy Nazir and the Sheristedars on the Original and Appellate sides shall be ex-officio Commissioners for taking affidavits in respect of matters and causes to be instituted or instituted in the Chief Court.

53. Title. Every affidavit shall be entitled in the suit or matter in which it is sworn or affirmed; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant, respectively and that there are other plaintiffs or defendants as the case may be.

54. Form. Every affidavit shall be drawn up in the first person and shall be divided into paragraphs and every paragraph shall be numbered consecutively and, as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for an affidavit or part of an affidavit substantially departing from this rule.

55. Deponent's description. Every affidavit shall state the name description, place of residence and occupation, if any, of the deponent.

56. Endorsement should state on whose behalf filed. Every affidavit shall bear at the head an endorsement stating on whose behalf it is filed.

57. Source of information to be disclosed. (1) Every affidavit shall express clearly how much is a statement of the deponent's own knowledge and how much is a statement made on his information or belief and shall also state the source or grounds of the information or belief with sufficient particularity.

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

(3) All documents referred to in such affidavit and as shall be in the possession of the deponent shall be produced in original, unless copies thereof are admissible in evidence or are permitted by the Registrar (O.S.) to be produced pending production of the original and shall bear numbers or letters of identification.

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

59. Scandalous matters. The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between advocate and client.

60. Alterations and interlineations. Alterations and interlineations shall, before an affidavit is sworn or affirmed, be authenticated by the initials of the Officer taking the affidavit (hereinafter in this Chapter called the Commissioner) and no affidavit having therein any alteration or interlineations not so authenticated, or any erasure, shall, except with the leave of the Court, be filed or made use of in any matter.

61. Attestation fee. (1) An attestation fee at the rate prescribed under the scale in Chapter V in Appendix C shall be levied for each affidavit 1 [be paid to the officers making the attested.]

1*** **

62. Affidavit how taken outside Court House. When an affidavit is required to be sworn or affirmed outside the Court House, a written requisition shall be made to the Registrar, Appellate Side, along with the fee prescribed in the scale in Chapter V in Appendix C stating where the Commissioner is required to attend and for what purpose and why he is so required. On receipt of such requisition the Registrar, Appellate Side, shall, unless he sees any reason to the contrary, require a qualified officer of the Chief Court to attend as Commissioner at such time as he thinks proper. Fees for attestation done without the precincts of the Chief Court shall ordinarily be paid to the officer making the attestation provided it is done outside office hours.

63. Reading of contents of affidavit to deponent. (1) The Commissioner shall, before the affidavit is sworn or affirmed, ask the deponent if he has read it and understood its contents. If the deponent says that he has not read the affidavit or is ignorant of the language in which it is written, or appears to the commissioner to be illiterate, blind or not otherwise able to understand the contents thereof, the Commissioner shall read and explain the affidavit to the deponent in a language which he understands.

(2) If it is necessary to employ an interpreter for this, purpose, the interpreter shall be sworn to interpret truly.

(3) When an affidavit is read, translated or explained as hereinabove provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read translated or explained by him or in his presence, as the case may be, and that the deponent

appeared fully to understand the same at the time of swearing or affirming the affidavit and made his signature or thumb-impression in his presence.

(4) Where an interpreter is employed, he shall swear or affirm an affidavit that he is thoroughly conversant with the language in which the affidavit is written and the language spoken by the deponent and that he truly and accurately interpreted and explained the affidavit.

64. Endorsement of the Commissioner. The Commissioner shall endorse at the foot of the affidavit the date on which and, in the event of the affidavit having been taken elsewhere than in the Court House, the place where the affidavit is taken, and shall sign his name and description at the end and initial each page.

65. Identification of deponent. Where the deponent of an affidavit is personally known to the Commissioner, the fact shall be stated in the attestation. Otherwise, the affidavit shall be attested by some person who knows the deponents personally and is also known to the Commissioner personally.

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

67. Every exhibit to be initialled and dated. Every exhibit annexed to any affidavit shall be initialled and dated by the Commissioner.

68. Form of certificates. The endorsements on the affidavit shall be as in Form No.3 in Appendix A.

69. What affidavit shall not be used in evidence. An affidavit not sworn or affirmed in the manner hereinbefore provided shall not be used in evidence.

70. Use of defective affidavit. The Court may receive any affidavit sworn or affirmed for the purpose of being used in any suit or matter, notwithstanding any defect due to a misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may make a memorandum on the affidavit that it has been so received.

NOTE.- Jurat means a memorandum as to when, where, and before whom an affidavit is sworn.

71. Special time for filing affidavit. Where a special time is allowed for filing an affidavit, no affidavit filed after that time shall be used unless by the leave of the Court obtained on an application made in that behalf.

72. Proof on affidavits. (1) Unless otherwise provided by these rules or ordered by the Court, any facts required to be proved in the following matters may be proved by affidavit:-

(a) any uncontested case under Regulation VIII of 1872, the 1*** Succession Act, 1925, and the Guardians and Wards, Act, 1890;

- (b) suits in which defendants do not appear when called on for hearing;
- (c) interlocutory application; and

(d) proof as to the ability of the judgment-debtor to pay the decretal amount in execution applications for arrest, where the judgment-debtor does not appear at the hearing though served with notice.

Explanation.- For the purpose of this rule, an application under rules 58, 97, 99 or 100 of O.XXI of the Code shall be deemed to be an interlocutory application.

(2) Nothing in this rule shall be deemed to affect the provisions of section 12 of the Deccan Agriculturists' Relief Act 1879, or limit or otherwise affect the power of the Court to order or permit proof by affidavit in other cases as provided in Order XIX of the Code.

Interlocutory Proceedings

73. Form. Every interlocutory application shall be entitled in the suit or matter in which it is filed.

74. Contents thereof. (1) Except where otherwise provided by these rules or by any law for the time being in force, an interlocutory application:-

- (a) shall contain only one prayer or one series of alternative prayers of the same kind;
- (b) shall not contain any argumentative matter;
- (c) shall be supported" by affidavits stating clearly the grounds and the facts on which the application is based; and
- (d) when filed in a suit or matter valued at Rs.50 or less, shall specify the fact that it is so valued by a note to that effect at the top of the left and margin.

(2) Every application not in accordance with this rule shall be returned for amendment.

75. Counter-affidavits, etc. (1) Unless the Court in its discretion extends or abridges the time, counter-affidavits must be filed not less than 4 days before the hearing.

(2) Not more than one affidavit in rejoinder may be filed without the leave of the Court and that not one less than 2 days before the hearing unless the Court in its discretion extends or abridges the time. Such affidavit shall be confined strictly to matter of reply.

(3) No counter-affidavit and no affidavit in rejoinder shall be filed unless a copy thereof and copies of accompaniments thereto, if any, have been previously served on each party or his advocate, if any. Parties or their advocates-served with such copies shall give a receipt therefore. Copies shall be authenticated by the signature of the parties or their advocates, if any, on each page at the bottom of the left hand margin.

(4) Except by leave of the Court, no affidavit in support of an application, no counter-affidavit and no affidavit in rejoinder beyond those which are filed and copies of which with accompaniments thereto are served in time as aforesaid shall be used at the hearing, or allowed on taxation.

(5) Where any affidavit, counter-affidavit or affidavit in rejoinder is not filed and served as aforesaid, it shall be filed separately in the record of the case until leave of the Court has been obtained under sub-rule (4).

76. Procedure in applying for interim relief. Notwithstanding anything contained in rule 123, the plaintiff may move the Court *ex parte* for interim relief on the ground of urgency and the Court on such application may, if it shall think fit grant interim relief on such terms as shall seem just.

Receivers

77. Application for appointment of receiver to be by petition supported by affidavit. Application for the appointment of a receiver shall be made by petition supported by affidavit.

78. Form of order of appointment. The order appointing a receiver may be in Form No.4 in Appendix A, or in such other form as the Court may direct.

79. Register of receivers. On an order for the appointment of a receiver being drawn up and filed, an entry shall be made in a register in Form No.1 in Appendix B, to be kept for the purpose. A copy of the order of appointment shall be sent to the receiver.

80. Receiver other than Official Receiver to give security. Where an order is made directing a receiver to be appointed, the person appointed, if not the Official Receiver, shall unless otherwise ordered, first give security to the satisfaction of the Nazir for the due performance of his duties as receiver. Unless the Court otherwise orders, the Nazir shall take the recognizance of the receiver himself and two sureties and the amount of the bond shall be double the annual rental of any immovable property, or the value of the movable property, which is likely to come into the hands of the receiver. Such annual rental or value shall be estimated after notice to the parties and the receiver, and in case of disagreement the matter shall be placed before the Registrar (O.S.) for orders.

81. Surety may point out omission or neglect of duty cast on receiver. If the security mentioned in rule 80 be furnished by the receiver by his executing a bond with a surety or sureties (including in the latter term a Guarantee Society), the surety or sureties shall be entitled, by an application, to bring to the notice of the Court any act, omission or neglect of any duty cast on the receiver by law or any other circumstances, which would entitle the surety or sureties to be discharged from the obligation created by such bond and the Court may thereupon make such order and on such terms as it may think fit.

82. Notice to surety of application affecting surety's risk. The surety or sureties mentioned in rule 81 shall be entitled to notice of any application to the Court on the part of the receiver or any party interested relating to any property in the management or under the control of the receiver which may affect the risk undertaken by the surety or sureties under the security bond furnished by the receiver and the Court upon hearing the said surety or sureties may make such

order as to his or their cost of appearance in such application as it may think fit.

83. Powers of a receiver. In the absence of any order in that behalf, every receiver of immovable property shall have all the powers of an owners specified in Order XL, rule 1 (d) of the Code except that he shall not, without the leave of the Court, (1) grant leases for a term exceeding three years, or (2) bring suits, except suits forint, or (3) institute an appeal in any Court (except from a decree in a rent suit), where the value of the appeal is over Rs.1,000, or (4) expend on the repairs of any property in any period of two years more than half of the net annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair.

84. Receiver's remuneration. A receiver shall be allowed such remuneration not exceeding the rates prescribed in Chapter IV in Appendix C as the Court may order, and may also be allowed the necessary expenses of management.

85. Establishment and costs therefore to be detailed in the appointment order. The establishment, clerical or otherwise, required by a receiver in addition to his ordinary establishment, if any, and the cost thereof chargeable to the estate or property of which he is appointed receiver, shall as far as possible be detailed in order of appointment or subsequent order.

86. No charge for additional establishment allowed. Unless otherwise ordered, no charge for any establishment in addition to his ordinary establishment, if any shall be allowed to the receiver.

87. Receiver, to file half-yearly accounts. Every receiver shall, unless otherwise order, file his half-yearly accounts in Court, the first of such accounts to be filed within one month after the expiration of six months from the date of his appointment, and every subsequent account within one month after the expiration of each succeeding period of six months, or in a case where the purpose for which the receiver was appointed has been carried out or completed before the expiry of six months from the date of appointment, within one month from the date of carrying out or completion.

88. Account to show balance in hand and how much may be paid into Court, etc., to be filed with affidavit. Form of affidavit. Unless otherwise ordered, every such account shall show what the balance in hand is, whether any, and if so what portion thereof is required for the purposes of the estate, and how much may be paid into Court or invested, and shall be filed together with an affidavit verifying the same in Form No.5 in Appendix A.

89. Examining and vouching of accounts by officers. Every such account, before being submitted to the court, shall be examined and vouched for by the Deputy Registrar or such other officer as the Court may either generally from time to time, or particularly with reference to a particular estate or account, appoint for that purpose. Such officer shall have all the powers of the Official Commissioner of the Court and may require the attendance of the receiver or his explanation or his evidence upon oath or affirmation, or the production of any document by him and receive within such time as he may appoint and decide objections to the account and shall embody the result of his examination in a report.

90. Appointment for passing accounts-Notice thereof. After the officer shall have submitted his report to the Court under rule 89, he shall obtain a date from the Court for passing such accounts, of which date notice shall be given to the parties, the sureties and to the receiver.

91. Objections to report to be filed. Objections if any to the report shall be filed in Court one week before the day fixed for the passing of the accounts or within such further time as may be allowed by the Court. They shall specify in a concise form the nature of the objections and shall be signed and verified.

92. Passing of accounts by Court. Where no objections are filed, the Court shall, if otherwise satisfied, pass such accounts. Where objections have been filed, the Court shall, subject to rule 90, after hearing the objections make such order as it may think proper.

93. Procedure as to hearing of objections. The Court may, from time to time, adjourn the hearing of any objections or may refer them to an officer of the Court, or to any other person, with such directions as the Court may deem fit.

94. Auditing of difficult and complicated accounts. In any case where the accounts are difficult and complicated, the Court may order such accounts to be audited at the expense of the estate by a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932.

95. Order as to payment of balance. The Court, on the passing of the accounts, may make such order as to the payment of the balance, or any part thereof, either into Court or in such other manner as may seem proper.

96. Consequence of receiver's negligence to file accounts or pay the balance, etc. Where any receiver other than the Official Receiver neglects to file his accounts, or to pass the same or to pay the balance or any part thereof as ordered, the matter shall be reported by the officer mentioned in rule 89 to Court and the Court may, from time to time, when the accounts of such receiver are produced to be examined and passed, not only disallow the remuneration therein claimed by such receiver but also charge him with interest not exceeding nine per cent. Per annum upon the balance if any, so neglected to be paid by him during the time such balance shall appear to remain in the hands of such receiver.

97. Consequence of default by receiver. Where any receiver other than the Official Receiver fails to file any account or affidavit, or to make any payment or commits any other default, the receiver or the parties, or any of them, may be required by notice to attend before the Court to show cause why such account or affidavit has not been filed or such payment made, or any other proper proceeding taken, and thereupon the Court may give such directions as may be proper, including the discharge of any receiver and appointment of another and also the payment of costs by the defaulter.

98. Rule 84 applicable to manager or guardian. Rule 84 shall apply to a manager or guardian of the person or estate of a minor and a committee of the estate of a lunatic appointed by the Court where a Government official is appointed as such manager or guardian or a committee member.

99. Interim receiver. The provisions of rules 77 to 97 shall apply mutates mutandis to orders for appointment of interim receivers.

100. Security summons. Where security is ordered to be given to the satisfaction of the Nazir, the party ordered to give security shall take out a summons in Form No.6 in Appendix A and shall serve the summons upon the opposite party within 24 hours of the order if no time has been fixed by the Court for giving security, or if time has been fixed for giving security, not less than one clear day before the expiry of the time so fixed.

The summons shall state the name and address of each surety to be tendered and the description of property in respect of which each surety will offer to justify:

Provided that it shall not be necessary to take out the summons-

(1) where the Court has ordered security to be furnished forthwith and directed the parties concerned to appear before the Nazir to proceed with the taking of the security and the examination into the sufficiency of the surety or sureties tendered; or

(2) where case or Government Promissory Notes of the amount or value of the security required have been paid into or lodged in Court to the credit of the suit or matter in which security is to be given to a separate account.

101. Production of title deeds, affidavit of justification, examination. Every person offering himself as surety shall produce before the Nazir his title deeds and vouchers and shall be examined by him on oath or solemn affirmation, touching the value of his property, and the debts and liabilities to which it is subject. After being examined and allowed, the surety shall swear or affirm and file his affidavit of justification and sign the bond and shall deposit his title deeds and vouchers:

Provided that in cases where the amount of the bond does not exceed Rs.500, the Nazir, and where the amount does not exceed Rs.2,500, the Registrar (O.S.), and in other cases the Court may, on good cause shown, dispense with the deposit of title deeds and vouchers.

102. Contents of affidavit of justification. Affidavits of justification shall be deemed insufficient unless they state that each person justifying is worth the amount required by the Nazir over and above what will pay his just debts and over and above every other sum for which he is then surety, and that his property is unencumbered.

103. More than two sureties irregular. A tender of notice of more than two sureties shall not be accepted except by order of the Court.

104. Property in respect of which a surety may justify. The title deeds may relate to immovable property situate beyond the local limits of the ordinary jurisdiction of the Court, but shall in all cases be in the name of the proposed surety. A surety may justify also in respect of movable property of which he can produce evidence satisfactory to the Nazir, such as deposit receipts, Government Promissory Notes, or other evidence of title.

105. Who are not competent sureties. An agriculturist, and unless the Court otherwise orders, and advocate practicing within the local limits of the jurisdiction of the Court, a clerk of such advocate, or a partner, assistant, clerk or other employee of any person tendering security, or of any person proposed as surety, shall not be accepted as surety to a bond.

106. Who may be present at the examination. No person other than the party giving security, the sureties and their respective advocates, the party or parties, if any, on whom notice has been served and his or their advocate or advocates, shall be present at the examination of any surety by the Nazir.

107. Reference to Court. In cases in which the security is disputed or challenged, the Nazir shall make an order in writing and shall, if so required, refer it to the Judge.

108. Security for costs. If a party is required to give security for costs, unless the Court otherwise orders, the penal sum in the bond shall be one thousand rupees.

109. Custody of securities and security bonds. All papers and records relating to the taking of security including securities and security bonds, shall be kept by the Nazir in safe custody in his safe in the strong room after making an appropriate entry in a register to be maintained by him in Form No.2 in Appendix B. The Nazir should also note on the case papers, below the Court's order which has to be permanently preserved, that he has taken the required security mentioning also the names of the principal and the surety and the amount.

Miscellaneous

110. Urgent motions. Motions shall ordinarily be made to the Judge nominated for the purpose on such days as may, from time to time, be prescribed, but if urgent, they may be made on any day.

111. Oral motions. Except as otherwise expressly provided by these rules, motions may be made orally in matters of routine or indulgence or in matters wholly within the discretion of the Judge or Judges.

112. Urgent matters. Precedence shall be given to urgent matters and the officer receiving them shall forthwith enter thereon also the hour of presentation. Each ministerial officer of the Court, through whose hands such matters pass, shall in his turn put his initials and the hour of receipt and passing on by him.

113. Only one advocate to be heard for a party. No more than one advocate shall be heard on behalf of each party or set of parties, provided that the opening address and the reply may be made by different advocates.

113-A. Notice of proceedings to Advocate-General. (1) The Court may direct notice to be given to the Advocate-General in all matters coming before it, which involve a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder, and the Advocate-General may appear and take part in the proceedings.

(2) The Advocate-General may apply to be heard in any such matter before the Court and the Court may, if in its opinion the justice of the case so requires, permit him to appear and be heard, subject to such terms as to costs or otherwise, as the Court may think fit.

CHAPTER V INSTITUTION OF PROCEEDINGS

114. Appearance by agent. (1) When a party appears by a recognized agent other than an advocate, the agent shall, before making or doing any appearance application or act in or to the Court, file in the Court a power-of-attorney, if it is not already filed; or, in the case of an agent carrying on a trade or business on behalf of a party, file an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit or matter and further that no other agent is expressly authorised to make or do such appearance, application or act.

(2) The Deputy Registrar shall examine the power-of-attorney and, if it contains the necessary powers, shall make an entry to that effect at the foot of the proceeding and return the power-of-attorney: Provided always that a party shall, on receiving notice requiring him to do so, forthwith produce and leave such power-of-attorney at the office of the Deputy Registrar for inspection by the opposite party or his advocate.

115. Leave to verify. When application is made for the Court's permission to a plaint or an application being verified by some person other than a plaintiff or person on whose behalf the application is made, the application shall be accompanied by an affidavit of the person proposing to verify, showing clearly his connection with the facts alleged in the plaint or application.

116. Suit against corporation or a firm. Where a corporation or a firm is sued as a defendant, the plaint shall be accompanied by a separate application under OXXIX rule 2 or O.XXX rule 3 of the Code, as the case may be, duly stamped stating where, in what manner and on whom the plaintiff wishes the summons to be served.

117. Copies to be filed of applications, etc. A party presenting a plaint or an application of which a notice is to be issued by the Court to any person, shall file with it in Court a sufficient number of copies thereof and of the affidavits in support thereof, and other documents filed therewith, if any, for service on the person concerned along with the summons or notice.

Where notice of an interlocutory application is served by a party or his advocate under rule 5, a copy of the application and affidavits and other documents, filed therewith, if any, shall also served along with the notice.

The aforesaid copies shall show the date of presentation of the original and the name of the advocate, if any, of such party.

118. Presentation of proceedings on Original Side. (1) Plaints and execution applications shall be presented to the Deputy Registrar. Application for leave to sue in forma pauperis and insolvency petitions under section 10 of the Presidency-towns Insolvency Act, 1909, shall be presented to the Registrar (O.S.). All other proceedings including written statements,

applications, affidavits and documents shall be presented to the Sheristedar concerned or to such officer as may be appointed by the Chief Judge for that purpose.

(2) The officer concerned shall forthwith enter and initial the date of receipt on the proceedings and attest documents or copies of documents file therewith and cause the Court fee stamps to be cancelled.

119. Examination of proceedings. (1) The officer concerned shall examine the proceedings in the order in which they are presented.

Return if not in order

(2) If any proceeding is not in proper form, is not properly stamped or is otherwise defective, he shall endorse the objections thereon and return it to the person presenting it for compliance therewith a time to be prescribed by him.

120. Admission of plaints. If a plaint filed is in order if the objections, if any thereto have been complied with-

(i) It shall be admitted with the words "Admitted this day. Issue summons," endorsed thereon and dated and initialled by the Registrar, (O.S.). The Deputy Registrar shall fix a day for the defendant's appearance and shall cause a summons to be prepared and issued upon payment by the plaintiff of the proper process fee for service of summons;

(ii) translation fees, if any, shall be paid to the Head Translator within seven days of the date of the order admitting the plaint or within such further time as may be allowed by an order in writing of the Registrar (O.S.).

121. Plaint liable to be rejected to be submitted to Judge hearing miscellaneous matters. If a plaint is liable to be rejected under O.VII, rule 11 of the Code, the Deputy Registrar shall note thereon the reasons for its rejection and submit it for the orders of the Judge hearing miscellaneous matters.

122. Admission or rejection of execution application. If an execution application is not in order or if it is liable to be rejected under O.XXI, rule 17 of the Code, the Deputy Registrar shall submit it to the Registrar (O.S.) for orders after noting thereon his reasons for its rejection.

123. Notice to the other party. Except in cases in which party is entitled as a matter of right and of course to the order asked for in a petition, notice shall ordinarily be issued to the other party interested to show cause why the order asked for should not be granted. If a party making an application desires that the order asked for be made without notice to any other party interested, reasons for making the order without such notice shall be set out in the petition.

124. Registration of proceedings admitted. On the admission or rejection of plaints, miscellaneous applications and execution applications, they shall be registered in the appropriate registers and their number entered thereon and on the title page, and documents produced therewith shall be received into safe custody and registered.

125. Ex-parte amendments. Amendments in pleadings, which are made only for the purpose of rectifying some clerical error or errors in names, dates or sums, may be made on an order of the Registrar (O.S.), without notice.

126. Amendments how to be made. Subject to the provisions of O.I., rule 10(4) of the Code, if in any amendment the new matter can conveniently be entered on the original proceeding, such proceeding shall be amended by an interlineation or if the amendment be by omitting some original matter, the same shall be struck out of the record. Such amendment or variation shall be made in red-ink and shall be initialled by the Registrar (O.S.) in all other cases an amended proceeding shall be filed and annexed to the original.

127. Attestation of amendment. The attestation of any amendment under O.II rules 6 and 7, O.VI rules 16 and 17, O.VII rule 11 and O.XXI rule 17 of the Code shall, unless otherwise ordered by Court, be done by the Deputy Registrar.

CHAPTER VI PROCESSES

128. Time for payment of process fee and consequence of non-payment. Process fees for the issue of summons, notice or other process and costs of advertisements shall be paid to the Nazir within seven days from the order directing such summons, notice, process or advertisement to issue or within such further time as may be allowed by an order in writing of the Registrar, (O.S.). In default of such payment, the plaint or application shall be struck off by the Registrar, (O.S.), who shall make an endorsement to that effect on the plaint or application and sign it. The plaintiff or applicant or his advocate presenting the plaint or application is expected to ascertain and shall be presumed to know the date of the order directing the issue of the process or advertisement.

129. Restoration. A plaint or miscellaneous application struck off the file under the last preceding rule, may be restored to the file, as of the date on which it was originally filed, on the application of the plaintiff or applicant and on sufficient grounds being shown to the satisfaction of the Registrar (O.S.).

130. Fresh plaint. When a plaint or miscellaneous application, is so struck off the file, the plaintiff or the applicant shall be at liberty subject to the law of limitation to present a fresh plaint or miscellaneous application for the same matter.

131. Parties or their advocates may file processes duly filled up. Parties or their respective advocates may, on receiving intimation of receipt of orders for issue of process, prepare correctly on forms supplied by the Court, the Court copies of processes and the necessary copies thereof for service and enter thereon the value of the claim. They shall present them to the Sheristedar concerned and shall be responsible for the accuracy of the information entered therein. The Sheristedar shall, after scrutinizing the copies so prepared and completing them where necessary, transfer the Court copies for payment of process and traveling expenses and subsistence money if any according to the prescribed scales to the Nazir. If the amounts due have been or are paid, the Court-fee stamps shall be affixed to the copies and the copies shall be retransferred with endorsements as to payment by the Nazir. Thereupon the Court-fee stamps shall be cancelled and the necessary copies for service shall be sent for service as

hereinafter prescribed. If the amount due is not paid within the time prescribed by rule 128, the copies shall be retransferred, with endorsements to that effect, by the Nazir, and shall be filed in the record.

132. When process fee not to be levied. Process fee shall not, however, be levied in respect of process received for service from other Courts in British India, where it is certified on such process that the proper process fees have been levied according to the rules in force in such Courts; nor shall process fee be levied in respect of process received for service from Courts outside British India to which the provisions of section 29 of the Code apply, whether or not the levy of the proper process fees has been so certified by such Courts.

133. Full address to be given of persons on whom process to be served. Persons on whom processes are to be served or executed shall be described therein fully by a statement of the name, father's name and surname (if possible), occupation, address and such further particulars as well facilitate identification and service. In the case of service and execution of process in towns, the name of the street, lane or section and the number of the house (if nay), shall also be given.

134. Process for service on persons of rank and gazetted officers. (1) Processes for service on persons of high rank shall be sent to them direct in the form of a letter.

(2) Processes for service on gazetted officers shall be sent in the form of a letter addressed to the heads of their offices. But in special cases, for reasons to be recorded in writing, they may be sent direct to them. In the latter cases, the Registrar (O.S.) shall give intimation to the head of the office concerned with notice of the date for which the gazetted officer has been summoned.

135. Summons for final disposal and settlement of issues. Summons shall issue for final disposal in short causes and for settlement of issues in long causes.

136. Returnable date of summons. Unless otherwise ordered, every writ of summons shall be made returnable as follows-

(1) if the defendant or all the defendants reside within the local limits of the Court, in three weeks from the date of the admission of the plaint;

(2) in all other cases, within such time as may be considered sufficient for the transmission, service and return of the summons.

137. Processes to be served or executed within jurisdiction to be addressed to Nazir. Processes for service or execution within jurisdiction shall be issued, as soon as they are ready, to the Nazir for service or execution:

Provided that processes for service under O.XVI, rule 1 A shall be issued to the party for service and receipt obtained on the application for summons.

138. Endorsement on process for service outside jurisdiction. Processes for service outside jurisdiction shall be endorsed with the fact of payment of process fees according to the rules in force within jurisdiction and shall be sent with the travelling and subsistence money, if any.

139. Process to be served without identification by party. The serving officer shall serve all processes entrusted to him without the aid of the party at whose instance the process is issued and after due enquiry as to the identity of the person on whom, or the house or property where, the same is to be served:

Provided that if it appears to the Registrar (O.S.) or in his absence to the Deputy Registrar that sufficient information cannot be given as to the identity and place of residence of the person on whom process is to be served, or as to the house or property where process is to be served, or if the Registrar (O.S.), or in his absence the Deputy Registrar is satisfied from the affidavit of the serving officer or upon his examination on oath (if necessary) that the person or the house or property or the place of residence of the person aforesaid could not be identified after due diligence and enquiry, he may ask the party concerned to supply an identifier.

140. Endorsement of identifier on the original process. If the serving officer is not personally acquainted with the person to be served, he shall, whenever possible, obtain on the original process the endorsement by signature or thumb-impression of a respectable person of the locality identifying such person or place of residence or the house or property on which the process is served.

141. Procedure where defendant refuses to accept service or cannot be found. Where the person to be served refuses to sign the acknowledgement or cannot be found, the serving officer shall whenever possible, before affixing a copy of the summons on the outer door of the house of such person, obtain on the original process the endorsement by signature or thumb-impression of at least one respectable person of the locality in support of such fact.

142. Return of service. (1) Every process serving officer shall immediately after completion of any duty connected with any process, record with his own hand upon the original process at the place of execution and in the presence of witnesses (if any) his report specifying the manner of execution or the causes which prevented execution. Such report shall be sworn or affirmed before the Nazir or the Deputy Nazir and shall, together with the process, be filed in the record.

(2) Process serving officers must invariably note the date, hour and exact place of service of each individual process.

(3) If the process is addressed to more than one person, the report shall describe the manner of service on each person and also the sequence in which the processes are served on different persons.

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

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

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

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

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

144. Notice where summons is affixed to outer door. If a summons to a defendant is affixed to the outer door of a house, the serving officer shall affix therewith a notice that the person so served can, upon application to the Court, obtain a copy of the plaint, and shall in his return state that he has done so and shall return the plaint to the Court. If the summons has been sent by another Court for service and the defendant does not apply for the said copy before the summons is returned to the said Court, it shall be returned to that Court along with the summons.

145. Inquiry as to sufficiency of service. The Registrar (O.S.) shall hold an inquiry as to the sufficiency of service of process in all cases in which it has been returned and in which an appearance has not been entered on the day appointed therefore in such process by or on behalf of the person or persons against whom it has been issued.

Such inquiry may be adjourned, if necessary, from time to time. Affidavits and further affidavits may be received or evidence taken viva voce at such inquiry.

146. Fresh process not to issue until previous one returned. Unless otherwise ordered, a second or subsequent process shall not be issued until after the one previously issued has been returned.

147. Acts of Registrar to be effectual as acts of Court. All acts which may be done by the Court under O.V., rules 19, 20, 21 and 21-A, of the First Schedule to the Code may be done by the Registrar (O.S.) and service of process as may be ordered by the Registrar (O.S.) shall be as effectual as if the same had been ordered by the Court.

CHAPTER VII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

148. Admission of next friend to bring a suit. Order unnecessary. When a suit is brought on behalf of a minor, the next friend shall make an affidavit, to be presented with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise a fit and proper person to act as such next friend. The age of the minor shall also be stated. No formal appointment of the person instituting the suit as next friend need be made.

149. Next friend to file address for service. (1) Unless the next friend is a public officer or a ministerial officer of the Court, he shall file along with the plaint a memorandum in writing stating his address for service. A next friend appointed under sub-rule (2) of rule 9 or under rule 10 of order XXXII of the Code shall, immediately on being so appointed, file his address for service.

(2) If the next friend fails to file his address for service as aforesaid or within such further time as the Registrar(O.S.) may allow, the plaint shall not be admitted or, if it has already been admitted, such failure may be deemed to be sufficient cause for removing him under rule 9 of Order XXXII of the Code.

150. List of all likely guardians ad litem to be filed. (1) In suits where the defendant is a minor the plaintiff shall file with the plaint a list of persons (with correct addresses) who are suitable for appointment as guardians ad litem.

(2) A notice shall issue in Form No.8 in Appendix A, simultaneously on two or three such person, single process fee being levied, such persons shall be deemed to be unwilling to act as guardian ad litem, if they do not sign the certificate at the foot of the prescribed notice, or having signed it, fail to appear, after service of notice, on the date fixed;

(3) if the person specified in the list filed under sub-rule (1) are unwilling to act as guardian ad litem, the Registrar (O.S.) may, if there be more defendants than one and their interests are not adverse to the minor, appoint one of such defendants who may be willing to act as guardian ad litem; or may appoint forthwith one of the officers of the Court as such guardian ad litem.

151. Address for service of guardian ad litem. Every guardian ad litem other than a public officer or a ministerial officer of the Court, shall, within seven days of the order of his appointment as such or such further time as the Registrar (O.S.) may allow, file in Court a memorandum in writing stating his address for service. Failure on his part to do so may be deemed sufficient ground for removing him under rule 11 of O.XXXII of the Code.

152. Duty of the Officer of the Court appointed guardian ad-litem. When an officer of the Court is appointed guardian ad litem; he shall communicate with the minor, if of an age to understand, and with the minor's relations if any, in order to ascertain what defence ought to be made; and he shall appear at the hearing and explain to the Court the steps taken.

153. Application of rules 148 to 152 to persons of unsound mind and to appeals and applications. The provisions contained in rules 148 to 152, so far as they are applicable, shall extend to person adjudged to be of unsound mind, and to persons who, though not so adjudge, are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued; and shall also apply to appeals and applications.

CHAPTER VIII

APPEARANCE BY DEFENDANT – WRITTEN STATEMENT – COUNTER CLAIM

154. Hearing of applications. The Registrar (O.S.) on being satisfied as to due service of the notice of an application on the defendant or respondent or all the defendants or respondents shall, if or as soon as the application is ripe for hearing and disposal, proceed to dispose of it, if it is one which he is empowered to deal with himself or shall set it down for hearing and disposal in Court on the next or some subsequent miscellaneous business day.

155. In default of appearance of defendant suit to be posted on short cause day. If on the day fixed for his appearance in the writ of summons the defendant does not appear and it is proved that the summons was duly served, the suit shall, whether the summons was issued for final disposal or not, be set down for final disposal on the next or some subsequent short cause day.

156. Procedure when defendant appears. If the defendant appears personally or by an advocate before or on the day fixed for his appearance in the writ of summons-

(1) if the summons had been issued for final disposal, the suit shall be set down for final disposal on the next or subsequent short cause day;

(2) if the summons had been issued for settlement of issues, the defendant shall be directed to file his written statement within fourteen days of such appearance, unless the Registrar, (O.S.) for sufficient reasons, allows more than fourteen days time for the purpose.

157. Ordinarily one extension allowed for filing W.S. Ordinarily not more than one extension shall be granted to the defendant for filing a written statement: Provided that a second or any further extension shall be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit.

158. Procedure where no written statement filed by any defendant. If the defendant or all the defendants in a suit shall have failed to file his or their written statements within the time allowed under rule 156 or any time extended by order, the suit shall be set down for final disposal on the next or subsequent short cause day. Should the defendant or one or more of several defendants then appear and show good cause of his for their default, he or they may be allowed to defend on payment of costs to the plaintiff not exceeding Rs.100 and the suit may be transferred to long causes or may be postponed.

159. Procedure if written statement; not filed by some of the defendants. If in a suit where there are more defendants than one, any defendant shall have failed to file his written statement within the time fixed under rule 156 or any time extended by order, he shall not be allowed to appear and defend except with the leave of the Court upon such terms as to the filing of his written statement, giving discovery and the payment of costs of adjournment as a condition precedent to leave to defend or otherwise, as the Court may order, or upon such other terms as the Court may, think proper.

160. Service of copies of written statement and list of documents on the other side. No written statement or list of documents shall be filed without the leave of the Court unless a copy thereof has been previously served on each party or his advocate, if any. Parties or their advocates served with such copies shall give a receipt therefor. Copies shall be authenticated by the signature or initials of the parties or their advocates, if any, on each page at the bottom of the left hand margin.

Set off

161. Court may disallow set-off. Where a defendant pleads a set-off under O.VIII, rule 6 of the Code, the Court may, on the application of the plaintiff made in the behalf at any stage of the proceedings and after hearing the defendant, make an order directing that the claim for set-off may be tried separately and may make such other order as shall be just.

Counter Claim

162. Counter claim by defendant. (1) A defendant in a suit, in addition to be right of pleading a set-off under O.VIII, rule 6 of the Code, may set up by way of counter claim against the claims of the plaintiff any right or claim, whether such counter claim sounds in damages or not.

(2) Subject to the provisions of rule 165, such counter claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the counter claim.

163. Counter claim. Where any defendant seeks to rely upon any grounds as supporting the right of counter claim he shall, in his written statement, state specifically that he does so by way of counter claim.

164. Reply to counter claim. When a counter claim is made in a written statement, plaintiff may deliver a reply to the counter claim within the time within which he may deliver a written statement if the counter claim were a plaint.

165. Excluding counter claim. Where a defendant sets up a counter claim, the Court may, on the application of the plaintiff made in that behalf at any stage of the proceedings and after hearing the defendant, make an order directing that the counter claim may be tried separately any may make such other order as shall be just.

166. Proceeding with counter claim where action stayed. If in any case in which the defendant sets up a counter claim the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with.

167. O.XX, R. 19 to apply to decree in such suits. Sub-rules (1) and (2) of rules 19 of Order XX of the Code shall apply to the decree in a suit in which counter claim is made.

CHAPTER IX THIRD PARTY PROCEDURE

168. Third party notice

168. (1) Where in a suit a defendant claims as against any person not already a party to the suit (hereinafter in this Chapter called the third party) that he is entitled to contribution or indemnity, he may make an application to the Court for leave to have a notice (hereinafter in this Chapter called the third party notice) issued to that effect to the third party. The Court may give such leave on an ex parte application.

(2) The application shall state the nature and grounds of the claim and shall be supported by an affidavit.

(3) The third party notice shall be in Form No.9 in Appendix A and shall be served together with a copy of the aforesaid application and a copy of the plaint in the manner provided for service of summons.

169. Effect of notice. Subject to the provisions of section 22 of the Indian Limitation Act, 1908, the third party shall as from the time of the service upon him of the third party notice, be a

party to the suit with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

170. Appearance of third party-default of. If a third party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the notice has been given or his own liability to the defendant, the third party must enter an appearance in the suit on the day fixed therefore in the third party notice. In default of his so doing, he shall be deemed to admit the validity of and shall be bound by the decree obtained against such defendant, whether obtained by consent or otherwise, and shall also be deemed to admit his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice: Provided that a third party failing to appear on the day fixed in the third party notice or any adjourned hearing may apply to the Court for leave to appear, and such leave may be given upon such terms as the Court shall think fit.

171. Procedure on default before trial. (1) Where third party makes default in entering an appearance in the suit or deliver an pleading which he has been ordered to deliver and a decree has been passed against the defendant giving the notice by default, such defendant shall, on an application made for a motion in that behalf, by entitled at any time after satisfaction of the decree against himself or before such satisfaction by leave of the Court, to a decree against the third party to the extent of any contribution or indemnity claimed in the third party notice.

(2) The provisions of Order IX, Rule 13 of the Code shall apply to such decree against a third party.

172. Third party directions. If the third party enters an appearance, the defendant giving the third party notice may, after serving notice of the intended application upon the plaintiff, the third party and any other defendant, apply to the Court for directions, and the Court may-

(a) where the plaintiff's claim is admitted by the defendant giving the third party notice and the third party and the claim of such defendant for contribution or indemnity is admitted by the third party the Court may pass such decrees in favour of the plaintiff and in favour of the defendant giving the third party notice as the nature of the case may require: Provided that execution shall not be issued without leave of the Court until after satisfaction by such defendant of the decree against him;

(b) if satisfied that there is a question or issue proper to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part,-

(i) order such question or issue to be tried in such manner before, at or after the trial of the suit as the Court may direct, or

(ii) give the third party liberty to defend the suit, either alone or jointly with the original defendant, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, pleadings or documents to be delivered, or amendments to be made, and give such directions as to the Court shall appear proper for having the question and the rights and liabilities of the parties most

conveniently determined and enforced, and as to the mode and extend in or to which the third party shall be bound or made liable by the decree in the suit; or

(c) dismiss the third party application.

173. At trial. Where the suit is tried, the Court may, at or after the trial, pass such decree as the nature of the case may require for or against the defendant giving the third party notice against or for the third party: Provided that execution shall not be issued without leave of the Court until after satisfaction by such defendant of the decree against him.

174. Costs. The Court may decide all questions of costs as between a third party and the other parties to the suit, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

175. Fourth and subsequent parties. (1) Where a third party makes as against any person not already a party to the suit a claim that he is entitled to contribution or indemnity, the provisions of this chapter regulating the rights and procedure as between the defendant and the third party shall apply mutates mutandis as between the third party and such other person, and the Court may give leave to such third party to have a third party notice issued and the preceding rules of this Chapter shall apply mutatis mutandis and the expressions "third party notice" and "third party" shall apply to and include every notice so issued and every person served with such notice respectively.

(2) Where a person served with a notice under this rule by a third party in turn makes such a claim as aforesaid against another person not already a party to the suit, this chapter as applied by this rule shall have effect as regards such further person and any other person or persons so served and so on successively.

176. Defendant claiming against co-defendant. (1) Where a defendant claims against another defendant that he is entitled to contribution or indemnity, the defendant making the claim may make an application to that effect and may without any leave of the Court have a notice issued by the Registrar (O.S.) of such application to other defendant.

(2) No appearance to such notice shall be necessary and the same procedure shall be adopted for the determination of such claim between the defendants as would be appropriate under this chapter if the defendant making a claim were a third party.

(3) Nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the suit.

CHAPTER X SUMMARY SUITS

177. Written statement

177. When an order has been made giving leave to the defendant to defend a suit filed under Order XXXVII of the Code, the defendant shall, within fourteen days from the date of such order, file his written statement, unless the Judge, who grants leave, orders the affidavit of the defendant to be taken as his written statement or allows a longer time for filing the written

statement. The suit may be set down for directions upon a written statement being filed or upon such order being made as aforesaid.

178. On default by defendant suit to be set down forthwith. Where the defendant makes default in filing his written statement or in complying with any conditions which may have been imposed on him, within the time limited in the order, the plaintiff shall be at liberty to have the suit set down for hearing forthwith as if no such order had been made.

179. Ex-parte order may be set aside on application. An ex-parte order giving leave to defend may be set aside or varied on the plaintiff's application by petition after notice to the defendant, but the Judge shall refuse to issue the notice and reject the plaintiff's application if; it appears to him that such application could not be allowed without going into the merits of the suit, or if the plaintiff has unduly delayed making such application.

180. Judgment for party of claim. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, the taxation of costs, or otherwise, as the Court may think fit; and the defendant may be allowed to defend as to the residue became plaintiff's claim.

CHAPTER XI COMMERCIAL SUITS

181. Where one defendant has good defence but other not. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the suit, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to judgment and decree against the latter, and may execute such decree without prejudice to his right to proceed with his suit against the former.

182. What are commercial causes. Commercial suits include suit arising out of the ordinary transactions of merchants, bankers and trader; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance banking and mercantile agency and mercantile usages.

183. Plaint in such suits to be marked "commercial suits". Where a plaintiff at the presentation of the plaint, applies that his suit may be dealt with as a commercial suit, the Deputy Registrar or other officer to whom the plaint is presented for admission, shall if satisfied that the suit is a commercial suit and has been brought with undue delay, cause the plaint to be marked with the words "Commercial Suit" in addition to the usual endorsements.

Explanation.- A suit which has been brought within six months of the cause of action having arisen has been brought without undue delay.

184. Setting down of Commercial suits. Commercial suits shall, so far as possible, be set down for hearing before the Judge appointed from time to time by the Chief Judge for that purpose and to be called the Commercial Judge, and shall be heard in priority to all other suits

appearing on the board on that day, except part-heard suits and other commercial suits on the same board fixed for hearing on prior dates.

185. Decision of Commercial Judge may be consent be final. The parties may, where they so desire, agree in writing to be signed by them or their advocates, that the judgment or decision of the Commercial Judge shall be final, when such judgment or decision shall not be liable to appeal or revision.

CHAPTER XII DIRECTIONS

186. Setting down for directions. (1) When the pleadings have been closed, the suit shall be set down before the Registrar (O.S.) for directions; Provided that any party may apply to the Registrar, (O.S.), before the closing of the pleadings for directions, and the Registrar (O.S.) may grant or refuse such application as he thinks fit.

(2) On the suit coming before him for directions, the Registrar, (O.S.) shall, so far as practicable, make such orders as may be proper with respect to the following matters:-

Pleadings, particulars, admissions, discovery, interrogatories, inspection of documents or of movable or immovable property and the mode by which particular facts may be proved.

187. Any party may apply for directions at the hearing. Upon the hearing for directions the plaintiff or any of the defendant who has appeared and is contesting the suit shall, so far as practicable, apply for any order or directions with respect to any of the matters set out in sub-rule (2) of rule 186.

188. Subsequent application must be by petition to Court. Any application subsequent to the hearing for directions as to any interlocutory matter by any party shall be made by petition, three clear days' notice whereof shall be given to the other party or parties stating the grounds of the application. Such application must be to the Court.

189. Costs of subsequent application. Any application by any party which might have been made at the hearing for directions shall, if granted on any subsequent application, be granted at the costs of the party applying unless the Judge is of the opinion that the application could not properly have been made at the hearing for directions.

190. Appeal from Registrar to a Judge. Rule 15 shall apply in the event of any party wishing to have any matter, on which directions have been given by the Registrar (O.S.), under rules 186 and 187 of this Chapter, referred to the Court.

Discovery

191. Agent may make affidavit of documents when none of the parties reside in Karachi. Notwithstanding anything contained in rule 13 of O.XI of the Code, where the transactions which form the subject matter on a suit have been carried on wholly or principally in Karachi and any of the parties are not residing in Karachi at the time an affidavit of documents is

required to be filed, such affidavit may be made by the agent in Karachi of such absent party on his behalf.

192. Procedure where the affidavit is required to be made by the absent parties. If in the case provided for by the last preceding rule any party desires to have such affidavit made by all or any of the absent parties personally, he shall be at liberty to apply for an order to that effect to the Registrar, (O.S.) setting forth the grounds for making such order and the Registrar, after hearing the opposite party may, if he thinks it, right and just, make such order; but the party obtaining such order shall deposit in Court on account of the costs of such order and affidavit a sum of not less than Rs.15. Such costs shall be dealt with by the Judge who tries the case.

Issues

193. Date for settlement of issues by Court. After the pleading have been closed and the directions given, if any, have been duly complied with, a date shall be fixed for settlement of issues by the Court.

CHAPTER XIII COMMISSIONS COMMISSIONS FOR EXAMINATION OF WITNESSES

194. Parties to notify commission. (1) When a party to a suit or matter intends to apply for a commission to examine a witness, he shall notify his intention to do so at the first hearing, and thereupon, unless otherwise ordered by the Court, the suit or matter shall not be set down for final disposal.

(2) No application for the issue of such commission as aforesaid shall be entertained after the suit or matter has been set down for final disposal in default of such intimation unless the Court is satisfied that the application could not have been made earlier, and in that case the court may make such orders as to costs as it deems fit.

195. Commission on interrogatories. (1) Applications for the issue of commissions to examine witnesses on interrogatories shall be made by a party within the time allowed by the Court, and shall be supported by an affidavit and be accompanied by interrogatories. Copies of such application, affidavit and interrogatories shall be served on the opposite party.

(2) If the opposite party objects to the issue of the commission, he shall, within 7 days of the service on him of the aforesaid documents, file his objections.

(3) If the objections to the issue of the commission are disallowed by the Court or if the opposite party does not object to the issue of the commission, such party, shall, within 7 days of the dismissal of the objections or of the service on him of the interrogatories, as the case may be, file cross interrogatories, and serve copies thereof on the other party, who shall, within 7 days thereafter, file re-interrogatories if any. The objections, if any, to the cross interrogatories and re-interrogatories will then be heard and disposed of by the Court.

196. Commission for viva voce examination. Application for issue of commission for viva voce examination shall be made by a party within 7 days of notifying his intention under rule 194,

and shall be accompanied by an affidavit disclosing the nature of the evidence sought for from the witness.

197. Final hearing may be fixed after return of commission. If the application referred to in rule 195 or 196 is granted, the matter may not be set down for final disposal before the return of the Commission, except by order of the Judge.

198. Preparation etc., of commission. Commission shall be prepared by the Registrar (O.S.) who shall seal the same and annex thereto the interrogatories, cross-interrogatories, re-interrogatories and documents, if any, and shall enclose them with directions that the same be returned to him when executed) in a sealed envelope.

199. Commission executed by Official Commissioner. Commission for examination of a person within the local limits of the court shall ordinarily be executed by the Official Commissioner appointed under section 16 of the Sindh Courts Act, 1926.

200. Examination de bene esse. Commissions for examination of witnesses de bene esse may be issued at any time notwithstanding anything herein before contained in cases where it is not possible for the examination to be conducted by the Judge. Such examination shall be viva voce.

COMMISSIONS FOR TAKING ACCOUNTS AND FOR LOCAL INVESTIGATION AND PARTITION OF IMMOVABLE PROPERTY

201. Official Commissioner to execute Commissions for accounts. The Official Commissioner appointed under section 16 of the Sindh Courts Act, 1926, shall ordinarily be the Commissioner for taking accounts, making local investigations and effecting partition of immovable property, unless the Judge directing the commission to issue, for reasons recorded in writing, otherwise orders.

202. Registrar, (O.S.) to send necessary proceedings to Commissioner. The Registrar (O.S.) shall furnish the Commissioner with such part of the proceedings as may be necessary.

203. Commission for taking accounts how executed. (1) The Commissioner shall direct which party shall file a statement of accounts before him and which party shall file a statement of objections and surcharge. He shall also fix the period within which the statements of accounts, objections and surcharge are to be filed.

(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 objections shall specify the items to which objections are taken by reference to their numbers in the statement of account.

(4) The statement of surcharge shall specify the amount with the 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. The items of surcharge shall be numbered consecutively.

(5) The statement of objections and 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 objections or surcharge within the period allowed, the Commissioner shall report the fact to the Court.

(7) 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 oral and documentary evidence on such points.

(8) 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 had before him. The report shall state (a) the contested items allowed or disallowed by the Commissioner, (b) and reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due and (e) the name of the party by whom it is due.

204. Deposit of commission fees. (1) Commission fees shall be payable according to the scale prescribed in Chapter VI in Appendix C.

(2) The Court or the Registrar (O.S.), as the case may be, may order that such amount as it or he considers proper be deposited in Court in advance towards the Commissioner's fees together with the Costs of issue of the commission within seven days of the grant of the commission or Letters of Request or within such further time as may be allowed. In default, the matter shall be set down for final disposal in due course, unless otherwise ordered for reasons to be recorded in writing.

(3) If at any subsequent time the Court is satisfied that the deposit made under sub-rule (2) is not sufficient to cover the remuneration of the Commissioners, it may, after notice to the parties or their advocates, order that such further amount as it considers proper be deposited in Court within 7 days from the date of such order or within such further time as the Court may allow. In default, the procedure prescribed in sub-rule (2) shall be followed.

(4) No fees shall be paid to the Commission without an order in writing of the Court or the Registrar (O.S.). Except for special reasons recorded in writing such payment shall not be ordered until the commission has been executed and the objections, if any, to the Commissioner's report have been disposed of.

(5) Commission fees in the case of Commissioners being the members of the regular establishment shall be credited to Government.

205. Return of commission. (1) Every order for the issue of a commission or Letter of Request shall appoint a date allowing sufficient time for its execution and return.

(2) If the Commissioner is unable to return the commission duly executed within the time fixed by the Court, he shall apply to the Court for extension of the time and the Registrar (O.S.), may extend the time or the Court may cancel the commission and may appoint another commissioner in his place.

206. Procedure in examination of witnesses. (1) The Commissioner shall follow the provision of the Indian Evidence Act and shall, in case the person examining the witness presses question which the Commissioner shall have disallowed, record such question and the answer thereto unless the Commissioner is satisfied that any such question is put for the purpose of obstruction or delay. He shall also record any objection to the production of a document by or through the witness.

(2) Where times or dates according to any other than the Christian era are mentioned, the Commissioner shall add the times or dates of the Christian era corresponding thereto.

207. Deposition to be read over to and signed by the witness. After the deposition of any witness shall have been taken down and before it is signed by him, it shall be distinctly read over and, when necessary, translated to the witness in order that mistakes or omissions may be rectified or supplied.

The deposition shall then be signed by the witness and left with the Commissioner who shall sign his name and write the date of the examination.

208. Notice of filing of report. Filing objections thereto. (1) On receipt of the report of the Commissioner other than the report forwarding the deposition of a witness recorded by him, the Registrar (O.S.) shall give notice to the parties to the suit or matter of the filing of the report.

(2) Any party desiring such report to be discharged or varied shall, unless the Registrar (O.S.), otherwise directs, within ten days from the date of the service of such notice on him, file his objections thereto, and serve a copy of the same on the other parties to the suit or matter. After the objections have been filed as aforesaid, the suit shall be set down for hearing of such objections. If any party, after having filed objections, abandons or does not proceed with them, any other party in the same interest shall be all at liberty to proceed with such objections.

CHAPTER XIV WITNESSES

209. Summons to witnesses. (1) An application for calling witnesses before the court or a Commissioner appointed to take evidence, shall set forth a list of the witnesses and state, in addition to the particulars required by rule 133, whether they are required to give evidence as experts or otherwise or to produce any document, and, in the latter case, shall specify the date and description of the document so as to identify it.

(2) If the applicant desires to serve the witnesses or any of them personally under O.XVI, rule 1-A of the Code, the fact shall be stated in the application.

(3) Upon the grant of process, the process fee, travelling expense and subsistence money chargeable, if any, in respect thereof shall be calculated forthwith.

210. Summoning public officers as witnesses. (1) No application for summons for the appearance of public officers whose absence from duty may be detrimental to the public service shall be granted, unless it is shown by affidavit that their examination on commission will not answer the required purpose.

(2) Except in urgent cases or as otherwise ordered for reasons recorded in writing, a summons requiring a public officer to give evidence or produce documents shall be served on the head of his office or, as the case may be, on the witness directly under rule 134 at least seven days before the date when the witness is required to attend or the document is required to be produced.

(3) When public officers are summoned, they shall be examined promptly and if necessary, de bene esse.

211. Summoning Finger Print expert. When an opinion is desired on documents bearing finger prints the documents shall be sent to the Officer in charge, Finger Print Bureau, Karachi, for opinion.

If it is necessary subsequently that an officer of the Bureau should appear to give evidence in Court, the officer-in-charge may be requested to send a suitable officer, but no particular officer should be summoned by name. Care shall be taken that all the documents concerning an opinion required are available in Court on the day on which the officer is summoned.

212. Payment of expenses to witnesses who are public officers. (1) A servant of the Crown or of a State Railway whose salary does not exceed Rs.20 per mensem whether he is or is not entitled to travelling allowances under the rules regulating the conditions of his service, shall, when summoned as a witness in his official capacity to give evidence or to produce a document before a Court, be paid travelling expenses in accordance with the prescribed scale.

Any servant of the Crown or of a State Railway, whose salary exceeds Rs.20 per mensem but who is not entitled to travelling allowances under the rules regulating the conditions of his service by reason of the fact the Court is situated not more than five miles from his headquarters, shall be paid travelling expenses in accordance with the prescribed scale.

Any sum payable to such servant on account of subsistence allowance shall be credited to the Central of the Provincial Government or the State Railway, as the case may be.

(2) Where the expenses of such servant whose salary exceeds Rs.20 per mensem and who is summoned as a witness in his official capacity and is entitled to traveling allowance under the rules regulating the conditions of his service, have to be deposited in advance by a private party, the term 'expenses' shall be interpreted to mean the travelling and halting allowances admissible under the rules regulating the conditions of his service (but not subsistence allowance), and the sum so deposited shall be credited to Government.

(3) A servant of the Crown or of the State Railway, who has not been paid travelling expenses under sub-rule (1) and who is entitled to receive travelling allowances under the rules regulating the conditions of his service shall obtain from the Court a certificate that he has attended in his official capacity for the purpose of giving evidence of facts which had come to his notice or of facts with which he had to deal in his official capacity or of producing a document from public records, stating the date of his appearance, the period for which he has been detained, and that he has received no payment from the Court.

213. Payment of expenses to other witnesses and issue of certificate to Railway servants. Subject to the provisions of rule 212, witnesses shall be paid their expenses at the rate prescribed in Chapter II in Appendix C daily during attendance. Certificates showing the number of days and attendance shall, if required, be granted in the case of Railway servants.

214. Re-attendance of witnesses on adjourned hearing. When the hearing is adjourned, re-attendance of the witnesses present may be secured by payment to them of travelling and subsistence allowances at the prescribed rates and by service upon them of an order of re-attendance in Form No.10 in Appendix A.

PRODUCTION OF PUBLIC DOCUMENTS

215. Production of public documents. (1) Every application for summons for production of public documents shall be supported by an affidavit stating-

(i) the document or documents the production of which is required,

(ii) the relevancy of the document or documents,

(iii) why the production of a certified copy of the same would not serve the purpose, and

(iv) in cases where the production of a certified copy would serve the purpose, whether application was made to the proper officer for a certified copy and the result of such application.

(2) The Registrar (O.S.) shall not issue such a summons unless he considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The Registrar (O.S.) shall in every case record his reasons in writing.

(3) Nothing in this rule shall apply to an application under Order 13 rule 10 of the Code for production of the record of any other suit or proceeding from the record of the Chief Court.

216. Return of original public record after its production in evidence. When public records are produced and put in evidence in original, the Court, unless it thinks it necessary to retain the original, shall direct a copy to be made at the expense of the applicant and shall return the original.

217. Power of Courts to summon public records suo motu. Nothing in rule 215 shall prevent the Court of its own motion from sending for public records or other documents in the custody of a

public officer or Court if it thinks it necessary for the ends of justice. Costs in such a case of summoning and of production of such evidence shall be paid by such party as the Court directs.

Note.- In making an order for production of official documents, the instructions contained in the Sindh Government Resolution, Home Department, No. 1693-H/39, dated 7th December 1939, with respect to procedure to be followed regarding production of official documents in Courts should be followed.

CHAPTER XV ADJOURNMENTS

218. Adjournments to be to a day certain. All adjournment shall be to a day certain. No suit or matter shall be adjourned sine die except for reasons recorded in writing.

219. Adjournment granted only on good cause. No adjournment shall be granted except on good cause which shall be shown in the order granting adjournment. The consent of parties shall not of itself be a good cause for adjournment.

220. Costs of adjournment. (1) If an adjournment is rendered necessary by the conduct of a party, the Court, when granting it, shall impose such terms as to costs and expenses as it thinks proper and may, as a condition precedent, require the party applying to pay forthwith or within such time as the Court may allow to the opposite party such sum as in its opinion will cover all such costs and expenses as are incurred by him by reason of the adjournment.

(2) The Court may forthwith on the application of the party to whom costs are awarded enforce the payment of such costs by attachment and sale of the property of the defaulting party, and may direct that the suit or matter shall proceed as if the application for adjournment had been refused.

221. Notice of antedating of hearing. (1) Any party, who desires that the hearing may be antedated, may apply therefore by interlocutory application of which notice shall be given to the other party or his advocate.

(2) The party served with notice may give to the other party or his advocate notice in writing that he consents to or will oppose such intending.

(3) On the day appointed for hearing of such application the Court will pass necessary orders granting or refusing the application.

CHAPTER XVI ORIGINATING SUMMONS

222. Who may take out originating summons and in respect of what matters. The executors or administrators of a deceased person or any of them, and the trustees under any instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative, or as cestui qui trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise, under any such creditor or other person as aforesaid, may take out, as of course, an originating summons for such relief of the nature of kind following as may by the summons be specified and the circumstances of the case may

require, that is to say, the determination without an administration of the estate or trust of any of the following questions or matters:-

- (1) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir, or legal representative, or cestui qui trust;
- (2) the ascertainment of any class of creditors, devisees, legatees legal representatives or others;
- (3) the furnishing of any particular accounts by the executors, administrators or trustee, and the vouching (where necessary) of such accounts;
- (4) the payment into Court of any monies in the hands of the executors, administrators or trustees;
- (5) directing the executors, administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators or trustees;
- (6) the approval of any sale, purchase, compromise or other transaction;
- (7) the determination of any question arising in the administration of the estate or trust.

223. Order for administration of estate or of the trust. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for-

- (1) the administration of the estate of the deceased;
- (2) the administration of the trust.

224. Persons to be served with summons. The persons to be serve with the summons under the last two preceding rules in the first instance shall be the following, that is to say-

- (1) where the summons is taken out by an executor or administrator or trustee-
 - (a) for the determination of any question under sub-rules (1), (5) (6) or (7) of rule 222, the persons or one of the persons whose rights or interests are sought to be affected;
 - (b) for the determination of any question under sub-rule (2) of rule 222, any member of alleged member of the class;
 - (c) for the determination of any question under sub-rule (3) of rule 222, any person interested in taking such accounts;
 - (d) for the determination of any question under sub-rule (4) of rule 222, any person interested in such money;
 - (e) for relief under sub-rule (1) of rule 223, the residuary devisees, legatees or heirs or legal representatives or some of them;

(f) for relief under sub-rule (2) of rule 223 the cestui qui trust or some of them;

(g) where there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur.

(2) where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees.

225. Vendor or purchaser may take out summons. A vendor or purchaser of immovable property or their representatives respectively may, at any time or times and from time to time, take out an originating summons for the determination of any question which may arise in respect of any requisitions or objections or any other question arising out of or connected with the contract (not being a question affecting the existence of validity of the contract or any claim for compensation.)

226. Persons to be served with such summons. The summons under the last preceding rule shall be served upon such person as under the existing practice would be the proper defendants to a suit for the specific performance of the contract out of which the question to be settled arises.

227. Mortgagee or mortgagor may taken out such summons. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out, as of course, an originating summons for such relief of the nature or kind following as may be specified and as the circumstances of the case may require, that is to say, sale, foreclosure, delivery of possession by or recovery of any deficiency from the mortgagor; redemption, re-conveyance and delivery of possession by the mortgagee.

228. When may a partner take out such summons. Where the existence of the partnership or the right to or the fact of the dissolution thereof is not in dispute, any partner in a firm or his representatives may take out an originating summons against his partners or former partners or their representative (if any) for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of, and winding up, such partnership, and for the determination of any question arising in such partnership whether to be dissolved or wound up or not.

229. Persons interested under will, etc., may take out such summons. Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the person interested.

230. Court not bound to determine question of construction. The Court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons.

231. Persons to be served with such summons. The summons under either of the rules 228 or 229 shall be served upon the person who would be proper defendants under the existing practice if the same relief were sought in a suit.

232. Service on other person by direction. The Court may, in all cases, direct such other person to be served with an originating summons as it may think fit.

233. Complaint and document alone to be filed. An originating summons shall be in Form No.11 in Appendix A. The person entitled to apply shall present with it to the Registrar (O.S.) a complaint, setting forth concisely the facts upon which the relief sought by the summons is founded. The complaint shall specify at the end but not in the form of a prayer the relief which is sought by the summons. No documents shall be annexed to the complaint unless greater brevity or clearness would be gained by reference to annexed documents as opposed to setting out in the complaint itself the contents of documents which are not annexed thereto.

234. O.S. complaint how to be marked. The complaint when accepted shall be filed and numbered as an ordinary suit, and entered in the Register of Civil Suits, but after the serial number the letters "O.S." shall be placed to distinguish it from complaints filed in ordinary suits.

235. Service of originating summons. Originating summons shall be signed by the Registrar (O.S.) and shall, together with a copy of the complaint, be served in the manner provided for the service of summons on a defendant, and the summons after service shall be filed in the proceedings.

236. Returnable date of originating summons. Originating summons shall, in ordinary cases, be made returnable in fourteen days from the date of the admission of the complaint, but the Registrar (O.S.) may fix such longer period as to him may seem proper.

237. Entry of appearance. A party served with an originating summons shall appear before the Registrar (O.S.) on the day fixed for his appearance in the summons and shall present a written statement of his defence, if he so desires. The Registrar (O.S.) shall then fix a date for the hearing of the summons in Court.

238. When may be supported by evidence. On the hearing of the summons, if the parties thereto do not agree to the correctness of the facts set forth in the complaint, the Court may order the summons to be supported by such evidence as it may think necessary; and may give such directions as it may think just for the trial of any question arising therefrom. The Court may make such amendment in the complaint and summons as may seem to it, to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties.

239. What may be done on bearing originating summons. If it appears to the Court that the matters in respect of which relief is sought cannot be disposed of in a summary manner on originating summons, it may refuse to pass any order on the summons, may dismiss, the same and refer the parties to a suit in the ordinary' course; and in such case may make such order as to costs already incurred as may seem to it to be just.

In dismissing the summons the Court may, instead of referring the parties to a suit in the ordinary course, direct that the complaint filed in support of the summons with necessary

amendments shall be admitted as the plaintiff is an ordinary suit. Upon such direction being given, the letters "O.S." placed in pursuance of rule 234 against the entry of the case in the Register of civil Suits shall be struck off and the suit shall proceed on the amended plaintiff in all respects as an ordinary suit, and the defendant shall be required to file a written statement if no written statement has been previously filed by him.

240. Costs in originating summons. In originating summons advocates' fees shall ordinarily be taxed in accordance with clause 2 of Chapter VIII in Appendix C.

241. Order made on originating summons to be drawn up as decree of Court. If the Court is of opinion that the matter is fit to be dealt with on an originating summons, it may pronounce such judgment as the nature of the case may require, and any order made by it shall be a decree of the Court and shall be drawn up as such; provided that if the Court dismissed the summons under rule 239, it shall be sufficient for it to sign an order to that effect, which shall be filed in the proceedings.

242. Direction as to carriage or execution of decree. The Court may give any special directions touching the carriage or execution of such decree, or the service thereof upon persons not parties, as it may think fit.

243. Subsequent summons about same estate. When any summons under rules 222 and 223 has been taken out, every subsequent summons relating to the same estate or trust shall, so far as possible, be heard by the Judge who heard the original summons.

244. O.II, R.2 of the Code not to apply to plaintiffs filed in support of originating summons. Nothing in O.II, rule 2 of the Code, shall apply to plaintiffs filed to support an originating summons or to any proceedings thereunder.

245. When costs of originating summons shall be allowed in a suit. Where at the hearing of a suit it shall appear to the Court that the party instituting the suit might have obtained the desired relief by originating summons, it may direct that such party shall be allowed on taxation only such costs as would have been incurred in an originating summons.

CHAPTER XVII

PROCEEDINGS AT THE HEARING OF SUITS, AND UP TO AND INCLUSIVE OF DECREES

246. Evidence, how taken. Upon the hearing of any suit the evidence of witnesses shall be taken down by, or in the presence and under the superintendence of the Judge or one of the Judges, not ordinarily in the form of question and answer, but in that of a narrative. The evidence so taken shall be signed by the Judge and shall form part of the record.

247. Any particular question and answer may be taken down. The Court may, of its own motion or on the application of any party or his advocate take down or cause to be taken down any particular question and answer, or any objection to any question, if there appears to be any special reason of so doing.

248. Question objected to and allowed by Court. Where any question put to a witness is objected to by party or his advocate and the Court allows the same to be put, the Judge may

take down or may cause to be taken down the question, the answer, the objection and the name of the person making it together with the decision of the Court thereon.

249. Remarks on demeanour of witnesses. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

250. Sheristedar to bring to Judge's notice erasures, etc., and documents tendered in evidence. The Sheristedar or other officer in Court shall examine all documents produced or offered in evidence and bring any apparent erasures or interpolations or any apparent insufficiency of the Court-fee or other stamps to the notice of the Judge for orders. He shall endorse all documents admitted in evidence and all documents rejected with the particulars required by law and sign or initial such endorsements.

251. Exhibits how marked. Depositions recorded of witnesses of both sides and documents admitted in evidence shall be numbered with cardinal numbers 1, 2, 3 and the following numbers, in one continuous series.

252. Numbering lines of depositions, etc. The Sheristedar shall cause every tenth line of all depositions, judgments and orders to be numbered consecutively 10, 20, 30, and so on for convenience of reference.

253. Proceedings in another suit, how put in evidence. When any proceedings in a suit in the Court are necessary as evidence in another suit in the Court, they shall not be removed from the file of the former suit unless true copies thereof are substituted in the file of the former suit, unless the Judge shall otherwise direct.

254. Witnesses not to be present in Court during hearing of the suit. Witnesses other than the parties shall not except by consent of parties, be present during the hearing of the suit or other matter in Court before their deposition have been recorded.

255. Exhibits to be officially translated. No document, not in the English language, shall be read or received in evidence without an official translation thereof, except by leave of the Judge.

256. No compromise without leave of Court in pauper suits. Where a plaintiff has been permitted to sue in forma pauperis, the suit shall not be compromised without leave first had and obtained from the Court.

257. Judgment how delivered. (1) Judgments may be either oral or written.

(2) When the Court delivers a written judgment, no further record of such judgment shall be necessary.

(3) When the Court delivers an oral judgment, it shall be taken down by the shorthand writer. A transcript shall then be prepared for correction by the Judge or Judges who delivered the judgment. A fair copy of the transcript so corrected shall be signed by the Judge or Judges and dated with the date of delivery and shall be the record of the judgment.

258. Written judgment of two or more Judges how pronounced. When any suit or matter is heard by two or more Judges.

(1) If they have agreed to a written judgment and signed it, one of them may pronounce the judgment in the absence, for any reason, of the other or others;

(2) if each of one of them has written a separate judgment and signed it, one of them may pronounce the judgment written and signed by the other or others in his or their absence.

259. Payment of costs a condition precedent in order for withdrawal. When a suit is allowed to be withdrawn with liberty to bring a fresh suit on the same matter, unless the Court shall otherwise direct, the order shall be drawn up so as to make the payment of the costs of the suit a condition precedent to the plaintiff bringing a fresh suit.

260. Setting of draft of decree. (1) Advocates shall give notice at the time of judgment if they desire to examine and sign the draft decree before submission to the Registrar (O.S.) and shall in such cases and in all complicated cases, but not otherwise, be given notice as soon as the draft decree is prepared. They shall within three days from the date of service of such notice examine and sign the draft decree if found correct or file objections thereto, if any.

(2) If the objections filed are such that in the opinion of the Registrar, (O.S.) the other party ought to be heard concerning them, he shall fix a day for hearing them and direct that the other party shall be served with a notice of such hearing together with a copy of the objections filed.

(3) If the Registrar (O.S.) allows the objections, the necessary correction or alteration shall be made in the draft decree and initialled by the Registrar (O.S.) and the decree shall be drawn up accordingly and signed by the Sheristedar and submitted to the Judge for signature.

(4) If the Registrar (O.S.) disallows the objections or if no objections are filed within the prescribed time, the decree shall be signed by the Sheristedar and submitted to the Judge for signature.

261. Directions under rule 260(3) and (4) liable to be referred to Court. Any matter on which directions have been given by the Registrar (O.S.) under sub-rules (3) and (4) of rule 260 shall, at the request of a party or his advocate be referred to the Court. Such matter shall ordinarily be heard by the Judge who passed the decree.

262. Date of signing decree to be also endorsed. The Judge when signing the decree shall write below his signature also the date, month and year on which the decree is actually signed by him.

263. Copies of decrees to Collector. (1) The Deputy Registrar shall cause copies of decrees to be prepared without delay for communication to the Collector in cases in which pauper costs are recoverable by Government and in cases affecting immovable property coming within the scope of S. 135-H of the Bombay Land Revenue Code, 1879, and shall append to the judgment a copy of the communication.

Certificate under S. 11, Court Fees Act to be sent to Collector

(2) The Deputy Registrar shall also cause the certificate mentioned in section 11 of the Court Fees Act, 1870 as amended by Sindh Act X of 1939, to be sent without delay to the Collector.

264. Errors how rectified after decree sealed. After a decree or order has been sealed, any application to rectify any inaccuracy, or clerical or arithmetical error or otherwise, to make it in accord with the judgment, shall be made to the Judge who passed the decree or order, or in the event of his absence on leave or retirement, to any other Judge, and he may (in his discretion) after notice to the parties, when the Judge deems it necessary, amend the same so as to bring in into conformity with the judgment, or rectify such inaccuracy or error. Save as aforesaid no alteration or variation shall be made without a review of judgment and rehearing under the provisions of section 114 and O. XLVII of the Code.

CHAPTER XVIII TAXATION OF COSTS

265. What bills of costs are to be taxed by the Deputy Registrar. The Deputy Registrar shall tax all bills of costs on every side of the Court and in the Insolvency Court.

266. Time for filing bill of costs. Each party shall within five days from date of a judgment or order submit his bill of costs.

267. Receipt and advocate's certificate to accompany bill of costs. The bill of costs shall be accompanied by the Nazir's receipt for process fees expenses of witnesses and all other monies paid into the Court. It shall also be invariably accompanied by a certificate from the advocate concerned that he had not agreed to receive less than the amount of advocate's fees entered in the bill of costs or to return any part of the same. In default of such certificate advocate's fees shall not be allowed under the decree on taxation of costs. In the event of any advocate having agreed to receive less, the amount actually agreed to be received shall be certified and entered in the bill of costs and that amount shall be allowed on taxation of costs.

268. Notice for taxation. When a bill of costs has been duly lodged before taxation of costs, two days' notice shall be given to the opposite party: Provided that no-notice shall be necessary in any case when the defendant has not appeared in person or by his advocate or guardian.

269. What expenses of witnesses may be included in costs. No expenses of witnesses other than those paid through the Nazir shall be included in the costs allowed.

270. Condition for taxing expenses of copies of documents. All copies of documents required by any party in whose favour costs have been awarded must be applied for and all charges therefore paid before taxation of costs and no expenses of procuring such copies shall be allowed after taxation.

271. Taxation of costs. (1) Except as otherwise provided in rule 568, advocate's fee shall be taxed according to the scale prescribed in Chapter VIII in Appendix C. Other costs shall be taxed according to the charges necessarily and actually incurred. The charges shall include, in addition to other costs allowable under the rule, the other costs allowable under the rule,

the cost of typing according to the ordinary scale or where the cost of printing is shown, cost of printing, pleadings for the use of the Court, the fess paid at the Registration Office Court, and the cost of preparation of process taxed according to the scale prescribed in Chapter IX in Appendix C.

(2) Unless the court expressly directs otherwise, the following costs shall not be deemed to have been incurred necessarily within the meaning of sub-rule (1) and shall not be taxed;-

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

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

(iii) Expenses of affidavits improperly or unnecessarily incurred;

(iv) Expenses of filing and proving unnecessary documents or documents which the other party was no previously called upon to admit by notice (O. XII, r. 2), or of exhibiting interrogatories unreasonably, vexatiously or at improper length (O.XI, r. 3);

(v) Process-fee for serving persons found by the Court to have been unnecessarily impleaded or the suit against whom has been dismissed, withdrawn or not prosecuted; and

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

(3) At the time of passing an order disposing of an application, the Court or the Registrar (O.S.) shall direct whether or not the costs of it shall be costs in the cause.

272. Review of taxation only on notice to the opposite side. No application for review of taxation, unless the taxation was ex parte, shall be made except on notice to the opposite side.

273. No review of taxation of costs if bill of costs not filed in time. If the bill of costs is not filed within the time fixed under rule 266, the bill will be prepared by the taxing officer and no application for review of taxation shall be allowed, unless made before the decree is signed.

274. What costs allowed after taxation. The only costs which shall be allowed after taxation shall be the costs of execution or of transmission of the decree to another jurisdiction. Such subsequent costs shall be entered on the face of the decree.

275. Meaning of "proportionate costs". Where "proportionate costs" or "costs in proportion" are allowed, such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim.

276. Application to Court for review of taxation. Any party, who may be dissatisfied with the decision of the Deputy Registrar as to any item or part of any item may, not later than fourteen days from the date of the decision or within such further time as the Court may allow, apply to the Court for an order to review the taxation as to the said item or part of any item, and the

Court may thereupon after notice to the other side, if necessary, make such order as to it may seem just; but the taxation of the Deputy Registrar shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

277. Hearing of such application. Such application shall be heard and determined by the Court upon the evidence which shall have been brought in before the Deputy Registrar, and no further evidence shall be received upon the hearing thereof, unless the Court shall otherwise direct.

CHAPTER XIX ARBITRATION

Proceedings under Chapters III and IV of the Arbitration Act, 1940

278. Proceedings under Chapters III and IV how entitled. (1) Every application under section 20(1) of the Arbitration Act, 1940 (hereinafter in this rule and rules 279 to 292 called the Act) shall be verified, numbered and registered as a suit. All subsequent applications shall be entitled in such suit.

(2) All applications under Chapter IV of the Act shall be entitled in the suit in which they are filed.

SPECIAL CASE

279. Form. A special case shall be submitted in Form No.12 in Appendix A. It shall set out clearly and distinctly the questions of law on which the opinion of the Court is required and shall state concisely, in paragraphs numbered consecutively, such facts and refer shortly to such documents as may be necessary to enable the Court to decide the said questions and shall be signed by the arbitrators or umpire.

280. Special case to be forwarded to Registrar (O.S.). (1) A special case shall be forwarded to the Registrar (O.S.) accompanied by the documents or copies of the documents therein referred to. The Registrar (O.S.) shall fix a day for the appearance of the parties before him and issue a notice accordingly to the parties.

Hearing in Court

(2) The Registrar (O.S.) on being satisfied as to the service of the notice on the parties shall, as soon as the special case is ripe for hearing, fix it for hearing on the next or some other miscellaneous business day.

Awards

281. Form of award. (1) An award shall so far as possible be in Form No.12-A in Appendix A.

Award in form of special case

(2) Where the arbitrators or umpire state on award wholly or in part in the form of a special case, they shall follow the provisions of rule 279 and shall also, so far as it is practicable, state

the award on various points of law in the alternative. Where it is not practicable to do so, they shall state the award according to the view they take of the law.

282. Award how filed in Court. (1) The arbitrators or umpire shall cause the award or a signed copy of it to be filed in Court by forwarding the same under a sealed cover addressed to the Registrar (O.S.) with a petition in Form No.12-B in Appendix A requesting the same to be filed. The arbitrators or umpire shall state in the petition the name of the party or of any person claiming under him at whose request the award copy of it is being filed and the amount of fees and charges received, if any. The arbitrators or umpire shall also send together with the award or copy of the arbitration agreement and the reference, if in their possession, the depositions and documents which may have been taken and proved, the opinion pronounced by the Court on a special case, submitted by them, if any, and also a copy of the notice given to the parties together with receipts or acknowledgements thereof.

(2) If the Court makes an order under section 38 of the Act directing the award to be delivered, it shall further direct that the arbitrator or umpire shall also deliver the documents mentioned in sub-rule (1), if in their possession, to the applicant who shall cause the award to be filed in Court by forwarding the same together with the aforesaid documents under a sealed cover to the Registrar (O.S.) with a petition in Form No.12-B in Appendix A.

(3) When an award made without intervention of a Court has been so filed, the accompanying petition shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested under the reference as plaintiff or plaintiffs and the remainder as defendant or defendants.

An award made and a special case stated in an arbitration under Chapter III and IV of the Act shall be entitled in such suit.

283. Service of notice of filing of award in Court. (1) The Registrar (O.S.) shall issue notice to the parties other than the party referred to in rule 282 (2) of the filing of an award in Form NO.12-C in Appendix A. If a special case is stated in the form of an award, the provisions of rule 280 shall also be followed, so far as may be, for hearing the special case.

(2) The arbitrators or umpire or the party referred to in rule 282 (2) shall deposit Rs.5 in the first instance in Court to meet the cost of such notice.

284. Form of application to modify, correct or set aside, award. An application to modify, correct or set aside an award, or to remit an award to the arbitrators or umpire for reconsideration shall be made by a verified petition which shall set out the grounds on which the application is made. Such petition shall be entitled in the suit in which it is filed. A notice of such petition shall be served on the opposite party.

Interim Orders

285. Applications for interim orders to be by interlocutory applications. (1) All applications under section 18 of the Act shall be by interlocutory applications which shall, so far as may be and subject to the provisions of section 18 of the Act, be regulated by rules 73 and 74.

(2) The affidavit filed with such application must among other things show that the provisions of rule 282 have been duly complied with, that the arbitration agreement, the reference and the award passed thereon are prima facie free from objection and that delay in granting the application pending the service of notice under rule 283 or pending expiry of the Act, as the case may be, is likely to prejudice him.

286. Service of notice of interim order on opposite party. (1) A copy of an interim order passed under section 18 (1) of the Act together with a copy of the application made and affidavit filed in support of it shall be served on the person against whom such interim order has been passed.

(2) If the party to whom notice has issued wished to show cause, the provisions of rule 75 shall, so far as may be, be followed.

Applications

287. Form of other applications under the Act and their registration. (1) Save as aforesaid, all applications under the Act shall be made by petition entitled in the matter of the Act and the arbitration.

(2) There shall be annexed to every such petition the documents, if any, relating to the subject matter of such application.

(3) Every such petition shall be supported by affidavit and, unless otherwise ordered by the Court, the provisions of rules 74 to 76 shall, so far as may be apply.

The person making an application shall be the petitioner and the person served therewith, the respondent.

(4) Every petition or copy thereof shall specify the persons affected thereby and upon whom notice must be served as hereinafter provided.

(5) Every such petition and every special case in a arbitration without intervention of a Court (not being a special case stated in the form of an award) shall be numbered and registered as a miscellaneous application: Provided that if more than applications are made in the same arbitration for extension of time under section 28 of the Act, subsequent applications shall bear the number and title of the first such application.

(6) This rule shall not apply to an application under section 34 of the Act.

288. Notice to persons concerned. Notice shall be served upon all person specified in the application under rule 287 (4), upon the arbitrator, arbitrators or umpire against whom an application under section 11 of the Act is made and upon such other person as may appear to the Court or the Registrar (O.S.) to be affected by or concerned with the application.

Stay of Proceedings

289. Title of applications, etc., under section 34. (1) Applications, affidavits and proceedings under section 34 of the Act shall be entitled in the suit or the proceeding which the applicant seeks to have stayed.

Notice to issue before ordering stay of proceedings

(2) No proceeding shall be stayed under section 34 of the Act without notice to the opposite party, except where it appears that the object of granting a stay would be defeated by the delay occasioned by the notice, when an interim stay may be granted.

Fees

290. Advocates' fees. Advocates fees shall be calculated at the rates laid down in clause 2 of Chapter VIII in Appendix C except, if the Court so thinks fit, in the case of an application to set aside an award when the fees shall be calculated at half the rates laid down in clause 1 of the said Chapter.

General

290-A. Notice of appointment of arbitrator. A notice of appointment of the arbitrators or umpire, as the case may be, under section 8(2), 12, 20, or 23 of the Act shall be in Form No.12-D in Appendix A. Such notice shall be served at the cost of the party making the application.

291. Mode of service of notice. (1) Unless otherwise ordered, all notices under this Chapter-

(a) shall be served in the manner prescribed by-or under the Code for the service of summons, or

(b) if the Registrar so directs, may be addressed, whether they reside within the jurisdiction of the Court or not to the parties, arbitrators or umpire, as the case may be, at the place where they reside and sent to them by registered post prepaid for acknowledgement, provided that at such place there is a regular postal service.

(2) When notice are served on the arbitrators or umpire under clause (a) of sub-rule (1), they shall be served on, them personally.

292. Award includes interim award. The foregoing provisions relating to an award shall apply, so far as may be, to an interim award: Provided that in the case of arbitration without intervention of a Court an award or awards subsequent to the first interim award shall bear the same title and number as the first interim award.

THE ARBITRATION (PROTOCOL AND CONVENTION) ACT, 1937

293. Title of applications, etc. Applications, affidavits and proceedings under the Arbitration (Protocol and Convention) Act, 1937 (hereinafter in this Chapter called "the said Act") shall be entitled in the matter of the said Act, and in the matter of the arbitration: Provided that applications, affidavits and proceedings under section 3 of the said Act shall be entitled in the suit or matter which the applicant seeks to have stayed.

294. Applications under section 3 and 5 to be disposed of as miscellaneous matters. Applications under section 3 and 5 of the said Act shall be made by petition and shall be disposed of as miscellaneous matters.

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

296. Stay of proceedings under section 3 of the said Act. (1) Upon an application for stay of proceedings under section 3 of the said Act being filed, the Court shall direct notice to be given to the party or parties to the proceeding, other than the applicant, requiring him or them to show cause, within the time specified, why the order should not be made, unless the Court is satisfied that the object of the application would be defeated by the delay occasioned by the notice.

(2) Any order for stay made under sub-rule (1) may be varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

297. Documents to be produced with petition. (1) The Party seeking to enforce a foreign award shall produce with his petition-

(i) the document specified in section 8(1) of the said Act and, where such document is in a foreign language, a translation thereof into English certified in the manner prescribed in sub-section (2) of the said section 8;

(ii) the original agreement for arbitration or copy thereof authenticated in manner required by the law of the country in which it was made and, when the same is in a foreign language, a translation thereof into English certified in manner prescribed in sub-section (2) of the said section 8;

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

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

Procedure to be followed in case of non-production of documents with petition

(2) If the application under section 5 of the said Act be presented without the document specified in clause (i) of sub-rule (1), it shall forthwith be returned to the party presenting it. If such application is unaccompanied by the documents specified in clauses (ii) and (iii) of sub-rule (1), the Court may allow time within which such documents must be filed.

298. Presumption as regards certain copies. (1) The Court shall presume that a copy of an agreement for arbitration or of an award required to be produced under sub-rule (1) of rule 297 is duly authenticated in manner required by the law of the country in which it was made if it is

certified on the face of such copy by a diplomatic or consular agent of the British Government or of the Government of India in the country in it was made that the authentication is in the manner commonly used in that country for the authentication of copies of such documents.

(2) The Court shall presume that any document purporting to be a copy of the arbitration proceeding relating to the award is genuine and accurate if it is certified on the face of such document by a diplomatic or consular agent of the British Government or of the Government of India in the country in which the arbitration proceedings took place that the document is authenticated in manner commonly in use in that country for the authentication of copies of such documents.

299. Execution of decree and orders. The provisions of the Code and the Rules and Forms of this Court relating to execution of decrees and orders shall, *mutantis mutandis*, be applicable to the execution of decrees and orders under the said Act.

300. Advocates fees. The advocates' fees shall be calculated at the rates laid down in clauses 2 of Chapter VIII in Appendix C except, if the Court so thinks fit, in the case of an application to set aside an award when the fees shall be calculated at half the rates laid down in clause 1 of the said Chapter.

CHAPTER XX PROCEEDINGS IN EXECUTION

301. Interpretation. In this chapter the word "decree" includes order.

APPLICATION FOR TRANSMISSION

302. Transmission of decree for execution. (1) An application for the transmission of a decree to another Court for execution shall be entitled in the suit, shall specify the Court to which the transmission of the decree is sought and be supported by an affidavit stating the grounds. It shall be accompanied by a certified copy of the decree or an application for the same.

(2) If the application is granted, the applicant shall within 3 days thereafter deposit in Court the expenses for preparing a certified copy of the decree, if it is not filed with the application.

(3) The Registrar (O.S.) shall transmit by registered post, at the cost of the applicant, the certified copy of the decree together with the other documents mentioned in Order XXI, rule 6 of the Code to the Court to which the transmission is sought in accordance with the provisions of rules 4 and 5 of O.XXI of the Code.

303. Stay of execution on transmission. When a decree is sent to another Court for execution, execution of the decree will not be stayed in the proceedings in this Court unless this Court shall, on such terms as it thinks fit, otherwise, direct.

304. Transmission of decree in two or more districts simultaneously. When a person against whom execution is sought has property in two or more districts, the Registrar (O.S.) may, on being satisfied of the necessity, cause a copy of the decree obtained against such person to be transmitted for execution in some or all of such districts, contemporaneously. In the certificate

of non-satisfaction, to be sent therewith to the Court of each of such districts, it shall be stated to what other Courts a copy of the decree or order has been sent for execution. At the same time a letter shall be sent to the Judge of one of such Courts requesting him to attach and sell the property in his district (hereinafter mentioned as district A), or a sufficient portion thereof, and certify the result to this Court, and with such letter shall be sent a copy of the letter sent to the Judge of each of the other Courts. A letter shall also be sent to the Judge of each of the other Courts, requesting him to attach the property in his district, but not to sell the same until furnished by this Court with information as to the result of the sale of the property in district A.

305. When insufficient amount realized in first district. If the amount realized in district A shall not be sufficient to satisfy the decree, a certificate stating the result of the sale shall be sent to the Judge of another of such Courts with a letter requesting him to sell the property under attachment in his district (hereinafter mentioned as district B), or a sufficient portion thereof, and certify the result to this Court.

306. Also in second or succeeding districts. If the amount realized in execution in district B shall not be sufficient to satisfy the balance payable under the decree, the proceedings indicated in the last preceding rule shall be followed, and so, on as to each of the other districts successively.

307. When sufficient amount realized in execution. If the amount realized in execution in district A or district B or any other district except the last, shall be sufficient to satisfy the decree, a certificate that such is the case shall be sent to the Court of each district, in which property shall at the time be under attachment in execution of the decree.

308. Notice of execution of foreign Court decree to issue to judgment-debtor. Unless the Court otherwise directs, notice of the decree of another Court transmitted to this Court for execution shall issue to the judgment-debtor.

309. Register of decrees received from other courts. Decree received for execution from other Courts shall be entered in the Register of Decrees received for execution from other Courts; whether they be decrees of Courts within British India or of Courts outside British India covered by section 43, 44 and 44-A of the Code.

310. Return of decree to the transmitting Court. If, after a decree has been sent to the Chief Court for execution, the decree-holder does not within six months from the date of the transfer apply to the Court for the execution of his decree, the Registrar (O.S.), shall certify to the Court which passed the decree the fact that no application for execution has been made to this Court and shall return the decree.

APPLICATION FOR EXECUTION

311. Application under O. XXI, r. 15 to be supported by affidavit. An application under rule 15 of O. XXI of the Code shall be supported by an affidavit stating the grounds.

312. Checking and admission of execution petition. The applications for execution shall ordinarily be checked in the order in which they have been filed by reference to the execution proceedings and to the Register of Civil Suits and all objections thereto, if any, shall be noted

thereon. They shall then be submitted to the Registrar (O.S.), for orders. All applications for execution, when admitted, shall be entered in the Register of Execution Applications.

313. Procedure in execution application under O.XXI, r 15. When an application is made by one or more of several joint decree-holders, unless a written authority signed by the other decree-holders for the applicant to execute the decree and to receive the money or property recovered, in filed in Court, the Court or the Registrar (O.S.), may give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not joined in the application and may also give notice of any application for payment or delivery to the applicant of any money or property recovered in execution.

314. Procedure when cause not shown. Where execution is for the arrest of a judgment-debtor, if the judgment-debtor does not appear on the day of hearing fixed under the notice issued or on such day as the hearing thereof may be postponed to the notice and the affidavit of service thereof shall be filed and the Registrar (O.S.), after being satisfied that it is a fit case for a warrant of arrest to issue, shall make an order for the issue of warrant of arrest.

315. Registrar, (O.S.), not to issue execution simultaneously against person and property. The Registrar (O.S.), shall not issue execution against the property of a judgment-debtor at the same time that he or the Court has issued execution against his person. But a judgment-creditor desiring to proceed against both at once, must apply specially to the Court on affidavit, and in case of such application being refused, shall not be allowed to include the costs thereof in his costs as against the debtor without the special order of the Court. But when a warrant for the arrest has not been executed, the Registrar (O.S.), may, at the request of the judgment-creditor, forthwith issue a warrant for the attachment.

316. Application for receiver in execution of decree. An application for the execution of a decree by the appointment of a receiver under section 51 and Order XL, rule 1 of the Code to realize or otherwise deal with property under attachment shall be made to the Court, and such receiver shall, unless otherwise ordered, be subject to the rules of this Court applicable to persons appointed receivers of property, the subject-matter of a suit.

MODE OF EXECUTION

Execution of documents

317. Decree-holder to file in Court the draft and fees for service. The decree-holder shall file two copies of the draft referred to in Order XXI, rule 34(1) of the Code and two copies of the Notice in Form No.15 in Appendix A together with the prescribed process fee for service thereof. One of the copies of the draft shall be served on the person directed to execute the document in the manner prescribed for service of summons on the defendant to a suit.

318. Execution of document under O.XXI, rule 34(5). Unless otherwise ordered by the Court, a document shall be executed or a negotiable instrument endorsed under Order XXI, rule 34 (5) of the Code by the Registrar (O.S.).

Arrest

319. Deposit with warrant of arrest. With every warrant of arrest before or after judgment there shall be deposited with the Nazir a sum of Rs.2 for the intermediate subsistence of the judgment-debtor, pursuant to Order XXI, rule 39 (1) to (4) of the Code.

320. Production of persons arrested after sunset. Every person arrested after sunset shall be immediately lodged in the civil jail and brought before one of the Judges at the opening of the Court on the next working day. If such day be a Sunday or other holiday, he shall be brought before one of the Judges at his place of residence.

321. Superintendent to keep in custody. The Superintendent of the Civil Jail, Karachi, shall receive and keep in his custody any person arrested till the said person can be placed before a Judge for an order of committal or otherwise; provided that on committal an order of committal shall be lodged with the Superintendent.

322. Production before Judge under fresh warrant of persons already in custody. When a warrant is received to arrest a person already in custody of the Superintendent of the Civil Jail, Karachi, on civil process, the Superintendent shall forthwith cause the person to be brought before a Judge for an order of committal. The Judge may then apportion the subsistence allowance between the detaining creditors in such manner as he thinks just.

Attachment

323. Application of incumbrancer to be made a party to the suit or to join in the sale. An incumbrancer, not a party to the suit, may at any time before the sale apply to the Court to be made a party or for leave to join in the sale; and such order shall be made thereon and in protection of his rights and as to costs as to the Judge shall seem fit.

324. Inquiry before the Registrar, (O.S.) as to matters specified in O.XXI, rule 66. (1) If the judgment-debtor appears before the Registrar (O.S.), pursuant to the notice issued under Order XXI, rule 66(2) of the Code, the Registrar (O.S.), shall examine him on any matter affecting his title to the attached property. The judgment-creditor may also examine him on any matter relating thereto. If the judgment-debtor fails to attend, the Registrar (O.S.), shall proceed ex parte.

(2) The Registrar (O.S.) may also exercise powers under order XXI, rule 66 (4).

(3) Documents produced (if any) shall be left with the Registrar (O.S.), and shall be subject to his directions both as to their custody pending the sale and their ultimate disposal, such directions being subject to appeal to the Court.

325. Receipt of attached property to be given. A bailiff attaching movable property shall, if required, furnish to the judgment-debtor or other person, from whose possession the movable property is attached, a receipt in the form of a list of the said property signed by the said bailiff.

326. Procedure where property is already under attachment by revenue authorities. When property to be attached is already under attachment by the revenue authorities, the bailiff shall require the Makthiarkar or, in his absence, the Head Munshi of the place to give him a certificate to that effect stating also the amount of the Government demand. On such certificate

being issued to him, the bailiff shall refrain from attaching the property and shall report to the Nazir.

327. Removal of property attached under O.XXI, Rule 43 to the Court. All live-stock and other movable property attached under Order XXI, rule 43 of the Code shall ordinarily be removed and conveyed by the attaching officer or by his subordinate or by persons specially engaged by him for the purpose to the Court premises or other appointed place and there kept under due custody till sold or otherwise disposed of according to law:

Provided that if the property attached consists of cash, Government or other securities, jewels or other valuable articles of small bulk, the Nazir may send the same for safe custody to the Government Treasury.

328. Removal to Court by judgment-creditor on executing bond. In cases where it is found more convenient so to do, the property may be handed over to the judgment-creditor for removal and conveyance to the Court premises or other appointed place for the purpose specified in the next succeeding rule, provided such person enters into a bond in Form No.17 in Appendix A.

329. Procedure where removal impracticable or costly. (1) When the property is of such a nature that, in the opinion of the attaching officer, its removal to the Court premises or other appointed place is impracticable or can only be effected at a cost out of proportion to its value, the attaching officer shall report his opinion to the Registrar (O.S.), and, pending receipt of his order, shall arrange for its proper maintenance, guarding and custody at or near the place at which it has been attached.

(2) The Registrar (O.S.), on receipt of such a report as is mentioned in sub-rule (1), may either order the removal of the property to the Court premises or other appointed place or sanction its detention at the place at which it has been attached or elsewhere under such conditions as to its maintenance, guarding and custody as he thinks fit.

(3) Nothing in this rule affects the power of the attaching officer under the provisions of Order XXI, rule 43 of the Code to sell such property at once if it is subject to speedy and natural decay.

330. Deposit of cost for removal or maintenance of property. Before making any order for the attachment of live-stock or other movable property, or at any time after any such order been passed, the Court or the Registrar (O.S.), may require the person at whose instance the order of attachment is sought or has been made to deposit in Court such sum of money as the Court or the Registrar (O.S.) may consider necessary-

(a) for the removal of the property to the court premises or other appointment place and its maintenance, guarding and custody till arrival thereat.

(b) for the maintenance, guarding and custody of the property at the Court premises or other appointed place till it is sold or otherwise disposed of; and

(c) for the maintenance, guarding and custody of the property at the place at which it was attached or elsewhere.

In case of failure to deposit such sum within the time prescribed by the Court or Registrar (O.S.), the Court or Registrar (O.S.) may either refuse to issue or may cancel the order of attachment, as the case may be.

331. Account to be rendered on demand. An account of the expenses actually incurred shall, on demand being made on or before the date of the sale, be furnished to the attaching creditor and to the person whose property was attached and the amount that the Registrar (O.S.), after hearing their objections to the account, if any, made within three days after furnishing the same, finds to be property due, shall be deducted as a first charge from the proceeds of the sale of the property and paid to the attaching creditor along with any balance that there may be of the deposit.

332. Restoration of attached property on payment of costs incurred. (1) If in consequence of the cancellation of the order of attachment or for any other reason the person whose property has been attached becomes entitled to receive back the live-stock or other movable property attached, he shall be given a notice by the Registrar (O.S.), that he should take delivery of it within the time prescribed by the Registrar (O.S.) on payment by him of all charges, if any, found by the Court or the Registrar (O.S.) to have been properly incurred and which have not been defrayed or for the defrayal of which no money has been deposited by the attaching creditor.

(2) If he commits default in taking delivery of the property by failure to pay the requisite charges or otherwise, the Registrar (O.S.) may order that the property be sold by public auction and that after defraying the charges referred to in sub-rule (1), if any, and the expenses of the sale, the balance of the sale-proceeds be credited to his account.

Sale of attached property

333. Notice regarding sale of guns and other arms, etc., attached. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act XI of 1878 or any other articles in respect of which licences have to be taken under any law in force, are sold by public auction in execution to decrees, the Registrar (O.S.), shall give due notice to the District Magistrate, Karachi, or other appropriate officer of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchaser of such arms or other articles.

334. Sale of Government Promissory Notes, how made. Government Promissory Notes attached in execution of a decree, which have to be disposed of in satisfaction of the decree, shall be sent by the Registrar (O.S.), to the Comptroller, Sindh, with instructions regarding the disposal of the sale-proceeds of the notes.

335. Immediate sale of movable property. In the case of property to be sold under the proviso to rule 43 of Order XXI of the Code,-

(i) if such property is in the Court premises in the custody of the Nazir, the Registrar (O.S.), may authorize him to sell the same by public auction and may give such directions as to the

date and place of sale and the manner of publishing the same as the circumstances of the particular case admit;

(ii) in other cases the sale shall be made by public auction and after such publication and notice as the circumstances of the particular case admit.

336. Place of sale of Live-stock, etc. Save as provided by the last preceding rule and rule 74 of Order XXI of the Code and unless the Court otherwise orders, all sales of live-stock, articles of local manufacture, and other things commonly sold at country markets, which have not been brought to Court shall be held at such market in the neighbourhood of the place where the goods were attached as may appear to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expenses in carriage.

337. Application for sale to be accompanied by abstract of title. An application for sale of immovable property attached shall be accompanied by an abstract of the title of the judgment-debtor so far as it can be ascertained and if the original title deeds are in the hands of the decree-holder, they shall be produced in Court.

338. Contents of sale proclamation. In addition to the particulars specified in sub-rule (2) of rule 66 of Order XXI of the Code the proclamation shall contain a notice that only the right, title and interest of the judgment-debtor is to be sold that purchasers must satisfy themselves as to the judgment-debtor's title to the property, and that the title deeds or an abstract of the judgment debtor's title will be open for inspection at the office of the Nazir.

The proclamation shall, whenever such information is available, also state in whose possession and occupation the property is and the tenancy or terms on which any person is in occupation or possession.

339. Publication of proclamation. Whenever the sale of land or of a house or houses exceeding Rs.200 in value or of movable property exceeding Rs.200 in value is ordered, the Nazir shall, with the permission of the Court, advertise such sale in a local newspaper on newspaper as may be ordered by the Registrar (O.S.).

340. Copy of sale proclamation to be sent to collector in case of sale of land. When any land or share of land is ordered to be sold in execution of a decree, the Court shall send a copy of the proclamation of sale issued under Order XXI, rule 67 of the Code to the Collector of Karachi, or as the case may be, to the Chief Officer of the Municipal Corporation of the City of Karachi.

341. Place of sale of immovable property. As regards all sales of immovable property, the Registrar (O.S.) in fixing the place of sale will consult the wishes of the parties, preference being given to those of the judgment-debtor. In the absence of any expressed wish on the subject by the parties, the sale shall be held where the property is situated except in cases in which in the opinion of the Registrar (O.S.), some particular advantage is to be obtained by holding it at the Court house.

342. Sale at Court house, how conducted. All such sales when held at the Court-House shall be conducted by the Nazir or other responsible officer of the Court and shall take place on some fixed day of each week and at such hours of such day as the Court shall make generally known.

343. Leave to bid. Reserved price. (1) An application for leave to bid at the sale shall be supported by an affidavit giving reasons why the applicant should be permitted to bid.

(2) In cases in which the Registrar (O.S.) considers that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Registrar (O.S.) to give leave to bid at the sale only on condition that the applicant's bid shall not be less than the amount so fixed, which amount shall so far as practicable, be determined with reference to the probable market value of the property or of the lot or lots into which the property is divided for sale.

344. Sale. On the day and at the time and place appointed for the sale, the proclamation of sale shall be read out before the property is put up for sale.

345. Postponement of sale for want of sufficient bidding. If there be no bid or the highest bid be below the reserved price (if any) or be deemed insufficient by the Nazir or other officer conducting the sale, he shall postpone the sale and record the reason for such postponement in the bidding paper.

346. Postponement of sale otherwise than under rule 345. The Nazir or other officer conducting the sale may postpone it if he is unable to attend on the appointed day or for other sufficient cause or with the consent of the Parties. The costs of a postponement rendered necessary by the absence of the Nazir or other officer conducting the sale shall be costs in the cause. The costs of a postponement made at the request of the party or by reason of his conduct shall be borne by him or as shall be consented to by the parties.

347. Bidding paper

To be signed by the purchaser

The name of each bidder at the sale of property shall be noted on a paper to be called "the bidding paper" and the amount of the bid shall be entered opposite his name. If there be no bid, the words "no bidding" shall be written in the bidding paper opposite the property or, as the case may be, the number of the lot. If the highest bid be deemed insufficient, the words "not sold" shall be written opposite the property or the number of the lot. If the property be sold, the highest bid shall be inserted opposite the property or the number of the lot and the purchaser shall write his full name opposite such entry and shall add his address and occupation. All notices thereafter served at the address so given shall be deemed to have been duly served on the purchaser.

348. Or by his agent as such. A person purchasing as duly authorized agent for another shall sign the bidding paper as such giving the full name, address and occupation both of himself and his principal. All notices thereafter served at either of the addresses given shall be deemed to have been duly served.

349. Declaration of purchase. If the highest bid be equal to or higher than the reserved price (if any), the Nazir or other officer conducting the sale shall, make an entry in the bidding paper to the following effect:-

"I declare to have been the highest bidder for the purchase of the property above set forth (or of lot No.....) for the sum of Rs....."

350. Report of sale. Upon the completion of the sale the Nazir or other officer conducting the sale shall file in Court his report of the sale.

351. Time for confirming sale. A sale of immovable property shall not be confirmed until after the expiration of 30 days from the date of such sale.

Delivery of possession of immovable property

352. Possession of house how delivered to decree-holder or purchaser. When immovable property of which possession is to be given under Order XXI, rules 35 or 95 of the Code is found locked, notice shall be issued by the officer executing the warrant for delivery of possession to the person bound by the decree and in possession of the house requiring him to unlock it within a given time. If on the day so appointed it is still locked, it may be broken open in the presence of two respectable persons of the locality and given into the possession of the judgment creditor or the purchaser; as the case may be.

353. Decree holder or purchaser to give notice to owner regarding removal of property therein. When there is movable property in a judgment debtor's immovable property of which the decree holder or purchaser has been put in possession, it is for the decree holder or purchaser to give notice to the owner, if he is known to remove such property; and if the owner fails to do so, to take such steps as he may be advised.

GENERAL

354. Preparation and issue of processes in execution. No process in execution shall be prepared unless process fee and, in the case of warrants of arrest, subsistence money at the prescribed rates have been paid within seven days or such extended time as may be allowed by the Registrar (O.S.). No process in execution shall be issued until the requisite Court fee stamps have been affixed and cancelled and the process has been signed and sealed by the proper officer of the Court.

355. Procedure on stay of execution. When execution of a decree is stayed by a competent Court, the application for execution of the decree shall not, unless withdrawn by the applicant, be struck off the file but shall be adjourned pending the final order of the Court staying execution.

356. Recording of evidence and order in execution proceedings. In proceedings in execution other than those in which proof is given on affidavit in accordance with these rules or under an order of the Court or the Registrar (O.S.), evidence shall be recorded and exhibits admitted in evidence shall be marked in accordance with the provisions of Order XVIII of the Code and these rules, so far as they are applicable.

CHAPTER XXI NAZIR'S OFFICE

357. Nazir and Deputy Nazir to execute or to cause to execute processes. The Nazir and, subject to his directions, the Deputy Nazir shall execute or cause to be executed through the officers of the Court all processes including all warrants or orders for the delivery, attachment

or sale of property in execution, or for the arrest or custody of any person, which may be entrusted to the Nazir for execution. They shall return all warrants and orders within the time prescribed, with an endorsement specifying the manner of execution or the causes which prevented execution. Such warrants and orders shall be filed in the record. A Process Service Register shall be kept in Form No. 3 in Appendix B.

358. Nothing of date on processes. The Nazir or the Deputy Nazir shall note on every process the date on which it was delivered to him.

359. Service on holidays. No process shall be served or executed and no sale shall be held in execution on Sundays or during holidays or vacation of the Chief Court, except by leave of the Court or the Registrar (O.S.).

360. Service on the firm of advocates. Where the service is effected on a firm of Advocates, such service may be on any one or more of the partners of such firm.

361. Payment of money. (1) The Nazir and, subject to his directions, the Deputy Nazir shall receive all monies paid under due authority into the Court and shall pay out all monies duly ordered to be paid out of Court.

(2) Money may, be paid or deposited in Court by postal money order. In that case the person making the payment shall send to the Nazir a statement containing full particulars regarding the intended payment or deposit.

362. Notice of payment or deposit to judgment creditor or Collector. (1) A person paying money into or depositing property in the Court in part payment or full satisfaction of a decree shall give notice through the Court of such payment or deposit to the judgment creditor.

(2) Where the decree orders payment of Court fees to Government under O.33, rule 10 of the Code, no order shall be made on the application, for payment of such money or delivery of such property without giving notice thereof to the Collector at the expense of the applicant.

363. Delivery of securities, jewellery or other valuables into Court. When jewellery or other valuables are brought into Court, two copies of a descriptive list thereof shall be presented and shall be checked and signed by the Nazir in the presence of the depositor. The jewellery or other valuable shall be placed in a box furnished with a lock and key to be provided by the depositor. The box shall then be locked and sealed with the seal of the Court and forwarded by the Court to the Treasury Officer together with one of the copies of the said list and the key shall be retained by the Nazir. On the return of the counterfoil receipt by the Treasury Officer, a receipt shall be given to the depositor.

Note. The provisions of this rule are subject to rules 9 (a) and 341 (b) and (c) of the Financial Rules.

364. Application for payment of money, etc. Every application for payment of money or delivery of property deposited in Court shall be entitled in the suit or matter and shall also show the number of the execution application, if any, is pending showing the right and interest of the party applying and the amount claimed.

365. Applications to be checked. Applications to make or receive payments shall be duly checked by reference to the record of the suit or matter and to the Nazir before submission for orders to the Registrar (O.S.), or, as the case may be, the Registrar, Appellate Side.

366. Payment by money order, bank draft etc. On the application of the decree holder or other person entitled to any money deposited in court and not expended for the purpose for which it was deposited, if there is no objection to the payment of money on the ground of attachment or otherwise, the Registrar (O.S.) may order that the amount, after making all necessary and lawful deductions, be sent to the applicant at his risk

(i) by money order if the amount does not exceed Rs.600.

(ii) by bank draft by registered post acknowledgement due, or

(iii) in any other, manner specified by the applicant, which the Registrar (O.S.) approves:

Provided that, before payment is ordered to be made under clause (ii) or (iii) the applicant shall submit a duly stamped receipt for the amount due in the form given below:-

FORM OF RECEIPT

Received the sum of Rs. (rupees annas and pies only) from the Chief Court of Sindh at Karachi being the amount deposited in the said Court in connection with

(Stamp)

Dated (Signature of the Payee)

367. Written authority of client requisite for payment to advocate. Unless otherwise ordered by the Court, no payment in a suit or matter, save and except when it is in respect of costs, shall be made to an advocate on behalf of his client without a written authority of the client signed by him for such payment:

Provided that if an advocate has been adjudged insolvent or if an application to adjudge him insolvent is pending, no such payment as aforesaid shall be made to him until he is discharged or the application to adjudge him insolvent is dismissed.

368. Account books to be kept. The following account books shall be kept in the form and in the manner prescribed for the Civil Courts subordinate to the Chief Court:-

A. Book of receipts for money paid into Court.

B. Process fee receipt book.

C. Register of deposit receipts, viz., register of sums received in Court in connection with suits or, judicial proceedings and deposited with Government (to be kept in duplicate).

D. Register of deposit payments, viz., register of payments from sums received into Court in connection with suits or Judicial proceedings and deposited with Government (to be kept in duplicate).

E. Files of applications for refund of lapsed deposits and of statements of lapsed Civil Courts deposits.

F. Register of attached property.

G. Register of money received on account of subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate disbursement.

H. Register of payments on account of subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate disbursement.

I. Cash book.

J. Ledger.

K. Bank or Treasury pass book.

L. Bank or Treasury cheque book.

Signing of cheques and checking of accounts.

369. The Registrar, Appellate Side 1[or in his absence the Registrar, Original Side] is authorized to sign cheques. He shall at least once a month call for the Registers and accounts and satisfy himself that the entries have been carefully and properly made. When such inspection is made, he should note the fact with his own hand on the register or account inspected.

370. Account books to be kept in minors or lunatics' estates. The Nazir shall in connection with minors' or lunatics' estates under his administration keep the following account books in the manner prescribed for the Civil Court subordinate to the Chief Court:

(1) day book,

(2) ledger,

(3) counterfoil receipt book, and

(4) such other account books as the Chief Judge may from time to time prescribe.

The record of each estate should be kept in separate file, papers being arranged in chronological order, with an index for the same.

371. Return of minors' estates under administration. The Nazir shall prepare in the month of April of each year a history sheet in such form as the Chief Judge may from time to time

prescribe showing the minors estates still under his administration. The history sheet shall be examined by the Registrar, Appellate side and submitted to the Chief Judge for such order as may be necessary.

372. Nazir to visit civil jail daily. The Nazir shall be the Superintendent of and visit the Civil Jail, Karachi, daily and satisfy himself that each prisoner has received his subsistence money according to the prescribed scale. The Nazir shall promptly discharge any prisoner entitled to release, obtaining where necessary through the Deputy Registrar, the orders of the Judge.

373. Inspection of civil jail by Registrar, A.S. The Registrar, Appellate Side, shall visit the civil jail once a month and inspect the following books which shall there be kept:-

(1) Register of civil prisoners,.

(2) Visitor's book.

and shall examine the warrants under which the prisoners are kept in custody. He shall report any matters requiring orders to the Chief Judge.

374. Charge of property in criminal cases. (1) The Nazir shall take charge of all property sent to the Court in connection with sessions trials and criminal appeals, references, and revisions, and shall keep thereof, in the form now in use, a Criminal Property Register.

Charge of dead stock

(2) The Nazir shall have charge of all dead stock and shall keep a dead stock Register in Form No. 4 in Appendix B.

CHAPTER XXII TESTAMENTARY AND INTESTATE JURISDICTION Preliminary

375. Interpretation. In this Chapter -

(i) "Act" means the Indian Succession Act, 1925; and

(ii) "will" includes a "codicil"

Application for Probate, etc

376. Application for probate. Application for probate shall be made by petition in Form No.21. If in Appendix A and shall be accompanied by-

(a) affidavit of one of the attesting witnesses, if procurable, in Form No. 22 in Appendix A;

(b) valuation of the property prepared strictly in the form set forth in the third schedule to the Court Fees Act, 1870;

- (c) a deposit of the amount payable upon grant of probate under the Court Fees Act, 1870; and
- (d) affidavit of proof or certificate of death.

377. Application for letters of administration. Application for letters of administration shall be made by petition in Form No. 23 in Appendix A, and shall be accompanied by the annexures (b) and (d) and the deposit mentioned in the last preceding rule.

378. Application for letters of administration. C.T.A. Application for letters of administration with the will annexed shall be made by petition in Form No.24 in Appendix A and shall be accompanied by the annexures (a) (b) and (d) and the deposit mentioned in rule 376.

379. Application for succession certificate. Application for succession certificate shall be made by petition in Form No. 25 in Appendix A and shall be accompanied by the Deposit of a sum equal to the fee payable under the Court fees Act, 1870 in respect of the certificate.

380. Address for service. Every application for probate, letters of administration with or without the will annexed or succession certificate shall also state the address for service of the petitioner.

381. Delay in application. In any case where probate or administration or succession certificate is for the first time applied for after the lapse of three years from the death of the deceased, the reason for delay shall be explained in the petition. Should the explanation be unsatisfactory, the Court may require such further proof of the alleged cause of delay as it may deem fit.

382. Interlineations, alterations etc. in the will should be sworn to by the attesting witness. When interlineations, alterations, erasures or obliterations appear in the will (unless delay executed as required by the Act, or recited or otherwise identified by the attestation clause) a statement must, if possible, be made in the affidavit of the attesting witness whether they existed in the will before its execution or not.

383. In absence of attesting witnesses with other evidence must be produced. If no affidavit by any of the attesting witnesses is procurable, an affidavit shall be procured (if possible) from some other person (if any) who may have been present at the execution of the will; but if no affidavit of such person can be obtained, evidence on affidavit must be produced, of that fact and of the handwritings of the deceased and of the attesting witnesses, and also of any circumstances which may raise a presumption in favour of due execution.

384. Attempted cancellation must be accounted for. Any appearance of an attempted cancellation of a testamentary writing by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such writing or part thereof must be accounted for.

385. Unsigned or unattested will. In cases in which it is not necessary that a will should be signed by the testator or attested by witnesses to constitute a valid testamentary disposition of the testator's property, the testator's intention that it should operate as his testamentary disposition must be clearly proved by affidavit.

386. Production of deed, paper, etc., referred to in will. If a will contains a reference to any deed, paper, memorandum or other document of such a nature as to raise a question whether it ought not to form a constituent part of the will, such deed, paper, memorandum or other document shall be produced with a view to ascertain whether it is entitled to probate and if not produced, its non-production must be accounted for.

387. Administration to a creditor. In all applications by a creditor for letters of administration, it shall be stated particularly how the debt arose.

388. Renunciation. No person, who renounces probate of a will or letters of administration of the property of a deceased person in one character, shall, without leave of the Court, take out representation to the same deceased in another character.

389. Grants throughout British India. In all cases under the Act, in which it is sought to obtain a grant of probate or letters of administration with or without the will annexed to have effect throughout British India, such grant must be expressly asked for, and it must be further stated in the petition that, so far as the petitioner has been able to ascertain or is aware, there are no property and credits other than what are specified in the schedule attached to his affidavit of valuation.

390. Applications for probate, etc., to be registered as miscellaneous applications. Applications for probate, letters of administration with or without the will annexed and for succession certificate, when admitted, shall be registered and numbered as miscellaneous applications.

Citation

391. Notice of application to be given to collector. The Registrar (O.S.) shall give notice of all applications for probate or letters of administration to the Collector or the Revenue Commissioner, as the case may be, in Form No. 26 in Appendix A.

392. Notice to next of kin. When administration or succession certificate is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the Registrar (O.S.), may direct notice of such application to issue to such other next of kin.

393. Citation to Administrator General. No grant of letters of administration, other than letters of administration pendente lite, shall issue to a creditor, or to a legatee, other than a universal legatee; or to a friend of the deceased until citation has first issued to the Administrator General of Sindh.

394. Form of citation. A citation under section 283 and a notice of an application under section 373 of the Act shall be issued in Form No. 27 in Appendix A.

395. When citation to be dispensed with. In all applications for probate or for letters of administration with or without will annexed where the gross value of the estate is Rs.5,000 or less: the Registrar (O.S.), may, if he thinks fit, allow publication of citation in one or more newspapers only or may dispense with it altogether.

Proof

396. Proof of identity. The Court or the District Delegate may in case where it is deemed necessary, require proof, in addition to the usual statement required to be made in the application, of the identify of the deceased or of the party applying for the grant.

397. Blind or illiterate testator. The Court or the District Delegate shall not grant probate of the will or administration with the will annexed of any blind or obviously illiterate or ignorant person unless it or he has, satisfied itself or himself that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents.

Limited Grants

398. Order for limited grant. Except by order of the Court, no, person entitled to a general grant of administration of the property, of the deceased will be permitted to take a limited grant.

Administration Bond

399. Forms of administration and succession certificate bonds. An Administration bond shall be in form No. 28 in. Appendix. A. A. Succession certificate bond shall be in Form No. 29 in Appendix A.

400. Amount of administration bond and succession certificate bond. Unless otherwise ordered by the Court or in non contentious matters by the District Delegate, an administration bond or succession certificate bond shall be given with two or more sureties, approved by the Nazir, for the amount of the value of the property for which the grant is made or succession certificate issued:

Provided that, if the value is under Rs.500, one surety only may be taken.

401. Insurance Companies as sureties. A bond from an approved Insurance Company may be accepted in lieu of a bond from two sureties.

402. Attestation of bonds. Administration bonds shall be attested by the Deputy Registrar or by such other two officers of the Court as may be nominated by the Registrar (O.S.)

Grants and extensions thereof

403. Grants limited to Province of Sindh. All grants of probate or letters of administration (with or without the will ennexed) shall, unless otherwise order be drawn up so as to have effect only throughout the province of Sindh.

404. Affidavit of valuation of property to be annexed to grants. A copy of the affidavit of valuation of the property of the deceased accompanying an application for probate or letters of administration shall be annexed to the grant of probate or letters of administration.

405. Extension of grant to have effect throughout British, India. An order for the extension of a grant limited to the Province of Sindh, to have effect throughout British India shall be made on an interlocutory application filed for that purpose supported by an affidavit stating where the additional property and credits are situate and accompanied b the annexure (b) and the deposit

mentioned in rule 376 in respect thereon Provided that in case of a grant of letters of administration with or without the will annexed the petitioner shall give a further bond before the grant may be extended, as aforesaid.

406. Extension of succession certificate. An application for the extension of a succession certificate shall be by interlocutory application stating the particulars of the additional debt or security and accompanied by a deposit of a sum equal to the fee payable under the Court, Fees Act, 1870, in respect of such extension. Before the certificate is extended, the petitioner shall give a further bond, if so required.

Inventory and Accounts

407. Form of inventory. (1) The inventory and the account required by section 317 of the Act to be exhibited shall be in Forms Nos.30 and 31 respectively in Appendix A.

Form of register

(2) A register shall be kept in Form No. 5 in Appendix B and the particulars therein prescribed shall be entered from time to time as occasion requires.

Contentious Proceedings

408. Particulars in caveat. A caveat shall, in addition to the particulars prescribed by section 284 (4) and schedule V of the Act, state the address for service of the caveator.

409. Notice of caveat. Notice of the filing of a caveat shall be given to the petitioner or his advocate.

410. Affidavit supporting caveat. Where a caveat is entered after an application has been made for a grant of probate or letters of administration with or without the will annexed, affidavit or affidavits in support of the caveat shall be filed within eight days of the caveat being lodged. Such affidavit shall state the right an interest of the caveator and the grounds of the objections to the application. No such affidavit shall be filed after the expiration of the said eight days without the order of the Court.

411. Notice to caveator to file affidavit. Where an application for grant of probate or letters of administration with or without the will annexed is presented after a caveat has been filed, notice shall forthwith issue to the caveator calling upon him to file his affidavit or affidavits in support of his caveat within eight days from the service of such notice.

412. Consequence of not filing affidavit. Where the caveator fails to file arty affidavit in support of his caveat in compliance with rule 410 or in compliance with the notice issued under rule 411, the caveat may be discharged by an order of the Court.

413. Procedure. Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner), the proceedings shall be numbered and registered as a suit in which the petitioner for probate or letters of administration shall be the plaintiff and the caveator shall be the defendant, the petition for probate or letters of administration being registered as and deemed a plaint filed against the caveator and the

affidavit filed by the caveator being treated as his written statement in the suit. The procedure in such suit shall be, as nearly as may be, according to the provisions of the Code. The decree shall be in Form No. 32 in Appendix A.

414. Notice in probate suit. In a probate suit the party opposing a will may, with his affidavit, give notice to the party setting up the will that the merely insists upon the will being proved in solemn form of law and only intends to cross examine the witnesses produced in support of the will and he shall thereupon be at liberty to do so and shall not, in any event, be liable to pay the costs of the other side, unless the Court shall be of opinion that there was no reasonable ground for opposing the will.

Miscellaneous

415. Certificates under section 274 (1) (b) of the Act. With every certificate to be sent to a High Court under the provisions of section 274 (1)(b) of the Act the Registrar, (O.S.) shall send to the other High Courts a copy of so much of the affidavit as aforesaid as relates to the state within the jurisdiction of such High Court.

416. Notice by executor or administrator to creditors under sections 360 and 367 of the Act. Where an executor or administrator has given notice to creditors and others in Form No. 33 in Appendix A, such notice shall be deemed to satisfy the requirements of sections 360 and 367 of the Act.

417. Disposal of petition for non prosecution. Any testamentary application in which grant or certificate has not issued owing to non-prosecution of the petition for a period of one year, shall be treated as disposed of and no action shall be taken on such petition unless a fresh petition is filed or an order obtained from the Court giving permission to the petitioner to proceed with the petition already filed.

418. Making will. Every will, copy of a will, or other testamentary paper to which an executor or administrator is sworn or affirmed, shall be marked by the person before whom he is sworn or affirmed.

Rules under Bombay Regulation VIII of 1827

419. References from police and magistrates re. unclaimed property to be accompanied by list and valuation. References and reports from the Police and Magistrates with regard to unclaimed property shall be accompanied by an accurate list and approximate valuation of the property.

420. Deduction of administration fees. Administration fees shall be deducted from the proceeds of the property at the rate not exceeding the rate prescribed in Chapter VII in Appendix C before surrender to claimants or deposit in public treasury.

Note. For form of note to be appended to certificates and form of order see Forms Nos. 34 and 35 in Appendix A.

CHAPTER XXIII MATRIMONIAL JURISDICTION

I

Rules under the Indian Divorce Act, 1869

421. Marriage certificate to be annexed to petition. All petitions under sections 10, 18, 23, 27, 32 or 34 of the Indian Divorce Act, 1869 (hereinafter in this chapter called. "the Act"), shall be accompanied by a certified copy of the certificate of the marriage, if such a certificate is available to the petitioner.

422. Contents of petition. (1) In the body of a petition under section 10, 18, 23, 27, 32 or 3 of the Act shall be stated-

(i) whether the petitioner professes the Christian religion;

(ii) the place and date of the marriage and domicile of the wife at the time of the presentation of the petition;

(iii) the domicile of the husband at the time the petition is presented, his occupation and places of residence of the parties at the time the petition is presented;

(iv) the principal permanent addresses where the parties have cohabited, including the address where they last resided together in India;

(v) whether there is living issue of the marriage, and if so, the names and dates of birth or ages of such issue;

(vi) whether there have been in the Divorce Division of the High Court of Justice in England or in the Court of Sessions, in Scotland or in any Court in India any, and if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(vii) the matrimonial offences charged set out in separate paragraphs with the times and places of their alleged commission;

(viii) the claim for damages, if any;

(ix) the grounds on which the petitioner claims that the Chief Court has jurisdiction to determine the petition;

and, if the petition is one for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation, it shall further state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought, and shall be signed by the petitioner:

Provided that where the petitioner is by reason of absence or for other good cause, unable to sign the petition, it may be signed by any person duly authorised by him or her to sign the same or to sue on his or her behalf.

(3) Rules 19 to 25 of O.VIII of the Code shall apply so far as may be, to petitions under the aforesaid sections.

423. Verification of petition. The statements contained in every petition shall be verified by the petitioner or some other competent person.

424. Co respondent in husband's petition. In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterer co respondent in the suit, unless the Court shall otherwise direct under section 11 of the Act.

425. Intervener in wife's petition. Where a husband is charged with adultery with a named person, a certified copy of the pleading containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled, within the time therein specified, to apply for leave to intervene in the cause.

426. Service of petition and notice. Every petition or notice under the Act shall be served on the party to be affected thereby, either within or without British India, in the manner prescribed by the Code for the service of summons:

Provided that, unless the Court for good cause shown otherwise directs, service of all such petitions and notices shall be effected by delivery of the same to the party to be affected thereby, and the Court shall record that it is satisfied that service has been so effected:

Provided also that the Court may dispense with service altogether in case it seems necessary or expedient to do so.

427. Answer. A respondent or co respondent, or a woman to whom leave to intervene has been granted under rule 425, may file in the Court an answer to the petition.

428. Verification address for service. (1) Any answer which contains matter other than a simple denial of the facts stated in the petition shall be verified in respect of such matter, and when the respondent is the husband or wife of the petitioner, the answer shall contain a declaration that there is not any collusion or connivance between the parties.

(2) Where the answer of a husband alleges adultery and prays relief, a certified copy thereof shall be served upon the alleged adulterer, together with a notice to appear in like manner as a petition. When in such case no relief is claimed the alleged adulterer shall not be made a co respondent, but a certified copy of the answer shall be served upon him together with a notice as under rule 425 that he is entitled within the time therein specified to apply for leave to intervene in the suit, and upon such application he may be allowed to intervene, subject to such direction as shall then be given by the Court.

(3) Every respondent, co respondent or person to whom leave to intervene is granted, shall, with the answer to the petition, file in Court memorandum in writing stating his or her address for service.

(4) Rules 20, 22, 23, 24 and 25 of O.VII of the Code shall apply so far as may be to addresses for service filed under sub rule (3).

429. Service of decree nisi. A copy of a decree nisi for dissolution of marriage or of a decree of nullity of marriage or judicial separation shall be served on the respondent and co respondent in the manner provided by the Code for the service of summonses. But proceedings subsequent to such decree shall not be rendered invalid by reason only of the fact that the decree is not proved to have been served

430. Decree absolute when to be made. (1) No decree nisi for the dissolution of marriage shall be made absolute and no decree for dissolution of marriage or of nullity of marriage made by a District Judge shall be confirmed till after the expiration of six months from the pronouncing thereof.

(2) On the expiration, of the period aforesaid a notice shall be served on the parties of the date on which the suit will be called up in Court for decree absolute or, as the case may be, for confirmation of the decree. The decree may be made absolute or, as the case may be, confirmed without any application being made to the Chief Court either by the party in person or by an advocate and even if no party appears at the hearing.

431. How cause shown after decree nisi. (1) Any person wishing to show cause against a decree nisi being made absolute or wishing to apply to the Chief Court to remove a suit under the last clause of section 17 of the Act, shall file affidavits setting forth the facts upon which he relies. Certified copies of the affidavits shall be served upon the party or the advocate of the party in whose favour the decree has been pronounced.

(2) The parties in the suit may, within a time to be fixed by the Court, file affidavits in answer, and the person showing cause may within a further time to be so fixed file affidavits in reply.

432. Alimony, maintenance and custody of children. The Chief Court shall not entertain an application for the modification or discharge of an order for alimony, maintenance or the custody of children unless the person on whose petition the decree was pronounced is at the time the application is made resident in India.

433. Costs. A wife whether she be petitioner or respondent may have her costs up to and of and incidental to the hearing taxed de die in diem, and the husband may be ordered to pay into Court a sum sufficient to cover such costs or to give security for the same. If the sum be paid into Court, the wife may have her costs taxed and paid out of such sum de die in diem to her or to her advocate. The Court may, where the wife is possessed of sufficient means of her own, refuse to pass any such order.

II

Rules under the Parsi Marriage and Divorce Act, 1936

434. Interpretation. In this rule and in rules 435 to 447

(1) "the said Act" means the Parsi Marriage and Divorce Act, 1936;

(2) "the Court" means the Parsi District Matrimonial Court constituted under section 20 of the said Act.

435. Certified copy of decree or order in certain cases to be filed with plaint. Where a plaintiff sues for divorce on the ground mentioned in clause (h) or (i) of section 32 of the said Act, he or she shall file with the plaint a certified, copy of the decree or order for judicial separation, or the decree for restitution of conjugal rights, or the order for separate maintenance, as the case may be, on which he or she relies.

436. Application dispensing with the joinder of co defendant. (1) In every suit for divorce or judicial separation on the ground of adultery, where the plaintiff does not desire or is unable to make the person with whom the adultery is alleged to have been committed a co defendant to the suit, the plaintiff shall apply ex parte to the Court for leave to dispense with the joinder of the co defendant. Such application shall be accompanied by the plaint intended to be filed.

(2) The Court may require the plaintiff to serve a copy of such application upon the defendant, and after hearing the parties may pass such orders as it may deem proper.

437. Leave of the Court to sue. (1) Leave of the Court to sue under subsection (3) of section 29 of the said Act shall be obtained on an application made to the Court at the time of presentation of the plaint.

(2) The application shall be accompanied by the plaint intended to be filed, and shall be supported by an affidavit made by the plaintiff setting out the grounds on which the leave is asked for.

(3) The Court may grant the leave, or may reject the application and return the plaint for being presented to the proper Court: provided that leave shall not be granted without first issuing a notice to the defendant.

Counter Claim

438. Joinder of co defendant to counter claim. Where a defendant by a counter claim alleges adultery on the part of the plaintiff, he or she shall make the person with whom the adultery is alleged to have been committed a co defendant to the counter claim; and the provisions of rule 436 shall apply to such a case mutatis mutandis.

Alimony pendente lite'

439. Application for alimony pendente lite. (1) in all matrimonial suits under the said Act, except suits under section 31, the wife may file with the Registrar (O.S.) an application for alimony pendente lite under section 39 of the said Act.

(2) Such application shall be made:

(i) where the wife is the plaintiff, after service of the writ of summons upon the husband, and

(ii) where the wife is the defendant, after filing her written statement admitting the fact of the marriage.

440. Service of such application on husband. (1) After an application for alimony has been filed, a copy thereof shall be served upon the husband who shall within fourteen days after such service file his answer thereto signed and verified; in default the Court will proceed ex parte.

Wife's application to Court for decree (2) After the answer of the husband has been filed, the wife may apply to the Court to decree her alimony pendente lite, provided that the wife shall, four days before she so moves the Court, give notice to her husband or to his agent or advocate, of her intention to do so.

Witnesses when to be examined. (3) Subject to any order as to costs, the wife may, if not satisfied with the husband's answer, move to have a day fixed for hearing such application when witnesses may be examined in support of and against such application for alimony.

441. Varying, modifying or rescinding of an order for alimony 'pendente lite'. The Court may, upon application by either party, from time to time vary, modify or rescind any order made on the application for alimony pendente lite; in such manner as it may deem proper, if it is satisfied that there is a change in the circumstances of the parties which warrants a variation, modification or rescission, a copy of such application shall be served upon the other party, and the application shall be heard after service thereof, on such day as the Court may fix.

Application for Permanent Alimony, Custody of Children, etc., on Decree

442. Application for permanent alimony, custody of children. etc. (1) Applications for-

(i) permanent alimony,

(ii) disposal of joint property,

(iii) custody (or access), maintenance and education of children, and

(iv) settlement of the wife's property for the benefit of the children,

shall be made as soon as may be convenient after the judgment in the suit has been pronounced.

(2) A copy of the application shall be served upon the husband and such parties as a Court may direct.

(3) The application will after service thereof be heard on such day as the Court may fix.

443. Stay of application and making of interim orders. Where an appeal from the decree in the suit is pending, every application under rule 442 shall be stayed until after the disposal of the appeal. But the Court may, in that event, make such interim orders for alimony or for the custody, (or access), maintenance and education of children as it could have made if the application had been made pending the hearing of the suit.

444. Power of the Court to pass consent order. Nothing in rule 442 shall preclude the Court from passing, at the time of pronouncing judgment in the suit, any consent order with regard to permanent alimony, disposal of joint property, custody (or access), maintenance and education of children, or settlement of the wife's property for the benefit of the children.

445. Procedure to vary, modify, rescind or suspend order for permanent alimony, etc. (1) Where an order for permanent alimony or for permanent custody (or access), maintenance and education of children has been made, any subsequent application to vary, modify, rescind or suspend such order shall be made by petition, a copy of which shall be served on the other side.

(2) The petition shall state specifically the change in the circumstances of the parties, or in the position of the children, which renders such petition necessary.

(3) A certified copy of the order sought to be varied, modified, rescinded or suspended shall be annexed to the petition.

(4) The petition shall after service thereof be heard on such day as the Court may fix.

Registration of Divorces, etc

446. Registration of divorces, etc. The Registrar (O.S.) shall send a certified copy of every decree for divorce nullity, or dissolution of marriage, to the Registrar of Marriages of the place at which the marriage is registered.

(2) The said certified copy shall be sent as soon as possible after the expiration of three months from the date of the decree, or if an appeal therefrom is pending, as soon as possible on receipt of a certified copy of the judgment and decree of the Appeal Court and in accordance therewith.

447. Practice and procedure regulated by the Code and rules. In all other respects the practice and procedure of the Court shall be regulated by the provisions of the Code and the other provisions of these rules.

CHAPTER XXIV RULES UNDER THE GUARDIANS AND WARDS ACT, 1890

448. Title of Proceedings. All proceedings under the Guardians and Wards Act, 1890, (hereinafter in this chapter called "the Act") shall be entitled in the matter of the minor.

Appointment of Guardian

449. Form of application. An application under section 10 of the Act for the appointment of a guardian or for a declaration that a person is the guardian of a minor, shall be by petition in Form No. 36 in Appendix A. Such petition shall be registered and numbered as a miscellaneous application.

450. Contents of application. The application shall, in addition to the particulars required by section 10 of the Act, state whether the minor is entitled to any property absolutely or subject to the rights or interests of any other person and whether any property is subject to any and what incumbrance.

451. Where father of minor is living. Where the father of a minor is living and is not proposed as guardian, the application shall also state the facts relied on as showing that he is unfit to act as guardian of the minor or that he consents to the application.

452. Form of Notice. The notice required by section 11 of the Act shall be in Form No. 37 in Appendix A.

453. Copy of application to Court to Wards. Whenever the application made under section 10 of the Act states that the property of the minor consists of land or any interest in land, of which the Court of Wards could assume superintendence, a copy of the application shall be sent free of charge to the Court of Wards.

454. Procedure in appointing or declaring guardian. The Court shall in all cases, except for reasons to be recorded, examine the applicant and the proposed guardian, if the latter is not the applicant, as to the age of the minor and the competency and fitness of the proposed guardian and as to the necessity of the proposed appointment. The Court shall also as far as possible, satisfy itself that the proposed guardian has no interest opposed to that of the minor and where the application is one for the appointment of a guardian of the minor's person, that he is in a position to take proper care of the minor.

455. Security by guardian. The security bond required by section 34 of the Act shall be in Form No. 38 in Appendix A. The amount of such security shall ordinarily be equal to the value of the movable property and to twice the amount of the annual rents, profits or other income of movable and immovable property to be received or accounted for by the guardian.

456. Time for furnishing security order conditional. Where security is required, the Court shall fix a time within which such security shall be furnished, and the order of appointment or declaration shall be made conditional on the furnishing of the security.

457. Form of certificate of guardianship. Upon the appointment or declaration of a guardian a certificate of guardianship shall be issued in Form No. 39 in Appendix A. But where security is required, the certificate shall not issue until the security is furnished.

458. Form of Register. The appointment or declaration of a guardian shall be entered in a register in Form No. 6 in Appendix B, and the particulars therein prescribed shall be entered from time to time as occasion requires.

459. Directions at the hearing. At the hearing the Court may determine the amount to be allowed for the maintenance and education of the minor and the amount, if any, to be allowed to the guardian as his remuneration, and may also give any special directions as to the powers to be exercised by the guardian.

460. Form of statement filed under Section 34(b). The statement provided in section 34 (b) of the Act shall be in Form No. 40 in Appendix A.

461. Marriage of minor girl. When the minor is an unmarried girl, the Court shall require that the minor shall not be married without previous permission of the Court; and shall satisfy itself before sanctioning any proposal for a minor's marriage that it is a fit and proper one.

Interlocutory Applications

462. Subsequent applications to be interlocutory. Every application under the Act subsequent to the appointment or declaration of the guardian of a minor shall be by interlocutory application and rules 73 to 76 shall, so far as may be apply to such application.

Application to deal with immovable property of a minor

463. Application to deal with immovable property of a minor. An application for leave to deal with immovable property of a minor by way of sale, mortgage, lease or otherwise shall state concisely the substance of the order prayed for and shall be verified.

464. Sale of property. If leave to sell is granted, the Court may, if it thinks fit, direct the sale to be by public auction in such manner and on such terms as it may deem fit.

465. Payment into Court of proceeds of sale. If a particular sale or other disposition of property is authorised, the Court may direct that the instrument of transfer be brought into Court for approval and that the proceeds or any portion, thereof be paid into Court for disposal in accordance with such further directions as the Court may give.

Accounts

466. Guardian to keep accounts. The Court shall direct the guardian to keep such accounts as may be deemed necessary having regard to the extent and circumstances of the estate.

467. Time for submitting and period of accounts. In the absence of any direction to the contrary by the Court, the accounts to be kept by the guardian shall be for the year beginning with the 1st Aril and ending with the 31st March, and the Court shall require the guardian to submit on or before the 30th April in each year after the date of the appointment copies of the accounts kept by him during the preceding year: provided that the Court may in all cases call for the accounts at any time it shall think fit so to do.

468. Inspection and audit of accounts. The copies submitted under rule 467 shall be exhibited and preserved with the record of the main petition and shall be open to inspection, with the permission of the Court, by persons legitimately interested in the same on the payment of the fee prescribed by rule 162 of Chapter XIV of the Appellate Side Rules. The Court should ordinarily cause copies of the accounts submitted under rule 467 to be audited by the Nazir or such other officer as it may appoint, and in any case where the accounts are difficult and complicated, it may order such accounts to be audited by a registered accountant enrolled on the Register of Accountants, maintained by the Central Government under the Auditors Certificate Rules, 1932, at the cost of the minor's estate. The report of the Auditor shall in all

cases be submittal to the Court. The Court may allow such fees to the Auditor as it thinks fit. In the case of the Nazir or other officer of the Court, such fees shall be credited to Government.

469. Where minor attains majority before 31st March in following year. When at the audit of accounts under rule 468 it appears to the Court that the ward will attain majority at a date before the 31st March in the following year, it shall direct the guardian to furnish accounts up to such date and shall fix a definite date for considering such accounts and shall issue notice to the ward in Form No. 41 in Appendix A.

470. Order under sections 32 and 43 (1) of the Act re: investment of surplus monies etc. (1) The Court shall in all proper cases consider the propriety of making orders under section 32 and 43 (1) as to (a) investment of surplus money, (b) borrowing of money by the guardian on behalf of his ward, and (c) sale or retention of ornaments or other valuable movables.

(2) When the court passes an order as to investment, it shall ordinarily direct it to be made in securities mentioned in clauses (a), (b) (bb), (c) and (d) of section 20 of the Indian Trusts Act, 1882, or rule 959, or in the Government Savings Bank or in deposit with the Imperial Bank.

(3) When the Court permits investment to be made in any other securities, it shall record its reasons for so doing.

Discharge or Removal of Guardian

471. Discharge or removal of guardian. An application for the discharge or removal of a guardian shall, except where the minor has attained majority, para for the appointment of a guardian in place of the guardian to be discharged or removed. Except where the minor has attained majority, notice of the application shall be given to all parties to the main petition and to all persons interested in the property of the minor.

472. Guardian not to be discharged till accounts passed. Unless the Court for reasons recorded in writing otherwise orders, a guardian shall not be discharged from his liabilities until he has filed his accounts and they have been passed and until he has paid into Court any balance shown in the final account as due from him.

Allowance to Guardians

473. Allowance to guardians. Except for special reasons to be recorded in writing, no remuneration shall be allowed to a guardian for work or service performed by him in connection with the custody or the care of the person or the general control or management of the property of a minor. When remuneration is allowed, it shall not exceed in amount the remuneration usually paid for such work or service.

474. Administration fees if Nazir appointed guardian of property of minor. When the Nazir or other officer of the Court is appointed a guardian of the property of a minor, administration fees shall be charged as provided in rule 84, and credited to Government.

475. Costs. The cost of any application with respect to the person or the property of the minor may, if the application is for his benefit, be ordered to be paid out of the income of his property

or, if that is insufficient, out of capital monies or monies realized by sale or mortgage of any property of the minor authorized by the Court for this purpose.

476. Rules may be relaxed for estates smaller than Rs.500 in value. These rules shall be applied strictly only in the cases of estates exceeding five hundred rupees in value. For smaller estates the Court may relax these rules so far as may seem desirable in each particular case. These rules should be applied, with necessary modifications, also to ex officio guardians.

CHAPTER XXV

RULES REGARDING REFERENCE AND APPLICATION UNDER SECTION 66 OF THE INDIAN INCOME TAX ACT, 1922

References under section 66 (1)

477. Form of reference. (1) All references under sub section (1) of section 66 of the Indian Income tax Act, 1922 (hereinafter in this Chapter called "the Act"), shall set out clearly and distinctly the questions of law on which opinion of the Court is required and shall state concisely in paragraphs numbered consecutively such facts and refer to such documents as may be necessary to enable the Court to decide the questions referred.

(2) They shall be addressed to the Registrar (O.S.), and shall be accompanied by three copies of the statement of the case drawn to and of the documents referred to therein, and also by a memorandum setting forth the address of the assessee to whom notice is to be given of the reference.

478. Notice of hearing to assessee and Commissioner. A reference under sub section (1) of section 66 of the Act shall be numbered and registered as a civil reference. The Registrar (O.S.), shall fix a day of hearing and cause a notice to be issued to the assessee concerned and to the Commissioner.

Applications under section 66(2) or (3)

479. Form of application. An application under sub section (2) or (3) of section 66 of the Act shall be by petition which shall set out concisely in paragraphs numbered consecutively the material facts, the proceedings that have taken place before the income tax Officers, a statement of the question or questions of law upon which the case is to be stated, and shall pray for an order requiring the Appellate Tribunal to state the case and refer it to the Chief Court, and shall be duly verified. It shall be presented to the Deputy Registrar.

480. Copies to be filed. With the petition shall be filed a spare copy thereof and a certified copy of the order of the Appellate Tribunal disposing of the case.

481. Petition to be registered. Such petition shall be numbered and registered as a miscellaneous application.

482. Registrar to place it for admission. The Registrar (O.S), shall place such petition before a Bench appointed by the Chief Judge for admission.

483. Service of notice on admission. Where the petition has been admitted, the Registrar (O.S.) shall fix a day for hearing and issue a notice to the Commissioner.

484. Paper Book. All references under sub section (1) and all applications under sub section (2) and (3) of section 66 of the Act shall, together with their enclosures, be typed at the expense of the Commissioner or the applicant, as the case may be, and bound in book form. Three copies of the paper book shall be filed with the Registrar (O.S.), two for the use of the judges and one for the Commissioner or he applicant, as the case may be, at least 7 days before the hearing.

485. Notice to Appellate Tribunal if Court requires case to be stated. In the event of the court requiring the Appellate Tribunal to state a case, notice of such order of the Court together with a copy of it specifying the question or questions of law on which the case is to be stated shall be sent by registered post to the Registrar, Appellate Tribunal.

486. Omitted.

487. Omitted.

488. Omitted.

489. Omitted.

General

490. Constitution of Bench to hear references and applications. All references and all applications under section 66 of the Act shall be heard by a Bench appointed by the Chief Judge under section 66 A of the Act.

491. Copy of judgment to be sent to Registrar, Appellate Tribunal. In the event of the said reference being answered by the Chief Court, a copy of the judgment delivered by the Court shall be sent by registered post to the Registrar, Appellate Tribunal.

492. Costs of reference or application. When the Court at the hearing of a reference or an application allows costs, such costs shall be taxed on the scale prescribed in Chapter VIII in Appendix C, unless the Court gives any special direction in the matter.

CHAPTER XXVI

RULES UNDER THE INDIAN OATHS ACT, 1873

493. Form for witnesses. The following forms of oaths and affirmations are prescribed under section 7 of the Indian Oaths Act, 1873:

(1) Hindus and Muhammadans shall be required to repeat the following words .

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth."

(2) Parsis shall be required to repeat with shoes on their feet and the right hand on the open Zend Avesta the following words:-

"I swear in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth. Manasni, Gavasni, Kunasni,

(3) Jews shall be required to hold the Hebrew Testament in the right hand and to repeat the following words:

"I swear that what I shall state shall be the truth, the whole truth and nothing but the truth. So help me God", and shall be required to kiss the book.

(4) Christians shall be required to hold the New Testament in the right hand and to repeat the following words:

"I swear that what I shall state shall be the truth the whole truth and nothing but the truth. So help me God", and shall be required to kiss the book.

494. Form for interpreters, and jurors. Oaths and affirmations shall be administered to interpreters in similar forms with substitution of the words:

"I will well and truly interpret and explain all questions put to and evidence given by the witness", and to jurors with substitution of the words:

"I will well and truly try the case submitted to the Jury and return a true verdict according to the evidence."

CHAPTER XXVII
RULES UNDER THE TRANSFER OF PROPERTY ACT, 1882

495. Deposit of money due on mortgage. Every deposit under section 83 of the Transfer of Property Act, 1882 (hereinafter in this Chapter called the Act), shall be accompanied by a verified petition stating the facts in connection with the mortgage and the amount due for principal and interest. Such petition shall be registered as a miscellaneous application and the petition by a mortgagee under section 83 of the Act shall be entitled in such miscellaneous application.

496. Deposit of costs. Unless otherwise ordered, there shall be paid into Court, in addition to the sum deposited under section 83 or any subsequent section, a sum sufficient to provide for the issue and service of notices by the Court and for the mortgagee's costs of obtaining payment out of Court and also when such payment is made under section 83 and a re transfer of the property is required a further sum to provide for the mortgagees costs of transferring the property and causing such transfer to be registered.

497. Order for payment of money into Court under S. 83. Every order for payment of money into Court under section 83 of the Act shall specify the sums to be paid and the purpose for which each sum is intended.

498. Mode of service. Subject to the provisions of sections 102 and 103 of the Act, notice under section 83 of the Act shall be served in one of the modes prescribed for service of summonses by the Code or by sending it by registered post to the address for service of the person to be served.

499. Costs of mortgagee. Where it shall appear that previous to any payment into Court under section 83 a sufficient tender was made to and refused by the mortgagee, he shall not be allowed to obtain payment of the amount deposited in Court to meet his claim without deduction of the fees and charges which the mortgagor may have incurred by reason of his payment of the money into Court nor shall he be allowed the cost of drawing out the money paid in. Except as aforesaid or when otherwise ordered, the mortgagee shall be allowed all costs properly incurred by him.

500. Court's order for paying out. On an application for payment of money out of Court under section 83 by a mortgagee who has complied with the orders of the Court and the provisions of the Act and of the rules, made in this behalf, so far as they relate to him or apply to his case, and who has, when required so to do, transferred the property and possession free from encumbrances and caused such transfer to be registered and has accounted for the document of title which were held by him, the Court shall make such order or orders as to it shall seem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

501. Enforcement of order. Every enforceable order made under section 83 may be enforced under the provisions of the Code and shall for that purpose be deemed to have been made in a suit instituted under that Code.

CHAPTER XXVIII
RULES UNDER THE POWERS OF ATTORNEY ACT, 1882.

502. Presentation of petition to the Deputy Registrar. An application to deposit a power of attorney shall be made by a petition signed by the applicant. The petition and the power of attorney and the affidavit or declaration, if any, shall be presented to the Deputy Registrar either by the petitioner in person or by an advocate of the Chief Court.

503. If presentation by both donor and donee, it may be filed forthwith. If the power of attorney be presented by or on behalf of both the donor and the donee, the Deputy Registrar may forthwith order it to be deposited.

504. In other cases notice to issue and order of Court to be obtained. (1) If the power of attorney is presented by or on behalf of the donor or the donee only, the Deputy Registrar shall receive it and issue a notice to the donee or the donor, as the case may be, to show cause within the time fixed therein why it should not be deposited.

(2) The cause shall be heard by, or if no cause be shown, the Deputy Registrar shall obtain the orders of the Chief Judge or such Judge as the Chief Judge shall appoint either generally or specially in this behalf.

(3) If the Chief Judge or such Judge as aforesaid is satisfied as to the due execution of the power of attorney, he shall make an order directing the power of attorney to be filed. He may require further evidence of such execution.

(4) If the Court is not satisfied as to the due execution of the power of attorney, it shall be returned to the petitioner.

505. Filing of powers of attorney. (1) On the order for deposit being made, the power of attorney shall be numbered and endorsed with a certificate in Form No. 42 m Appendix A and placed on the file of instruments deposited under the Powers of Attorney Act, 1882; and a receipt shall be given for it.

(2) The files shall be kept in a safe.

506. Power of attorney filed when returned. (1) No power of attorney which has been filed shall be returned or otherwise allowed to pass out of the custody of the Deputy Registrar, except in pursuance of an order of the Court.

(2) For every power of attorney ordered to be removed from the file a certified copy shall be substituted at the expense of the person to whom the original is to be delivered, and a receipt for the original shall be taken from such person and filed.

507. Index to be kept of instruments deposited. The Deputy Registrar shall keep an alphabetical index in Form No. 7 in Appendix B of the powers of attorney ordered to be deposited in the Court.

508. Deputy Registrar to dispose of application for search, copies, etc. Applications for permission to search the Index or to inspect powers of attorney, and applications for copies or for the stamping or making of copies as certified copies shall be made to, and be disposed of by the Deputy Registrar.

509. Fees. The following fees shall be paid in Court fee tables:-

Rs. a. p.

(1) For application to deposit a power of attorney 1 0 0

(2) For filing a power of attorney 2 0 0

(3) For application for search 1 0 0

(4) For a certified copy or for authentication of a copy presented as under:-

(a) for copying or comparing per folio of 90 words. 0 8 0

(b) sealing 2 0 0

CHAPTER XXIX
CROWN SIDE RULES
Constitution of Court and Sittings

510. Jurisdiction to be exercised by a single Judge. The Sessions Court jurisdiction of the Chief Court shall unless the Chief Judge otherwise directs, be exercised by a single Judge.

511. Cases to be tried by Judge or Judges nominated by Chief Judge. Cases to be tried by the Chief Court shall be tried on the Crown Side according to the provisions of the Code of Criminal Procedure 1898, before such Judge or Judges as the Chief Judge shall nominate.

512. Sittings of Sessions. Subject to the provisions of section 334 of the Code of Criminal Procedure, 1898, the Court of Session shall sit daily (Sundays and Court holidays excepted), unless the presiding Judge otherwise directs.

Clerk of the Crown

513. Clerk of the Crown. The Registrar, Appellate Side, or in his absence the Registrar (O.S.), shall ex officio be the Clerk of the Crown.

514. Clerk of the Crown to fix a date for the trial. On receipt of the record, the Clerk of the Crown shall fix a date for the trial. He shall also fix dates in case in which the trial has been adjourned by the Court without date for further hearing.

Vakalatnamas

515. Vakalatnamas. (1) Vakalatnama shall be filed by all pleaders, as defined in the Code of Criminal Procedure, 1898, (except Barristers and Advocates), appearing on behalf of either the prosecution or the defence in all classes of cases, including appeals and revisional or miscellaneous applications: Provided that no vakalatnama shall be necessary in the case of-

(a) Advocate General for Sindh;

(b) Public Prosecutor for Sindh and Assistant Public Prosecutor for Sindh appearing on behalf of the Crown;

(c) Pleaders appointed by the Court in any case to defend persons who are too poor to engage counsel for themselves;

(d) Pleaders appearing as amici curiae.

(2) Where a sessions trial is not conducted by the Public Prosecutor or Assistant Public Prosecutor, a written authority shall be filed by the pleader appointed by the District Magistrate.

Jurors

516. Qualifications of jurors. Except as hereinafter provided, every male person who is

- (i) between the ages of 21 and 60,
 - (ii) a British subject or a subject of the United States of America,
 - (iii) able to understand and speak the English language,
 - (iv) resident within the Municipal limits of the City and Cantonments of Karachi and Manora, and
 - (v) is in the receipt of an income of Rs.100 a month and upwards or pays income tax,
- is qualified and shall be liable to serve as a juror.

517. Disqualifications of jurors. The following persons shall not be eligible to serve as jurors;

- (1) Persons who have been convicted and sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months or to transportation, such sentence not having been subsequently reversed or quashed or the offender pardoned;
- (2) persons incapacitated in the opinion of the Clerk of the Crown from serving by insanity or imbecility of mind, or by deafness, blindness, or any other permanent infirmity;
- (3) persons holding any office in or under the Chief Court.

518. Persons exempted from serving as jurors. 1****The following persons are exempt from liability to serve as jurors, namely:

- (i) Clergymen in Holy Orders, Priests; and dissenting Ministers following no secular employment except that of a School Master;
- (ii) advocates and pleaders actually practising;
- (iii) physicians, surgeons, and medical practitioners actually practising;
- (iv) all engineers in charge of mills who by the rules of Government are obliged to remain in charge of machinery; and
- (v) such other persons whose absence from their employment while serving on juries may, in the opinion of the Clerk of the Crown, be likely to be prejudicial to the public service.

1*** The Clerk of the Crown shall keep a list of persons exempted from liability to serve as jurors under sub rule (1) and by the Provincial Government under section 313 (4) of the Code of Criminal Procedure, 1898. Such persons shall not be entered in the list of jurors:

519. Clerk of the Crown to make out a list of qualified men before 1st April. The Clerk of the Crown shall, before the 1st day of April in each year, prepare and make

out a true list of all male persons qualified and liable to serve as jurors in alphabetical order, containing in separate columns opposite to each man's name his proper style, occupation, place of residence and religious profession: Provided always that in stating the religious profession of any person it shall be sufficient to say Christian, Muhammadan, Hindu, or the like, without specifying the particular Church or sect of the person.

520. Upon completion of such list, Clerk of the Crown to make out lists of Common and Special Jurors. Upon the completion of such list the Clerk of the Crown shall, if need be, make inquiry and shall adjudge and determine who, out of the persons entered in such list, are to serve as Common and Special Jurors respectively, and shall place in a separate list the names of all persons chosen by him to serve as Special Jurors, not exceeding the number prescribed, and shall thereafter proceed and deal with such list as provided in the Code of Criminal Procedure, 1898.

521. Number of persons in the Special Jurors List. The names of not more than 2[seven] hundred persons shall, at any one time, be entered in the Special Jurors' List.

522. Names of persons to be numbered consecutively. The names of all jurors in the lists prepared by the Clerk of the Crown shall be numbered consecutively.

523. Publishing of notice for inspection of the Jury List and for objections (if any) to be taken. When preliminary lists of Jurors have been published under section 314 of the Code of Criminal Procedure, 1898, a notice shall be given in the official Gazete and in reputable Karachi newspapers that such lists are open for inspection at the office of the Clerk of the Crown and that all objections to the lists will be heard and determined by the Clerk of the Crown at a date and hour to be specified in the notice.

The Clerk of the Crown shall sit at such specified date and hour and hear and dispose of the objections, if any, taken by the persons interested in the amendment of the list and there shall be no appeal from or review of his decision.

524. Original lists to be kept by the Clerk of the Crown and inspection to be given. The Clerk of the Crown shall keep, the said lists or a true copy thereof and shall allow the same to be perused by any person at any reasonable time without charge.

525. Correction of mistakes in the lists by Clerk of the Crown. If at any time after the making of such lists it should appear that any person placed thereon has been described by a wrong name or that his place of residence has been wrongly stated or that there is any mistake in the said list, the Clerk of the Crown may, on being satisfied of the truth of the matter, correct such wrong description or mistake: Provided that no correction shall be made in either of such lists which would have the effect of placing on the list of jurors the name of any person who was not intended to be placed thereon at the time the same was prepared.

526. Clerk of the Crown to cause to be made out a list of Jurors to serve on the Juries. The Clerk of the Crown shall, not less than fourteen days before the commencement of each Sessions, cause to be made out a list of as many Jurors to serve on the Special and Common Juries respectively as the Clerk of the Crown considers necessary.

527. Summoning of jurors. Any person liable to serve on any Jury may be summoned in the manner following, that is to say, the Clerk of the Crown may make out a summons and such summons being put in an envelope having the words "Jury Summons" legibly written or printed on the same side as the address, may be sent by registered post at least 10 days before the date of the commencement of the Sessions. The production by the person who posted such summons of the sender's receipt shall be evidence of the summons having been duly delivered at the address of the person whose name and address is thereon endorsed.

528. Names of jurors excused attending at one session may be inserted in the list for a subsequent session. Any person who has been summoned as a Juror or any Session may apply to the Clerk of the Crown to cause him to be excused from attendance as a Juror either generally or at that particular Session. Such application shall be made at least 1[four] days before the date fixed for the commencement of the Session, and shall specify the Grounds upon which the application is made. The Clerk of the Crown shall, 1*** **** **** **** **** dispose of the same or if he considers it necessary or desirable bring them before the Judge presiding at the Session. Such orders as may be passed on the application shall be communicated by the Clerk of the Crown to the respective applicants. If the Judge or the Clerk of the Crown shall think fit to excuse any of the applicants from attendance at the particular Session, he may do so unconditionally or on condition of his serving at the next or some subsequent Session to be fixed, and any such conditional order shall operate as an authority to the Clerk of the Crown to include the name of such person in the list for such subsequent Session.

529. Additional jurors may be summoned. If, during the continuance of any Sessions, it appears that the number of persons so summoned is not sufficient, the Clerk of the Crown shall summon, with all convenient speed, such additional number of persons liable to serve as, jurors as may be necessary to attend on such days as the Court shall appoint.

530. Panels of Special and Common juries to be delivered to the Court. The Clerk of the Crown shall at the commencement of each Sessions deliver to the Court a. panel of the persons summoned to serve on the Special Jury as aforesaid or, a panel of the persons summoned to serve on the Common Jury as aforesaid, and nothing in these rules contained shall be construed to take away from the Court such control as it may legally exercise on any panel delivered by the Clerk of the Crown.

531. Mode of choosing Jury. The name of each person, who shall be summoned as aforesaid to serve on the Jury, with the place of his abode and occupation shall be written on a separate piece of paper or card such pieces of paper or card being all as nearly as may be of equal size and shall be put by the Clerk of the Crown in a box and delivered by him to the presiding Judge at the commencement of the Sessions. The Judge shall in the presence of the prisoner about to be tried draw from the said box in open Court the said pieces of paper or card indiscriminately one after the other and the names of the first nine persons that shall be drawn out and appear and shall not be challenged or set aside or excused shall form the Special or Common Jury, as the Case may be, to try such prisoner: Provided that on the trial of a person claiming to be tried by a mixed Jury under the provisions of section 275 of the code of Criminal Procedure, the Judge shall put back into the box the papers or cards drawn by him on which appear the names of persons who are not European or Indian British subjects according as the person to be tried is an European or Indian British subject, respectively, until there are in the Jury box five such

European or Indian British subjects, as the case may be, who shall not have been challenged, set aside, or excused, after which he shall complete the number of the Jury by drawing out the paper or cards indiscriminately as in ordinary cases.

532. Note in the list of jurors summoned to serve at the Sessions. After the close of each Sessions the Clerk of the Crown shall note in the margin of the lists of Jurors kept by him against the names of the Special and Common Jurors who have been summoned to serve at the Sessions the fact that they have been so summoned. He shall also note against the name of any Juror who has been specially exempted by order of the presiding Judge from serving again for a period, the fact of such exemption and the length of the period.

Processes

533. Issue and service of process. (1) All processes shall be sealed and issued from and returned into the office of the Clerk of the Crown.

(2) Summonses to jurors shall be signed by the Clerk of the Crown. Summonses to witnesses to give evidence or to cause to produce a document shall be signed by the Sheristedar on the Crown Side. Remand warrants shall be signed by the Deputy Registrar. Warrants for the execution of any sentence shall be signed by the Judge who passed the sentence or his successor in office.

Other processes, forms of which are given in Appendix A, shall be signed by the officer prescribed in the forms.

(3) Summonses to witnesses may be served through the City Magistrate or the Committing Magistrate, as the case may be. But in urgent or special cases summonses to witnesses and jurors may be served by the Nazir of the Chief Court.

534. Witnesses residing beyond certain limits how summoned. No summons shall be issue to compel the attendance as a witness of any person residing at the time beyond the limits of the Sessions Jurisdiction of the Chief Court, except on an order of the Court.

535. Attendance of witnesses under recognizances. In cases where witnesses have been bound over by recognizances or summoned to attend and give evidence at the trial of any person committed by a Magistrate to the thief Court, it shall not be necessary to issue any summons to such witnesses, but the Clerk of the Crown shall in all such cases in sufficient time before the day appointed for the trial send a letter to the Magistrate by whom the committal was made, stating the day appointed for the trial and forwarding a list of the witnesses from whom recognizances have been taken and of those to whom summonses have been issued, and requesting the Magistrate to cause the witnesses to be served with a notice to attend on the day in sufficient time in order to ensure their attendance on that day.

536. Process for service. The provisions of rule 134 shall apply mutates mutandis for summoning gazetted officers and persons of high rank as witnesses before the criminal sessions of the Chief Court.

537. Payment of expenses to witnesses. Subject to the provisions of rule 212, witnesses shall be aid their expenses at the rates prescribed in Chapter III in Appendix C. Certificates showing the number of days and attendance shall, if required, be granted in the case of public officers or Railway servants.

Recording of Evidence, etc

538. Recording evidence of witnesses. (1) The provisions of rules 246 to 255 shall apply, so far as may be, to the recording of evidence of witnesses and to the exhibiting of documents in all sessions trials in the Chief Court.

(2) Originals of public records shall not ordinarily be admitted in evidence where certified copies are obtainable and will answer the required purpose.

539. Recording of examination of accused, etc. All questions put to the accused and the answers thereto, all oral statements made by the accused, all questions put to or by the jury with the answers thereto shall be recorded in English verbatim by, or in the presence and under the superintendence of the Judge.

540. Recording of charge to the jury. (1) The charge to the jury shall be recorded in English in shorthand. The shorthand writer shall record the charge to the jury in books the pages of which shall be machine numbered and the first and last pages of which shall be sealed with the seal of the Court. He shall sign the shorthand notes made by him in token of their correctness and shall lodge the same with the clerk of the Crown.

(2) The Shorthand writer shall furnish forthwith to the Judge a transcript of the shorthand notes taken by him which after correction, if necessary, by the Judge shall be preserved as part of the record.

541. Diary. (1) In trials before the Chief Court in its Sessions Court Jurisdiction a diary shall be kept in Form No. 43 in Appendix A.

(2) In other proceedings before the Chief Court in its Session Court Jurisdiction, a diary shall be kept in the same form as in suits on the Original Side.

(3) The diary under sub rules (1) and (2) shall be written legibly by the Sheristedar or one of his assistants attending in Court. Diary under sub rule (1) shall be signed by the Clerk of the Crown and under sub rule (2) by the Sheristedar or his assistant as the case may be.

542. Duties of Sleristedar. Subject to the provisions of this Chapter, the Sheristedar on the Crown Side shall, so far as may be, perform such duties on the Crown side as the Sheristedar is empowered to perform on the Civil Original Side.

543. Registers. The following Registers shall be kept on the Crown Side:

(1) Register of Sessions Cases.

(2) Register of Criminal Appeals in the Sessions Court Jurisdiction.

(3) Register of Criminal Revision and Miscellaneous Applications in the Sessions Court jurisdiction.

(4) Register of Fines.

544. Report to Government of misconduct by police. The Judge may require the Clerk of the Crown to report to Government any instance of misconduct or abuse of authority by the police which has come to his notice.

Appeals

545. Provisions of Chapter V of Sindh Chief Court Rules, (A.S.) to apply. The provisions of Chapter V of the Sindh Chief Court Rules, Appellate Side, shall apply, so far as may be, to all appeals and applications for revision filed in the Sessions Court Jurisdiction of the Chief Court.

Revision

546. Time for application for exercising revisional jurisdiction. An application for revision shall ordinarily be made within 30 days from the date of the decision complained against, exclusive of the time required for obtaining copies.

Bail

547. Application for bail. (1) Every application for bail shall be by petition and shall state when, by whom, for what offence, and under what circumstances the prisoner was committed to and where he is detained in custody, and the grounds for the application.

(2) The petition shall be accompanied, if the accused is committed to the Chief Court, by a copy of the committal order; or, if he is convicted by a magistrate and sentenced to imprisonment, by a copy of the Judgment and memorandum of appeal unless the Court in its discretion dispenses with the same.

548. Copy of bail application to be sent to public Prosecutor and his receipt filed. A copy of every application for bail shall be sent by the applicant to the public Prosecutor for Sindh and his receipt shall be appended to the application for bail filed in Court.

549. Application how disposed of. Applications for bail may be disposed of by a Judge in Chambers, and shall ordinarily be made to the Judge nominated to take the ensuing Sessions. When the Court of Sessions is sitting, the application shall be made to that Court.

550. Order granting bail to order Nazir or Magistrate to take bail. (1) Whenever any person is directed to be released on bail, the Judge shall order such bail to be given before the Nazir or before such Magistrate as shall appear proper to the Judge.

(2) Where such bail has been given to the satisfaction of the Nazir, the order for release, which shall be in Form No. 58 in Appendix A, shall be signed by the Registrar, Appellate Side, and forwarded to the Superintendent of the Jail for compliance.

551. Nature of security. Security for the release of a prisoner on bail may be by way of deposit of title deeds, Government or other securities or cash or by way of personal security as the Clerk of the Crown, subject to the general or special order of the Judge, shall direct.

CHAPTER XXX
RULES UNDER THE PARTITION ACT, 1893

552. Rules 337 to 351 to apply to sales under Partition Act. The provisions of rules 337 to 351 shall, so far as the same are applicable, apply to a sale under section 7 of the Partition Act, 1893: Provided that rule 343 shall not apply to the said sale and the Court may grant leave to any party to bid for and purchase the property or any part thereof on such terms as the Court thinks fit.

CHAPTER XXXI
RULES UNDER THE PRESIDENCY TOWNS INSOLVENCY ACT,
1909
Preliminary

553. Interpretation of terms. (1) In this Chapter unless the context or subject matter otherwise requires,

- (i) "Act" means the Presidency towns Insolvency Act, 1909;
- (ii) "Court" includes the Registrar when exercising the powers of the Court pursuant to the Act or these rules;
- (iii) "creditor" includes a corporation and a firm of creditors in partnership;
- (iv) "debtor" includes a firm of debtors in partnership and includes any debtor proceeded against under the Act, whether adjudged insolvent or not;
- (v) "Judge" means the Judge for the time being assigned under section 4 of the Act for the exercise of the original Jurisdiction of the Court in insolvency proceedings;
- (vi) "Registrar" means Registrar (O.S.), and includes in his absence the Registrar, Appellate Side, and includes also the Deputy Registrar and other officer of the Court appointed to exercise 1 or any of the powers mentioned in section 6 of the Act and to perform the functions assigned to the Registrar (O.S.), under this Chapter;
- (vii) "scheme" means scheme of arrangement pursuant to the Act;
- (vii) "these rules" means rules in this Chapter;
- (ix) "writing" includes type writing and print, and "written" includes typed or printed.

(2) The provisions of section 2 of the Act shall apply to these rules and any other terms and expressions defined by the Act shall, in these rules, have the meanings thereby assigned to them.

COURT PROCEDURE
Court and Chambers

554. Matters to be heard in open Court. The following matters and applications shall be heard and determined in open Court, namely:

- (a) the public examination of debtor;
- (b) applications to approve a composition or scheme;
- (c) applications for orders of discharge or certificates of removal of disqualification.
- (d) applications to set aside or avoid any settlement, conveyance, transfer, security or payment, or to declare for or against the title of the Official Assignee to any property adversely claimed;
- (e) applications for committal of any person to prison for contempt;
- (f) appeals against the rejection of a proof or applications to expunge or reduce a proof.

Any other matter or application may be heard and determined in Chambers.

555. Adjournment from Chambers to Court and vice versa. Subject to the provisions of the Act and these rules, any matter or application may, at any time, if the Judge (or, as the case may be, the Registrar) thinks fit, be adjourned from Chambers to Court or from Court to Chambers; and if all the contending parties require any matter or application to be adjourned from Chambers into Court it shall be so adjourned.

Proceedings

556. Proceedings how entitled. (1) Every proceeding in Court under the Act shall be entitled Insolvency Jurisdiction with the name of the Court and of the matter to which it relates.
(2) All applications and orders shall be entitled ex parte the applicant.

(3) The first proceeding in every matter shall have a distinctive number assigned to it by the Registrar, and all subsequent proceedings in the same matter shall bear the same number.

(4) Form No. 59 in Appendix A shall be used.

557. Publication notices. In every case in which the Act or these rules require any notice to be published, the publication shall be made in the Office Gazette and in a daily newspaper or advertiser having circulation in Karachi, unless otherwise provided by these rules or ordered by the Judge.

558. Filing, Gazetting, & c. (1) Whenever the Gazette of India and the Sindh Govt. Gazette, contain any advertisement relating, to any matter under the Act, the Registrar shall file with the proceedings in the matter a memorandum (which shall be in Form No. 60 in Appendix A) referring to and giving the date of such advertisement.

(2) In the case of an advertisement in a local newspaper, the Registrar shall in like manner file a copy of the paper and a memorandum (which shall be in Form No. 60 in Appendix A) referring to and giving the date of such advertisement.

Discovery of debtor's property

559. Applications for discovery. Every application to the Court under section 36 of the Act shall be in writing and shall state shortly the grounds on which it is made and shall, unless it is made by or on behalf of the Official Assignee or a Special Manager, be verified by affidavit.

Appropriation of Pay, salary, etc.

560. Application for an appropriation order under section 60. Where the Official Assignee or any creditor who has proved his debt applies to the Court for an appropriation order under section 60 of the Act, notice of the application shall be given to the insolvent. Such notice shall specify the time and place fixed for hearing the application and shall state that the insolvent is at liberty to show cause against such order being made. The notice shall be in Form No. 61 in Appendix A.

561. Communication of order under section 60. Where an order is made under sub section (1) of section 60 of the Act, a copy thereof shall be sent by the Registrar to the head of the department under which the pay or salary is enjoyed. In case of an order under sub section (2) of that section, the Registrar shall give to the Official Assignee a copy thereof for communication to the person under whom such salary or income is enjoyed. (Form No. 62 in Appendix A).

562. Review of order. Where an order has been made for the payment by an insolvent or by his employer for the time being, of a portion of his income or salary, the insolvent may upon his ceasing to receive a salary or income of the amount he received, when the order was made, apply to the Court to rescind the order or to reduce the amount ordered to be paid by him to the Official Assignee.

Warrants, Arrests and Commitments

563. To whom warrants addressed. A warrant of seizure or a search warrant or any other warrant issued under the provisions of the Act shall, unless it is addressed to a Police Officer, be addressed to the Nazir of the Court.

564. Production of insolvent before Court & etc. When an insolvent is arrested under a warrant issued under section 34 of the Act within the local limits of the original civil jurisdiction of the Court, he shall be produced with all convenient speed before the Court: if such arrest has been effected outside such local limits, he shall be given into custody of the officer in-charge of the Karachi Civil Jail, who shall produce such insolvent before the Court as it may from time to time direct and shall safely keep him until such time as the Court shall otherwise order, and any books, papers, moneys, goods and chattels in the possession of the insolvent which may be seized, shall forthwith be lodged with the Official Assignee.

565. Suspension of issue of committal order. Where an order of committal is made against a debtor or against a receiver or special manager for disobeying any order of the Court to do some particular act or thing, the Court may direct that the order of committal shall not be issued, provided that the insolvent, receiver or special manager, as the case may be, complies with the previous order within a specified time.

566. Committal of contumacious insolvent or witness. (1) If an insolvent or a witness examined before the Registrar refuses to answer to the satisfaction of the Registrar any question which he may allow to be put, the Registrar may report such refusal in a summary way to the Judge and upon such report being made, the insolvent or witness in default shall be put in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report of the Registrar shall be in writing but without affidavit and shall set forth the question put and the answer (if any) given by the debtor or witness.

(3) The Registrar shall before the conclusion of the examination of which the default in answering is made, name the time when and place where the default will be reported to the Judge; and upon receiving the report, the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

(4) The report of the Registrar may be in Form No. 70 in Appendix A.

Costs

567. Awarding costs. (1) The Court in awarding costs may direct that the costs of any matter or application shall be taxed and paid as between party and party or as between advocate and client or that full costs, charges and expenses shall be allowed or the Court may fix a sum to be paid in lieu of taxed costs.

(2) In the absence of any express direction, costs of an opposed motion shall follow the event and shall be taxed as between party and party.

(3) The fees, costs and expenses of and for issue and service of processes, traveling and diet expenses of witnesses, the court fees payable on appeals and applications and all other matters in the Court' Insolvency. Jurisdiction, whether original or appellate, shall, unless otherwise expressly provided by these rules or ordered by the Judge or Judges hearing the application or appeal, those prescribed for or actually payable for like matters in the Court's original or appellate civil jurisdiction, as the case may be, and shall be deposited and paid in accordance with the rules and practice of the Court by the party whose application necessitates them.

(4) for all summonses and notices sent by registered post, actual postal charges shall be charged for each cover in substitution of process fee payable under the rules.

568. Scale of costs. (1) Fees to advocates may be allowed in the discretion of the Court. Generally one or the other of the following scales shall be observed:

Taking instructions and preparing petitions, schedule accounts, etc., of an insolvent preliminary to hearing application for discharge.

Taking instructions and preparing petitions, etc., from and on behalf of a creditor preliminary to hearing application for discharge.

Attendance in Court at an effective hearing of the case, per diem. Scale

1 2 3

Rs. Rs. Rs.

100

50

30

50

15

15

10

10

5

(2) Subject to express provisions in these rules as to costs of certain matters, the Judge may direct that the costs of an insolvent or of a creditor, either generally or in respect of any particular matter, shall be paid out of the insolvent's estate prior to any distribution of the estate amongst the creditors.

569. Applications for costs. Where any party to or person affected by any proceeding desires to make an application for an order that he be allowed his costs or any part of them incident to such proceeding and such application is not made at the time of the proceeding—

(1) Such party or person shall serve notice of his intended application on the Official Assignee;

(2) the Official Assignee may appear on such application and object thereto;

(3) no costs of or incident to such application shall be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceeding.

570. Priority of costs and charges payable out of assets. The assets in every matter remaining after payment of the actual expenses incurred in realizing any of the assets of the debtor shall,

subject to any order of the Court, be liable to the following payments which shall be made in the following order of priority, namely:

(i) the actual expenses incurred by the Official Assignee in protecting the property or assets of the debtor or any part thereof an expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;

(ii) the commission of the Official Assignee, and any other fees payable to or costs, charges' and expenses incurred or authorized by the Official Assignee;

(iii) the deposit or deposits lodged by the petitioning creditor pursuant to these rules;

(iv) the deposit or deposits lodged on any application for the appointment of an interim receiver;

(v) the remuneration of the Special Manager, if any;

(vi) the taxed costs of the petitioner, except such as have been spent out of the deposit made by him and which are repaid to him as such;

(vii) the remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his schedule;

(viii) any allowance made to the debtor by the Official Assignee under an order of the Court;

(ix) the Official Assignee's necessary disbursements other than actual expenses of realization heretofore provided for;

(x) the costs of any persons properly employed by the Official Assignee with the sanction of the Committee of Inspection or of the Court;

(xi) the actual out of pocket expenses necessarily incurred by the Committee of inspection subject to the approval of the Court.

571. Disallowance of costs of unnecessary petition. In any case in which after a petition for an order of adjudication has been presented by a creditor against a debtor and before the hearing of such petition the debtor files a petition and a vesting order is made on the petition of the debtor, unless in the opinion of the Court the estate has benefited thereby or there are special circumstances which make it just that such costs should be allowed, no costs shall be allowed to the debtor or his advocate out of the estate.

572. Apportionment of costs in cases of partnership. In the case of a petition for adjudication against a partnership, the costs payable out of the estates upto and inclusive of the vesting order shall be apportioned between the joint and separate estates in such proportion as the Official Assignee may in his discretion determine.

573. Costs out of Joint or separate estates. (1) Where the joint estate of any co debtors is insufficient to defray any costs or charges properly incurred before the vesting order, the Official Assignee may pay such costs or charges out of the separate estate of such co debtors

or one or more of them in such proportion as in his discretion the Official Assignee may think fit. The Official Assignee may also, as in his discretion he may think fit, pay any costs or charges properly incurred as aforesaid for any separate estate out of the joint estate or out of any other separate estate and any part of the costs or charges of the joint estate properly incurred as aforesaid which affects any separate estate out of that separate estate.

(2) Where the joint estate of any co debtors is insufficient to defray any costs or charges properly incurred after the making of the vesting order, the Official Assignee, with such consent as is hereinafter mentioned, may pay such costs or charges out of the separate estate of such co debtors or one or more of them. The Official Assignee with the said consent may also pay any costs or charges properly incurred as aforesaid for any separate estate out of the joint estate, and any part of the costs or charges of the joint estate incurred after the making of the vesting order which affects any separate estate out of that separate estate. No payment under this rule shall be made out of a separate estate or joint estate by the Official Assignee without the consent of the Committee of Inspection of the estate out of which the payment is intended to be made, or without an order of the Court.

Proceedings by Company or Co partnership

574. Public officer or agent of company. An insolvency petition against any debtor to any company or corporation duly authorized to sue and be sued in the name of a public officer or agent of such company or corporation may be presented by or sued out by any such public officer or agent as the nominal petitioner for and on behalf of such company or corporation on such public officer or agent filing an affidavit stating that he is such public officer or agent and that he is authorized to present or sue out such petition of insolvency and on his producing his power of attorney, if any for the Registrar's inspection.

Proceedings by or against firm

575. Attestation of firm's signature. Where any notice, petition or other document is signed by a firm of creditors or debtors in the firm's name, the partner signing for the firm shall add also his own signature, e.g., "B and Co. by A.B. a partner in the said firm."

576. Service on firm. (1) Any notice of petition or other proceeding shall be deemed to be duly served if it is served upon any one or more of the partners or at the principal place at which the partnership business is carried on within British India upon any person having at the time of service the control or management of the partnership business there; and such service shall be deemed good service upon the firm whether all or any of the partners are within or without British India.

(2) Where a notice to or petition against a firm is served in the manner provided by sub rule (1) every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business or in both characters, and in default of such notice, the person served shall be deemed to be served as a partner.

577. Debtor's petition by a firm. Where a firm of debtors files an insolvency petition, the same shall contain the names in full of the individual partners; and if such petition is signed in the

firm's 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.

578. Schedule. The debtors shall submit a schedule of their partnership affairs and each debtor shall submit a schedule of his separate affairs.

579. Order of adjudication against a firm. (1) An order of adjudication made against a firm shall operate as an order of adjudication individually against such of the adult partners of the firm as have been duly served individually with the notice of the application for the adjudication of the firm or have applied to be so adjudicated.

(2) Subsequent proceedings shall continue in the name of the firm so far as is practicable but applications for discharge must be made by the partners individually.

580. Acceptance of composition, etc., by joint and separate creditors. The joint creditors and each set of separate creditors may severally accept compositions or schemes. So, far, as circumstances 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.

581. Voting on composition. 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 proposals made to each such 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.

582. Adjudication and separate committees. Where a partnership is adjudged insolvent each set of separate creditors may appoint its own Committee of Inspection; but if any set of separate creditors do not appoint a separate committee, the committee, (if any) appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors.

583. Separate firms. 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 where 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.

Lunatics

584. Lunatics. Where an debtor or creditor is a lunatic not so found by a Civil Court, the Court may appoint such person as the Court shall think fit to do any act required by the Act or these rules to be done by such debtor or creditor.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE
Insolvency Petition

585. Form of insolvency petition. A debtor's insolvency petition shall be in Form No. 71 in Appendix A and a creditor's insolvency petition shall be in Form No. 72 in Appendix A.

586. Insolvent to lodge all books, & c., with the Official Assignee. (1) Every debtor, who files a petition, shall lodge forthwith in the office of the Official Assignee in addition to any books produced before the Court under section 15 (3) (a) of the Act all papers, writings and vouchers relating to his estate with a list thereof signed by himself and also a statement of his movable and immovable property; if the debtor is in jail such list and statement as aforesaid shall be forwarded by the jailor.

Certificate of Official Assignee. (2) On the debtor complying with the provisions of sub-rule (1) of this rule, the Official Assignee shall give to, the debtor a certificate certifying the same, and no order of adjudication shall be made on the petition unless such certificate is produced.

587. Deposit by petitioner. (1) Upon the presentation of a petition either by the debtor or by a creditor, the petitioner shall deposit with the Nazir the sum of Rs.50, if debtor, or the sum of Rs.75, if creditor, and such further sum as the Nazir may, from time to time, require to cover the fees and expenses to be incurred by the Nazir, and no petition shall be received unless the receipt of the Nazir for the deposit payable on the presentation of the petition is endorsed thereon.

(2) The Nazir shall account for the money so deposited to the creditor, or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor, so far as circumstances will permit, out of the proceeds of the estate in the priority prescribed by these rules.

Creditor's Petition

588. Security for costs. A petitioning creditor who is resident abroad, or whose estate is vested in a trustee, Official Assignee, Official Receiver or interim receiver under any law relating to bankruptcy or insolvency, or against whom a petition is pending under the Act, or who has made default in payment of any costs ordered by any Court to be paid by him to the debtor, may be ordered to give security for costs to the debtor.

589. Joint, petition. Where a petition is presented, by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge; but it shall be sufficient that each statement in the petition is deposed to by some one within whose knowledge it is.

590. Death of debtor before service of petition. If a debtor against whom an insolvency petition has been filed dies before service thereof, the Court may order service to be effected on the legal representative of the debtor or on such other persons as the Court may think fit.

Hearing of Petition

591. Adjudication order to be made forthwith on debtor's petition. Where a petition is filed by a debtor, the Court shall forthwith make an adjudication order thereon.

592. Proceedings on creditor's petition. A creditor's petition shall not be heard until the expiration of eight days from the service thereof: Provided that where it is proved to the satisfaction of the Court that the debtor has absconded or in any other case for good cause shown the Court may, on such terms if any, as the Court may think fit to impose, hear the petition at such earlier date as may be deemed expedient.

593. Several respondents. Where there are more respondents than one to a petition, the rules as to service shall be observed with respect to each respondent; but where all the respondents have not been served, the petition may be heard separately or collectively as to the respondent or such of the respondents as has or have been served, and separately or collectively as to the respondents not then served according as service upon them is effected.

594. Debtor intending to show cause. Where a debtor intends to show cause against a petition he shall file a notice with the Registrar specifying the statements in the petition which he intends to deny or dispute and deliver or transmit by post or otherwise to the petitioning creditor or his advocate a copy of the notice three days before the date on which the petition is to be heard. (Form No. 74 in Appendix A).

595. Non appearance of creditor. If the creditor neglects to appear on his petition; no subsequent petition against the same debtor or debtors, or any of them either alone or jointly with any other person, shall be presented by the same creditor in respect of the same act of insolvency without the leave of the Court.

596. Personal attendance of creditor when dispensed with. The personal attendance of the petitioning creditor and of the witnesses to prove the debt and act of insolvency and other material statements, upon the hearing of the petition, may, if the Court shall think fit, be dispensed with.

597. Proceedings after trial of disputed question. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt (Form No 75 in Appendix A) and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the Registrar to fix a day on which further proceedings on the petition may be had, and the Registrar, on production of the decree of the Court in which the question was tried, or a certified copy thereof, shall give notice to the petitioner or his advocate by post or otherwise of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute, or to his advocate.

598. Application to dismiss. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt and such question has been decided against the validity of the debt, the debtor may apply to the Registrar to fix a day on which he may apply to the Court for the dismissal of the petition with costs, and the Registrar, on the production of the decree of the Court in which the question was tried, or a certified copy thereof, shall give notice to both the petitioner, and debtor or to their respective advocates by post or otherwise of the time and place fixed for the hearing of the application.

Interim Receiver

599. Appointment of interim receiver. An application for the appointment of interim receiver under section 16 of the Act may be made by a creditor or by the debtor himself, and shall, as far as practicable, contain full particulars of the property which is intended to be taken possession of by the interim receiver and upon proof by affidavit of sufficient grounds for the appointment the Court may, if it thinks fit and upon such terms as may be just, appoint the Official Assignee as interim receiver of the property of the debtor or any part thereof. Such appointment shall, unless the Court otherwise directs, carry full powers under Order 40, Rule 1 of the Code.

600. Form and contents of order. The order appointing the Official Assignee as interim receiver shall be in Form No. 77 in Appendix A and shall state particulars of the property, or any part thereof, of which he is ordered to take possession.

601. Deposit. Before any such order is drawn up, if the person who has made the application is a creditor, he shall deposit with the Official Assignee a sum of Rs.85 towards the prescribed fee for the Official Assignee and such further sum as the Court shall direct for the expenses which may be incurred by him.

602. Further deposit, if necessary. If the sum of Rs.85 and such further sum so to be deposited for the expenses which may be incurred by the Official Assignee shall, prove to be insufficient, the creditor on whose application the order has been made shall, from time to time, deposit with the Official Assignee such additional sum as the Court may, on the application of the Official Assignee, from time to time, direct, and such sum shall be deposited within twenty four hours after the making of the order therefore.

If such additional sum shall not be so deposited, the order appointing the interim receiver may be discharged by the Court.

603. Repayment of deposit. If an order appointing an interim receiver is followed by an order of adjudication, the deposits made by the creditor on whose application such interim receiver was appointed shall be repaid to, him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the costs, charges and expense incurred by the interim receiver out of the proceeds of the estate in the order of priority prescribed by these rules.

604. Damages if petition dismissed. Where after an order has been made appointing an interim receiver the petition is dismissed, the Court shall, upon application to be made within twenty one days from the date of the dismissal thereof, adjudicate with respect to any damages or claim thereto arising out of the appointment, and shall make such order as the Court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

Order of Adjudication

605. Form and contents. (1) An order of adjudication on a debtor's petition under section 15 of the Act shall be in Form No. 78 and an order of adjudication on a creditor's petition under section 13 of the Act shall be in Form No. 79 in Appendix A.

Appendix A

(2) Every order of adjudication shall contain at the foot thereof a notice requiring the debtor to attend on the Official Assignee forthwith on the service thereof at the place mentioned therein. When the order of adjudication is made on a creditor's petition, there shall be stated in it the nature and date or dates of the act or acts of insolvency upon which the order has been made.

606. Transmission of copy to Official Assignee and service on debtor. (1) A copy of every order of adjudication, and order for the appointment of the Official Assignee as interim receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by the Registrar to the Official Assignee.

(2) A copy of the order of adjudication, sealed with the seal of the Court, shall be delivered to or served on the debtor or each of the debtors as soon as possible either personally or by affixing it on a conspicuous part of his last known place of business or residence or by sending it by registered post to such place of business or residence.

607. Stay of proceedings. There may be included in an order of adjudication an order under section 18 of the Act staying any suit or other proceedings against the debtor.

608. Advertisement. (1) Upon an order of adjudication being made, the Registrar shall forthwith cause notice to be published in accordance with the provisions of section 20 of the Act in the Gazette of India and in one or more issues of the Sindh Government Gazette and such other newspaper or newspapers as the Court may direct.

(2) The notices shall be in the Form No. 81 or No. 82 in Appendix A.

609. Costs of petition, & c. 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 is made, that cost of the petitioning creditor shall be taxed and be payable out of the proceeds of the estate in the order of priority prescribed by these rules.

Public examination of Insolvent and his failure to perform the duties imposed on him

610. Form of notice under section 27. The notice under section 27 of the Act shall be in Form No. 83 in Appendix A.

611. Default of debtor in attending. If the debtor fails to attend the public examination at the time and place appointed by any order for holding or proceeding with the same, and no good cause is shown by him for such failure, the Court may, upon its being proved to the satisfaction of the Court that the order requiring the debtor to attend the public examination was duly served and without any further notice to the debtor, by warrant cause him to be arrested and committed to prison for contempt of Court under section 33 of the Act. The warrant of arrest may be in Form No. 84 and the warrant of commitment may be in Form No. 85 in Appendix A.

612. Service of order and notice to creditors of examination. A sealed copy of the order appointing the time and place for holding his public examination shall be delivered to or served upon the debtor in the manner provided by rule 606 (2) and notice thereof in Form No. 86 in

Appendix A shall be served on the creditors whose names appear in the insolvent's schedule or upon petitioning creditor and such other creditors, if any as have filed an appearance in the case. Such notices may be served by sending them by registered post addressed to the creditors at their respective residences as set out in the schedule or otherwise appearing on the record of

the case. A list of all such notices dispatched by post shall be made in Form No. 87 and list of those sent to the Nazir shall be made in Form No. 88. The details required by the headings in the said Forms shall be entered up before the hearing.

A notice of such order in Form No. 89 in Appendix A shall, if it has not been published with notice of the order of adjudication, be also published by the Registrar in one or more issues of any local newspaper or papers as the Registrar deems fit.

613. Adjournments sine die. Where the Court is of opinion that the debtor is failing to disclose his affairs or where the debtor has failed to attend the public examination or any adjournment thereof or where the debtor has not complied with any order of the Court in relation to his accounts, conduct, dealings and property, and no good cause is shown by him for such failure, the Court may adjourn the public examination sine die, and may make such further or other order as the Court shall think fit.

614. Proceedings after adjournment sine die. Where an examination has been adjourned sine die and the debtor desires to have a day appointed for proceeding with the public examination, the expense of advertising and giving notice to creditors of the day to be appointed for proceeding with such examination shall, unless the Official Assignee consents to such costs being paid out of the estate, be at the cost of the debtor, who shall, before examination, any day is appointed for proceeding with the public examination, deposit with the Nazir of the Court such sum and furnish Court fee Stamps of such value as the Registrar may require to be deposited and furnished.

615. Notice of proceeding after adjournment sine die. In any case in which a public examination has been adjourned sine die, and the Court afterwards makes an order for proceeding with such public examination, notice to creditors of time and place appointed for proceeding with such public examination shall be sent by the Registrar by post or otherwise, and notice shall also be inserted in the Official Gazette and such other newspaper as the Registrar may direct, at least seven days before the day appointed (Form No. 90 in Appendix A).

Annulment of Adjudication

616. Hearing of application for revocation. In the event of the debtor or any person interested in the matter of the insolvency of a debtor applying to the Court under section 21. (1) of the Act for annulment of the order of adjudication, the hearing of such application shall be fixed for as early a date as possible, consistent with the other business of the Court, and with notice of the application being served upon the creditor on whose petition the order of adjudication shall have been made and on such other person or persons as the Court shall think fit.

617. Order annulling adjudication. (1) An order annulling an adjudication may be in form No. 91 in Appendix A.

(2) Notice of such annulment shall be published in Form No. 92 in Appendix A.

618. Form of Security Bond. The Security Bond to be entered into by the debtor under section 21(2) of the Act may be in Form No. 93 in Appendix A.

619. Vesting order on annulment. (1) A vesting order made by the Court pursuant to the provisions of section 23 (1) of the Act may be in Form No. 94 in Appendix A.,

(2) A warrant of arrest and warrant of recommitment of the debtor under section 23(2) of the Act shall be in Forms Nos. 95 and 96 in Appendix A respectively.

Proceedings consequent on Order of Adjudication

620. Insolvent's schedule. (1) The schedule required to be filed by the debtor under section 24 of the Act shall be in Form No. 99 in Appendix A and shall be made out and submitted in duplicate to the Registrar,, one copy being verified by affidavit. The verified copy shall be filed in Court with the record of the case and the other copy shall be forthwith sent to the Official Assignee.

(2) The schedule of a debtor or debtors who has or have carried on business in partnership shall, when his or their firm is in insolvent circumstances, be in two parts: one part shall contain a full and true description as to all matters and things required to be set forth in the schedule relative to the joint creditors, debtors and property: the other shall contain a full and true description as to all matters and things required to be set forth in the schedule relative to his or their separate creditors, debtors and property.

Trading account of insolvent. (3) The insolvent shall, on the request of the Official Assignee, furnish him with trading and profit and loss accounts and such other accounts for a period not exceeding two years prior to the date of the order of adjudication as the Official Assignee may require: Provided that the insolvent shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer period. If the insolvent fails to comply with the requirements of this rule, the Official Assignee shall report such failure to the Court and the Court shall take such action on such report as the Court shall think just.

621. Extension of time to file schedule. Where any debtor requires any extension of time for the filing of his schedule, he shall apply to the Court therefore on a certificate of the Official Assignee or an affidavit setting forth the cause of his inability to file his schedule within the time prescribed by section 24 of the Act or within such further time as the Court may have allowed him.

(2) Where the debtor fails to file his schedule or answers to the interrogatories referred to in Forms Nos. 99 and 80 within the time provided by these rules or such further time as may be extended by the Court, and no good cause is shown by him for such failure, the Court may, upon its being proved to the satisfaction of the Court that the order requiring the debtor to file his schedule or his answers to the interrogatories was duly served and without any further notice to the debtor, by warrant cause him to be arrested for contempt of Court under section 33 of the Act.

622. Failure of insolvent to file schedule. If the insolvent fails to prepare and submit his schedule in obedience to the order of adjudication, the Registrar shall submit the case for an order upon creditors to submit their claims, duly verified by affidavit to the Official Assignee.

623. Notice of order to submit claims to the Official Assignee. The Official Assignee shall publish notice of such order in Form No. 100 in Appendix A. After the date fixed for submitting claims the Official Assignee shall cause a schedule to be prepared as nearly as possible in accordance with Form No. 99 in Appendix A (save that verification by affidavit shall not be necessary) and shall deliver it to the Registrar to be filed with the record of the case.

Interim Protection

624. Application for protection order. The application of the insolvent for protection under section 25 of the Act shall contain a statement by him as to whether any warrant for his arrest has been issued or applied for, and if so, the name and address of the creditor who has taken out or applied for such warrant shall be set out. The application may be in Form No.101 in Appendix A, and shall be verified. The application shall be accompanied by a certificate of the Official Assignee under section 25(4) of the Act; and if the insolvent has not filed his schedule, he shall either annex to the application a certificate of the Official Assignee that in the opinion of that Officer it is necessary in the interests of the creditors that a protection order should be made before the insolvent has submitted his schedule, or state therein that such certificate was asked for but was not granted.

625. Hearing of application. Upon such application being filed as aforesaid, the Court may, in the exercise of its discretion, either make an order for the protection of the insolvent from arrest or detention for all the debts mentioned in the schedule or for such of the debts (to be mentioned in the order) as the Court thinks fit, or it may direct notice of the application to be served upon the creditors mentioned in rule 624 in addition to or in substitution for a notice in Form No.102 in Appendix A to be published once in a daily newspaper on the insolvent depositing the necessary costs therefore: Provided that when a creditor has given notice of his intention to oppose the grant of a protection order, the Court shall fix a day for the hearing of the application and cause notice thereof to be served upon that creditor. The hearing of every such application business of the Court and with notice of the application, if any being served and / or published as may be directed.

626. Protection order. A protection order shall be in Form No. 103 in Appendix A and a copy thereof under the seal of the Court shall be given to the insolvent upon his application therefore.

If such order is revoked, the insolvent shall be bound forthwith to deliver up to the Registrar any copy of the protection order which he may have received.

627. Warrant of release. A warrant for the release of an insolvent imprisoned for debt upon his obtaining a protection order shall be in Form No. 104 in Appendix A.

If any insolvent, who has been brought in custody from the jail, is released in the Court house, notice of such release shall be sent to the Officer in charge of the Jail in Form No. 105 in Appendix A.

Meetings of Creditors

628. Application for direction to hold meetings. An application for directions to the Official Assignee under section 26 of the Act to hold a meeting of creditors may be made by motion at a sitting of the Court or by petition in writing. When made by a creditor, it shall be supported by an affidavit of the creditor or some person on his behalf setting out the circumstances which render the holding of a meeting of creditors necessary or desirable. Notice of a creditor's application or a copy of the affidavit filed in support of an intended motion shall be served on the Official Assignee at least three days before the date fixed for the hearing of the application or the date of the intended motion.

629. Order to call meeting. (1) When the Court makes an order (Form No.106 in Appendix A) directing the Official Assignee to hold a meeting on the application, of a creditor, the provisions of rule 7 of the First Schedule to the Act as to the costs and expenses of the meeting shall apply.

(2) A sealed copy of the order shall be forthwith sent to the Official Assignee by the Registrar.

630. Notice of meeting. A notice of meeting to a creditor under rules 2 and 3 of the First Schedule to the Act shall be in Form No.107 in Appendix A and a notice to the debtor under rule 4 of the said First Schedule shall be in Form No. 108 in Appendix A.

631. Copy of Resolution for Registrar. The Official Assignee shall send to the Registrar a copy, certified by him, of every resolution of, a meeting of creditors.

632. Adjournment. Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the minutes or the proceedings of the adjourned meeting another place is specified (Form No. 109 in Appendix A).

Proxies

633. Form of proxies. A general proxy shall be in Form No. 112, and a special proxy shall be in Form No. 113 in Appendix A.

634. Signature of Proxy. A proxy given by a creditor, resident out of Sindh, shall be deemed to be sufficiently executed if it is signed by his duly constituted attorney or agent, whose power of attorney shall be produced before the Official Assignee, if required.

635. Filling in when creditor blind, & c. The proxy of a creditor, blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness who shall add to his signature his description and residence: Provided that all insertions in the proxy are in the hand writing of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

636. Minors not to be appointed. No person who is a minor shall be appointed a general or special proxy.

Composition and Schemes

637. Forms where proposal submitted by debtor. (1) A proposal for composition or a proposal for a scheme of arrangement of his affairs intended to be submitted by a debtor under section 28 (1) of the Act shall be submitted to the Official Assignee in Form No. 114 or 115 in Appendix A.

(2) Notice of the day and time fixed for the meeting of creditors called to consider a proposal for a composition or scheme shall be in Form No. 116 and the report of the Official Assignee on any such proposal and voting letter expressing a creditor's assent to or dissent from the proposal shall be in Form No.117 in Appendix A.

638. Form of acceptance, application for approval to Court, & c. A resolution accepting a proposal for a composition or a scheme may be in Form No. 118 or No. 119, and an application to the Court to approve a proposal accepted by the creditors with order appointing a day for the hearing of the application shall be in Form No. 122 in Appendix A.

639. Notice to creditors and Official Assignee. Notice of the date fixed for hearing the application to be given to creditors under section 29 (1) of the Act shall be in Form No. 123 in Appendix A. When the applicant is the insolvent, such notice shall also be given to the Official Assignee:

640. Order approving a composition or scheme. An order approving of a composition or scheme shall be in Form No. 124 in Appendix A.

641. Correction of formal slips & c. At the time a composition or scheme is approved of, the Court may correct or supply any accidental or formal slip, error or omission therein, but no alteration in the substance of the composition or scheme shall be made.

642. Proceedings if scheme approved. When a composition or scheme is approved of the Official Assignee shall, on payment of all proper costs charges and expenses of and incidental to the proceeding and his own commission, forthwith put the debtor or, as the case may be, the trustees under the composition or scheme, or other person or persons to whom under the composition or scheme to property of the debtor is to be assigned, into possession of the debtor's property.

643. When Official Assignee may be the trustee in a composition or scheme. In every case of a composition or scheme in which a trustee is not appointed or, if pointed, declines to act or becomes incapable of acting or is removed, the Official Assignee shall, unless and until another trustee is appointed by the creditors; be the trustee for the purpose of receiving and distributing the composition or for the purpose of administering the debtor's property and carrying out the terms of the composition or scheme, as the case may be.

644. Default in payment of composition. Where a composition or scheme has been approved and default is made in any payment either by the debtor or by the trustee, if any, no action to enforce such payment shall lie, but the remedy of the any person aggrieved shall be by application to the Court.

645. Annulment of composition or scheme. Where a composition or scheme is annulled, the trustee under the composition or scheme shall account to the Official Assignee for any money or property of the debtor which has come to his hands, and pay or deliver to the Official Assignee any money or property which has not been duly administered.

646. Dividends under composition or scheme. Where under any composition or scheme provision is made for the payment of any moneys to creditors entitled thereto, and any claim in respect of which a proof has been lodged is disputed, the Court may, if it shall think fit, direct that the amount which would be payable, if established, shall be secured in such manner as the Court shall direct until the determination of the claim so disputed, and on the determination thereof the sum so secured shall be paid as the Court may direct.

647. Proof of debts in composition or scheme. Every person claiming to be a creditor under any composition or scheme, who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any or, if there is no such trustee, with the Official Assignee who shall admit or reject the same. No creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt and his proof has been admitted.

648. Application to enforce composition and order. An application to the Court to enforce the provisions of a composition or scheme under section 30(2) of the Act shall be supported by an affidavit. An order on such application shall be in Form No. 125 in Appendix A.

649. Application for annulment of composition or scheme and order. An application to annul a composition or scheme under section 31(1) of the Act shall likewise be supported by affidavit. An order annulling a composition or scheme shall be in Form No.126 in Appendix A.

650. Application for arrest of insolvent under section 34(1). An application to the Court under section 34 (1) of the Act shall set forth particularly the acts or omissions on the part of the insolvent relied upon as justifying an order under clause (a), (b) or (c) of that section and the sources of knowledge or belief on the part of the declarant as to such acts or omissions. Every such application other than that by Official Assignee shall be supported by affidavit.

Control over Person and Property of insolvent

651. Order for redirection of letters. An order to the postal authorities in British India, under section 35 of the Act for redirection of post letters, & c., shall be in Form No. 128 in Appendix A.

Discharge of Insolvent

652. Application for discharge. An application by an insolvent for an order for discharge under section 38(1) of the Act shall have annexed thereto a list, certified by the Official Assignee to be correct, of all the creditors who have proved upto the date of the application and their respective addresses.

653. Fixing date for hearing of application for discharge and notice. (1) Upon the application being presented and the necessary process fees being furnished, the Registrar shall appoint a

date for the hearing of the application, and notice thereof in Form No.130 in Appendix A, shall be published and sent to the Official Assignee and to each creditor who has proved at least one month before the day so appointed. Such notice shall be served as provided in rule 612 and the lists prescribed by that rule shall be prepared.

(2) The day which shall ordinarily be fixed for the hearing of the application shall be-

(a) when all the creditors are resident or have agents in the town of Karachi, the first of second insolvency Court day after the date on which the petition was presented;

(b) when some of the creditors are not resident in and have no agents in the town of Karachi but all are resident or have agents in India, the second or third Insolvency Court day after the date on which such petition was presented;

(c) when some of the creditors reside out of India and have no agent, resident therein, the third or fourth Insolvency Court day after the date on which such petition is presented.

654. Official Assignee's report. In every case of an application by, an insolvent for his discharge the Official Assignee shall hold an investigation into the insolvent's conduct and affairs, and shall, at least seven days before the time fixed for hearing the application, file with the Registrar his report under sub section (2) (a) of section 79 of the Act. The Official Assignee shall also furnish a copy of the report to the insolvent on his application.

655. Opposed application. An application by an insolvent of his discharge upon which the Official Assignee reports to the Court any fact, matter or circumstance which would under the Act justify the Court in refusing an unconditional order of discharge, shall be deemed to be an opposed application for the purposes of section 6(2) (d) of the Act.

656. Answer to report and creditor's grounds of opposition. (1) An insolvent who intends to dispute any statement with regard to his conduct and affairs contained in the Official Assignee's report shall, not less than two days before the hearing of the application for discharge, give notice in writing to the Official Assignee specifying the statements in the report, if any, which he proposes at the hearing to dispute.

(2) Any creditor who intends to oppose the discharge of the insolvent on grounds other than those mentioned in the Official Assignee's report, shall give to the Registrar not less than four days before the hearing of the application, notice of the intended opposition stating the grounds thereof. A copy of such notice, hereinafter called, "grounds of opposition" shall be furnished by him to the Official Assignee, and another copy shall be sent to the insolvent's advocate, if any, or furnished to the insolvent on his application.

657. Form of grounds of opposition. (1) Grounds of opposition shall be framed as far as possible to the form of specific charges of acts or omissions on the part of the insolvent on which the creditor relies and on proof of which the Court would be either required to refuse a discharge or be justified in refusing an unconditional order of discharge under section 39 of the Act, and shall contain such particulars as are reasonably sufficient to give the insolvent notice of the specific matters alleged against him.

(2) Unless a creditor files grounds of position framed as above within the time aforesaid, he shall not be entitled, without the special leave of the Judge, to be heard in opposition to the insolvent's application for his discharge: Provided that if any creditor who has filed such grounds of opposition abandons them or does not proceed thereon, any other creditor may proceed on such grounds.

658. Hearing of application. At the hearing of the insolvent's application for his discharge, the Official Assignee and any creditor may cross examine the insolvent and offer evidence in support of the grounds mentioned in the Official Assignee's report, and any creditor who has filed grounds of opposition or any other creditor who is entitled to proceed on such grounds of opposition may cross examine the insolvent and offer evidence in support of such grounds of opposition, and the insolvent may offer evidence in his defence, and the Court may hear such arguments as may be offered in support of and in opposition to such grounds respectively. No matters which are not specifically included in such grounds and grounds of opposition respectively as aforesaid shall, without the special leave of the Judge, be entered into or considered at the instance of any creditor.

659. Order on application for discharge. The order of the Court made on an application for discharge shall be dated the day on which it is made and shall take effect from the day on which the order is drawn up and signed; but except in the case of an unopposed application, such order shall not be delivered out or published until after the expiration of the time allowed for appeal, or if an appeal is preferred, until after the decision of the Court of Appeal thereon. The order shall be in one of the Forms Nos. 131 to 134 in Appendix A, as the case may require.

660. Notice of order. When the time for appeal has expired or, the case may be, when the appeal has been decided by the Court of Appeal, on payment of the necessary advertising charges by the insolvent the Registrar shall publish notice of the Order of discharge once in the Official Gazette, and in a local daily newspaper or advertiser m Form No.135 in Appendix A.

661. Costs of application. An insolvent shall not be entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate.

662. Conditional orders. (1) When the Court grants an order of discharge conditionally upon the insolvent consenting to a decree being passed against him in favour of the Official Assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge, the order of discharge shall not be signed, completed or delivered out until the insolvent has given the required consent in the Form No. 136 in Appendix A. The decree shall be recorded in the Original Jurisdiction of the Chief Court of Sindh and shall be in the Form No. 137 in Appendix A.

(2) If the insolvent does not give the required consent within one month of the making of the conditional order, the Court may, on the application of the Official Assignee, revoke the order or make such other order as the Court may think fit.

663. Execution of decree against insolvent. An application by the Official Assignee for leave to execute the decree passed against the insolvent pursuant to a conditional order of discharge shall be in writing, and shall state briefly the grounds on which the application is made. On presentation of the application, the Registrar shall fix a day for the hearing and shall give notice

thereof to the insolvent not less than eight days before the day appointed for the hearing, and shall at the same time furnish him with a copy of the application.

664. Accounts of after acquired property. (1) When an insolvent is discharged subject to the condition that a decree shall be passed against him in favour of the Official Assignee or subject to any other condition as to his future earnings or after acquired property, it shall be his duty until such decree or condition is satisfied from time to time to give the Official Assignee such information as he may require with respect to his earnings and after acquired property and income, and not less than once a year to file in the Court a statement verified by affidavit, showing the particulars of any property or income he may have acquired subsequent to his discharge.

(2) The Official Assignee may require the insolvent to attend before the Court to be examined on oath with reference to the statement contained in such affidavit or as to his earnings, income after acquired property, or dealings. When an insolvent neglects to, file such a statement or to attend the Court for examination when required so to do or properly to answer all such questions as the Official Assignee; revoke the order of discharge. The affidavit shall be in Form No.138 in Appendix A.

665. Failure to apply for discharge. If an insolvent fails to apply to the court for an order of discharge within eighteen months after the date of the order of adjudication or six months after the conclusion of his public examination, if any, whichever is the later period, the Registrar shall set down the case with notice to the insolvent and the official Assignee of not less than seven days of the date on which it will be set down for the orders of the Court under section 41 of the Act.

666. Renewal of application. After expiration of two years from the date of an order absolutely refusing a discharge, the Court may, on sufficient grounds being shown such as subsequent good conduct of the debtor and on a certificate of the Official Assignee that the insolvent has furnished and rendered so far as he could such information and assistance as were required of him, permit him to renew his application for discharge.

ADMINISTRATION 4F PROPERTY Proof of Debts

667. Form of proof. A creditor's proof shall be in Form No. 139 in Appendix A.

668. Wages of labourers & c. In any case in which it shall appear from the debtor's schedule that there are numerous claims for wages by labourers and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor or his foreman, or head assistant, or some other person on behalf of all such creditors. Such proof shall be in Form No. 140 in Appendix A and shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the labourers and others and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said labourers and others.

669. Transmission proofs to trustees. Where a trustee is appointed in any matter, all proofs of debts that have been received by the Official Assignee shall be handed over to the trustee. But

the Official Assignee shall first make a list of such proofs and take a receipt therein from the trustee for such proofs.

670. Proofs to be sent by the Official Assignee to Registrar. The Official Assignee where no other trustee is appointed, shall forthwith after the final payment has been made in a composition or scheme duly approved by the Court or after a final dividend has been declared in an insolvency send to the Registrar all proofs tendered in the proceeding with a list thereof certified to be correct, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

671. Proofs to be sent by trustee to Registrar. Every trustee under a composition or scheme other than the Official Assignee shall on the first day of every month send to the Registrar a certified list of all proofs, if any, received by him from the Official Assignee or otherwise tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected and such as stand over for further consideration, and in the case of proofs admitted or rejected, he shall transmit the proofs themselves for the purpose of being filed.

672. Procedure where creditor appeals. The Official Assignee, or as the case may be, the trustee appoint under a composition or scheme shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof, with the Registrar with a memorandum thereon of his disallowance thereof. After the appeal has been heard by the Court, the proof, unless wholly disallowed, shall be given back to the Official Assignee or trustee, as the case may be.

673. Time for admission or rejection of proof by Official Assignee. Subject to the power of the Court to extend the time and not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, the Official Assignee shall in writing either admit or reject wholly or in part every proof lodged with him or require further evidence in support thereof.

674. Time for admission or rejection of proof by trustee. Subject to the power of the Court to extend the time, the trustee under a composition or scheme other than the Official Assignee, within twenty eight days after receiving a proof which has not previously been dealt with by the Official Assignee, shall in writing either admit or reject it wholly or in part or require further evidence in support thereof.

675. Notice of admission or rejection of proof. Where a creditor's proof has been admitted, the notice of dividend shall be sufficient notification to such creditor of such admission. Where a proof has been rejected, the Official Assignee shall forthwith deliver or send by prepaid post letter or otherwise notice of the rejection to the creditor concerned in Form No. 141 in Appendix A.

Explanation. Where any claim for interest after the date of adjudication has been erroneously included in the affidavit and is disallowed by the Official Assignee, it shall not be deemed to be a rejection of the claim or part thereof and it shall not be necessary for the Official

Assignee to give notice of the disallowance thereof

676. Costs of appeals from Official Assignee's decision as to proof. The Official Assignee shall in no case be personally liable for costs in, relation to an appeal from his decision rejecting any proof wholly or in part.

Application to realise Security

677. Application to realise security. Upon application by a person claiming to be a mortgagee of any part of the insolvent's freehold or leasehold property or by the Official Assignee with the consent of such person claiming to be a mortgagee as aforesaid under rule 18 of the Rules in the Second Schedule to the act or by a creditor who holds any other security over the insolvent's property to have such mortgage or security realised, a day shall be fixed for hearing the application, and notice thereof shall be given to the Official Assignee, if he is not the applicant, and shall be published in Form No. 142 in Appendix A.

678. Report of the Official Assignee and hearing of application. The Official Assignee shall inquire into every such claim and shall report to the Court thereon, and before granting the application the Court shall take into consideration the report of the Official Assignee and shall hear any objections which may be made by or on behalf of a creditor or other person interested in the matter.

679. Order for realisation of security. If the Judge orders the mortgage or other security mentioned in Rule 677 to be realized, the order shall be in Form No. 143 in Appendix A.

Unless otherwise ordered, notice of the time, place, & c., of the sale shall be published in the Official Gazette and one local newspaper.

680. Costs of application. If the claimant succeeds in proving his claim; the Court may order the creditor or person, who opposed the same, to pay the claimant's costs of the application. If the claimant fails to prove his claim, the Court may order him to pay the opposing party's costs in opposing the same.

Realisation of property

681. Warrant of seizure and search warrant. Warrant of seizure and search warrants under section 59 of the Act shall be in Forms Nos. 144 and 145 in Appendix A and when granted to the Nazir of the Court they may be executed personally either by the Nazir or by the Deputy Nazir of the Court. All other processes may be endorsed by the Nazir for service to any bailiff working under him.

Disclaimer of Lease

682. Disclaimer of lease. (1) A lease may be disclaimed without the leave of the Court in any of the following cases viz:-

(i) where the insolvent has not sub let the demised premises or any part thereof or created a mortgage or charge upon the lease, and

(a) the rent reserved of the property leased is less than Rs.500 per annum or,

(b) the estate is administered under section 106 of the Act, or the Official Assignee serves the lessor with notice of his intention to disclaim and the lessor does not, within seven days after the receipt of such notice, give notice to the Official Assignee requiring the matter to be brought before the Court;

(ii) where the insolvent has sub let the demised premises or created a mortgage or charge upon the lease and the Official Assignee serves the lessor and the sub lessee or the mortgagees with notice of his intention to disclaim, and neither the lessor nor the sub lessee or the mortgagees or any of them, within fourteen days after the receipt of such notice, require or requires the matter to be brought before the Court.

(2) The notices shall be in Forms Nos. 146 and 147 Appendix A.

(3) Except as provided by this rule, the disclaimer of a lease without the leave of the Court shall be void.

(4) Where the Official Assignee disclaims a leasehold interest, he shall forthwith file the disclaimer with the proceedings in the Court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until it is filed by the Official Assignee, the disclaimer shall be inoperative (Forms Nos. 148 to 150 in Appendix A).

(5) Where in pursuance of notice by the Official Assignee of his intention to disclaim a leasehold interest, the lessor, sub lessee or mortgagee requires the Official Assignee to apply to the Court for leave to disclaim, the costs of the lessor, sub lessee or mortgagee shall not be allowed out of the estate of the insolvent except in cases in which the Court is satisfied that such application was necessary in order to do justice between the parties.

(6) A disclaimer made without the leave of the Court under this rule shall not be void or otherwise affected on the ground only that the notice required by this rule has not been given to some person who claims to be interested in the demised property.

(7) Where any person claims to be interested in any part of the property of the insolvent, burdened with onerous covenants, he shall, at the request of the Official Assignee furnish a statement of the interest so claimed by him.

Distribution of Property

683. Notice of intended dividend. (1) Not less than a month before declaring a dividend the Official Assignee shall publish notice of his intention to do so in Form No. 154 in Appendix A and shall at the same time send notice thereof in Form No. 155 to each of the creditors mentioned in the insolvent's schedule who has not proved his debt. Such notice may be delivered personally or sent by prepaid post letter, as may be convenient, and shall specify the latest date upto which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proofs may be lodged, appeals or intends to appeal against the

decision of the Official Assignee rejecting a proof, he shall give notice of his appeal or intended appeal to the Official Assignee within seven days from the date mentioned in the notice of intention to declare a dividend or from the date of the notice of the decision against which the appeal has been or is to be made, whichever is the later date; and the Official Assignee shall in such case make provision for the dividend upon such proof as if it was a disputed proof within the meaning of section 71(1) (c) of the Act.

(3) Immediately after the expiration of the above mentioned period of seven days, the Official Assignee shall proceed to declare a dividend and shall send in the manner prescribed in sub rule (1) of this rule a notice of dividend to each creditor who has proved in Form No.156 in Appendix A.

(4) On declaring a dividend the Official Assignee shall send to the Registrar for filing with the record of the case a copy of the statement mentioned in sub section (5) of section 69 of the Act, signed by him, as to the particulars of the estate, which shall be in Form No. 157 in Appendix, A.

684. Production of bills, notes, & c. Subject to any law for the time being in force and subject to the power of the Court on special grounds being shown to order production to be dispensed with every bill of exchange, hundi, promissory note, or other negotiable instrument or security upon which proof has been made, shall be exhibited to the Official Assignee for payment of dividend thereon, and the amount of dividend paid shall be endorsed on the instrument.

685. Dividend may be sent by post. The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by cheque by post (Form No. 156) in Appendix A in a period cover or by money order after deducting the money order commission. No postal or other charges shall be levied.

686. Notice of intention to make final dividend. The notice to be given by the Official Assignee under section 73(1) of the Act shall be in Form No. 158 in Appendix A and may be delivered personally or sent by prepaid post letter as may be convenient to the addressees at the addresses given in the insolvent's schedule or such other address as may be otherwise known to the Official Assignee. Such notice may also be published in any newspaper or advertiser, if in the discretion of the Official Assignee he considers it fit to do so.

687. Rate of interest on dividends which the Official Assignee is ordered to pay. When the Court makes an order under section 74 of the Act for the payment of a dividend by the Official Assignee, the amount ordered to be paid shall carry interest at the rate of six per cent, per annum (Form No.159 in Appendix A).

688. Appointment of insolvent to manager property, or carry on trade. The Power of the Official Assignee to appoint the insolvent under the provisions of section 75(1) of the Act to superintend the management of his property or to carry on his trade shall be subject to the consent in writing of the Committee of Inspection, if any, or of the majority in number and three fourths in value of all the creditors whose debts are proved or to previous sanction of the Court being obtained to such appointment.

THE OFFICIAL ASSIGNEE

689. Security by Official Assignee. The Official Assignee shall give security for the due and faithful execution of his duties to the amount of Rs.15,000 in the form of a bond for that amount to the Governor of Sindh for the time being with two sureties to be approved by the Chief Judge. If, either surety dies or becomes insolvent, the Official Assignee shall, immediately after such event has become known to him, give notice thereof to the Chief Judge, and shall execute a fresh bond with two sureties forthwith.

690. Liability for loss. The Official Assignee and his sureties shall be responsible under their bond for any and every loss of or deficiency in the funds of the Official Assignee as such which may be occasioned by his negligence or default, or by the negligence or default of any person officiating for him during his tenure of the office.

691. Fees, commission and percentages chargeable by the Official Assignee. The Official Assignee shall be entitled to charge for the duties to be performed by him as Official Assignee or as interim receiver

(a) such fees and percentages as may be chargeable by him under the Act and these rules;

(b) a commission at the rate of 5 per cent on the gross amount or value of assets realised or collected by him in each estate;

(c) a commission at the rate of 5 per cent on the amount realised by the Official Assignee on sale of mortgaged property under the provisions of the Second Schedule to the Act;

(d) a commission at the rate of 5 per cent on the amount paid or payable in pursuance of a composition or scheme of arrangement; and when an application is made under section 21 of the Act on the ground that the debts of the insolvent are paid in full, a commission at the rate of 5 per cent on the total of such debts (the same to be paid before an order is made under that section):

Provided that with reference to clauses (c) and (d) the Court may, in its discretion, fix a sum less than the sum payable at the rate of 5 per cent as Official Assignee's commission; provided further where the order of adjudication is annulled or petition is withdrawn and assets have not been realised either in whole or in part, it shall be competent for the Court to fix such remuneration for the duties performed by the Official, Assignee in respect of such part of the said assets as has not been realised by the Official Assignee before the date of the order of annulment or withdrawal of petition.

692. Payment of fees, percentages, etc., to Government. The fees, percentages and commission realised by the Official Assignee under the provisions of the Act and these rules shall be paid by him to the account and credit of the Provincial Government in the first week of the month following the month in which the said fees, percentages and commission are realised or received by the Official Assignee or as soon thereafter as may be convenient.

693. Remuneration of the Official Assignee. The Official Assignee shall be paid on the time scale of Rs.600 50 900.

694. Deposit in bank of moneys realised. Unless the Court shall otherwise order, the proceeds of sale and other moneys received in respect of insolvents' estates shall, after deducting his commission and such amount as may be required by him for immediate payment of costs, charges and expenses, be deposited by the Official Assignee in the Imperial Bank of India or any other approved bank to the credit of an account in the name of the Official Assignee, and all interest accruing on the amounts in the current account shall be credited, from time to time, to the unclaimed Dividend Revenue Account.

All such sums as may not be required for immediate use may: from time to time, with the sanction of the Judge, be deposited by him in any approved bank in fixed deposit or invested in any security of the Government of India in the name of the Official Assignee, and for such period as the Judge may deem fit. The Official Assignee shall however be entitled to retain in his hands for petty expense a sum not exceeding Rs.1,000 in all.

695. Money how drawn. When any money is required to be drawn from such account the same shall be drawn by cheque signed by the Official Assignee.

696. Account of dividends declared. Every dividend declared in respect of a claim admitted or established in the Court shall be placed in the accounts of the Official Assignee to the credit of the creditor to whom it is due and shall, subject to the provisions of section 122 of the Act, stand to his credit in such accounts until claimed by him or on his behalf by or on behalf of his representatives unless the Court shall otherwise direct.

697. Official Assignee to open Unclaimed Dividend Account. The Official Assignee shall open an account called "The Unclaimed Dividend Account" and shall from time to time transfer to the said account all dividends unclaimed within one year from the date of the declaration of such dividends except such sum as may be required for payment of dividends together with all sums standing to the credit of the insolvents' estates in which no further recovery is anticipated and in which no dividend can be declared, and all such other unclaimed balances whatsoever as may be in his hands by virtue of proceedings under the Provincial Insolvency Acts of 1907 and 1920 and, with the sanction of the Judge, invest in the name of the Official Assignee all moneys standing to the credit of the account in any security of the Government of India or in fixed deposit with any approved bank.

698. Income from investments. (1) The Official Assignee shall transfer the interest accruing from all such investments to an account called "The Unclaimed Dividend Revenue Account". The amount in such account shall be devoted to payment of the cost of advertising and administering small estates in which funds are not sufficient and the cost of civil proceedings, etc., mentioned in rules 713 and 714 and interest as mentioned in rule 687 and the remuneration of any clerk, meita or other person employed temporarily with the sanction of the Chief Judge.

(2) At the end of every year all sums and securities standing to the credit of the Unclaimed Dividend Revenue Account less the sum of Rs.3,000 shall be transferred to the account and credit of the Provincial Government after the completion of the audit of the Official Assignee's account for the year: Provided that if at any time the amount standing to the credit of the Unclaimed Dividend Revenue Account is less than Rs.3,000, the deficit shall be paid by the

Provincial Government to the credit of the said account in order to make up the sum of Rs.3,000.

699. Disposal of the balance of Unclaimed Dividend Account. At the end of every year all sums and securities standing to the credit of the Unclaimed Dividend Account less the sum of Rs.7,500 shall be transferred to the account and credit of the Provincial Government after the completion of the audit of the Official Assignee's accounts or the year: Provided that if at any time the amount standing to the credit of the said account is less than Rs.7,500, the deficit shall be paid by the Provincial Government to make up the said sum of Rs.7,500.

700. List of dividends. The Official Assignee shall keep, suspended in a conspicuous position in his office, a list of all dividends due to creditors which have been unclaimed for six months which list shall be open to the inspection of all persons claiming to be interested in the estate of any insolvent.

701. Notice of unclaimed dividends. The Official Assignee shall, after the expiration of one year from date of declaration of every dividend, publish in the Official Gazette, in two consecutive issues thereof, a list of all dividends remaining unclaimed in respect of every estate which has come into his possession.

702. Half yearly statement of estates. The Official Assignee shall publish half yearly in the Official Gazette, namely, in the Gazette first published after the 31st day of March and the 30th day of September in each year for the half year ending on the 31st December or 30th June preceding, a statement of each estate not then wound up and fully distributed, that is to say, of the whole receipts, of the whole disbursements (distinguishing dividends from other payments), of the balance remaining, of the mode in and securities on which such balance is actually invested, and of the probable out turn of dependencies and, at the foot thereof, shall specify the amount of commission received by him during the half year.

703. Audit of accounts. (1) The accounts of the Official Assignee shall be audited once in every year, that is to say up to 31st December in every year, by the Comptroller, Sindh, or any auditor deputed by him for that purpose. The auditor shall be directed to ascertain that the accounts have been properly and accurately kept and that all moneys received and disbursed have been accounted for.

(2) The auditor shall examine the accounts of the Official Assignee including the statement of the half year ending 31st December preceding and report thereon to the Chief Judge, and if during such audit any question or matter of difference shall arise between the auditor and the Official Assignee in respect, of any payment, receipt voucher or otherwise, such question or matter of difference shall be referred to the Chief Judge or to such Judge as he may appoint to decide the same.

(3) For defraying the costs of the audit, the Official Assignee shall deduct from the assets in each estate a percentage of 4 annas on the amount realised by him and credit the same to the Unclaimed Dividend Revenue Account.

704. Fees for copy of lists. The Official Assignee shall levy the following fees in addition to such other fees as are prescribed by these rules:-

For each copy of the list of creditors and the debts due to each of them required to be furnished R. 1 plus such copying charges as are payable to copyists under the Sindh Chief Court Rules (A.S.)

For every certificate

For each copy of vesting order plus such copying charges as are payable to copyists under the Sindh Chief Court Rules (A.S.).

For each search in his office in answer to inquiry.

For every attendance before the Chief Court with books or papers from his Office by order of the Court or at the request of any party.

For every attendance at any Court other than the Chief Court with papers from his Office by order of such Court or at the request of any party.

At a Criminal Court no fee but only such reasonable expenses as may be actually incurred shall be charged.

For every transmission by post or by messenger to any Court other than the Chief Court of papers from his office by order of such Court or at the request of any party.

For the execution by the Official Assignee of any conveyance of immovable property when no portion of the purchase money is received by him for the benefit of the creditors at large, a fee at the rate of 12 annas per cent, upon the amount of the purchase money payable by the party requiring such execution, provided that such fee in the whole shall never exceed.

For affixing the seal of creditors, except in respect of certified copy of the list creditors.

Rs.

100

100

100

100

300

1000

1000

1000

10000 A p

Certified copies issued by the Official Assignee shall be signed either by him or by his Head Clerk and shall be served with the seal of his office.

Such fees shall be credited to the Provincial Government.

705. Record book. The Official Assignee shall keep a book to be called the "Record Book" in which he shall record all minutes of all proceedings had and all resolutions passed at any meeting of creditors or of the Committee of Inspection, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such document to any person other than a member of the Committee of Inspection.

706. Duties as to debtor's schedule. (1) As soon as the Official Assignee receives a copy of an order of adjudication, he shall, on the debtor's application, furnish him with a copy of instructions for the preparation of his schedule. The instructions shall be in Form No. 99 in appendix A.

(2) The Official Assignee shall also forthwith hold a personal interview with the debtor for the purpose of investigating his affairs and determining whether the estate should be administered under section 106 of the Act.

707. Joint and separate estate accounts. When an order of adjudication has been made against debtors in partnership, distinct accounts shall be kept of the joint estate and of the separate estate or estates and no transfer of a surplus from a separate estate to a joint estate on the ground that there are no creditors under such separate estate shall be made until after notice of the intention to make such transfer has been published once in a local newspaper or advertiser in Form No. 160 in Appendix A.

708. Mode of application to Court. Application by the Official Assignee to the Court may be made personally and without notice or other formality; but the Court may in any case order that an application be renewed in a formal manner and that such notice thereof be given to any person likely to be affected thereby as the Court may direct.

709. Evidence on application by Official Assignee. Where for the purpose of any application to the Court by the Official Assignee for directions, or to adjudge a debtor insolvent, or for leave to disclaim a lease or for an extension of time to apply for leave to disclaim a lease, or for an order to take criminal proceedings against an insolvent, or to commit an insolvent it is necessary that evidence be given by him in support of such application, such evidence may be given by a report of the Official Assignee to the Court and need not be given by affidavit, and any such report of the Official Assignee to the Court shall be received by the Court as prima facie evidence of the matters reported upon.

710. Application for direction. In any case of doubt or difficulty or in any matter and provided for by the Act or these rules relating to any proceeding in Court the Official Assignee may apply to the Court for direction.

711. Accounting by Official Assignee. (1) Where a composition or scheme is sanctioned by the Court, the Official Assignee shall account to the debtor, or, as the case may be, to the trustee under the composition or scheme.

(2) If the debtor, or, as the case may be, the trustee is dissatisfied with the account or any part thereof he may report the matter to the Court which shall take such action, if any, thereon as it may deem expedient.

712. Disposal of debtor's books of account, & c. The Court may on the application of the Official Assignee direct that the debtor's books of account and other documents given up by him may be sold, destroyed or otherwise disposed of.

Costs of Civil Proceedings

713. Costs of Civil proceedings. Where the Official Assignee has been directed by the Court in the matter of any insolvency to institute legal proceedings of any kind whatsoever, he shall be entitled, so far as the assets in his hands relating to such insolvency are insufficient to meet the costs and expenses of such proceedings, to pay such deficiency out of the Unclaimed Dividend Revenue account.

714. Civil liability of Official Assignee how met. Where the Official Assignee while acting under the order and direction of the Court or otherwise acting in his official capacity in the matter of any insolvency shall incur any civil liability and the assets in his hands relating to such insolvency are insufficient to meet such liability, he shall be entitled to apply to the Court for leave to pay any deficiency out of the Unclaimed Dividend Revenue Account, and such leave shall be granted, provided that the Official Assignee, while so acting, shall have complied with the order and direction of the Court and in the absence of any order and direction of the Court, he shall have acted bona fide in the discharge of his duties.

715. Costs when assets not available. Where an insolvent has no available assets, the Official Assignee shall not be required to insure any costs, charges or expenses in relation to his estate without the express direction of the Court:

Provided that he shall be at liberty to apply any moneys not exceeding Rs.250 in, any one matter out of the moneys standing to the credit of the Unclaimed Dividend Revenue Account in defraying any necessary court fees, costs, charges and expenses in administering estates in which he has no funds in his hands and shall repay, in priority to all other claims or charges, the amount so applied, out of the recoveries, if any, made by him.

716. Deficit how met. In all cases in which the Official Assignee is entitled to discharge any civil liability from, or to pay any costs, charges or, expenses out of, the Unclaimed Dividend Revenue Account and there is a deficit in the said account, the said deficit shall be made good out of the revenues of the Provincial Government.

717. Liability for costs, damages and expenses. The following provisions shall apply, to every case in which proceedings are taken either by' action, motion or in any other manner against the Official Assignee in respect of anything done or default made by him when acting or in the

bona fide and reasonable belief that he is acting in pursuance of the Act, or in execution of the powers given to the Official Assignee by the Act:

(1) subject to the provisions of the next following sub section, the costs, damages and expenses which the Official Assignee may have to pay or to which he may be put under such proceedings, shall be paid out of the estate of the insolvent. If such estate is insufficient, the deficit shall be paid from the Unclaimed Dividend Revenue Account;

(2) as soon as any such proceedings are commenced, it shall be the duty of the Official Assignee to report the same to the Court, which shall determine whether or not such proceedings shall be resisted or defended, and unless the Court shall otherwise determine, no such costs, damages or expenses shall be paid out of the estate unless the Court has determined that such proceedings shall be resisted or defended.

718. Books of account to be maintained by the Official Assignee. The Official Assignee shall maintain the books of account mentioned in Form No.169 in Appendix A, of which the first column contains the names of the several boos and the second column specifies the entries to be made therein, respectively.

Special Manager

719. Special Manager's accounts. Every special manager shall account to the Official Assignee and such special manager's accounts shall be verified by affidavit m Form No. 161 in Appendix A, and when approved by the Official Assignee, the total of the receipts and payments shall be added to the Official Assignee's accounts.

COMMITTEE OF INSPECTION

720. Control of Committee of Inspection over Official Assignee. (1) The Official Assignee shall submit the Record Book prescribed by rule 705, his books of account together with any other requisite books and vouchers to the Committee of Inspection, if any, as and when required.

(2) The Committee of inspection, if any, shall be consulted by the Official Assignee on all matters of importance affecting the general body of creditors, and in particular on questions relating to the valuation, redemption and realization of securities, and disclaimer of leases or property burdened with onerous covenants; and the proceedings had on such consultations, together with any resolutions of the Committee passed there at, shall, subject to the restrictions mentioned in rule 705, be duly recorded in the record book.

SMALL INSULVENCIES

721. Report of Official assignee as to value of property. (1) A report of the Official Assignee and an order for summary administration of an insolvent's estate under section 106(1) of the Act shall be in Forms Nos. 162 and 163 in Appendix A, respectively.

Summary administration. (2) When an order of summary administration of an insolvent's estate is made by the Court, the provisions of the Act and these rules shall, subject to any special directions of the Court, be further modified as follows:

- (i) there shall be no advertisement of any proceedings in a local paper unless the Court otherwise directs;
- (ii) the title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon "Summary Case";
- (iii) there shall be no Committee of Inspection;
- (iv) on an application by an insolvent for his discharge, the list certified by the Official Assignee shall not include nor shall notices be sent to creditors whose debts do not exceed Rs.30;
- (v) notices of meetings or of sittings of the Court shall only be sent to creditors whose debts or claims exceed Rs.30;
- (vi) such sheets from A to H in Form No. 99 in Appendix A, as will have to be returned blank shall be omitted from the schedule, the insolvent enumerating such sheets in the deficiency statement.

SPECIAL PROCEEDINGS

Administration of the estates of persons dying insolvent

722. Application for administration order. (1) A creditor's petition under section 108 of the Act shall, be in Form No. 164 in Appendix A, and shall be verified by affidavit, which shall state the source or sources of the deponent's knowledge or belief as to the statement or statements verified or deposited to by him.

(2) Notice of the petition to the legal representative of the deceased debtor shall be in Form No. 165 in Appendix A.

723. Order for administration. (1) An order for the administration in insolvency of deceased debtor's estate under section 108(2) of the Act shall be in Form No. 166 or 167 in Appendix A.

(2) Notice of the order shall be publishes in Form No. 168 in Appendix A.

724. Duties of legal representative. When an administration order under section 108 of the Act has been made, it shall be the duty of the legal representative of the deceased debtor to file with the Official Assignee forthwith an account of the dealings with and administration, if any, of the deceased's estate by such legal representatives and such legal representative shall also furnish forthwith a list of the creditors, and a statement of the assets and liabilities and such other particulars of the affairs of the deceased debtor as may be required by the Official Assignee. Every account, list and statement to be made under the rule shall be made and verified as nearly as may, be in accordance with the practice for the time being of the Court in its original civil jurisdiction.

725. Executor de son tort. In any case in which an administration order under section 108 of the Act has been made and it appears to the Court, on the report of the Official Assignee, that

no legal representative of the debtor exists, the account, list and statement mentioned in rule 724 shall be made, verified and filed by such person as in the opinion of the Court, upon such report, may have taken upon himself the administration of or may otherwise have intermeddled with the property of the deceased, or any part thereof.

SUPPLEMENTAL

Access to insolvent's books

726. Fee for infection. Notwithstanding anything contained in rule 162 of the Sindh Chief Court Rules, Appellate Side, the fee payable to the Official Assignee for inspection of an insolvent's books under section 124 (2) of the Act shall be Rs.2 if the inspection lasts for a day or part of a day; and if the inspection lasts for more than a day; Rs.2 for the first day and Re.1 for every subsequent day or part thereof. Such fees shall be credited to the Provincial Government.

Registers

727. Insolvency register. The Registrar shall keep a register of insolvency petitions, cases and proceedings in Forms Nos.8, 9 and 10 in Appendix B. He shall submit half yearly returns in Form No.11 in Appendix B to the Chief Judge.

728. Power of Court to extend time. The Court may, under special circumstances and for good cause shown, extend or abridge the time appointed by these rules or fixed by any order of the Court for doing any act or taking any proceeding.

CHAPTER XXXII

RULES UNDER THE COLONIAL COURTS OF ADMIRALTY ACT, 1890

729. Interpretation. In the construction of the rules in this chapter the following terms shall (if not inconsistent with the context or subject matter) have the respective meaning hereinafter assigned to them; that is to say:

"Affidavit" shall, in addition to its ordinary meaning, include a statement in writing on solemn affirmation, wherever by law a person may make a solemn affirmation instead of an oath.;

"Code" shall mean the Code of Civil Procedure, or other law in force for the time being, regulating the procedure of the Court;

"the Court" shall mean the Chief Court of Sindh;

"Judge" shall mean a Judge of the Chief Court;

"the Nazir of the Court" shall mean the Nazir of the Chief Court and all processes of the Court shall be executed by him or by one of the officers subordinate to him;

"party" shall include for purposes of Court procedure not only the party himself but his legal representative (Barrister, Solicitor or Advocate) duly admitted to practice before the Court under the rules in force for the time being as to the admission of advocates to practice in the Court;

"Registrar" shall mean the Registrar, Appellate Side, appointed to be Admiralty Registrar of the Court;

"Registry" shall mean the office of the Admiralty Registrar;

"suit" shall mean any suit, action or other proceeding instituted in the Court in its jurisdiction under the Colonial Courts of Admiralty Act.

730. Institution of suits. A suit shall be commenced by a plaint drawn up, subscribed and verified according to the provisions of the Code and the practice throughout shall, as far as is compatible with these rules, be that laid down in the Code.

731. Warrants. When a suit is instituted in rem, any party may, on filing an affidavit, obtain from the Court a warrant for the arrest of the property proceeded against.

732. Statements requisite in suits of necessaries and of wages. In a suit of necessaries and in a suit of wages the national character of the vessel proceeded against shall be stated in the plaint; and in a wages suit against a foreign vessel, notice of the institution of the suit shall be given to the Counsel of the State to which the vessel belongs if there be one resident in Karachi or in Bombay if there be no such Counsel residing in Karachi, and either a copy of the notice and an affidavit of service thereof or an affidavit that there is no such resident Counsel shall be annexed to the plaint.

733. Warrant with Court's leave though particular wanting. When it seems advisable, the Court may allow the warrant to issue though the affidavit or plaint may not contain all the required particulars and in a suit of wages may also waive the service of the notice.

734. Service of warrant, filling thereof. Every warrant shall be served by the Nazir or his bailiff. The party obtaining the order for issue of the warrant shall, within six days from the service thereof, file all the affidavits or other evidence necessary to prove the service thereof in the registry.

735. Service of summons or warrant, how effected on vessel. In suits in rem service of summons or warrant against ship, freight or cargo on board is to be effected by nailing or affixing the original summons or warrant for a short time on the main mast or on the single mast of the vessel and on taking off the process, by leaving, the copy of it issued under the provisions of the Code nailed or affixed in its place.

736. Service how effected on cargo landed. If the cargo has been landed or transhipped, service of the summons or warrant to arrest the cargo and freight shall be effected by placing the summons or warrant for a short time on the cargo and on taking off the process, by leaving the true copy aforesaid upon it.

737. Service on cargo in custody of third person. If the cargo be in the custody of a person who will not permit access to it, service of the summons or warrant may be made upon the custodian under the usual rules as to the service of a summons or corresponding order in execution proceedings contained in the Code.

738. Suits in rem by default. If on the date fixed for hearing no appearance is made for the defendant in the suit, the Court may proceed ex parte and if appearance is made, the Court will proceed in the usual manner under the Code.

739. Judgment for the claim, if well founded. If the suit proceed ex parte and the Judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim and may order the property to be sold with or without previous notice and the proceeds paid to the Nazir or may make such order as he shall think just.

740. Entry of appearance. A party desiring to enter an appearance in any suit shall file a written statement before the day set down for the first hearing or settlement of issues.

741. Contents of written statement. The written statement shall contain, besides the name of the party, an address in Karachi at which it shall be sufficient to leave all instruments and documents sufficient to leave all instrument and documents in the suit, in addition to the details required in written statements by the Code.

742. Security. If security is to be given in the registry, it shall be give according to the rules and practice of the Court as to security in the case of an attachment before judgment in an ordinary civil suit.

743. Releases. Property arrested, by warrant shall only be released in the authority of an order in writing issued by the Court to be called a release.

744. Release before appearance entered on application. A party at whose instance any property has been arrested the release thereof by filing an application to withdraw the warrant.

745. On payment into Registry, release of property. A party may obtain the release of any property by paying to the Nazir the sum in which the suit has been institute.

746. Release of cargo arrested for freight, on payment. Cargo arrested for the freight only may be released by an order of the Judge in Chambers upon proof by affidavit of the value of the freight and on payment of the amount of the freight to the Nazir.

747. Value of property under arrest in salvage suit. In a suit of salvage the value of the property under arrest shall be agreed to or proved by affidavit to the satisfaction of the Judge in Chambers before the property is released.

748. On security or payment into Registry, property arrested released. Where security shall have been given in the sum in which the suit has been instituted or such sums shall have been paid into Court and, if the suit be one to salvage, when the value of the property arrested shall have been proved to the satisfaction of the Judge in Chambers, he shall grant release for the property arrested, unless there be a caveat against the release thereof outstanding in the Caveat Release Book.

749. Release by Nazir. The order of release shall be sent to the Nazir to whom the party on whose application the order of release was made shall pay all costs charges and expenses attending the care and custody of the property while so under arrest and the Nazir shall thereupon release the property.

750. Caveat Release Book. A party in a suit, desiring to prevent the release of any property under arrest, shall file an application to that effect duly supported by affidavit and thereupon a caveat against the release of the property shall be entered in a book to be kept in the registry called the "Caveat Release Book".

751. Penalty for delaying release. A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the Court, good and sufficient reason for having so done.

752. Caveat Warrant Book. A person desiring to prevent the arrest of any property may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the registry.

753. Entry of appearance in Caveat Warrant Books. For this purpose he shall cause to be filed in the registry a notice, duly signed by himself or his legal representative, undertaking to enter an appearance in any suit that may be instituted against the said property, and to give security in such suit in a sum not exceeding an amount to be stated in the notice or to pay such sum into the registry, and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry called the "Caveat Warrant Book".

754. Service of plaint on party entering Caveat Warrant. A party instituting a suit against any property in respect of which a caveat has been entered in the Caveat Warrant Book shall, before filing the plaint, serve a copy thereof upon the person on whose behalf the caveat has been entered and shall annex to the plaint an affidavit of such service.

755. Party entering caveat to give security of filing of plaint. Within three days from the filing of the plaint the person on whose behalf the caveat has been entered shall if the sum in which the suit has been instituted does not exceed the amount for which he has undertaken, give security in such sum or pay the same to the Nazir, or if it exceed that amount, give security in the sum in which the suit has been instituted or pay the same to the Nazir.

756. On default, suit may proceed ex parte. After the expiration of three days from filing of the plaint, if the party on whose behalf the caveat has been entered shall not have given security in such sum or paid the same to the Nazir, the plaintiff may ask the Court to proceed with the suit by default and to pass judgment: provided that the Court may, on good cause shown and on such terms as to payment of costs as it may impose, extend the time for giving security or payment of the money to the Nazir.

757. Judgment to claim enforcement of payment. If when the suit comes before the Court it is satisfied that the claim is well founded, it shall pronounce for the amount which appears to be due and may enforce the payment thereof by order and attachment against the party, on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come, within the jurisdiction of the Court.

758. Notwithstanding caveat property may be arrested. The preceding rules shall not prevent a party from taking out a warrant for the arrest of any property notwithstanding the entry of a caveat in the Caveat Warrant Book but the party, at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the Court, goods and sufficient reason for having so done.

759. Sale by order of the Court. Every sale under the decree of the Court shall, unless the Judge shall otherwise order, be made by the Nazir in like manner as a sale of movable property in execution of a decree in an ordinary civil suit subject to the rules as to Court fees and other fees in force at the time.

760. Procedure by Nazir on sale of property. The Nazir shall pay into Court the gross proceeds of sale of any property sold by him and shall at the same time bring into the registry the amount of sale with vouchers in support thereof for taxation by the taxing officer of the Court, to whom the same shall be transmitted for the purpose.

761. Audience before Taxing Officer. Any person interested in the proceeds may be heard before the taxing officer on the taxation of the account of expenses and an objection to the taxation shall be decided by the Judge of the Court.

762. Payment of moneys. All money paid into Court shall be paid to the Nazir.

763. Payment out of money. Money paid into Court shall not be paid out of Court, except in pursuance of an order of the Court.

764. Security for latent demands. Security for latent demands shall not, unless the Judge shall otherwise order, be required on the payment of money out of Court.

765. Notice against payment Caveat Payment Book. A party desiring to prevent the payment of money out of Court shall file a notice; duly supported by affidavit, and thereupon a caveat shall be entered in a book to be kept in the registry called the "Caveat Payment Book."

766. Applications. Forms of application to be filed in the, registry or the Nazir's office may be obtained on application in the registry. They may be varied or altered by the Judge at his discretion.

767. Signature to application. Every application shall be signed by the party.

765. Improperly filled up application. If an application be not properly filled up, the Registrar or the Nazir may refuse to receive the same or to act thereon without an order of the Judge to whom he shall refer the matter if, the party desires this to be done.

769. Caveat to be in force for six months. A caveat, whether against the issue of a warrant, the release of property or the payment of money out of Court, shall not remain in force for more than six months from the date thereof.

770. Withdrawal of caveat. A caveat may be withdrawn by the party on whose behalf it has been entered.

771. Application to overrule a caveat. Application may be made to the Court or to the Judge in Chambers to overrule any caveat.

772. Fees by Officers and Nazir. The fees to be paid in all proceedings, whether in Court fees or in money shall be regulated by the table of fees and rules sanctioned from time to time for proceedings under the original civil jurisdiction of the Court.

773. Forms of Admiralty Division to be followed. The forms used in the Admiralty Division of the Supreme Court in England under the rules of the Supreme Court Act, 1883, shall be followed as nearly as the procedure laid down in the Code and by these rules and the circumstances of each case will allow.

774. Where not provided for, rules and practice of O.C.J., to apply. The other proceedings in suits brought in the Court in the exercise of its jurisdiction under the Colonial Courts of Admiralty Act, 1890, not provided for by these rules, shall be regulated by the rules and practice of the Court in suits brought in it in the exercise of its original civil jurisdiction.

775. Fees to nautical assessors. Nautical assessors shall be entitled to fees according to the scale prescribed in Chapter II in Appendix C.

CHAPTER XXXIII
RULES UNDER THE INDIAN COMPANIES ACT, 1913
General

776. Act defined. In this Chapter "the Act" means the Indian Companies Act, 1913.

777. General headings. The following shall be used as general headings in all matters to which the provisions of this chapter apply:-

(a) for proceedings in Court

"in the Chief Court of Sindh.

In the matter of the Indian Companies Act, 1913, and of the..... Company; Ltd".

(b) for all advertisements notices and other proceedings not in Court-

"In the matter of the India Companies Act, 1913, and of the..... Company, Limited";

(c) in case where it is required, the words "and reduced" shall be added to the description of the company.

778. Application to be by petition and to be registered Register of Company Matters. All applications under the Act shall be made by petition and, exception interlocutory applications, shall be numbered and registered as miscellaneous applications in the book to be called "the Register of Company Matters and to be maintained in Form No.12 in Appendix B.

779. Miscellaneous application to be supported by affidavit. Every miscellaneous application under the Act shall be supported by an affidavit of the petitioner or one of the petitioners where there are more than one and, in case the petition is presented by a corporate body, by a director, secretary or principal officer hereof: Provided that the Registrar (O.S) may for

sufficient reasons, grant leave to any other person duly authorised by the petitioner to make and file the affidavit.

780. Accompaniments to petitions. Unless dispensed with by the Registrar (O.S.)-

(1) every petition under section 12 of the Act (alteration of memorandum) section 54 of the Act (re organization of share capital), section 59 of the Act (for an order confirming reduction of share capital) or section 105 A of the Act (sanction the issue of shares at a discount) shall be accompanied by a true copy of the-

(a) memorandum of association,

(b) notice calling the meeting, and

(c) special resolution sanctioning the alteration;

(2) every petition under section 153 of the Act (for sanctioning a compromise or arrangement), shall be accompanied by a true copy of the

(a) memorandum of association,

(b) compromise or arrangement, and

(c) resolution adopting the compromise or arrangement;

(3) every petition under section 166 of the Act (for winding up) shall be accompanied

(i) in the case of a petition filed by the Registrar of Joint Stock Companies, by a true copy of the order of Government sanctioning the filing of the petition, and

(ii) in the case of a petition filed by a company, by a true copy of the special resolution resolving that the company be wound up by Court,

(4) every petition under section 247 (6) of the Act (for being restored to the register) shall be accompanied by a true copy of the order striking out the company's name from the register; and.

(5) every petition under section 267 (6) the Act (for substituting memorandum and articles: for deed of settlement) shall be accompanied by a true copy of the

(a) deed of settlement,

(b) proposed memorandum and articles of association,

(c) special resolution sanctioning the substitution, and

(d) notice calling the meeting.

781. Advertisement. (1) Unless the rules in this Chapter otherwise provide, every miscellaneous application under the Act shall be advertised not less than 14 days before the date fixed for appearance before the Registrar (O.S.), in the Official Gazette and in one English and one vernacular daily newspaper, as may be ordered by the Registrar (O.S.) Such advertisement shall be to Form No.170 in Appendix A. Such application shall also be served on such persons as the Act requires and in other cases as the Registrar (O.S.) may direct.

(2) When an advertisement is required for any other purpose except where otherwise provided in this chapter, the advertisement shall be inserted once in the Official Gazette and in such other newspapers or newspapers for such number of times as may be directed.

(3) The Court or the Registrar (O.S.) may however, in such cases as it or he shall think fit, dispense with any advertisement required by the rules in this chapter.

782. Service on company. Every miscellaneous application, unless presented by the Company, and every notice, summons, order or document required to be served on a company shall be served at the registered office of the company and if there is no registered office, then at the principal or last known place of business of the company, by leaving a copy thereof with any officer or servant of the company, and in case no such person can be found there, then in such manner as the Registrar (O.S.) may direct. If the company is being wound up at the date of admission of a miscellaneous application, notice, summons, order or document, service shall be effected upon the liquidator. If the registered office or place of business referred to in this rule is situated beyond the original civil jurisdiction of the Court, service of the application, notice, summons, order or document, may, with the leave of the Registrar (O.S.), be effected by sending a copy thereof by prepaid registered post addressed to the company at such office or place of business.

783. Service on other persons. (1) Except where otherwise provided in this Chapter, all notices, summonses and other documents, other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith.

(2) All notices, summonses and other documents sent by prepaid post letter in accordance with the provisions of this Chapter shall be considered as served at the time the same ought to have been delivered in due course by the Post Office and notwithstanding the same may have been returned by the Post Office:

(3) No service under this Chapter shall be deemed invalid, by reason only of the fact that any name other than the name by which a person on whom service is sought to be made is ordinarily known, or by which he is designated in the list of contributories or in petition, summons, order, notice, or other document, wherein the name of such contributory or creditor is contained, has been omitted, provided the Court is satisfied that such service is in other respects sufficient.

784. General power of Court. The power of the Court to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceedings and to give any direction as to the course of proceedings is unaffected by the provisions of this Chapter.

785. General English practice to apply. In cases not provided for in this Chapter or by rules of procedure laid down in the Act or in the Code, the practice and procedure of the High court of Justice in England in matters relating to companies shall be followed so far as they are applicable and not inconsistent with the Act or these rules.

Reduction of Capital

786. Form of petition. An application order section 56 of the Act shall be in Form No.171 in Appendix A.

787. Procedure at the hearing. Upon the hearing of the application if the Court is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any share holder of any paid up share and that no creditor is entitled to object to the reduction, it may confirm the resolution. But if the Court is not so satisfied or is of opinion that creditors are entitled to object, the procedure hereinafter prescribed shall be followed.

788. Directions where creditors are entitled to object. In cases in which the creditors are entitled to object to the proposed reduction, the Court may give such directions as it thinks fit with respect to publication of notices and fixing the date with reference to which the list of creditors entitled to object to the reduction is to be made out and generally fixing a time for taking all necessary and proper steps for settling the list of creditors. The order on such application may be in Form No. 172 in Appendix A.

789. List of creditors. The company shall, within the time allowed by the Court, file in the Court a list in Form No.173 in Appendix A made out by some officer of the Company competent to make the same, containing the names and addresses of the creditors of the company as on the date fixed by the Court under the last preceding rule. The said list shall also contain the amounts due to the creditors and in case of debts payable on a contingency and not ascertained, a just estimate of the same. Such list shall be supported by an affidavit of an officer of the company competent to make the same.

790. Contents of affidavit. The person making such affidavit shall state therein his belief that the list verified by such affidavit is correct and that there was not at the date filled by the Court under rule 788 any debt or claim which if that date was the commencement of the winding up of the company, would be admissible in proof against the, company except the debt set forth in such list and shall state his means of knowledge of the matters deposed to in such affidavit. The affidavit shall be in Form No.174 in Appendix A.

791. Inspection of list of creditors. Copies of the list containing the names and addresses of the creditors and the total amount due to them including the estimated value of unascertained, and contingent debts, but omitting the amount due to them respectively, or (if the Court shall so direct) complete copies of the list of creditors shall be kept at the registered office of the company and at the office of the advocate force the company. Any person desirous of inspecting, the same may, at any time during the ordinary hours of business, inspecting the same may, at anytime during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee.

792. Notice to creditors. The company shall, within 7 days after the filing of the list of creditors referred to in rule 789 or such time as the, court may allow, send to each creditor whose name is entered in the, said list a notice stating the amount of the proposed reduction in capital and the amount or estimated value of the debt for which such creditor is entered in the said list and the time, as fixed by the Court, within which if he claims to be a creditor for a larger amount than that shown in the notice; he must send in his name and address and the particulars of his debt or claim and the name and address of his advocate, if any, to the advocate of the company, such notice shall be sent by prepaid letter registered for acknowledgment addressed to each creditor at his last known address or place of abode: Provided that, where any of the creditors of the company are residing out of British India or where their addresses are not known to the company, the Court may direct notice to be given by advertisement in such papers and in such manner as the Court may deem proper. The notice or advertisement shall be in Form No.175 in Appendix A.

793. Advertisement of the petition and the list of creditors. Notice of the presentation of the petition and of the list of creditors shall, after the filing of the list referred to in rule 789 be advertised in such newspapers as the Court or the Registrar (O.S.) may direct. Every such notice shall state the amount of the proposed reduction of capital, the places where the list of creditors may be inspected and the time within which and the person to whom the creditors of the company, who are not entered in the said list and are desirous of being entered therein, must send in their names and addresses and the particulars of their claims and the names and addresses of their advocates, if any. Such advertisement shall be in Form No.176 in Appendix A.

794. Affidavit as to result of rules 792 and 793. The company shall, within the time fixed by Court, file in Court an affidavit made by the person to whom the particulars of debts or claims are by the notice mentioned in rules 792 and 793 required to be sent in, stating the result of such notices respectively and verifying the list containing the names and addresses of the person, if any, who shall have sent in the particulars of the debts or claims in pursuance of such notice respectively and the amounts of such debts or claims and some competent officer or officers of such company shall joint in such in such affidavit and shall in such list distinguish which, if any; of such debts and claims are wholly admitted or as to any and what part thereof by the company, and which, if any, of such debts and claims are wholly or as to any part thereof disputed by the company. Such affidavit shall also state which of the creditors entered in the said list have been paid or have consented to the proposed reduction. Such affidavit shall be to Form No.177 in Appendix A. The company shall also file affidavit in Form No.178 in Appendix A, by the person who sent the notices referred to in rule 792.

795. Procedure when claim is not admitted. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim, whether admitted or not, or if any debt or claim is not admitted by the company wholly or in part, then in every such case, unless the company is willing to appropriate m such manner as the Court shall direct, the full amount of such debt or claim, the company shall if the Court so directs, send to the creditor a notice in Form No.179 in Appendix A that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove his debt or claim or any such part thereof as is not admitted by the company on the day fixed by the Court. Such notice shall be served 14 clear days before the date fixed by the Court: Provided that the Court may refer any inquiry under this rule to the Registrar (O.S.) and the Registrar (O.S) shall have all the powers of the Court in respect of any matter so referred to him: Provided further that a

reference shall lie to the Court against any order of the Registrar (O.S.) in the manner provided by these rules.

796. Costs of proof. The costs of proof of a debt or claim or of any inquiry under rule 795 shall be in the discretion of the Court.

797. Certificate by the Court as to creditors. The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the advocate of the company, and signed by the Judge. Such certificate shall state what debts or claims, if any have been disallowed, the debts or claims, if any, the amount of which has been fixed by inquiry under section 59 of the Act and the rules in this Chapter, and the debts and claims, if any, which are admitted by the company, and shall show which of the creditors have consented to the proposed reduction and the total amount due to them, and which of the debts or claims if any the company is willing to appropriate; it shall not be necessary to show in the certificate the names of any creditors who are not entitled to be entered in the list or show the several amounts of the debts or claims of the person who have consented to the proposed reduction.

798. Hearing of petition. After expiration of not less than 8 clear days from the date of signing of such certificate as is mentioned in the last preceding rule the application shall be set down for hearing in the ordinary course. Notice of the date fixed for hearing of the application shall be advertised in such newspapers as the Court or the Registrar (O.S.) may direct and shall be in Form No.180 in Appendix A.

799. Who may appear and oppose. Any creditor included in the certificate whose debt or claim has not, before the hearing of the petition, been discharged or determined or been secured in the manner provided by section 59 of the Act and who has not before the hearing consented in writing to the proposed reduction of capital may, if he thinks fit, upon giving two clear days notice to the advocate for the company of his intention so to do, appear at the hearing of the petition and oppose it. The costs of the appearance of the creditor shall be in the discretion of the Court.

800. Direction at the hearing. At the hearing of the petition the Court may give such directions as it shall think fit with reference to securing, in them provided under section 59 of the Act, the debts or claims of such creditors as do not consent to the proposed reduction; and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

801. Directions as to advertisement of order and dispensing with the addition of words "and reduced". Where the Court makes an order confirming a reduction, such order shall include directions as to the manner and in which English and vernacular newspapers and the time or times when notice of registration of the order and minute referred to in section 61 of the Act shall be published; such order shall, in cases where the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to share holders of paid up share capital, state whether the addition of the words "and reduced" is dispensed with or fix the period for which such words shall be deemed part of the name of the company and in other cases shall fix the period for which the said words shall be deemed part of the name of the company unless an order in that behalf had been obtained previously on an application.

802. Approval of minutes. Within 7 days from the date of order confirming the reduction, the company shall file for approval of the Court of Registrar (O.S.) a draft of the minute and take an appointment for approval of the same. The advocate for the company shall attend when the minute comes before the Court or the Registrar (O.S.) at the appointed time.

803. Publication of reasons reduction, etc. If the Court shall, under section 65 of the Act, think fit to require the company to publish the reasons or causes of the reduction of the capital or any other information in relation thereto, the company shall within the time prescribed in the last preceding rule, file a draft of the statement to be published for approval by the Court in the manner provided by that rule. Such statement of the approval shall, as far as possible and subject to the directions of the Court, be published in the same newspapers in which the registration of the order was published under rule 801.

Winding up Petition

804. Form of petition by the Court. Every petition for the winding up of a company by the Court or subject to the supervision of the Court shall be in Form No. 181 in Appendix A.

805. Copy of petition to be supplied to creditor or contributory. Every contributory or creditor of the company shall, on application to the Court, be entitled to be furnished with a copy of the petition within 24 hours on payment of the fees for copies in accordance with the proviso to rule 127 of the Sindh Chief Court rules (Appellate side).

806. Substitution of petitioner. When a petitioner is not entitled to present a petition or, whether so entitled or not, where he (a) fails to advertise his petition within the time prescribed in this Chapter or such extended time as the Registrar (O.S) may allow or (b) consents to withdraw his petition or to allow it to be dismissed or the hearing to be adjourned or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof or on any day to which the hearing has been ,adjourned, or (c) if appearing does not apply, for an order in the terms of the prayer of his petition, the court may, upon such terms as it thinks just substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed in this Chapter or consents to withdraw his petition be made at any time.

Provisional Liquidator

807. Appointment of provisional liquidator. The Court may make the appointment of an official liquidator provisionally under sub section (2) of section 175 of the Act, with or without security upon an application supported by an affidavit setting forth grounds, by a creditor contributory or the company and after notice to the company, unless the application is made by the company itself or for reasons to be recorded it thinks fit to dispense with the notice. The court may fix the remuneration of such liquidator provisionally and direct the applicant at whose instance the appointment is made to pay in the first instance the remuneration so fixed.

808. Order appointing provisional liquidator. An order appointing a provisional liquidator shall state the nature and description of any property, of which possession is ordered to be taken and the duties to be performed by the provisional liquidator. (Form No. 182 in Appendix. A).

809. Provisional Liquidator to hand over assets to the official liquidator or receiver. On the making of a winding up order the provisional liquidator shall, if he is not appointed the official liquidator, forthwith hand over all the assets of the company in his hand; to the official liquidator or the official receiver, as the case may be.

810. Provisional Liquidator governed by rules which apply to official liquidator. The rules herein relating to the official liquidator shall, so far as the same are applicable and subject to any direction of the Court in each case, apply to provisional liquidators.

Winding up Order

811. Notice under section 170(3). Notice under sub section (3) of section 170 of the act shall be in Form No. 183 in Appendix A.

812. Copy of winding up order to be sent to official liquidator or official receiver. (1) Every order for winding up by the Court shall be in Form No.184 or 185 in Appendix A, as the case may be. A copy of such order shall be sent to the official liquidator or official receiver, as the case may be.

Advertisement order to wind up. (2) Notice of every order for the winding up of a company by the Court subject to the supervision of the Court shall, within 12 days after the date thereof, be advertised by the petitioner once in the Official Gazette and shall be served upon such person and in such manner as the Court may direct. Such notice shall be in Form No. 186 in Appendix A.

Official Liquidator

813. Appointment of official liquidator. At the time of making an order for winding up of a company or at any time thereafter upon an application supported by an affidavit setting out the grounds thereof by any person interested in the company or in the assets, the Court may, if it thinks it is desirable or necessary, appoint a person other than the official receiver as official liquidator of the company with or without security as it may think fit:

Provided that when such appointment is to be made after the order for winding up before making such appointment the Court shall give notice by advertisement in such manner as it shall direct so that the first and only advertisement shall be published within 14 days and not less than 7 days, before the day fixed. (Form No: 187 in Appendix A).

814. Procedure when official receiver not able to take up the duties. Where no official liquidator has been appointed, the official receiver may, if he is not in a position to take up the duties in connection with the winding up, apply for the appointment of an official liquidator. Upon any such application the Court may, after ascertaining the wishes of the creditors and contributories in such manner as it deems fit, make such order as it thinks proper.

815. Security by official liquidator. (1) An order appointing an official liquidator shall, unless

security is dispensed with or has been previously furnished, fix a time within which such security shall be furnished. The Court may by such order impose such restrictions as it thinks proper on the official liquidator in dealing with the assets of the company until such security is furnished. In the event of the security not being furnished within the time fixed, the petition shall be posted for the order of the Court immediately after the expiry of the time so fixed.

(2) The order shall also fix the times or periods when the official liquidator is to file his account of receipts and payments.

816. Security how furnished. Where an official liquidator has been directed to give security, he shall give such security by entering into a recognizance with two sufficient sureties or a guarantee society recognized by the Court or by depositing Government securities or in such other manner as the Court shall direct in such sum as the Court may approve. The recognizance of the official liquidator and his sureties shall be in Form No. 188 in Appendix A. and the sureties shall file an affidavit in Form No. 189 in Appendix A.

817. Solvency of sureties to be ascertained at the time of passing accounts. Where security has been given by an official liquidator, he shall, on each occasion of passing his accounts and also whenever the Court or Registrar (O.S.) may require, satisfy the Court or Registrar (O.S.) that his sureties are living and resident in the province of Sindh and are solvent, Sindh in default thereof he may be directed to give fresh security within such time as shall be directed by the Court.

818. Advertisement of appointment made. Every appointment of an official liquidator shall be advertised in such manner as the Court shall direct immediately after he has been appointed and has given security, if any required. (Form No. 190 in Appendix A)

819. Death, removal or retirement of official liquidator. In case of the death, removal or resignation of an official liquidator, another shall be appointed in his place in the same manner as in the case of a first appointment: and proceedings for that purpose may be taken by such party interested as may be authorised by the Court to take the same.

820. Remuneration. (1) The official liquidator shall, unless the Court otherwise directs, be allowed in his accounts or otherwise paid remuneration calculated as follows:

(a) upon the total assets including produce of calls on contributories, realised or brought to credit and not being moneys received and spent on carrying on the business:

on the first Rs.10,000 or fraction thereof .. 5 per cent
on the next Rs.15,000 or fraction thereof .. 3 per cent
on the next Rs.25, 000 or fraction thereof .. 2 1/2 per cent
on the next Rs.50,000 or fraction thereof .. 2 per cent
on any sum above Rs.1,00,000 .. 1 per cent

(b) when the official liquidator collects calls or realises property for debenture holders or other secured creditors, the same rate of fees as in clause (a) above payable out of the proceeds of such calls or property;

(c) when the official liquidator acts as trustee under a scheme of arrangement, such remuneration, not exceeding the rate of fees as in clause (a) above, as the Court shall allow;

(d) when the official liquidator performs any special duties not provided for above, such amount as the court on the application of the official liquidator may consider reasonable.

(2) He shall also be allowed, unless the Court otherwise directs, a sum sufficient to cover the expenses of the employment of assistants of clerks and his office rent, stationery, etc.

(3) The rate of remuneration of the official liquidator shall in no case exceed the amount specified in the scale of fees given above.

(4) No official liquidator shall settle his remuneration with the attorneys or a advocates for the parties concerned or with the parties.

Statement of Affairs

821. Preparation of statement of affairs. Any person who under section 177 A of the Act has been required to submit and verify a statement as to the affairs of the company shall be furnished by the official liquidator with such forms and instructions as he may in his discretion consider necessary. The statement shall be made out in duplicate and shall be submitted to the official liquidator within the time prescribed by the section or within such extended time as the official liquidator or the Court may, for special reasons, appoint. One copy shall be verified by an affidavit. The official liquidator shall cause the verified statement of affairs to be filed in the Court and shall retain the duplicate thereof for his records.

822. Official liquidator may hold personal interview for investigating company's affairs. The official liquidator may from time to time (whether before or after the submission of the statement) hold personal interviews with persons required to submit the statement for the purpose of investigating the company's affairs and it shall be the duty of every such person to attend on the official liquidator at such time and place as the official liquidator may appoint and give the official liquidator all information that he may require and answer all such questions as may be put to him by the official liquidator.

823. Extension of time for submitting statement of affairs. Where any person required to submit a statement under section 27 A of the Act requires any extension of time, he shall apply in the first instance to the official liquidator who may, if he thinks it, give a written certificate extending the time and this certificate shall be filed with the proceedings in the winding up.

824. When application to Court for extension of time may be made. Where the official liquidator refuses to grant an extension of time for submitting the statement of affairs, the person required to submit the statement may on notice to the official liquidator apply to the Court.

825. Application to dispense with requirements of section 177 A to be supported by official liquidator's certificate. Any application to dispense with the requirements of section 177 A shall be supported by a report of the official liquidator showing the special circumstances which in his opinion render such a course desirable. Where the Court makes an order dispensing with the requirements of the section, it may give such consequential directions as it thinks fit:

Report by Official Liquidator

826. Procedure for considering the official liquidator's preliminary report. On the filing by the official liquidator of the preliminary report under subsection (1) of section 177 B of the Act or of a further report, if any, under sub section (2) of the said section, the Registrar (O.S.) shall fix a date for consideration of such report by the Court and notify the date on the notice board of the Court. The official liquidator shall either personally or by advocate attend the consideration of such report and give the Court any further explanation or information with reference to the matters contained therein which the Court may require.

827. Directions. The official liquidator shall, with all convenient speed (and in any event not later than 7 days) after the filing of the preliminary report prescribed by section 177 B of the Act, apply to the Court for directions, upon the hearing of such application, the Court, after hearing the official liquidator and any other person appearing on notice or otherwise, may give such directions as it shall think proper in regard to the carrying on the winding up and more particularly in respect of (i) the exercise by the official liquidator of any of the powers mentioned in section 179 of the Act, and (ii) the time within which the official liquidator shall take steps to settle the list of creditors and contributories of the company.

Collection and distribution of assets

828. Powers of the official liquidator. The duties imposed on the Court by section 184 (1) of the Act with regard to the collection of the assets of the Company and the application thereof in discharge of the company's liabilities shall be discharged by the official liquidator as an officer of Court subject to the control of the Court and subject to the proviso to section 246 (2) of the Act.

829. Official liquidator to be in the position of receiver. For the purpose of the discharge by the official liquidator of such duties, the official liquidator shall, for the purposes of acquiring and retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court and the Court may on his application enforce such acquisition or retention accordingly.

830. Company's property surrendered to the official liquidator on requisition. The powers conferred on the Court by section 185 of the Act shall be exercised by the official liquidator as an officer of the Court subject to the control of the Court: Any contributory for the time being on the list of contributories, trustee, receiver, banker, agent or officer of the company which is being wound up shall, within such time as the official liquidator may by notice in writing fix, pay deliver, convey, surrender or transfer to or into the hands of the official liquidator any money property or documents in his hands to which the company is prima facie entitled. The notice referred to in this rule shall be in Form No.191 in Appendix A.

List of contributories

831. Official liquidator to prepare list of contributories. Subject to any directions of the Court on the application referred to in rule 827 and as soon as possible after the date of the order on the said application, the official liquidator shall prepare a list of contributories of the company. He shall, as far as is practicable, state therein the respective addresses of and the number of

shares or extent of interest to be attributed to each such contributory and shall distinguish the several classes of contributories. Such list shall be in Form No. 192 in Appendix A. As regards representative contributories the official liquidator shall observe the requirements of section 184(2) of the Act.

832. Appointment of place and time for settling list of contributories. The official liquidator shall fix a time and place for the settlement of such list and shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person included in the list prepared by him and shall state in the notice to each person in what character and for what number of shares or interest such person is included in the list. Such notice shall be in Form No. 193 in Appendix A and sent by prepaid letter post to the person at the address mentioned in such list so as to reach such person in the ordinary course not later than fourteen days before the date fixed for the settlement.

833. Settlement of the list of contributories. On the day fixed in the last preceding rule the official liquidator shall hear any person who objects to being which settled as a contributory and after such hearing shall finally settle the list which, when so settle, shall be the list of contributories of the company.

834. Notice of settlement to contributories and application to Court to vary the list. The official liquidator shall forthwith give notice to every person placed on the list person placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and in the notice inform such person that any application for the removal of his name from the list or for a variation of the list shall be made to the Court without 21 days from the date of service on the contributory of such notice. The notice shall be in Form No. 194 in Appendix A and shall be sent to each person by prepaid post registered for acknowledgment at the address mentioned in the list.

835. Applications filed out of time not to be entertained. Except with the leave of the Court no Application by, airy person who objects to the list of contributories as finally settled by the official liquidator shall be entertained after the expiration of the period mentioned in the notice referred to in rule 832.

836. Variation, of the list of contributories by the official liquidator. The official liquidator may, from time, to time, added to or vary the list of contributories and any such variation or addition shall be made m. the same manner in all respects as the settlement of the original list: Provided that no liability of ally contributory placed on the list settled by him and filed in Court shall be diminished except with the leave of the Court.

837. Certificate of final settlement to be filed in Court. The official liquidator shall, within seven days after the settlement of any list of contributories, file in, Court a certificate of final settlement of the list of contributories in Form No.195 in Appendix A together with the affidavit of service of notice in Form No.196 in Appendix A.

838. Official Liquidator not personally liable for costs. The official liquidator shall not in any case be personally liable to pay any costs in relation to any application to set aside or vary his act or decision in connection with the settling of the list of contributories.

Calls

839. Calls by liquidator. The powers and duties of the Court in relation to making calls upon contributories conferred by section 187 of the Act may be exercised by the official liquidator as an officer of the Court subject to proviso to section 246 (2) of the Act:

840. Application for leave to make call. An application for leave to make any call on the contributories or any of them shall be made by petition stating the proposed amount of such call and shall be supported by an affidavit of the official liquidator in Form No. 197 in Appendix A. Notice of such application shall be served in Form No. 198 in Appendix A at least 4 clear days before the day appointed for the hearing of the application or, if the Court shall so direct, notice of such application may be given by advertisement in Form No. 199 in Appendix A in such daily newspapers as the Court shall direct.

841. Document making the call. When the official liquidator is authorized by order to make a call on the contributories he shall file in Court a document in Form No. 200 in Appendix A making the call.

842. Service of notice of call. When a call has been made by the official liquidator, a copy of the order granting leave to make the call shall forthwith, after the call has been made be served upon each of the contributories included in such a call together with a notice in Form No.201 in Appendix A from the official liquidator specifying the amount or balance are from such contributory. Such order shall be in Form No.202 in Appendix A and need not be advertised unless the Court so orders for any special reasons.

843. Enforcement of payment of call. Payment of the amount due from any contributory on a call may be enforce by order of the Court to be made on application by the official liquidation supported by affidavit in Form No. 203 in appendix A. Such order may be in Form No. 204 in Appendix A and may be executed as if it were a decree for money.

Sales by official liquidator

844. Procedure at Sales. Subject to the directions of the Court, any movable or immovable property of the company shall be sold in the same manner as in the case of a sale under a decree or order of the Court in a suit. Provided that all conditions and contracts of sale shall provide that the purchase money other than the amount paid to the officer conducting the sale at the time of bidding shall be paid by the purchaser into the bank in which the official liquidator has been authorized to deposit the moneys of the company to the credit of the official liquidator.

Disclaimer

845. Application for leave to disclaim. Any application for leave to disclaim any part of the property of a company under section 230 A of the Act may be made ex parte and shall be supported by an affidavit showing who are the parties interested and what their interests are. At the hearing of the application, the Court or Registrar (O.S.) may direct notice to be given to such parties.

846. Disclaimer to be filed in Court. Where an official liquidator has been granted leave to disclaim a leasehold interest, he shall forthwith file the disclaimer in Court. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notices of the disclaimer have been given. The disclaimer shall be inoperative until it is so filed in Court. A disclaimer shall be in Form No. 206 in Appendix A and a notice of disclaimer in Form No. 206 in Appendix A.

847. Claimant to furnish statement of his interest. Where any person claims to be interested in any property of a company which the official liquidator wishes to disclaim, he shall at the request of the official liquidator, furnish a statement of the interest so claimed by him.

848. Vesting of disclaimed property. Where an application is filed under section 230 A (6) of the Act for the vesting of a disclaimed property of a leasehold nature and it appears to the Court that there is a mortgagee or under lessee of the property, the Court may direct notice to be given to such mortgagee or under-lessee stating that if he does, not elect to accept and apply for such a vesting order as aforesaid upon the terms imposed by the above sub section of the Act within a time to be fixed by the Court, he will be excluded from all interest in and security upon the property. If at the expiration of the time fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under lessee from all interest in or security upon the property.

Examination under Sections 195 and 190 of the Act

849. Application for examination. An application for the examination of any person under section 195 of the Act shall, if made by any person other than the official liquidator, be supported by an affidavit of such person stating the matters in respect of which the examination is sought and the grounds on which the applicant relies in support of his application. Notice of such application shall be served on the official liquidator.

850. Conduct of the examination. The conduct of the examination under section 195 of the Act may be given either to the official liquidator or to the applicant as the Court shall think fit.

851. Party to be examined to be served with summons and paid expenses. The person having the conduct of the examination shall cause a summons to be served in Form No. 207 in Appendix A and cause expenses at the scale prescribed in Chapter II in Appendix C to be paid to the person to be examined under section 195 of the Act. The summons shall be served in the manner; prescribed for service of summons on a witness.

852. Attendance at examination under section 195. At the examination of any person under section 195 of the Act the official liquidator and the applicant, if any, may take part either in person or by advocate and no other person shall be entitled to take part except with the leave of the Court. The notes of the deposition of any person so examined shall not be open to inspection of any person other than the official liquidator, nor shall any copy thereof or an extract therefrom be supplied to any person other than the official liquidator save upon the orders of the Court.

853. Procedure at public examination. Where an order has been made for the examination of any person under 196 of the Act-

(a) the examination may be held before the Court or such other officer of the Court section 196 of the Act as the Court shall appoint;

(b) the Court may, if it thinks fit, either in the order for examination or by any subsequent order give directions as to the special matters on which any such person may be examined.

854. Notice of public examination. The official liquidator shall give notice in Form No.208 in Appendix A of the date and hour fixed by the Court or the officer appointed for holding of any examination under section 196 of the Act to creditors and contributories of the company by advertisement in such newspapers and in such manner as the Court or the officer, as the case may be, shall direct. Where a public examination is adjourned, it shall not be necessary to advertise the adjournment.

855. Service of summons on person to be examined under section 196. The official liquidator shall cause a summons to be served in Form No. 209 in Appendix A on (and shall, also cause expenses at the scale prescribed in Chapter II in Appendix C to be paid to) the person to be examined under section 196 of the Act: Such summons shall be served in the manner prescribed for service of summons on a witness.

856. Provisions of rule 566 to apply to examination under sections 195 and 196. The provisions of rule 566 shall apply, so far as may be, to examination under section 196 of the Act held before the Registrar (O.S.) or other officer of the Court.

Compromises and arrangements

857. Application for sanction of a compromise. Every application for sanction of a compromise or arrangement under section 234 (1) of the Act shall be supported by affidavit of, the official liquidator stating that the proposed compromise, if the application is under clauses (ii) and (iii) of the above sub section, is beneficial to the company and if the application is under clause (i) of the said sub section stating the necessity for such payment and in either case giving his reasons thereof. The Court may, before sanctioning the compromise or, the payment as the case may be, direct notice of such application to the Committee of Inspection, if any.

Debts and claims against the company

858. Advertisement for creditors. For the purpose of ascertaining debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims an advertisement shall be issued at such time as the Court shall direct. Such advertisement shall fix a day for the creditors to send their names and addresses and the particulars of their debts or claims to the official liquidator and appoint a day for adjudicating thereon and shall be in Form No. 210 in Appendix A.

859. Mode of proof. A debt may be proved in a winding up by delivery of or sending by post an affidavit verifying the debt to the official liquidator and a creditor need not attend upon the

investigation unless required to do so by notice from the official liquidator; but upon such notice being given, he is to come in and prove his debt or claim within a time to be therein specified.

860. Verification of proof. An affidavit proving a debt may be made by the creditor himself or by some person authorized by him.

861. Form of proof. An affidavit shall be in Form No. 211 in Appendix A and contain a statement of accounts showing the particulars of the debt and specify the vouchers or documents, if any, by which the same can be substantiated. The official liquidator may call for the production of such vouchers or documents.

862. Statement as to security. An affidavit proving a debt shall state whether a creditor is or is not a secured creditor.

863. List of debts. The official liquidator, shall investigate the debts or claims sent to him and shall, prior to the time appointed for adjudication, make out and file in Court a list supported by an affidavit in Form No. 212 in, Appendix A of all the debts and claims sent to him, distinguishing which of the debts and claims or party of the debts and claims so claimed are in his opinion justly due proper to be allowed without further evidence and which of them in his opinion ought to be proved by the creditors.

864. Allowance of debts. (1) At the time appointed for adjudication upon the debts and claims or at any adjournment thereof, the Court may either allow the debts and claims upon the affidavit of the official liquidator or may require the same or any of them to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed.

(2) The official liquidator shall give notice in Form No. 213 in Appendix A to the creditors whose debts or claims have been allowed on his affidavit of such allowance in such manner as the Court may direct.

865. Proof of debts. The official liquidator shall give notice in Form No.214 in Appendix A to the creditors whose debts or claims have not been allowed upon his affidavit of the date fixed by the Court for adjudicating upon such debts or claims.

866. Value of debts. The value of all debts and claims against the company shall, as far, as is possible, be estimated according to the value thereof at the date of the order of the winding of the company.

867. Expunging or reducing a proof. The Court may, on the application, of the official liquidator or if the official liquidator declines to interfere on the application of a creditor or contributory and after notice to the creditor who has proved his debt, expunge the debt or reduce its amount if it is satisfied that the proof has been improperly admitted.

868. Cost of proof. Unless otherwise ordered by the Court, a creditor shall bear the costs of proving his debt.

869. Workmen's wages. In any case where there are numerous claims for wages by workmen and others employed by the company it shall be, sufficient if one proof in Form No. 215 in Appendix A for all such claims is made by any person on behalf of all such creditors. Such proof

shall have annexed thereto as forming part thereof a schedule setting forth the names of the workmen and others and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

870. Judge's certificate of debts. The result of the adjudication upon debts and claims shall be in the form of a certificate to be signed by the Judge from time to time as convenience may require, and such certificate shall state whether the debts or claims are lowed or disallowed and whether allowed as against any particular assets or in any other qualified or special manner. Such certificate shall be in Form No. 216 in Appendix A.

Dividends

871. Notice of intended dividend. Not less than a month before applying to Court for leave to declare a dividend, the official liquidator shall publish notice of his intention to do so in Form No. 217 in Appendix A in such newspapers as the Court shall direct and shall also send by prepaid letter post notice in Form No. 218 in Appendix A to such of the creditors mentioned in the statement of affairs as have not proved their debt.

872. Provisions of rules 863 to 869 to apply. Where any proof is lodged pursuant to such notice, the official liquidator shall in relation to the admission or rejection thereof act in accordance with rules 863 to 869. The official liquidator shall apply, if necessary, to vary the list of creditors settled by the Court,

873. Dividends payable principal and interest. Creditors whose debts and claims carry interest and are allowed shall be entitled to receive dividends upon what was due for principal and interest at the date of the winding up. In the event of there being a surplus the dividend payable to such creditors shall be applied, firstly, towards payment of interest, and secondly, in reduction of the principal due to them.

Interest may be allowed on claims in respect of which it is recoverable as damages.

874. Declaration of dividend. No dividend shall be declared by the official liquidator without the sanction of the Court.

875. Notice of declaring and paying dividend. Unless otherwise ordered by the Court, the official liquidator shall give notice in Form No. 219 in Appendix A of the dividend declared by advertisement in such newspapers as the Court shall fix and by sending a notice in Form No. 220 in Appendix A by prepaid letter post to every creditor who has proved his debt.

876. Dividend may be sent by post. The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by cheque by post in a prepaid cover or by money order after deducting the money order commission. No postal or other charges shall be levied.

877. Payment of dividend to nominee. A person to whom dividends are payable may lodge with the official liquidator an authority in writing in Form No. 220 in Appendix A to pay such dividends to another person named therein.

878. Form of order directing return of capital to contributories. Every order by which the official liquidator is authorized to make a return to contributories of the company shall, unless the Court otherwise directs, contain or shall have appended thereto a schedule or list (which the official liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be made, the amount of money payable to each person, and particulars of transfers of shares, if any, which have been made or the variations in the list of contributories which have arisen since the date of settlement of the list of contributories and such other information as may be requisite to enable the return to be made. The schedule or list shall be in Form No. 221 in Appendix A with such variations as circumstances shall require and the official liquidator shall send a notice of return to each contributory in Form No. 222 in Appendix A.

Meetings

879. Application of rules as to meetings. Subject and without prejudice to any express provisions of the Act and directions of the Court the rules as to meetings hereinafter set out shall apply to meetings called by the official liquidator whether under the directions of the Court or otherwise.

880. Summoning of meetings. The official liquidator shall summon all meetings of creditors and contributories by giving notice in writing in Form No. 223 in Appendix A not less than 7 clear days before the day appointed for the meeting to every creditor or contributory of the time, place and object thereof; provided that where the Court shall so direct, such notice may be given by advertisement in which case the object of the meeting need not be stated. It shall not be necessary to insert such advertisement in the Official Gazette.

881. Time and place of meeting. Every meeting shall be held at such place and time as the official liquidator considers most convenient for the majority of the persons entitled to be present thereat. Different times or places or both may, if though expedient, be appointed for the meetings of creditors and the meetings of contributories.

882. Expenses of meetings at the instance of creditor, etc. The official liquidator may require every creditor or contributory who desires the summoning of a meeting to deposit as a condition precedent thereto a sum sufficient for the costs thereof to be computed in the following manner. Such costs, including all disbursements for printing, stationery, postage to the hire of a room shall be calculated at the rate of Re: 1 for each person whom notice is required to be sent for the first 25, at the rate of As. 8 for each person for the next 75 and at As. 4 for each person over 100. The said sum may be repaid to the person depositing the same from the assets of the company if the Court so directs.

883. Chairman of meeting. The official liquidator or some one nominated by him shall be chairman of any meeting. In the event of there being more than one official liquidator, the managing liquidator or his nominee shall be the Chairman. The nomination shall be in Form No. 224 in Appendix A.

884. Passing of resolution at creditor's meeting. At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution shall have voted in favour thereof. The value of a creditor

shall, in a meeting held under section 178 A of the Act, be deemed to be the value as shown in the books of the company, and in any other meeting the value for which the creditor has proved his debts.

885. Passing of resolution at contributories meeting. At a meeting of contributories a resolution shall be deemed to be passed when a majority in number and value present personally or by proxy and voting on the resolution have voted in favour of the resolution. The value of the contributories shall be determined according to the number of votes conferred on each contributory by the regulations of the company.

886. Copy of resolution to be filed. The official liquidator shall file with the Registrar (O.S.) a copy certified by him of every resolution of a meeting of creditors or contributories.

887. Non reception of notice by a creditor. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

888. Adjournments. The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

889. Quorum. A meeting may not act for any purpose except the adjournment thereof unless there are present or represented thereat at least 3 creditors or contributories entitled to vote or all the creditors or contributories entitled to vote if the number of such creditors or contributories shall not exceed three.

890. Procedure in the absence of quorum. If within half an hour from the time appointed for the meeting, a quorum as in the last rule is not present or represented thereat, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the Chairman may appoint not being less than seven days or more than 14 days from the day from which the meeting was adjourned.

891. When creditor can vote. No creditor shall be entitled to vote as a creditor unless he has lodged with the official liquidator a proof of the debt which he claims to be due from the company and such proof has been admitted wholly or in part by the official liquidator.

892. When creditor cannot vote. A creditor shall not vote in respect of any debt the value of which is not ascertained or of any debt which is contingent.

893. When secured creditor can vote. For the purposes of voting a secured creditor shall unless he surrenders his security; state in his proof the particulars of the security, the date when it was given and the value at which he assesses it and shall be entitled to vote only in respect of the balance due to him, if any, after deducting the value so given by the creditor.

894. Effect of voting by a secured creditor. If a secured creditor votes in respect of his whole debt, he shall be deemed of have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence:

895. Procedure when secured creditor votes without surrendering security. The official liquidator may, within twenty eight days from the date of the meeting at which a secured creditor, voted on the basis of his valuation of the security apply to the Court for an order to compel such creditor to give up the security for the general benefit of creditors on payment of the estimated value.

896. Meetings under section 178 A of the Act. Rules 891 to 895 inclusive shall not apply to meetings held under section 178 A of the Act:

897. Minutes of proceedings. The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly, entered in the book kept for that purpose and the minutes shall be signed by, him or by the Chairman of the next ensuing meeting. A list of creditors and contributories present at every meeting shall be made and ` kept in Form No. 225 in Appendix A.

898. Report by Chairman. The Chairman of a meeting summoned by the direction of the Court shall report the result thereof to the Court such report shall be in Form No. 226 in Appendix A.

Proxies

899. Voting by proxies. A creditor or contributory may vote in person or by proxy. Where a person is authorized to represent a corporation in the manner provided by section 80 of the Act, such person shall produce to the Chairman of the meeting a copy of the resolution so authorizing him. Such copy must either be under the seal of the corporation or certified to be a true copy by the Secretary or Director of that corporation.

900. Form of proxies. Every proxy shall be in Form No. 227 in Appendix A and every written part thereof shall be in the hand writing of the person giving the proxy or some person (other than the person to whom the proxy is given) duly authorized by him.

901. Forms to be sent with notice. Forms of proxies shall be sent creditors and contributories with the notice summoning the meeting. No name shall be inserted or printed in the form before it is sent.

902. Who may be appointed a proxy. No creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been admitted or allowed and no contributory, shall appoint a proxy who is not contributory of the company; but a creditor or contributory may appoint the official liquidator to act as his proxy.

903. Proxies to be lodged. A proxy shall be lodged with the official liquidator not later than 4 O'clock in the afternoon of the day before the meeting or adjourned meeting is to be held.

904. Use of proxies by deputy. When the official liquidator holds any proxies and cannot attend the meeting, he may in writing depute some person to use the proxies on his behalf and in such manner as he may direct.

905. Proxy by blind or incapable creditors or contributories. The proxy of a creditor or a contributory, blind or incapable of writing, may be accepted if such creditor or contributory has attached his signature or make thereto in the presence of a witness, who shall add to his own signature his description and residence: Provides that all insertions in the proxy are in the hand writing of the witness and that such witness shall have certified at the foot of the proxy that all such insertions were made by him at the request of the creditor or the contributory and in his presence before the creditor or the contributory attached his signature or mark.

906. Proxy of a creditor or contributory unacquainted with English. The proxy of a creditor or a contributory who does not know English may be accepted if it is executed in the manner prescribed in rule 905 and provided further that the witness certifies that it was explained to the creditor or the contributory in the vernacular known to him and gives the name of the creditor or the contributory in English adjacent to the signature.

Committee of inspection

907. Advertisement of date of hearing of application under section 178A (3). (1) On an application made under section 178 A(3) of the Act for directions a date shall be fixed for hearing the application and notice of such date shall be given by advertisement by the official liquidator in such manner as the Court may direct.

Official liquidator creditor or contributory may be heard on application. (2) On the date so fixed, the Court shall hear the official liquidator and any creditor or contributory who may appear at the hearing of the application.

908. Not dealing with assets. Neither the official liquidator nor any member of the Committee of Inspection of a company shall; while acting as official liquidator or member of such committee, except by leave of the Court, either directly or indirectly by himself or his employer, partner, clerk, agent or servant become purchaser of any part of the company's asset. Any such purchase made contrary to the provisions of this rule may be set aside by the Court of its own motion or on the application of the official liquidator, a member of the Committee of Inspection, any creditor or contributory, and the Court may make such order as to costs as it shall think fit.

909. Restriction of purchase of goods by official liquidator. Where an official liquidator carries on the business of the company he shall not, without the express sanction of the Court writing purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit, if any arising out of the transaction.

910. Committee of Inspection not to make profit. No member of a Committee of Inspection shall, except with the sanction of the Court in writing, directly or indirectly by himself or any employee, partner, clerk agent or servant be entitled to derive any profit from any transaction arising out of the winding up or to receive out of the assets any payment for service rendered by him in connection with the administration of the assets, or for any goods supplied by him to the official liquidator for or on account of the company. If it appears to the Court that any profit

or payment has been made contrary to the provisions of this rule, it may disallow such payment or order such profit to be recovered, as the case may be, on the audit of the official liquidator's account or otherwise.

911. Cost of obtaining sanction of the Court. In any case in which sanction of the Court is obtained under either of the last two preceding rules, the cost of obtaining such sanction shall be borne by the person at whose instance such sanction is obtained, and shall be payable out of the company's assets.

912. Sanction of payment to Committee. Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the services performed are of a special nature. Except by express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attached to his office as a member of such committee.

Accounts

913. Nature of books to be maintained. The official liquidator shall provide and keep such books of account as shall be necessary for the purpose of showing the debts and credits of the company. In particular he shall keep (1) a cash book in which shall be entered from day to day all receipts and payments, (2) a ledger which shall include the individual accounts of the contributories in which every contributory shall be debited from time to time with the amount payable in respect of a call made on him and (3) a record book in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors, contributories or the Committee of Inspection and all such matters as may be necessary to give a correct view of his administration of the company's affairs.

914. Nature of book when the business of companies to be carried on. When the official liquidator has been authorized to carry on the business of the company, he shall keep separate book of account in respect of such business and such books shall, as far as possible, be in conformity with the books kept by the company.

915. When accounts to be filed. Unless otherwise ordered, the official liquidator shall file his accounts twice every year. The first of such account commencing at the date of his appointment and brought down to the end of six months from such date shall be filed on or before one month from the expiration of the said six months and the subsequent accounts shall be filed at intervals of six months being brought down to the end of the half year for which they are filed.

916. Audit of accounts. (1) The Registrar (O.S) shall cause the accounts filed including the statement filed under section 244 of the Act to be audited. The Auditor shall be directed to ascertain that the accounts have been properly and accurately kept and that all moneys received and disbursed have been accounted for.

(2) For the purpose of such audit, the official liquidator shall produce before the auditor all vouchers, books and account which may be required by the Auditor in support of the said account and shall furnish such information as the Auditor may require.

(3) If during such audit any question or matter of difference shall arise between the Auditor and the official liquidator in respect of any payment, receipt, voucher or otherwise, such question or matter of difference shall referred to the Chief Judge or to such Judge as he may appoint to decide the same.

(4) When the accounts have been audited, one copy thereof shall be filed and kept by the Court and another copy shall be delivered to the Registrar of Joint Stock Companies to be kept with his records.

(5) Notice of such audit shall be given to such persons as the Court may direct.

(6) For defraying the costs of the audit, the official liquidator shall deduct from the assets in each estate such fees as may be allowed by the Court or if the Court so directs, by the Registrar, (O.S).

917. Form of accounts. The accounts or the official liquidator (to be filed in duplicate as prescribed in the Act) shall be in Form No. 228 in Appendix A and shall be verified by an affidavit in Form No. 229 in Appendix A.

918. Form of affidavit when there are no receipts and payments. Where an official liquidator has not, since the date of his appointment or since the date of his last accounts, as the case may be, received or paid any sum of money, he shall file an affidavit of no receipts or payments in Form No. 229 in Appendix A on the date on which he shall have to file his accounts for the period.

919. Account to be open in a bank. The official liquidator or provisional liquidator shall, as soon as may be after his appointment, open an account in such bank as the Court may direct (hereinafter called the bank), subject to the provisions of section. 244 A of the Act, in the name of the "Official Liquidator of the Company of, etc., in liquidation" or of the Provisional Liquidator of the Company of " as the case may be. An authority to open an account with the bank shall be in Form No. 230 in Appendix A.

920. Payment in of moneys. All moneys received in the course of winding up shall be paid into such account immediately after receipt thereof.

921. Payment out of moneys. No moneys shall be paid out of the aforesaid banking account except upon cheque or order signed by the official liquidator and countersigned by such person as is hereinafter mentioned in rule 924.

922. Securities to be deposited with the bank. All bills, hundis, notes and other securities of like nature payable to the company or the official liquidator thereof shall unless the Court otherwise directs, as soon as they shall come to the hands of the official liquidator be deposited by him with the bank for the purpose of being presented for acceptance and payment or for payment only as the case may be.

923. Delivery of security by the bank. No bills, hundis, notes and other securities deposited as aforesaid shall be delivered out except upon the request of the official liquidator countersigned by such person as is hereinafter mentioned in rule 924.

924. Countersigning authority. Unless otherwise ordered by the Court, the person required to countersign under rules 921 and 923 shall, in cases where the powers mentioned to section 179 (f) of the Act have been delegated to the official liquidator, be such member as the Committee of Inspection shall appoint for the purpose and in cases where there is no Committee of inspection and in cases where the powers have not been delegated to the official liquidator, shall be the Registrar (O.S):

Provided that the Court may dispense altogether with such countersignature.

925. Memorandum of sanction to draw bills. The sanction of the Court to the drawing, accepting, making and endorsing of any bill of exchange, hundi or promissory note, by an official liquidator shall be testified by a memorandum on such bill of exchange and signed by the Registrar (O.S.) or the member of the committee of Inspection referred to in the last rule, as the case may be Such memorandum shall be in Forms No. 231 and No. 232 in Appendix A.

926. Investment of moneys. All or any party of the money for the time being standing to the credit of the official liquidator in the bank and not immediately required for the purposes of winding up may, with the sanction of the Court, be invested, in the purchase of Government securities in the name of the official liquidator. All investments of moneys as aforesaid shall be made by the bank on a request (in Form No. 233 in Appendix A) signed by the official liquidator and countersigned by the Registrar (O.S.) such request shall be sufficient authority for debiting the account with the purchase money and such securities shall be retained by the bank and shall not afterwards be sold or transferred or otherwise dealt with except with the leave of the Court.

927. Collection of dividends on securities. Subject to any special orders of the Court, all dividends and interest to accrue due from any such securities shall, from time to time, be received by the bank (for which purpose the official liquidator may execute such power or powers of attorney as may be necessary) and placed to the credit of the account of such official liquidator. When any of such securities shall become payable, the principal and interest due thereon shall be received and placed to the credit of the account of the official liquidator.

Time for filing liquidator's statements, and regulations applicable thereto

928. Conclusion of proceedings. The winding up of a company shall for the purposes of section 244 of the Act be deemed to be concluded-

(a) in the case of a winding up by the Court, at the date on which the order dissolving the company has been reported by the official liquidator to the Registrar of Joint Stock Companies under section 194 (2) of the Act;

(b) in the case of a voluntary winding up or a winding up subject to the supervision of the Court, at the date on which the company shall be deemed to be dissolved under section 208 E or 209 H of the. Act: Provided that if at such date there are undistributed funds of the company

in the hands or under the control of the official liquidator, the winding up shall not be deemed to be concluded until such funds have been distributed or properly disposed of.

929. Form of affidavit and statement under section 244 of the Act. Every statement required to be filed in Court or with the Registrar of Joint Stock Companies under section 244 of the Act shall be in Form No. 231 and verified by an affidavit it in Form No. 235 in Appendix A.

930. Time for filing the statements. The first statement commencing at the date when the official liquidator was first appointed and brought down to the end of twelve months from such date shall be filed or sent within 30 days from the expiration of the said twelve, months and the subsequent statement shall be filed at intervals of six months being brought down to the end of the half year for which it is filed or sent.

931. Statement to be laid before meeting by liquidator. The statement to be laid before the meeting summoned under sections 208 D and 209 G of the Act shall, in the case of the first statement, be a statement similar in all respects to the first statement filed in the Court or with the Registrar of Joint Stock Companies, as the case may be under rule 930 and subsequent statements shall be similar in form to the first statement, but shall commence at the date when the last previous statement terminated and be brought down to the end of twelve months from such date.

932. Procedure on the filing of statement. Upon the filing in the Court of the statement referred to in rule 930 the procedure laid down in rule 826 shall be followed in respect of such statements.

933. Form of return under section 208 E (3) and section 209 H (3). The returns to be made under sub section (3) of section 208 E and sub section (3) of section 209 H of the Act, shall be in forms Nos. 236 and 237 in Appendix A, respectively.

934. Costs payable out of the assets. The assets of a company in a winding up by the Court remaining after payment of the, fees and expenses properly incurred in preserving, realizing, or getting in the assets, including where the company has previously commence to be wound up voluntarily such remuneration; costs and expenses as the Court may allow to the liquidator in such voluntary winding up shall be, subject to any order of the Court and to the rights of secured creditors if any, liable to the following payments, which shall be made in the following order of priority:-

(i) the costs of the petition including the costs of any person appearing on the petition whose costs are allowed by the Court;

(ii) the necessary disbursements of any liquidator appointed in the winding up by Court, other than expenses properly incurred in preserving and realizing or getting in of the properties of the company,

(iii) the costs of any person properly employed by such liquidator;

(iv) the remuneration of any such liquidator;

(v) the actual out of pocket expenses necessarily incurred by any member of the Committee of Inspection and sanctioned by the Court;

Provided that this rule shall not affect any order for costs directed during the course of the winding up proceedings.

Termination of winding up

935. Filing of final accounts. Upon termination of the proceedings for winding up of a company the official liquidator shall file his final accounts into Court. Upon such final accounts being passed in accordance with the provisions of this Chapter and after payment in the manner provided in the next rule of the balance in his hands as certified by the officer who passed the accounts, the official liquidator may apply for direction as to dissolution.

936. Disposal of balance. Unless otherwise ordered, the balance in the hands of the official liquidator referred to in the last preceding rule (inclusive of any amounts in the bank) shall, except as otherwise prescribed by section 244 B of the Act, be paid into Court within fifteen days after the date of passing of the final accounts.

937. Dissolution of the company. Upon the hearing of the application referred to in rule 935 the Court may, after hearing the official liquidator and any other person to whom notice may have been ordered by the Court, make such orders as it shall think fit with respect to the dissolution of the company, the disposal of book of the company kept by the official liquidator and the vacating of the, recognizance bonds entered into by the official liquidator and his sureties: provided that, unless otherwise ordered, the book and files of proceedings kept by the official liquidator shall be deposited in Court.

Miscellaneous

938. Attendance at proceedings. No order to the prejudice of contributories or creditors shall be made ex parte on the application of the official liquidator. Every person for the time being on the list of contributories of the company filed in Court by the official liquidator and every person having a debt or claim against the company allowed by the Court shall be at liberty at his own expense to attend the proceedings before the Registrar (O.S.) or Court, and shall be entitled upon payment of the cost occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Registrar (O.S.) or the Court shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

939. Appointment of representative party. The Court may from time to time appoint any one or more of the contributories or creditors as it thinks fit to represent before it at the expense of the company all or any class of the contributories or creditors upon any question as to compromise with any of the contributories or creditors or in and about any other proceedings before it relating to the winding up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall join in employing the advocate to represent them.

940. Appearance to be filed before attendance. No contributory or creditor shall be entitled to attend any proceedings before the Court unless and until he has filed an appearance with the Registrar (O.S.), A book to be called the "Appearance book" shall be kept in Form No. 238 in Appendix A in which all such appearances shall be entered.

941. Transfer of suits. Upon the making of an order for the winding up of a company by the Court all suits and proceedings to which the company is or shall be a party then pending or thereafter instituted in or transferred to the Chief Court shall be assigned to and placed in the list of the Judge or Judges for the time being exercising jurisdiction under the Act.

942. Filing of affidavit and service of copy thereof is condition precedent to use of it. Where an order shall have been made for the winding up of any company, any person intending to use any affidavit in any proceeding under such order shall file the same in Court and serve a copy thereof on the official liquidator. The person other than the official liquidator filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the Court shall otherwise direct.

943. Form of declaration of solvency. The declaration of solvency under section 207 of the Act shall be in Form No. 239 in Appendix A.

944. Duties of advocate of official liquidator. The advocate of the official liquidator shall conduct all such proceedings as are ordinarily conducted by advocates in Courts; and where the attendance of his advocate is required in any proceeding in Courts, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his advocate or the Court shall direct him to attend.

945. Advocate's fees. Advocate's fees shall be taxed in accordance with the provision of clause 2 of Chapter VIII in Appendix C, unless a gross sum in lieu of taxed costs is fixed by the Court. Where service of notice may be effected by an advocate's clerk as provided by the rules in this Chapter, a fee of Re. 1 may be allowed.

946. Accounts, etc., to be filed in Registrar's office. All accounts, lists, notices and other documents directed by the rules in this Chapter to be filed in Court shall be filed in the office of the Registrar (O.S.)

947. Fees of inspection and copies of accounts filed under sections 177 A and 244. Any creditor or contributory of a company which is being wound up shall be entitled to inspect the statement filed under section 177 A or the statement filed under section 244 of the Act on payment of a fee of Rs.3 and to receive a copy thereof or extract therefrom on payment of the usual fees for copies.

Voluntary winding up

948. Rules for application in voluntary winding up. Where an application is made to the Court under the provisions of the Act in the voluntary winding up of a company, the rules in this Chapter, so far as may be, shall be applied to the subject matter and mode of such application.

949. Rules applicable to meetings. Subject to the provisions contained in any of the company's articles of association and except in so far as the subject matter of the context may otherwise require, rules 880 to 885, 887 to 895, 897, 899 to 906 shall apply to meetings of creditors of contributories convened in a voluntary winding, up.

950. Chairman of meetings. The Chairman of any meeting convened by the liquidator shall be the liquidator or some other person nominated by him. In the event of there being more than one liquidator, the Managing liquidator or the person nominated by him shall be the Chairman. Where there is no such Managing liquidator and the liquidators do not agree as to who shall be the Chairman, then a liquidator elected by the meeting shall be the Chairman. In any meeting convened by a creditor or contributory, the person elected by the meeting shall be the Chairman.

951. Form of statements under Ss. 208 D and 209 G of the Act. The statement to be placed by the liquidator before the annual meetings of the company under section 208 D of the Act and before the annual meetings of the creditors and of the company under section 209 G of the Act shall be in Form No. 234 in Appendix A.

952. Notice of appointment of liquidator in voluntary winding up. The notice of appointment of a liquidator in the voluntary winding, up of a company to be filed with the Registrar of Companies under section 214 of the Act shall be in Form No. 240 in Appendix A.

Meetings to consider compromise and arrangement under section 153 of the Act

953. Form and notice. An application for an order for calling a meeting under section 153 (1) of the Act shall be in the form of an interlocutory application. A notice of such application shall be in Form No. 241 in Appendix A; and shall be served in such manner as the Court or the Registrar (O.S.) may direct.

954. Directions at hearing of application. At the hearing of an application under rule 953, the Court may give such directions as it shall think fit in respect of all or any of the following matters, namely:-

- (a) fixing the time when and place where the meeting is to be held;
- (b) appointing a chairman of the meeting and fixing a quorum;
- (c) mode of giving notice of meeting by advertisement or by sending notices;
- (d) the determination of the values of the members or creditors, as the case may be;
- (e) such other directions as the Court may consider necessary in the circumstances of the case.

955. Report of result of meeting. Within 7 days after the holding of a meeting, the Chairman of the meeting shall report the result thereof to the Court. Such report shall be filed and form part of the record of the application referred to in rule 953.

956. General directions for holding of meetings. In the absence of or subject to any directions by the Court under rule 954,

(a) the meetings of the creditors or members of a company, which is in the course of being wound up either by Court or under its supervision at the date of the application referred to in rule 953, shall be held in the manner provided by rules 880 to 897 and 809 to 906, and where the company is in the course of being wound up voluntarily, at the date of such application, in the manner provided by rule 949;

(b) the meetings of the creditors of members of a company which is not being wound up at the said date, shall be held in the manner prescribed by the articles of the company; provided that any person connected with the company as director, secretary or member, shall not be a chairman of any creditors meeting of the company;

(c) where the value of the debt or claim of any creditor is not or has not been admitted by the company or its liquidator, as the case may be, the Chairman shall have power to decide the value of the debt or claim: Provided that the provisions of rule 15 shall apply mutates mutandis to such decision.

957. Result of resolution of meeting should be decided by poll. Notwithstanding anything contained in these rules, the result of a resolution of any meeting held under section 153 (1) of the Act, shall be decided only by taking a poll.

Savings

958. Savings of pending proceedings in winding up. The rules in this Chapter shall not apply to any company of which the winding up has commenced before the commencement of the Indian Companies (amendment) Act, 1936. The rules in force immediately before the commencement of these rules shall apply to the winding up of such company.

CHAPTER XXXIV

Rule made under Section 20(f) of the Indian Trusts Act, 1882

959. Investment of trust money in debentures issued under the City of Karachi Municipal Act. Trust property consisting of money may, until further order, be invested in debentures issued under the City of Karachi Municipal Act, 1933.

Note. This is in addition to the securities already recognized under section 20 of the Indian Trust Act, 1882.