

THE SIND CIVIL COURTS RULES

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THE SIND CIVIL COURTS RULES

Part I General

Preliminary:

1. Short Title: These rules may be cited as “The Sind Civil Courts Rules:

2. (1) Extent, commencement and repeal:-- They shall apply to all the Civil Courts subordinate to the Chief Court of Sind except the Karachi Small Causes Court.

(2) They shall come into operation on the expiry of 30 days from the date the publication in the official Gazette and shall apply also to all proceedings then pending.

(3) The Sind Courts Civil Circulars shall, with effect from the date mentioned in sub-rule (2), cease to apply to the Civil Courts to which these rules apply.

3: Definitions :--In these rules, unless there is something repugnant in the subject or context:--

(1) “Chief Court” means the Chief Court of Sind;

(2) “Code” means the Code of Civil Procedure, 1908, as amended from time to time;

(3) “first hearing” includes the hearing of a suit for settlement of issues and any adjournment thereof;

(4) “interlocutory applications” means an application to the Court in any suit, appeal or proceeding, already instituted in such Court, not being a proceeding for execution of a decree or order;

(5) “miscellaneous application” means an application whereby any proceeding is instituted including a proceeding under rule 46-A, 58, 97 and 100 of Order XXI of the Code and an analogous proceeding under the Indian Companies Act, 1913; but does not include suit or an appeal or a proceeding in insolvency or a proceeding in execution of a decree or order.

(6) “verified” means verified in the manner provided by Order VI, rule 15 of the Code; and

(7) all other expressions used herein shall have the meanings assigned to them 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 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 pleader on the other party or his pleader or by sending the same by post in a registered prepaid cover to the address for service of the party or his pleader.

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 purpose therein mentioned.

7. Alteration, etc., of rules in Schedule in 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 I

Sittings and vacations of Courts:

8. Sitting hours of Court:-- Judges shall ordinarily sit in Court (including chambers with the Court premises) on week days from 11 a.m. to 5 p.m. and may rise for recess at 2 p.m. for not more than one hour; and, subject to rule 12(1), on Saturday they shall sit from 11 a.m. to 1.30 p.m.

Provided that during the hot weather between April and October (the exact dates being fixed by the District Judges) for their Courts and the Courts subordinate to them) they shall sit in Court (including chambers within the Court premises) on week days from 8 a.m. to 1.30 p.m. and may rise for recess at 11 a.m. for not more than half an hour; and, subject to rule 12(1) on Saturdays they shall sit from 8 a.m. to 10.30 a.m.

9. Precedence of judicial work over other work:-- The judicial work of the day shall be taken up punctually at the time prescribed by rule 8, and shall have precedence over all other work.

10. Judicial work to be done in open Court:-- All judicial work involving trial of cases or hearing of contested matters shall be done in open Court.

Provided that where, in the opinion of the Court, administration of justice would be impeded by the presence of the public where any law for the time being in force, or public policy so requires the Court may sit in camera.

11. Dress:-- (1) When presiding on the Bench all judicial officers (including Barristers-at-Law), whatever their rank, shall wear a King's Counsel's gown of black material and bands.

(2) Pleaders shall, when appearing in Court, wear a gown made of black material after the pattern of a King's Counsel's gown but with sleeves cut off at elbow and ending in a triangular flap at the back of the arm six inches long from the base to apex, and also bands:

Provided that pleaders who are Barristers may wear a Barrister's gown and bands.

12. (1) Saturdays may be reserved, when necessary, for preparation of reserved judgments and disposal of administrative business by the District Judge and, subject to the control of that District Judge, by Joint, Assistant and Subordinate Judges.

(2) On other days administrative or departmental work, unless very urgent, should be done either before the sitting, during the recess or after the rising of the Court.

13. Vacation and Court Holidays:-- (1) The Civil Courts to which these rules apply shall be closed and on such holidays as the Chief Court from time to time directs.

(2) The annual vacation of such Courts shall ordinarily be for a period of six weeks which shall begin and end on such days as the Chief Court may direct.

(3) A list of such holidays and the dates of the annual vacation sanctioned by the Chief Court shall be published yearly in the official Gazette.

(4) Suitable arrangement shall be made for urgent work, during the annual vacation and Court holidays.

14. Judicial work on holidays:-- Except in case of grant urgency no judicial work shall be done on Sundays and sanctioned holidays and during vacations.

CHAPTER II

The Court Office.

Dates and Cause List:

15. Dates to be fixed by Judge.—Dates shall be fixed in each case by an order in writing of the Judge.

16. Special days to be set apart for different work:-- Special days or hours may be set apart for long causes, short causes, execution and miscellaneous matters.

Subordinate Courts invested with the jurisdiction of a Court of Small Causes and Subordinate Judges appointed as Magistrate may set apart special days or hours for such work.

17. Matters to be considered in fixing dates:-- (1) Dates shall be fixed with reference to the convenience of the parties, the current business of the Court and the prospect of cases to enable them to take the necessary steps towards getting their cases ready for hearing.

(2) In fixing peremptory dates for hearing the following principles may be observed:--

(i) dates should not be fixed without something approaching to certainty that the cases will be finally heard on the dates so fixed; and

(ii) all cases should be brought to trial or hearing in order of their age no matter what may be their length or difficulty.

18. Cause Lists:-- On the last working day in every week a list of suits, miscellaneous applications, interlocutory applications, appeals and other cases, 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 suits, miscellaneous applications or appeal, names of the parties and the purpose for which it is fixed.

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

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

(i) ex parte and uncontested matters;

(ii) matters by or against soldiers and public officers;

(iii) matters in which the Government Pleader appears for Government;

(iv) part-heard matters; and

(v) all matters the lack of decision in which is delaying decision in other proceedings.

(3) The cause list shall be prepared under the direction of the Judge and signed by him and may in like manner be varied from time to time.

19. General Cause List Book:-- (1) A General Cause list Book shall be kept in Form No.1 in Appendix C.

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

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

(4) In the subordinate Courts entries in the General Cause List Book of matters of advanced stage should be marked with a tick; of matters merely adjourned, should be marked with a cross; and of matters decided should be crossed out by line through them.

20. 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.

21. Judicial registers:-- The following judicial registers shall be kept:-

(i) Register of Rejected Plaints;

(ii) Register of civil suits.

- (iii) Register of Documents filed in Civil Suits;
- (iv) Register of Decrees received for Execution from other Courts.
- (v) Register of Execution Applications;
- (vi) Register of Miscellaneous Applications;
- (vii) Register of rejected appeals;
- (viii) Register of Appeals from Decrees;
- (ix) Register of Miscellaneous Appeals, that is to say, appeals from orders other than decrees under the Code or from orders under Special Acts.

22. (1) How kept:-- Registers Nos. (ii) and (vii) shall be kept in Forms Nos. 14 and 15, respectively in the Appendix H to the First Schedule to the Code.

Registers Nos. (i) and (iii) to (vi) shall be kept in Form Nos. 2 to 6 respectively prescribed in Appendix C.

Registers Nos. (vii) and (ix) shall be kept in the same form as Registers Nos. (i) and (viii) respectively.

(2) Where complaints, applications or appeals have been amended or re-admitted after dismissal for default or otherwise, the amendments and re-admissions shall be noted against the original entries and shall not be entered under new numbers in the registers. Interlocutory applications shall be treated as part of the proceedings to which they relate and shall not be separately numbered and registered.

(3) Courts exercising both ordinary original civil jurisdiction and Small Cause Court Jurisdiction shall keep separate sets of registers in respect of matters falling within each such jurisdiction.

23. Arrangement of record in pending matters:-- The record of a regular suit other than a Small Cause Court suit shall be divided into following four parts:--

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

24. 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 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.

(3) The process file shall contain :-

- (i) the index,
- (ii) power of attorney,
- (iii) summons 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 processes and other papers connected with such execution proceeding.

25. Biding and title page:-- The splitting of the record and the distribution of the papers into the proper file shall in all cases be done as and when they are received, papers in each file shall be paged separately. The different files shall be kept together.

26. One file in appeals and miscellaneous application, etc:-- In appeals, miscellaneous application and Small Causes Court suit there may be only one file with a title page prefixed to it. Immediately after the title page shall be filed with the diary, the memorandum of appeal, miscellaneous application or plaint, as the case may be, the order sheet and then other documents.

27. Diaries:-- Diaries shall be kept in Form No.1 in the Appendix B by the chief ministerial officer or other officer in regular attendance 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.

28. 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 which may be written or typed and placed immediately after the order sheet.

(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 application, returns, reports and other similar documents.

Chief Ministerial Officer.

29. Chief ministerial officer:-- The Sheristedars of the District Courts and the Subordinate Courts shall be the chief ministerial officers of their respective Courts. In this rule the expression “District Courts” includes the Courts of the Joint and Assistant Judges.

30. Duties of chief ministerial officer:-- The chief ministerial officer of any Court and in his absence such other officer as may be appointed by general or special order of the Judge in this behalf shall perform the following duties subject to the control of the Judge:-

- (1) receive plaints, applications and appeals;
- (2) sign memoranda and attest copies of documents filed therewith;
- (3) cancel Court-fee stamps;
- (4) grant summonses for witnesses not being summonses for the appearance of public officers or for the production of public records; and sign all processes;
- (5) dispose of applications for the return of documents and other material objects after the expiry of the period or disposal of appeal;
- (6) dispose of applications by parties for copies and translations;
- (7) tax costs;
- (8) certify copies and translations;
- (9) sign registers and diaries and certify decisions and orders to lower Courts;
- (10) keep and affix the seal of the Court;
- (11) in the absence of any other arrangement in that behalf be interpreter and attend on the Judge in Court; and
- (12) in the temporary absence of the Judge adjourn proceedings, make an order for the re-attendance of witnesses, and for the taking of a surety from an apprehended witness under Order XVI, rule 18 and from judgment-debtors arrested under Order XXI, rule 38 of the Code.

Execution Clerk

31. Execution Clerk to make necessary entries in Register of Civil Suits:-- The Execution Clerk under the supervision of chief ministerial officer, shall enter in the appropriate column of the Register of Civil Suits, all applications for execution whether oral or in writing, all certified adjournments or payments out of Court, “all stay orders, all orders or notices of attachment, all entries of satisfaction and all returns of execution including certificates of execution from other Courts.

32. And to write diaries and keep Register of Execution Applications:-- He shall enter every proceeding in execution in the diary and shall

enter all applications for execution, when admitted, in the Register of Execution Application.

Part II.
Practice and Procedure.
Chapter III.

General – Form of Proceedings:

33. Miscellaneous:-- Every plaint, written statement, memorandum of appeal, application, and like document present to 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 pen space being left at the top and the bottom of each sheet;

(2) Paragraphs:-- shall be divided into paragraphs number consecutively, each paragraph containing as nearly as may be a separate allegation;

(3) By whom written:-- shall be written or typewritten by the party personally or by his clerk, his pleader, his pleader's clerk or by a petition-writer of the Court;

(4) Language:-- if filed in a District Court, or in a subordinate Court in original suits and proceedings of civil nature wherein the subject matter exceeds in amount or value Rs.5,000 shall be in English or in Sindhi accompanied by an English translation;

(5) shall be touched in proper language, and

(6) Dates:-- where Indian dates are used, shall give the corresponding English dates.

34. 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, miscellaneous applications, or memorandum of appeal, and need not be repeated in the subsequent proceedings in the same suit, appeal 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.

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

36. Draftsman's endorsement:-- At the foot of every pleading, miscellaneous application and memorandum of appeal there shall appear the name and signature of the person who has drafted, and if the draftsman is not a pleader of the party presenting it, also the signature of his pleader, if any, in token of his acceptance of the draft and responsibility therefore.

37. Particulars to be stated in address for service:-- The address for service required to be filed under rules 19 to 26 added to Order VII, rules 11 and 12 added to order VIII, rule 38 added to Order XLI, rule 8 added to Order XLVI and rule to the order 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 officer; and
- (iv) the taluka and district.

38. Initialing alteration, etc.:-- Every interlineations, erasure or correction in any pleading, miscellaneous application, memorandum of appeal, execution application or like document shall be initialed by the party or his recognized agent or pleader presenting it.

39. Consequences of non-compliance with rules 33 to 38.:-- If any pleading, memorandum of appeal, application or like document presented in Court fails to comply strictly with any of the provisions contained in rules 33 to 38, it shall be returned to the person presenting it for complying with the objection endorsed thereon.

Vakalatnama.

40. Form of Vakalatnama:-- Vakalatnama shall be in Form No.2 in Appendix B.

41. Execution and attestation of vakalatnama:-- (1) Execution of a vakalatnama by a party shall in any case where a party is illiterate, be by affixing his thumb impression thereon and shall be attested by a person in whose presence such thumb-impression is affixed and who shall certify such fact on the vakalatnama under his signature.

(2) Endorsement on vakalatnama:-- Every pleader 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.

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

42. Notice of change of pleader:-- A party desiring to obtain an order for change of his pleader on record in a suit or matter shall first give notice of his intended

application for change to that pleader, and the fact of such notice having been served shall be stated in the affidavit in support of such application.

43. Notice of change to client:-- A pleader 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 notice having been served shall be stated in the affidavit in support of such application.

44. Government Pleader not to file vakalatnama:-- No Government or other Pleader appearing on behalf of the Central Government of the Provincial Government shall be required to file a vakalatnama.

Affidavits.

45. Ex-officio Commissioners:-- The chief ministerial officers of District Courts and Subordinate Courts, the Sherishtedars of Joint and Assistant Judges and Nazirs of Subordinate Courts shall be ex-officio Commissioners for taking affidavits in respect of matters and causes arising within an subject to the jurisdiction of their respective Courts.

46. Title:-- Every affidavit shall be entitled in the suit or matter 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.

47. 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 his rule.

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

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

50. 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 document.

51. 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 person or matter as to which the opinion is expressed or other means of the knowledge of the deponent.

52. 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 pleader and client.

53 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 the 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.

54. Attestation fee:-- (1) An attestation fee at the rate prescribed under the scale in Chapter I, Appendix D, shall be levied for each affidavit not required for immediate use in Court.

(2) Affidavit shall not be sworn or affirmed until the attestation fee at the prescribed rate has been paid to the Accountant or Nazir.

55. Affidavit 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 Judge alongwith the fee prescribed in the scale in Chapter I, Appendix D, stating where the Commissioner is required to attend and why he is so required. On receipt of such requisition the Judge shall, unless he sees any reasons to the contrary, require a qualified officer of his Court to attend as Commissioner at such time as he thinks proper. Fees for attestation done without the precincts of the Court shall ordinarily be paid to the officer making the attestation provided. It is done outside office hours.

56. Reading of contents of affidavit to deponent:-- 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 therein above 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.

57. 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.

58. Identification of deponent:-- Where the deponent of an affidavit is personally known to the Commissioner, the affidavit shall be attested by some person who knows the deponent personally and is also known to the Commissioner personally.

59. Where the deponent is a purdanishin 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.

60. Every exhibit to be initialed and dated:-- Every document annex to any affidavit shall be initialed and dated by the Commissioner.

61. Form of certificate:-- affidavit shall be as in Form No.3 in Appendix B.

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

63. 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.

64. Special time of 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.

65. Proof of affidavit:-- (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 cases under Regulation VIII of 1827, the Succession Act, 1925, and the Guardians and Wards Act, 1890.

(b) suits in which defendants do not appear when called on the hearing;

© interlocutory applications; and

(d) proof as to the ability of the judgment-debtor to Pay the decreal 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 Order 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.

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

67. 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;

© 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 the effect at the top of the left hand margin.

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

68. 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 less than 2 days before the hearing, unless the Court in its discretion extends or abridge 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 pleader, if any. Parties or their pleaders served with such copies shall give a receipt therefore. Copies shall be authenticated by the signature of the parties or their pleaders, 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 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) Whereby 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).

69. Procedure applying interim relief:-- (1) 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.

(2) An order made ex parte for interim relief may be made in Chamber.

Security Procedure.

70. Security summons:-- Where security is ordered to be given to the satisfaction of the Nazir or the Accountant, the party ordered to give security shall take out a summons in Form No.4 in Appendix B 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 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 or the Accountant to proceed with the taking of the security and the examination into the sufficiency of the surety of sureties tendered; or

(2) where cash or Government Promissory Notes to 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 given, to a separate account.

71. Production of tile deeds, affidavit of justification,

examination:-- Every person offering himself as surety shall produce before the Nazir or the Accountant 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 or the Account and in other cases the Court may, on good cause shown, dispense with the deposit of title deeds and vouchers.

72. 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 or the Accountant 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.

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

74. Property in respect of what 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 moveable property of which he can produce evidence satisfactory to the Nazir or the Accountant, such as deposit receipts, Government Promissory Notes, or other evidence of title.

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

76. Who may be present at the examination:-- No person other than the party giving security, the sureties and their respective pleaders, the party or parties, in any, on whom notice has been served and his or their pleader or pleaders, shall be present at the examination of any surety by the Nazir or the Accountant.

77. Reference to Court:-- In cases in which the security is disputed or challenged, the Nazir or, as the case may be, the Accountant shall make an order in writing and shall, if so required, refer it to the Judge.

78. 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.

79. 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 or the Accountant 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.7 in Appendix C. The Nazir or the Accountant 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.

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

81. Precedence should 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.

82. Language in which proceedings to be conducted:-- Proceedings shall be conducted in the language of the Court, or where permitted by law, in English and, where interpretation is necessary, through the interpreter of the Court. A special interpreter shall be provided at the cost of the party in case of any language unknown to the officers of the Court.

83. Only one pleader to be heard for a party:-- Not more than one pleader 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 pleaders.

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

(2) The Government Pleader 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 require, permit him to appear and be heard, subject to such terms as to costs or otherwise, as the Court may think fit.

84. No presentation by post or telegram:-- No document or proceeding required to be presented to or filed in Court, which is received by post or telegram shall be attended to.

CHAPTER IV

INSTITUTION OF PROCEEDINGS

85: Appearance by agent:-- (1) When a party appears by a recognized agent other than a pleader, the agent shall, before making or doing any appearance, application or act in or to Court, file in Court a power of attorney in Form No.5 in appendix B, or in 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 and further that no other agent is expressly authorized to make or do such appearance, application or act.

(2) The chief ministerial officer shall examine the power of attorney and, if it contains the necessary powers, shall make an entry to that effect at the foot of 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 chief ministerial officer for inspection by the opposite party or his pleader.

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

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

87-A. Copies to be filed of applications, etc.:-- A. Party presenting a plaint, memorandum of appeal, cross objection, or an application of which a notice is to be issued by the Court to any person, shall file in Court along with it a sufficient number of copies thereof, and other documents filed therewith, if any, for service on the person concerned along with 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 be served along with the notice.

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

88.Presentation of proceedings:-- Pleading, miscellaneous applications, memoranda of appeals, execution applications and like documents may be presented to or filed in court by delivering them per day, the chief ministerial officer or other officer appointed for the purpose:

Provided that written statements and interlocutory applications in suits or matters fixed for the day must be presented to or filed in court by delivering them personally the Bench clerk not later than 15 minutes before the time fixed for sitting of the Court under rule 8. Such documents presented after the prescribed time shall no be accepted unless good cause is shown for the delay by affidavit or otherwise as the court may direct.

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

Filing No

Class of suit
Plaintiff
Defendant
Value of suit
Pleader
Description and valuation of process fees filed with.
Process form

90. Filing No. to be given to plaint on presentation:-- Immediately on receipt of a plaint, a serial (consecutive) number shall be marked on it to indicate the sequence filling No. to be filling, the same number shall be marked on it to indicate the sequence on the slip of paper required under the last preceding rule to be attached to it. The slip shall then be detached, stamped and made over to the per presenting the plaint. Then and there.

91. Procedure on presentation of proceedings :-- (I) The chief ministerial officer or other officer, if any, appointed in that behalf shall:-

(i) satisfy himself as to the identity of every person other than a pleader presenting a proceeding; and

(ii) forthwith enter and initial the date of receipt on the proceeding and attest documents or copies of documents filed therewith and cancel the court-fee stamps, dispose of matters within his own competence and submit the matters, after nothing any error of procedure or bar of jurisdiction, limitation or other express provision of law or any error or insufficiency in court-fee stamps, for preliminary orders of the Judge in chambers.

(2). The Judge may order that the proceeding shall be returned is the person presenting it for complying with such of the objections under sub-rule (I) as he considers to the valid within a time to be prescribed by him.

92. Examination of Plaint:-- (1) Subject to rule 81 the chief ministerial officer or other officer appointed, if any, in that behalf, shall examine plaints in the order in which they have been field is order to see whether all the requirements of law have to ascertaining, among other things-

(i) whether the plaint bears a proper court-fee stamp;

(ii) whether it complies with rules 33 of 38;

(iii) whether it has been properly signed and verified (order VI, rules 14 and 15);

(iv) whether it complies with the requirements of order VII, rule 1 to 4 and 6 to 8 (inclusive)

(v) whether it is accompanied by-

(a) necessary copies of plaints (order VII, rule 9 (1) as amend and rule 87-A, and

(b) forms of summons duly filled up and fees for service (rule 94);

(vi) whether the document used upon and in the possessions or power of the plaintiff is produced with the plaint and whether or copy of it is filed with the plaint (order VII, rule 14);

(vii) whether a list of documents (if any), produced with the plaint is endorsed on the plaint or annexed thereto (order VII, rule 9 (i));

(viii) whether a list of documents relied upon is added or annexed to the plaint (Order VII, rule 14);

(ix) whether it is accompanied by the party's address for service (order VII, rule 19 and rule 37);

(x) whether in the case of a minor plaintiff or defendant the requirements of Order XXXII, rules 1 and 3 (2) and (3) and rules 113, 114 (1) and 115 (1) have been complied with;

(xi) whether the provisions of order VI, rule 4 have been complied with;

(xii) where the plaint is signed or verified or filed by an attorney of the plaintiff, whether a proper power of attorney is produced;

(xiii) whether the suit is within the pecuniary and territorial jurisdiction of the court;

(xiv) whether the vakaltnama has been properly executed, accepted and endorsed; and

(xv) in suits in respect of land situated in any area to which chapter X-A of the Bombay Land Revenue code, 1879, (Bom. V of 1879) applies, whether certified copy as required by section 135-H of the code is filed.

(2) If a plaint filed is in order or if objection if any, thereto have been complied with, it shall be admitted with the words "Admitted the day – issue summons" endorsed thereon and dated and initialed by the Judge. A day caused to be prepared and issued upon payment by the plaintiff of the proper process fee for service of summons.

93. Registration of proceedings admitted :--On receipt of preliminary orders of rejection or admission, of the officer mentioned in Rule 91 (1) shall -

(i) promptly cause plaints, miscellaneous applications, execution applications and appeals to be registered in the appropriate registers and their number in the register to be entered thereon and on the title page, and documents produced therewith to be received into safe custody and registered; and

(ii) cause such matters as are admitted whether to summary or regular hearing to be entered in the General cause list book on the date fixed by the Judge for disposal.

93-A. Amendments to be made :--Subject to the provisions of Order 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 interlineations or if the same shall be made in red ink and shall be initialed by the Judge. In all other cases an amended proceeding shall be filed and annexed to the original.

CHAPTER V PROCESSE

Preparing of Processes and Payment of Fees.

94. Process fee and process form duly filled up to be filed with a proceeding:-- (1) In the case of a plaint, miscellaneous application and interlocutory application other than an application for calling witnesses in which a summons or notice is to be issued by the court, a party when represented by a pleader shall also file with it the prescribed process fee, if any, and printed forms of process in duplicate legibly filled up, leaving the hour and date of appearance and the date of process blank.

(2) In the case of appeal, process shall not issue unless process fee is paid and printed forms of process are filed and filled up as aforesaid, within seven days of its admission, in default, that matter shall be submitted for the orders of the Judge.

Note: For the scale of process fee see Chapter II, Appendix II

(3) In the case of a summons to the defendant the combined form as in Form No. 6 in appendix B shall be used and the party or his pleader shall leave the portion relating to the purposes of the summons intact leaving it to the court, after it has determined the purpose for which the summons is to issue, to strike out the portions of the form which do not apply.

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

(5) Where orders for the issue of the process are passed by the court, court-fee stamped supply under sub-rule (I) shall be affixed will be inserted in the form, and the process will be dated, signed and sealed;

(6) The necessary number of printed forms of process shall be supplied to the parties or their pleaders free of cost on oral application to such officer of the court as the Judge shall direct.

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

95. Language :- (1) Process shall ordinarily issue in the language of the court, but where it is sent for service to a Court where the language is different, it shall be accompanied by a translation into English, certified by the transmitting court to be correct.

(2) If the process is in English and the person to be serviced is not believed to know English, the substance in vernacular shall be endorsed thereon by the Nazir.

(3) Process issued to Europeans and Anglo-Indians shall be in English.

96. 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 Pakistan, where it is certified on such process that the proper process fee have levied according to the rule in such courts; nor shall process fee be levied in respect of process of section 29 of the code apply whether or no the levy of the proper process fees has been so certified by such courts.

97. Full address to be given of persons on whom process to be served:-- Persons on whom processes are to be served or executed shall described therein fully by a statement of the name, father's and surname (if Possible), occupation address and such particulars as will facilitate identification and service. In the case of service any execution of number of the house (if any) shall also be given.

98. Process for service on persons of rank and gazetted officer:--

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

(2) Process for service on gazetted officers shall be sent in the form in the forms 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 case, intimation shall be given to the head of the office concerned with notice of the date for which the gazetted officer has been summoned.

99. Returnable of process:-- Returnable dates should not be fixed at random but sufficient time should be allowed so that the processes for one trip may be all served and returned in a reasonable fixing dates, the distance to be traveled, the season of the year, the condition of the locality and the number of processes made over at a time shall be taken into consideration.

100. Process to be served or executed within jurisdiction to be addressed to Nazir:-- Process for service or execution within jurisdiction shall be issued, as soon as they ready, to the Nazir Service or execution. The Nazir shall note on every process the date on which it was delivered to him;

Provided that –

(a) Processes for service under order XVI, rule 1-A of the code shall be issued to the party for service and a receipt obtained on the application for summons;

(b) A notice of an interlocutory may, at the request of a party or his advocate under rule 5. be given to the party or his advocate for service and a receipt obtained.

101. 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 traveling and subsistence money, if any,

Distribution of Process

102. Service within five miles radius:-- Processes for service at places within the five-mile radius of the court shall ordinarily be sent out on every working day.

103. Area outside five miles radius divided into beats:-- The Nazir shall divide the area outside the five-mile radius of his court into convenient beats or circles where processes will be sent out at regular intervals so far as possible and shall make the most efficient arrangement for the prompt service of process in each beat. The boundaries of the circles and the fixation of the intervals should be varied from time to time as found necessary.

104. Distribution beats among bailiffs:-- The beats shall be fairly distributed between the bailiffs on the establishment and to each bailiff shall be allotted a number of beats according to the distance, situation and accessibility of the villages comprising each best to equalized the work of bailiffs, fresh distribution of beats among them should be made at such intervals as the Judge may direct;

Provided that the distribution of processes on the beat system may be departed from in case of urgent processes or in cases where there in an accumulation of processes of a particular beat.

Mode of Service and Return of Service

105. 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 this process is issued and after due inquiry as to the identity of the person on whom, or the house or property or the place of residence of the person or the house or property where, the same is to be served.

Provided that if it appears to the court that sufficient information cannot be given as to the identity and place of residence of the person on whom processes is to be served, or as to the house or property where process is to be served, or if the court 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 resident of the person aforesaid could not be identified after due diligence and inquiry, it may ask the party concerned to supply an identifier.

106. 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 identifying such person or place of residence or house or property on which the process is served.

107. Procedure where defendant refuses to accept service or cannot be found:-- Where the person to be served refuses to sign the acknowledgment 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 persons 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.

108. 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 his report specifying the manner of execution or the which prevented execution. Such report shall be sworn or affirmed before any court, magistrate, officer or a person empowered under section 139 of the code to administer the oath to the deponent of an affidavit 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 process are served on different person.

109. Service by fixing 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 neighborhood or endeavoring to evade service;

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

110. Notice summons 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 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 under rule 112 (1) it shall be returned to the said court along with the summons.

111. Duty of Court to which summons sent for service:-- The court to which a summons or other process has been sent for service shall make a return within the time fixed for the hearing of the case, stating whether service has been effected or not, and, if not, the reason for non-service.

112. Return of processes to issuing Court:-- (1) Process made over to the Nazir for service must be returned by him to the issuing court as soon as possible after they are received back from the bailing so as to reach such court at least a clear days before the date fixed for hearing of the case or matter.

(2) Where the return of service or report stating reasons for non service is in a language different from that of the issuing court, it shall be accompanied by translation into English certified by the transmitting.

CHAPTER VI

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND:

113. admission of next friend to bring a suit:-- 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 to be made.

114. 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 Court 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.

115. List of all likely guardians ad litem to be filed:-- (1) In suit 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 B simultaneously on two or three such persons, 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, on having signed it, fail to appear, after service of notice, on the date fixed.

(3) If the persons specified in the list filed under sub-rule (1) are unwilling to act as guardian ad litem, the Court 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.

(4) Address for service to 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 Court may allow, filed 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 Order XXXII of the Code.

116. 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.

117. Application of rules 113 to 116 to persons of unsound mind and to appeals and applications:-- The provisions contained in rules 113 to 116, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who, though adjudged, are found by the Court on inquiry, by reasons 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 VII

WRITTEN STATEMENT

117-A. Application of rules 113 to 116 to persons of unsound mind and to appeals and applications:-- 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 pleader, if any parties or their pleaders, served with such copies shall give a receipt therefore, Copies shall be authenticated by the signature or initials of the parties or their pleaders, if any, on each page at the bottom of the left hand margin.

Issues:

118. Procedure in re regard to the framing of issues:-- In framing issues, the court shall proceed as follows:-

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

(2) Every material proposition of fact shall be so framed as to indicate on whom the burden of proof lies.

(3) Every issue of law shall be so framed as to indicate, by reference to admitted or alleged fact or by reference to the pleading of some document mentioned therein, the precise question of law to be decided.

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

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

119. Court may disallow set off :-- Where a defendant pleads a set off under order VIII, rule 6 of the code, the court may, on the applications of the plaintiff made in that behalf at any stage of the an order directing that the claim for set off my be tried separately and may make such other order as shall be just.

CHAPTER VIII

COMMISSIONS AND RECEIVERS.

Commissions and Receivers:

120. 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 order as to it deems fit.

121. Commissioner on interrogatories:-- (1) Application for the issue of commissions to examine witnesses on interrogatories shall be made by a party within the time allowed by Court, and shall be supported by an affidavit and be accompanied by copies of such applications, 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. The objections, if any, to the cross interrogatories and re-interrogatories will then be heard and disposed of by the Court.

122. Commission for viva voce examination:-- Applications for the issue of commissions for viva voce examination shall be made by a party within 7 days of notifying his intention under rule 120, and shall be accompanied by an affidavit disclosing the nature of the evidence sought from the witness.

123. Final hearing may be fixed after return of commission:-- If the application referred to in rules 121 and 122 is granted, the matter may not be set down for final disposal before the return of the commission, except by order of the Judge.

124. 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.

Commission for taking accounts

125. Commission for taking accounts how issued and executed:-- Commission for taking accounts shall be issued and executed according to the following rules:--

(1) The Court shall furnish the Commissioner with such part of the proceedings before it as may be necessary and also with detailed instructions on the following points:-

- (a) the nature of the account to be taken;
- (b) the date from which and the date to which the account is to be taken;
- (c) the name of the party by whom a statement of account is to be filed before him;
- (d) the name of the party by whom a statement of objections and surcharge is to be filed;
- (e) the periods within which the statements of accounts, objection and surcharge are to be filed; and
- (f) any other matter on which the Court may think it necessary to give, or the Commissioner may desire to obtain instructions.

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

(3) The statement of 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) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due and (e) the name of the party by whom it is due.

General

126. Who may execute commissions:-- (1) Unless the Judge for reasons to be recorded in writing otherwise orders, the official Commissioner, if any, shall ordinarily be the commissioner for taking accounts, making local investigations, effecting partition of immoveable property and for examining witnesses.

(2) If there be no official Commissioner, commissions for taking accounts, making local investigations and effecting partition of immoveable property may be given, subject to any general or special orders in that behalf, to pleaders unless a knowledge of surveying is essential for the execution of such commissions.

127. Deposit of commission fee:-- (1) Commission fees shall be payable according to the scale prescribed in Chapter III, Appendix D.

(2) The Court may order that such amount as it considers proper be deposited in Court in advance towards the Commissioner's fees together with the costs of the issue of the commission within seven days of the grant of the commission or Letters of Request or within such further time as the Court may allow. In default, the matter shall be set down for final disposal in due course, unless otherwise ordered by the Court 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 Commissioner, 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 Commissioner without any order in writing of the Court:-- Except for special reasons recorded in writing, the Court shall not order such payment 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 Commissioner being the members of the regular establishment shall be credited to Government.

128. 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 Court may extend the time or cancel the commission and may appoint another Commissioner in his place.

129. Procedure in examination of witness:-- (1) The commissioner shall follow the provision of the Evidence Act and shall, in case the person examining the witness presses any 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.

130. Deposition to be read-over to and signed by 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.

131. (1) On receipt of the report of the Commissioner other than the report forwarding the deposition of a witness recorded by him, the Court 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 Court 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 objection, 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 at liberty to proceed with such objections.

Receivers.

132. Application for appointment of receiver, petition to be supported by affidavit:-- Application for the appointment of a receiver shall be made by petition supported by affidavit.

133. Form of order of appointment:-- The order appointing a receiver may be in Form No.9 in Appendix B or in such other form as the Court may direct.

134. Register of Receiver:-- 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.8 in Appendix C to be kept for the purpose. A copy of the order of appointment shall be sent to the receiver.

135. 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 moveable 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 Court for orders.

136. Surety may point out omission or neglect of duty cast on receiver:-- If the security mentioned in rule 135 be furnished by the receiver by his executing a bond with a surety or sureties (including in the letter 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.

137. Notice to surety of application affecting surety's risk:-- The surety or sureties mentioned in rule 136 shall be entitled to notice of any application to the Court on the part of the receiver or any other 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.

138. Powers of a receiver:-- In the absence of any order in that behalf, every receiver of immovable property shall have all the powers of owner 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 except suits for rent, or (3) institute an appeal in any Court (except from a decree in 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.

139. Receiver's remuneration:-- A receiver shall be allowed remuneration according to the rates prescribed in Chapter IV, Appendix D, and may also be allowed the necessary expenses of management.

140. 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 the order of appointment or subsequent order.

141. 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.

142. Receiver to file half yearly account:-- Every receiver shall, unless otherwise ordered, 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.

143. 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.10 in Appendix B.

144. Examining and vouchering of accounts by officers:-- Every such account, before being submitted to the Court, shall be examined and vouched for by the Nazir or such other officer as the Court may either generally, from time to time, or particularly with reference to 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.

145. Appointment for passing accounts – Notice thereof:-- After the officer shall have submitted his report to the Court under rule 144, 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.

146. Objections report to be filed:-- Objections, if any, to the report shall be filed in Court on 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.

147. 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 145 after hearing the objections make such order as it may think proper.

148. 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.

149. 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 as 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.

150. 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 deem proper.

151. Consequence of receiver's negligence to file accounts are pay the balance, etc.:-- Where any receiver other than the official receiver neglect 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 144 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 percent 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.

152. 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.

153. Application of rules 132 to 152 to interim receiver:-- The provisions of rules 132 to 152 shall apply mutatis mutandis to orders for appointment of interim receivers.

154. Rule 139 applicable to manager or guardian:-- Rule 139 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.

155. Official Receiver ordinarily appointed receiver:-- (1) Unless the Judge for reasons recorded in writing, otherwise orders, the official Receiver, if any, shall ordinarily be appointed as a receiver under the Code.

(2) From the Court establishment only Nazir to be appointed a receiver:-- Ordinarily no member of the establishment, except the Nazir shall be appointed as Commissioner or a receiver and the fees earned by him shall be credited to Government.

CHAPTER IX.

WITNESSES

156. Summons to witnesses:-- (1) An application for calling witnesses before a 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 the last preceding rule, whether they are required to give evidence as experts or otherwise or to production of the documents so as to identify it.

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

(3) Upon the grant of process, the process clerk shall calculate forthwith the process fee, traveling expenses and subsistence money chargeable, if any, in respect thereof.

(4) Unless the Judge in his discretion directs that they be entirely filled up in the office of the court, the applicant if represented by a pleader shall file the process forms duly filled up in the manner prescribed by rule 94 (x), and shall also pay the prescribed process fee, if any, and deposit in court with the Nazir or accountant the subsistence allowance as taxed so long before hand as may be sufficient for service.

157. 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 98 (x) at least seven days before the date when the witness is required to attend or the document is required to be produced.

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

158. Summoning fingerprint Expert:-- When an opinion is desired on documents bearing finger prints, the documents shall be sent to the officer-in-charge, Fingerprint 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 which an opinion is required are available in court on the day on which the officer is summoned.

159. Payment of expenses to witnesses who are public officers:--

(1) A servant of the crown of state railway, whose salary does not exceed Rs. 20 per mensem, whether he is or is not entitled to traveling 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 traveling expenses in accordance with the headquarters, shall be paid traveling expenses in accordance with the prescribed scale.

Any sum payable to such servant, on account of subsistence allowance shall be credited to the central or the provincial government or the state railway as the case may be.

(2) Where the expenses of such servant, on account 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 allowances 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 traveling 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 traveling expenses under sub-rule (1) and who is entitled to receive traveling allowances under the rules regulating the conditions of his service shall obtain from the court a certificate that has attended in his official capacity for the purpose of giving evidence 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.

160. Payment of expenses to other witnesses and issue of

certificates to railway servants:-- Subject to the provisions of rule 159, witnesses shall be paid their expenses at the rate prescribed in chapter V, Appendix D daily during attendance, certificates, showing the number of days and attendance shall if required, be granted in the case of railway servants.

161. 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 traveling and subsistence allowances at the prescribed rates and by service upon them of an order of re-attendance in Form No. II in Appendix B.

162. 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 or copies and the result of such application.

(2) No court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The court shall in every case record its reasons in writing.

(4) Nothing in this rule shall apply to an application to the court under order XIII, rule 10 of the code for production, from its own records, of a high court (other than the chief court) or courts subordinate to such high court shall be transmitted through the chief court and be accompanied by an affidavit referred to in sub-rule (1) together with a duly certified translation into English if such application be in Sindhi.

Requisition received through the chief court from courts outside the province shall be complied with.

163. Production of records in the custody of a Court:-- When a Court finds it necessary to require the production of the records of another court in the province, it shall address a letter of request to the Judge of that court stating that it considers the production of the original necessary.

164. 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 return the original.

165. Power of Courts to summon public records suo motu:-- Nothing in rule 162 shall prevent a 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.

CHAPTER X

ADJOURNMENTS

166. Adjournments to be to a day certain:-- All adjournments shall be to a day certain. No suit, appeal or other matter shall be adjourned sine die except for reasons given in writing by the judge.

167. Matters to be considered in granting adjournments:-- No adjournments shall be granted except on good cause which shall be shown in writing by the judge. The consent of parties shall not of itself be a good cause for adjournment.

168. Default by parties in hearing evidence ready:-- Parties must take all proper steps to secure the presence of their witnesses on the day fixed for hearing. If they fail to do so, in good time, they shall not usually be allowed further time.

169. Adjournment for producing documents:-- A party is not entitled to an adjournment in order to produce documents if by exercise of diligence such party could have produced them at an earlier stage.

170. Cost 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.

171. Notice of ante dating 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 pleader.

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

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

CHAPTER XI

TRIAL OF SUITS, JUDGMENTS AND DECREES

Arrangement of Board:

172. Orders in which cases may be tried:-- 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 prepared under rule 18.

173. Trial to be de die in diem:-- When the trial of a suit has once commenced, it shall, except for very good and sufficient cause (to be recorded by the Judge in his own hand), proceed throughout the day on which it has been opened, and from day to day and throughout each day following, until it is completed.

Record of Evidence

174. Proceedings and depositions how written:-- Proceeding of the suit shall be written or typed on foolscap paper with inner quarter blank margin depositions memoranda of the substance of the evidence may be typed by the judge, but every sheet as typed shall be signed by him.

175. Chief ministerial officer to bring to Judge's notice erasures etc., in documents tendered in evidence:--

The chief ministerial officer or other officer in regular attendance in court shall examine all documents produce 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 should be provided for this purpose with the requisite rubber stamps. He shall then and there submit the endorsement for the signature of the judge.

176. Exhibits marked:-- Deposition recorded of witnesses of both sides and document admitted in evidence shall be numbered with cardinal numbers 1,2,3 and the following numbers, in on continuous series.

177. Numbering lines of English depositions, etc., :--The chief ministerial officer shall cause every tenth lines of all English depositions, judgments and orders to be numbered consecutively 10, 20,30 and son on for convenience of reference.

***178. Proceedings in another suit, how put in evidence:--** When any proceedings in a suit in a court are necessary as evidence in another as evidence in another suit in the same court, they shall not be removed form the file of the former suit unless the Judge shall otherwise direct.

179. Witnesses not to 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 depositions have been recorded.

180. No compromise without leave of court in pauper suits:-- Where a plaintiff has been permitted to sue in forma paupers the suit shall not be compromised without leave first and obtained from the court.

181. Orders and judgments may be written or typed:-- (1) Orders, except in purely formal matters and except orders on order sheet, and judgments shall be written or typed on foolscap paper with inner quarter blank margin.

(2) orders and judgments shall be written or typed in English in all appeal able cases.

(3) In English orders and judgments the use of vernacular words, where their English equivalent can be used without determent to the sense, shall always be avoided. If a vernacular word is used, it nearest English equivalent shall be added in brackets.

(4) Where Indian date are mentioned, the corresponding English dates shall be added

182. Certain certificates to be appended to judgments:-- (1) A certificate shall be appended in form no.12 in appendix B to judgments in suits and applications relating to land to which section 135-H of the Bombay Land Revenue code, 1897, applies in the case of appellate or revisional decree or order passed by the chief court the communication mentioned in the certificate shall be made by the court form which the appeal or application for revision lay or the record was called for.

(2) Certificates under section II of the Bombay Public Trusts registration Act, 6-G of the Mussalman Wakil Act, 1923, as amended by the Mussalman Wakf (Bombay Amendment) Act, 1935, shall be appended in Form No. 13 in Appendix B.

Decrees.

183. If suit withdrawn formal order to be drawn up making payment of costs a condition precedent:-- (1) 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.

184. Preparation of decrees:-- (1) All decrees shall be prepared under the supervision of the chief ministerial officer of the Court.

(2) Pleaders shall give notice at the time of judgment if they desire to examine and sign the draft decree before submission to the Judge, 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.

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

(4) If the court allows the objections, the necessary correction or alteration shall be made in the draft decree and initialed by the Judge and the decree shall be drawn up accordingly and signed by the chief ministerial officer and submitted to the Judge for signature.

(5) If the court disallows the objections or if no objections are filed within the prescribed time, the decree shall be signed by the chief ministerial officer and submitted to the Judge for signature.

185. 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.

186. Copies of decrees to collector in pauper matters:-- (1) The chief ministerial officer shall cause copies of decrees to be prepared without delay for

communications to the collector in cases in which pauper costs are recoverable by Government.

(2) The chief ministerial officer shall cause copies of decrees to be prepared without delay for communications to the collector in cases in which pauper costs are recoverable by Government.

187. Errors how rectified after decree sealed:-- After a decree or order has been sealed, the court may in its discretion, on an application to rectify any inaccuracy or clerical or arithmetical error or other wise to make it in accord with the judgment, after notice to the parties, when it deems it necessary, amend the same so as to bring it into conformity with the judgment or rectify such in accuracy or error. Save as aforesaid, no alteration or variation shall be made without a review of judgment and re-hearing under the provisions of section 114 and order XLVII of the code.

CHAPTER XII

TAXATION OF COSTS

188. Time for filing bill of costs:-- (1) Each party shall within five days from the date of a judgment or order submit his bill of Cost.

(2) Receipt and pleader's certificate to accompany bill of costs :-- The bill of costs shall be accompanied by the Nazir's or accountant's receipt for process fees, expenses of witnesses and all other monies paid into court. It shall also be invariably accompanied by a certificate from the pleader concerned that he has not agreed to receive less than the amount of pleader's fees entered in the bill of costs or to return any part of the same. In default of such certificate, pleader's fees shall not be allowed under the decree on taxation of costs. In the event of any pleader having agreed to receive less than 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.

(3) *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 pleader or guardian.

189. 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.

190. Taxation of costs:-- (1) No expenses of witnesses other than those paid through the Nazir shall be included in the costs allowed.

(2) Pleadings' fees and petition writers' fees shall be taxed according to the scales

prescribed in chapter VI, Appendix D. Other costs shall be taxed according to the charges necessarily and actually incurred rules, the cost of typing according to the ordinary scale or, where costs of printing is shown, costs of printing pleadings for the use of court, the fees paid at the registration office for searching and obtaining copies of the necessary documents filed in court, and cost of preparation of process taxed according to the scale prescribed in chapter VII, Appendix D.

(3) Unless the court expressly directs otherwise the following costs shall not be deemed to have been incurred necessarily within meaning of sub-rule (2) 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 application or applications to suit the convenience of a party such as for adjournment of hearing for time to file written 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 not previously called upon to admit by notice (order XII, rule 2) or of exhibition interrogatories unreasonably, vexatiously or at improper length (order XI, rule 3);
- (v) Process fee for serving persons found by the court to have been unnecessary imp leaded or the suit against whom has been dismissed, withdrawn or not prosecuted; and
- (vi) Charges incurred in procuring the attendance of unnecessary witnesses.

4) At the time of passing in order disposing of an application the court shall direct whether or not costs of it shall be costs in the causes.

191. 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.

192.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 188, 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.

193.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.

194. 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.

CHAPTER XIII

APPEALS, REFERENCE AND REVIEW

195. Reasons to be recorded for rejecting memorandum of

appeal:-- When the memorandum of appeal is not drawn up in the manner prescribed and is therefore rejected, reasons for such rejection shall be recorded. In such cases no formal decree shall be prepared.

196. Reasons to be recorded if appeal dismissed under Order XLI,

rule 11:-- When an appellate court dismisses an appeal under order XLI, rule II of the code, a brief statement of the grounds shall be recorded and a formal decree drawn up.

197. Procedure in appeals filed after limitation period:-- When an appeal or application for review is presented after the prescribed period of limitation, it shall be accompanied by a petition supported by an affidavit setting forth the cause of delay.

198. Courts may order preparation of paper-book:-- When admitting a civil appeal to regular hearing, the court may order that a paper-book shall be prepared.

199. What papers must be included in paper-book:-- (1) In the case of an appeal from a decree a typed copy shall be prepared of-

(i) the pleadings, the issues and depositions of witnesses and documents exhibited or, if they be in vernacular, their translation if so ordered by the judge by general or special order in this behalf;

(ii) the judgment under appeal;

(iii) the memorandum of appeal;

(iv) the memorandum of objection, if any, under order XLI, rule 22 of the code;

(v) any document rejected by the original court, where its rejection is a ground of appeal or cross objection or a translation thereof if be in vernacular; and

(vi) such other documents as the court may direct on notice to the parties.

(2) In the case of other civil appeals, a typed copy shall be prepared of -

(i) the judgment or order under appeal;

(ii) the memorandum of appeal; and

(iii) such other documents as the court may direct on notice;

Provided that the appellant may apply that any documents specified by him may not be included in the paper-Box. If the respondents or any of them do not agree, the court may

refuse the application and may who do not agree to deposit the copying and translation fees as the security for the appellant's costs if such deposit is not made within in the time prescribed by the court, the documents specified by the appellant shall be excluded.

200. Deposit of costs estimated:-- On an order being made for the preparation of a paper-book for the use of the court, the Record Keeper or under his supervision the head copyist shall prepare an index of the papers to be included in the paper-book and shall estimate the deposit to be made by the appellant for the cost of notice shall be issued to the appellant to deposit the same within fifteen days of the receipt thereof;

Provided that if the estimated sum exceeds Rs. 400, a sum not less than Rs. 400 shall be deposited at a time unless the balance payable shall be less than that sum; provided also that where an application referred to in the proviso to rule 199 is made, copying or translation charges for the rest of the record may be accepted pending the disposal of such application.

201. Consequences of failure to make deposit:-- If the sum so estimated or any additional sum to make up the actual cost be not so deposited, the appeal may be set down for hearing. The court may, unless satisfied that there was reasonable ground for the default, direct the appeal to be dismissed for want of prosecution, or may pass such other order as may seem proper under the circumstances of the case.

202. Additional papers for paper-book:-- If a party requires any papers which are no provided for under rule 199 to be included in the paper-book prepared or to be prepared for the use of the court, he shall make an application in that behalf to the court not less than 2 months before the first date of hearing. On an order being made for their inclusion in the paper-book, the record keeper or under his supervision the head copyist shall prepare an index of the papers to be included and shall estimate the deposit to be made by the party for the said copies to be prepared for the use of the court. The party shall deposit the requisite amount in such time as ordered by the court and on such deposit being made, copies shall be prepared and included in the paper-book;

Provided that on sufficient cause being shown, the court may even after the expiry of the period prescribed therefore in the paper-book.

203. Preparation of copies:-- (1) Subject to rules 200 and 201, the provisions of chapter XVI relating to copies and translations shall, so far as may be, apply to the preparation and comparing of copies for a paper-book, fees payable therefore and distribution of such fees.

(2) The copies shall be bound and paged in the form of a paper-book. The index shall be placed at the beginning.

204. Court may dispense with paper-book if appellant to poor:-- Where the court is satisfied that the appellant is too poor to pay the cost of the paper-book for the use of the court, it may dispense with the preparation of it.

205. Reference to matter of record made from paper-book only:--

No paper in the record and proceedings of the case, which is not included in the paper-book shall be referred to at the hearing of the appeal without the special leave of the court. but this rule shall not preclude the court from referring to any paper to which it considers a reference necessary for the ends of justice.

206. Settlement of points for determination:--

When an appeal comes on for regular hearing the points for determination shall be determined and clearly stated to the pleaders of the parties, if any, who shall be asked whether they desire to suggest any further points. If they do not, the fact shall be recorded. If they do, the further points shall either be adopted or the reasons for their rejection shall be recorded. If they do, the further points shall either be adopted or the reasons for their rejection shall be recorded.

207. Contents of order of remand or reference:--

Any order of remand or reference under XLI or an order under rule 28 of order XLI of the code shall state clearly whether the suit, having been decided on a preliminary point, is remanded for final disposal on the merits by the lower court; or whether the suit is remanded for findings on any, and, if so, precisely what undetermined issues or questions of fact, or for recording any, and if so, precisely what additional evidence, to enable the matter to be finally disposed of by the appellate court.

208. Record and proceedings to accompany reference to chief court:--

When a reference in any civil suit or proceeding is submitted for the decision of the chief court, the record and proceedings shall be sent up at the time of making the reference.

209. Reference under order XLVI to accompany court's opinion as to finality of decree:--

When a court, makes a reference under order XLVI of the code, it shall always state whether in its opinion the suit or appeal is one in which the decree will be final.

210. Reference re: taxation of costs in original decrees to apply to appeals:--

(1) The rules for the taxation of costs and examination of decrees prescribed under chapter XII shall apply also to decrees and orders in appeals.

(2) The court to which a case is remanded or referred under order XLI, shall on returning its finding or the recorded additional evidence certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case.

211. Copy of judgment, decree, etc., to be sent to lower court under order XLI, Rule 37:--

The chief ministerial officer shall cause copies of judgment orders and decrees passed on appeal to be prepared promptly for communication to the lower courts under order XLI, rule 37 of the code.

CHAPTER XIV

PROCEEDINGS IN EXECUTION.

212. Interpretation:-- In this chapter the word “decree” includes order.

Application for Transmission.

213. Transmission of decrees 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 Court 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 Order XXI of the Code.

214. 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 the Court which passed it unless that Court shall on such terms as it thinks fit, otherwise direct.

215. 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 Court which passed the decree (hereinafter in this rule and in rule 216 referred to as the original Court) 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 thereof, and certify the result to the original 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 the original Court with information as to the result of the sale of the property in district A.

216. 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 the original Court.

217. Also in second or succeeding district:-- 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 district successively.

218. 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.

219. 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 it for execution shall issue to the judgment-debtor.

220. Register of decree received from other Courts:-- Decrees 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.

221. Return of decree to the transmitting Court:-- If after a decree has been sent to another Court by execution, the decree-holder does not within six months from the date of the transfer apply to that Court for the execution of his decree, that Court shall certify to the Court which passed the decree the fact that no application for execution has been made to it, and shall return the decree.

Application for Execution

222. Application under Order XXI, Rule 15, to be supported by affidavit:-- An application under rule 15 of Order XXI of the Code shall be supported by an affidavit stating the grounds.

223. Rules 89 and 90 to apply to presentation of execution applications:-- Rule 89 and 90 shall apply to presentation of applications for execution, modified as follows :--

(i) for the words “plaint” wherever it occurs in the aforesaid rules shall be read the words “application for execution” and

(ii) in the second line of the form of slip prescribed by rule 89 for the words “class of suit” shall be read the words “Suit No.”

224. Checking and admission of execution application:-- The execution clerk shall ordinarily check applications for execution in the order in which they have been filed by reference to the execution proceedings and to the Register of Civil Suits and shall note thereon all the objections thereto, if any. He shall then submit them to the Judge for orders not later than the day following the one on which they are

presented to or filed in Court, unless the Judge specially extends the time. He shall enter all applications for execution, when admitted, in the Register of Execution Applications.

225. Procedure in execution application under Order XXI, Rule

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, is filed in Court, the Court may give notice to 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.

MODE OF EXECUTION

Execution of documents by the Judge.

226. 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.16 in Appendix B 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.

Attachment.

227. 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.

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

229. 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 Mukhtiarkar 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.

230. Removal of property attached under Order XXI, Rule 43 to the Court:--

All live-stock and other moveable property attached under Order XXI Rule 43 of the Code shall ordinarily be removed and conveyed by the attaching officer or by his subordinates 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 nearest Government Treasury.

231. Removal to Court by judgment-creditor and 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.18 in Appendix B.

232. Procedure where removal impracticable or costly:-- (1) When the property is of such 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 Court and, pending receipt of the order of the Court, shall arrange for its proper maintenance, guarding and custody at or near the place at which it has been attached.

(2) The Court, 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 it 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.

233. Deposit of costs for removal or maintenance of property:--

Before making any order for the attachment of live-stock or other moveable property, or at any time after any such order has been passed, the Court 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 may consider necessary:--

(a) for the removal of the property to the Court premises or other appointed 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, the Court may either refuse to issue or may cancel the order of attachment, as the case may be.

234. 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 Court, after hearing their objections to the account, if any, made within three days after furnishing the same finds to be properly 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.

235. 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 moveable property attached, he shall be given a notice by the Court that he should take delivery of it within the time prescribed by the Court on payment by him of all charges, if any, found by the Court to have been properly incurred and which have not been defraying 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 Court 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.

236. Notice regarding sale of guns and other arms, etc.,

attached:-- Whenever guns or other arms in respect of which licences have to be taken by purchasers under the 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 of decrees, the Court directing the sale shall give due notice to the Magistrate of the District 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.

237. 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 Court making the attachment to the Comptroller, Sind, with instructions regarding the disposal of the sale-proceeds of the notes.

238. Immediate sale of moveable 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 Court may authorise 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.

239. 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 neighborhood 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.

240. Application for sale to be accompanied by affidavit of

search and abstract of title:-- An application for sale of immoveable 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.

241. 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 and that purchasers must satisfy themselves as to the judgment-debtors 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.

242. Publication of proclamation:-- Whenever the sale of land exceeding one jireb in admeasurement or of a house or houses exceeding Rs.200 in value or of moveable property exceeding Rs.200 in value is ordered, the Nazir shall, with the permission of the Court, advertise such sale in a local newspaper or newspapers as may be ordered by the Court.

243. 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 the District in which the land or share of land is situated.

244. Place of sale of immoveable property:-- As regards all sale of immoveable property, the Court 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 Court some particular advantage is to be obtained by holding it at the Court house.

245. 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.

246. 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 Court considers that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Court 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 as far as practicable, be determined with reference to the probable market value of the property or of the lot or lots into which the property is divided for sale.

247. 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.

248. 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.

249. Postponement of sale otherwise than under rule 248:-- The officer or other person conducting the sale may postpone it if 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.

250. Bidding paper. The name of each bidder at the sale of property shall be noted in 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 to given shall be deemed to have been duly served on the purchaser.

251. To be signed by the purchaser or by his agent as such:-- A person purchasing as duly authorised 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.

252. 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:_____”.

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

254. 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.

255. Possession of house, how delivered to decree-holder or purchaser:-- When immovable property of which possession is to be given under Order XXI, rule 35 or rule 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.

256. Decree holder or purchaser to give notice to owner regarding removal of property therein:-- When there is moveable 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.

257. 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 Court. 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.

258. 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.

259. Recording of evidence and order in execution proceeding:-- 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, 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.

260. Final order on execution application:-- On every execution application there shall ultimately be made a final order containing, if necessary, the Court's order as to costs. Such order will ordinarily be written by the Judge himself and be passed in open Court. NO final order shall be made in any case unless the decree-

holder or his pleader is present or has had an opportunity of appearing and applying for an adjournment of further proceedings.

CHAPTER XV

NAZIRE'S OFFICE.

261. Duties of Nazir regarding discipline and business, process-serving establishment:--

(1) The Nazir shall primarily be responsible for the attendance, discipline and business of the process serving establishment.

(2) He is responsible to the Judge of the Court for the due and regular execution of 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 him for execution and for the correctness of the statement made in the return in each case.

(3) It shall be the duty of the Nazir :--

(i) to explain to the process servers the directions contained in the Code and in these rules, the manner in which the various kinds of processes are to be served or executed and the returns to be verified and submitted;

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

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

262. 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 Court, except by leave of the Court.

263. Process Register:-- The Nazir shall maintain a Process Service Register in Form No.9 in Appendix C.

Deposits, Payments and Accounts.

264. Payment of money:-- (1) The Nazir and, subject to his directions, his clerk 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.

265. Notice of payment or deposit to judgment creditor or

Collector:-- (1) A person paying money into or depositing property to 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 Order XXXIII 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.

266. 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 valuables 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.

267. Application for payment of money:-- 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.

268. Application to be checked:-- The Execution clerk in the case of money deposited or payable in execution proceedings and in other cases the chief ministerial officer shall check all applications to make or receive payments, before submission for order of the Judge, by reference to the record of the suit or matter and to the Nazir.

269. 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 Court may order that the amount, after making all necessary and lawful deductions, be sent to the applicants at his risk:--

- (i) by money order if the amount does not exceed Rs.600;
- (ii) by bank draft by registered post acknowledgment due, or
- (iii) in any other manner specified by the applicant, which the Court approves;

Provided that before payment is ordered to be 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
Paisas _____ only) from the Court _____ at _____
Being the amount deposited in the said Court in connection with _____

Dated:

(Signature of the Payee)

(Stamp)

270. Written authority of client required for payment to pleader:--

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 a pleader on behalf of his client without a written authority of the client signed by him for such payment.

Provided that if a pleader 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.

271. Account to be kept:-- The following account books shall be kept in the forms prescribed in Appendix CC and in accordance with the rules hereinafter appearing:--

- 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 in Court in connection with suits or judicial proceedings and deposited with Government (to be kept in duplicate).
- E. Register of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827.
- F. Register of attached property and property produced in civil proceedings.
- 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.
- M. File of application for refund of lapsed deposits.
- N. Statements of lapsed Civil Courts deposits.

272. Exceptions:-- These rules and forms apply to all sums received and paid by civil Courts in connection with any suit or judicial proceeding, but they do not apply to:--

(a) monies received and paid by a Nazir in the administration of a minor's or a lunatic estate. The administration by the Nazir of any such estate will continue to be under the supervision of the Judge;

(b) Government money which has been paid into or drawn from the Treasury on account of pay or other allowances of judicial establishments. In respect of such Government money, District and Subordinate Judges are bound to carry out such orders as may be issued from time to time by Government, or the Comptroller, Sind acting under Government orders; and also

(c) other items, such as the following:--

- (i) Expenses of witnesses and jurors and assessors, and pleaders fees in criminal cases.
- (ii) Purchase and sale of dead stock articles.
- (iii) Rent and Municipal taxes.
- (iv) Travelling allowances to members of the establishment.
- (v) Departmental fines inflicted on members of the establishment.

273. Language which the accounts are to be kept:-- In all District Courts, except for special reasons, the accounts shall be kept in English (except Forms A, E, F, G and H). In Subordinate Courts they may be kept in English or in Sindhi, but the duplicates of the Registers C and D shall be in English in all Courts.

274. Procedure on receipt of money:-- When any persons pays money into Court in connection with any suit or judicial proceeding, or when collections of any such money are made by any officer of the Court, such person or officer shall tender such money or collection to the Nazir, who shall cause a receipt to be prepared with counterfoil, according to Form A, and shall obtain the signature or mark of the person or officer tendering the money on the counterfoil of the receipt. Both original and counterfoil shall be signed both by the officer of the Court receiving the money and also by the Nazir. The counterfoil shall be recorded for reference and the receipt delivered to the person paying the money. When payments are made into Court by an officer of the Court, the receipt shall not be given to him, but shall be kept in the record of the proceedings in reference to which the collection has been made.

275. And money orders:-- (1)When money is received by postal money order, without advice from the remitter as to the cause or purpose for which the money has been forwarded, the amount shall be entered in a register (Form C) a note in that register being made as to unadvised accounts.

Pending receipt of the information necessary to admit of the amount being credited to the cause or account for which the money was remitted the words "Money ordered suspense account" shall be written across column 5 of Register C. On receipt of the required information the amount shall be adjusted by entering the item in the manner described above as a payment in Register D, and re-entering the item in Register C or G, as the case

may be, as a receipt of that date, the necessary explanation be made on the counterfoil of receipts issued in Form A for money received through the post by money order or otherwise, giving a reference to the letter or advice with which the money was forwarded and if the money order coupon affords information, it should be pasted on the counterfoil of the receipt (Form A). The original receipt, there being no person to receive the same, should be crossed and cancelled and be initialed by the Nazir.

(2) **And cheques:--** When a cheque is received, a note of the fact should be made in the body of the Cash Book in red ink on the day of receipt without any amount being shown in the money column. When the amount of the cheque is realized, it should be entered with necessary particulars in the money column of the Cash Book on the date of realization, and a suitable note of the realization and date should be made against the original red ink entry, in the remarks column. Practically all the cheques will be cleared in the same month, and if any should be outstanding owing to their receipt in the last few days of the month or other cause, they may be detailed in the Cash Book after the closing entries for the month to serve as a guide to the officer checking the next month's entries in the Cash Book.

276. Use of Registered C:-- In the Register of deposit receipts (Form C) shall be entered:--

(a) all sums deposited with the Court in connection with any suit or judicial proceeding and not to be immediately credited to Government;

(b) the sums received on account of property of which the Nazir is appointed administrator under the provisions of section 9 and 10 of Bombay Regulation VIII of 1827, attached property and the property produced before the Court.

277. Use of Register D:-- In the Register of deposit payments (Form B) shall be entered:--

(a) all payments from sums deposited with the Court in connection with any suit or judicial proceeding and not to be immediately credited to Government;

(b) **Procedure on payment by Nazir:--** the payments from the sums received on account of property of which the Nazir is appointed administrator under the provisions of sections 9 and 10 of Bombay Regulation VIII of 1827, attached property and the property produced before the Court.

The Nazir before payment shall, unless the payment is made by money order or by a Bank Draft, obtain the payee's signature or mark in column 13 of Register D, both the original and duplicate; but where a receipt stamp is required, it shall be affixed to the latter only.

When payment is ordered under rule 269 by a Bank Draft, it shall be sent to the payee by registered post acknowledgement due, provided the payee submits in advance a duly stamped receipt for the amount due in the form given in rule 269. The voucher for the payment shall be, in the case of payment by a Bank Draft, the stamped receipt sent by the

payee and the postal acknowledgment, and in the case of payment by money order, the money order acknowledgment.

Payment shall be endorsed on the copy of the decree on order when such is produced, the endorsement being signed by the officer actually making the payment and attested by the Nazir who shall also initial the entry of payments in column 14 of Register C and column 11 of Register D.

278. Posting of Registers C and D:-- The Registers C and D shall be written up from day to day in duplicate. The original shall remain on the record of the Court, and the duplicate, which must be kept in English, shall also be written up from day to day and be forwarded every month to the Comptroller, Sind. The original Form C varies from the duplicate of it, as in the latter, some columns are added and some are omitted to suit the requirements of the Comptroller, Sind, the columns 1 to 6 only should be filled in, the other columns being left blank for use in the Comptroller, Sind's office but in the office copy of this register (original Form C) columns 12, 13 and 14 shall be filled up at once as the transactions occur; and in writing up Form D for the Comptroller, Sind, columns 10 to 11 shall be left blank.

279. Balance Register:-- In April of each year, the outstanding balances in the Receipt Register of the second preceding year which are not reported for lapse under rule 294 should be transferred to a Clearance Register in duplicate Form C with suitable changes in the headings, with a view to repayments during the next two years being recorded on it by the Account Office in the columns provided for the purpose. To this Clearance Register should also be transferred any item, in the last preceding Clearance Register, but one, that for special reasons are not allowed to lapse under rule 294. While the bulk of the outstanding in it so lapse. Old items thus transferred from one Clearance Register to a second one should be carefully watched by the Judge and should in a ordinary course lapse at the end of the two years for which the latter is current. They cannot be allowed to be carried forward to a third Clearance Register without the special sanction of the Comptroller, Sind. In the Courts the repayments of items entered in a Clearance Register submitted to the Accounts Office should continue to be recorded in the Original Receipt Registers. It is not intended that Clearance Registers should be used in the Courts.

280. Daily closing of Registers C and D:-- When the accounts are closed at the end of the day, the total of all the transactions for that day, which are entered in column 8 of Register C, shall be entered in column 11 of that register. The daily total of the transactions in column 9 of Register D shall be similarly entered in column 12 of Register D. The Nazir shall each day check the entries in these registers and initial the same.

281. Account of intestate property Form E:-- When the Nazir is appointed administrator under the provisions of sections 9 and 10 of the Bombay Regulation VIII of 1827, he shall keep a register in Form E. A separate page shall be opened for each estate and all transactions relating to it shall be entered on that page though occurring on various dates. At the close of each day the total receipts on account of each such estate shall be posted from column 14 of Register E into Register C, and the total payment shall be posted from column 20 in respect of charges, and from column 24 in respect of the disposal of each of the estate, into Register D, quoting in the latter the original credit

entry or entries from Register C. The receipts or acquaintances for these payments shall be taken from the Nazir or other officer appointed as administrator of the property in column property in column 13 of Register D, the persons actually receiving the payment signing in column 27 of Form E.

282. Account of attached property, Form F.:-- Property which may be attached by a civil court in the course of a suit, whether before or after judgment, shall be registered in Form F and the proceeds, when realized shall be posted from column 15 of this register into Register C. When money is attached, it shall be taken direct from Register F to Register C. Payments shall be entered direct into Register D, quoting the original credit entry from Register C. A note of the payment shall also be made in the last column of Register F. A separate page should be assigned to each attachment in the case of which entries occur at various dates and all such entries should be noted on that page. It must be understood that this register in no way supersedes the Register of applications for execution of decrees or the Register of suits, the columns in which relating to execution must be duly filed in.

283. The consecutive numbers of outstanding estates and attachments, etc., in the Registers E and F at the end of each year should be noted in the opening page of the same registers for the following year. A note should be made in the new register against every outstanding showing how and on what date it was disposed of, the full details being entered in the old register.

284. Subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate

disbursement, Forms G and H.:-- For subsistence money of civil prisoners, expenses of witnesses, miscellaneous petty items required for immediate disbursement, the registers of receipts and payments shall be in Form G and H, respectively. As these sums are required for immediate disbursement, they need not be deposited in the Treasury but the amounts shall be retained in the cash balance of the Nazir or officer of the Court entrusted with the accounts of money received by the Court. The daily total from column 10 of Register G and column 8 of Register H shall be entered in the cash book Form I. Items of subsistence money of civil prisoners lapsing to Government under section 16 of Bombay Act II of 1874, as amended by Bombay Act II of 1882, shall be remitted to the Treasury to be credit as a final receipt of Government. The balance of sums recovered on account of expenses of witnesses, and on account of miscellaneous petty items required for immediate disbursement, which remain unpaid over 12 months, shall be included in the return prescribed in rule 204 and dealt with in accordance with the said rule.

The following are instances of miscellaneous petty items :--

- (1) Money deposited for keep of attached cattle.
- (2) Salary of additional bailiffs.
- (3) Deposits of money for Court fees needed for Succession Certificates and Certificates under Regulation VIII of 1827, or similar documents, or for the issue of a fresh proclamation of sale.
- (4) Remittances accompanying commissions and processes from other Courts.
- (5) Printing charges of notices under Order I, rule 8 of the Code and other sections or rules.

- (6) Fee paid for the proclamation by beat of drums.
- (7) Expenses deposited for breaking open the lock in order to attach property or deliver possession of property.
- (8) Expenses for bringing attached property to the Court-house.
- (9) Any other petty item which the District Judge may direct to be entered in the Registers G and H.

The money for which Registers G and H are kept should be received and disbursed by the clerk whose duty it is to write them, the balance being handed over, when found correct at the close of the day, to the Nazir, who should himself revise the totals.

The Nazir should also see at the end of each day's transactions that each payment in the Register H is supported by a voucher and covered by a receipt entry in W.6 Register G, and should sign below the day's totals in token that he has done so.

When it is necessary to open a new Register G, the consecutive numbers of entries in the old register in which there are sums still to be disbursed, should be noted therein with full entries before new items of receipt are entered in the register and all further payments from such sums in the Register H should be noted in columns 11 and 12 of this Register.

Money return by the bailiff should be re-entered in Register G unless handed over at once to the party or pleader. In the case of expenses of witnesses sent to and received from other Courts, the necessary information can be easily shown in the Registers G and H. Where any sum on account of expenses is paid to a witness in Court in the course of the suit or proceeding and receipt is taken there and then and filed in the record, no entry need be made in the Registers G and H.

By the Government of India's Resolution No. 3025, dated the 31st December 1878, Collectors and Mamlatdars are authorised to make advances for the payment of subsistence money to witnesses summoned by a Judge in a suit under trial in his Court without an application from either party. Instances covered by this Resolution should be shown in the Registers G and H.

285. Use of Books, Form I:-- In the cash book (Form I) shall be entered separately on the debit or credit side as may be necessary :-

- (a) the daily totals of each of the Registers C, D (which include the daily totals of Registers E, F) and the daily totals of G, H;
- (b) such items as the following as are intended to be finally credited to Government :-
 - (1) fines inflicted by a civil Court under section 480 Criminal Procedure Code, or under Order XVI of the Code; (fines inflicted by a Sessions Court cannot appear in Civil Court accounts.)
 - (2) penalties for insufficient stamp duty;
 - (3) comparing fees;
 - (4) fees for copies made by paid members of the establishment, and credited B to Government (rule 307).

Nos. (3) and (4) though not necessarily paid in connection with a suit or judicial proceeding should always be shown in these accounts.

(5) commission fees paid for work done by Government servants during office hours, (rule 127 (5)).

These shall be taken direct to the cash book, and the subsequent payment to Government or refund debited per contra. In such cases only will columns 3, 4, 5, 10, 11 and 12 be entered up;

(c) the daily totals from the Daily Fee Book and payments made thereout as per rule 304 (2).

It is to be noted that moneys paid into Court in connection with suits or judicial proceedings are divided into two heads :-

(a) sums to be credited at once to Government which are to be taken direct to the cash book (Form I), and

(b) sums deposited with the Court, intended to be paid to some person, but which if not so paid and unclaimed, are credited to Government.

286. Remittances to Treasury with challan:-- All sums that are intended to be finally credit to Government shall be sent to the Treasury at frequent intervals during the month, or daily if possible. These remittances shall not be entered in the pass-book (K) and must be sent with the challan only, separate from sums to be credited to the Court's deposit, account mentioned in rule 289 which are to be accompanied with both the pass-book and the challan. The Court will receive from the Treasury Officer an acknowledgment on the challan presented.

287. Daily closing of cash book:-- The cash book shall be closed and balanced every day. The closing entry shall specify particulars of the balance thus:-

Specification of balance.

Rs. A. p.

(1) In the Treasury	
Cash with the Nazir	
(2) Deposits, etc, Form C.	
(3) Deposits from, Form G	
(4) Copying fee deposits	
(5) Other sums credited direct in cash book	...	_____
	Total	Rs: _____

Entry 1 must agree with the pass-book K, and the aggregate of items (2), (3), (4) and (5) should be verified by counting the cash. The Nazir having ascertained that the transactions of the day have been correctly entered in the cash book and that the arithmetical balance is correct, shall sign the cash book on the left and obtain the signature of the Judge on the right side below the closing entry. When a Judge presides over more than one Court, or when he is absent from his Court, there being no locum

tenens he shall, on his return to his Court, examine and sign the accounts for the days of his absence. In District Courts, where there is an Assistant Judge, he may, by order of the Judge, sign the accounts.

288. Use of Ledger Form:-- The ledger(Form J) is a supplementary record of all sums shown in the Registers C and D, and will not contain any entries of any moneys not to be found in them. The entries made in C and D shall be posted in J every evening or at least the first thing the next morning. Prefixed to the ledger there should be an index in rough alphabetical order showing the names of the defendants or persons paying the moneys, the corresponding pages of the ledger, and the number of the suits or proceedings. It is not necessary to have accounts in the ledger corresponding to the intestate and attached proper (Registers E and F).

289. Remittances to Treasury with pass book, Form K:--

Transactions with the treasury in regard to the Court's deposit account shall be by means of a pass-book (Form K) and by cheques (Form L)> Every remittance to the treasury, intended to be credited to the Court's deposit account, shall be accompanied by the pass-book and a Treasury challan in a form that will be supplied on application by the Treasury Officer. Entries will be made in the pass-book at the treasury and be receipted by the Accountant and Treasurer, when the remittance is under Rs.500 and by the Treasury Officer when it exceeds that sum. The Nazir shall not retain, except with the special permission of the Judge, a larger cash balance in the hands than, in the case of Subordinate Courts, Rs.100, and in the case of District Courts Rs.200, over and above the amounts retained by him in respect of items included in rule 284. All sums in excess of this amount shall be paid into the Government treasury as a deposit with Government. There shall be, as far as possible, a daily remittance from the Court to the treasury, and to secure an agreement between the treasury and the Nazir's accounts no portion of the amount entered in Form C shall be retained from deposit on the last working day of the month. In the case of Sub-Treasuries the last working day is usually the 25th, except in March when they close on the 31st.

290. Withdrawals from Treasury by cheque, Form L:-- Withdrawals from the Treasury shall be by cheques (Form L) signed by the Judge or Assistant Judge or (with the approval of Government) the chief ministerial officer. In such cases the District Judge shall inform the Treasury Officer of the name of the officer authorised, and furnish a specimen of his signature. Whenever it is convenient to make several small payments in favour of the Nazir; but payments to parties when the amount exceeds Rs.20, can be made by a cheque in favour of the payee at the option of the latter; but the payee must be informed that payment can only be made at the Treasury on the date of issue. If it is late in the day and there is a possibility that the cheque cannot be presented on the date of issue, it can bear the next day's date. If the currency of a cheque has lapsed, it may be revived by an endorsement thereon for immediate payment, on satisfactory explanation being furnished.

291. Payment otherwise than by a cheque:-- There is no objection to the payment being made to judgment creditors and others from deposits received during the day; but when the account is made up in the afternoon, the amount so paid shall be recouped by drawing a cheque which should accompany the cash sent to the treasury and

be adjusted on the treasury accounts, so that the gross transactions may pass on to the Government books.

292. Posting of pass-book at treasury:-- The Judge shall arrange to send the pass-book to the treasury during the first week of the month to be written up, balanced and signed by the Treasury Officer after verification with the treasury accounts. Whenever the pass-book is presented at the treasury the cheques paid must be posted in the pass-book and the entry attested by the Treasury Officer.

293. Monthly return to the Comptroller Sind:-- The Court shall, as directed in rule 278, render to the Comptroller, Sind, monthly the duplicate registers (Form C and D), signed by the Nazir and countersigned by the Judge accompanied by a *plus and minus memo* in the sub-joined form :-

<i>Plus and minus memo for the month of</i> _____		Rs. a. p.
Opening balance	
Deposits received during the month of register submitted.		
	Total..	_____
Less:--		
Deposits re-paid during the month as per register submitted		
	Total	_____
		Rs. a. p.
Balance:--		
In Court which I have verified	
In the Treasury as per pass-book	
	Total	_____

Dated: _____ 19 . (Signed)

Judge.

The Judge before countersigning the *plus and minus memo* should verify the cash balance in Court and the entry as to the balance in the Treasury shown by the Pass Book by examination of the pass-book.

These registers will be examined in the Office of the Comptroller, Sind, and any discrepancies or errors discovered made the subject of reference to the Judge of the Court, until the several transactions entered in them are passed as correct.

294. Lapsed deposits:-- Deposits not exceeding five rupees unclaimed for one whole account year, balances not exceeding five rupees and all balances unclaimed for more than three complete account years, save as provided for in rule 279, will at the close of March in each year be credited to Government. In the month of January of each year a list shall be posted up in the Court-house showing the sums of money in deposit with the Court which are due for lapse at the end of March following, as laid down above and the

names of persons to whom they are due; and if no one appears before the 31st of March to claim the sum due to him, it shall be paid into the Treasury to the credit of Government as a deposit unclaimed for the eventual benefit of any person who may duly establish his claim thereto to the satisfaction of the Court. To ensure the lapsed deposits being adjusted at the treasury before 31st of March the cheque should reach the Treasury not later than the forenoon of that date. In the month of April following the Court shall furnish to the Comptroller, Sind, in Form "N" corresponding with Form 29 at page 192 of the Civil Account Code, Volume I (8th Edition), a statement of the balances written off and credited to Government prepared from the original registers (Forms C and G) and the copying Fee Register and not from the ledger Form J.).

295. Refund of lapsed deposits:-- Deposits credited to Government under rule 294 cannot be re-paid without the sanction of the Comptroller, Sind, but this sanction will be given as a matter of course on proof that the item was really received, was carried to credit in the person who was entitled to draw it before the lapse or his heir. Applications for refund shall be made in Form M by the Judge to the Comptroller, Sind, who, if the credit for the amount is exhibited on his books, will authorise payment and return the document to the Judge for delivery to the party concerned, who should personally, or by an agent, claim payment from the Treasury. These refunds will not be brought on the Court's accounts. On receipt by the Court of the Comptroller, Sind's sanction, a note of the number and date thereof shall be made against the original entry in Register C.

296. Inspection of account. Verification of cash:-- (1) It is the duty of the Judge of every Court to inspect the Nazir's accounts at the beginning of January, April, July and October respectively and to call occasionally for the registers and accounts and satisfy himself that the entries have been carefully and properly made. When such inspection is made, the Judge should note the fact with his own hand on the register or account inspected.

(2) It is the duty of the Judge of every Court to verify the cash in the Nazir's custody at least once a month without previous warning, comparing with the Cash Book and the Pass Book and noting in the Cash Book in his own hand that he has verified the cash on that date. This verification should be independent of any certification made in connection with the submission of *plus and minus memo* of Deposits when there is generally little cash retained in hand.

The cash should also be verified on the re-opening after the summer vacation.

The verification of the cash of a District Court may be delegated by the District Judge to a Joint or Assistant or Subordinate Judge.

297. (1) The Judge should not pass any payment order without referring to the deposit amount or balance at the credit of the depositor in each case.

Note:-- If this is done overpayments will be impossible.

(2) The Judge should not sign any cheque without referring to the payment order passed by him and to the debit entry in the account books.

298. Paging and sealing of account books:-- Each page of every register and book of account shall be paged and sealed, and an endorsement shall be made at the end of the book showing the number of pages, and signed by the presiding Judge.

299. Alteration in Account books to be initialed:-- Every alteration in the accounts shall be forthwith initialed by the Nazir or responsible officer.

300. Account book to be kept in minor's estate:-- The Nazir shall in connection with the minor's estates under his administration keep the following account books:--

- (1) Day Book,
- (2) Ledger (Form O),
- (3) Counterfoil receipt book, and
- (4) Such other accounts books as the Chief Court may from time to time prescribe.

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

301. Return of minor's estates under administration:-- The Nazir shall prepare in the month of April of each year a history sheet in such form as the Chief Court may from time to time prescribe showing the minor's estates still under his administration. The history sheet shall be examined by the chief ministerial officer, and shall be examined by the chief ministerial officer, and submitted to the District Judge for such orders as may be necessary.

302. Custody of account books and files:-- The Nazir should retain in his own custody all current account books and files and those for the past two or three years required for frequent reference. But the rest shall be deposited with the Record Keeper.

Copying, comparing and translation fees accounts.

303. Daily Fee Book. (1) Copying and comparing fees, whether paid direct or recovered by value payable post, shall also besides being entered in the Register of Applications for Copies and Translations as required by rule 323, be at once entered in the Record Keeper's Daily Fee Book, which shall be kept in Form No.10 in Appendix C.

(2) Deficit amount, if any, when subsequently received, shall be endorsed on the application and at once entered in the Daily Fee Book.

(3) At the close of the day the Record Keeper shall take the endorsed applications and the money, together with the Daily Fee Book, to the Nazir and hand over the money to him and take the Nazir's signature on the Daily Fee Book. The Nazir shall compare the endorsements on the applications with the entries in the Daily Fee Book before signing it.

304. Deposit Account.—(1) The Nazir shall keep a Deposit Fee Account containing the following columns :-

(a) Balance at the close of the month.

Receipts.

(b) Amount deposited during the month as per Daily Fee Book.

© Total of columns (a) and (b).

(d) Copying and other fees as per abstract for payment of sectioners.

(e) Amount refunded to depositors.

(f) Comparing and other fees to be credited to Government.

(g) Total of columns (d) to (f).

(h) Balance at the close of the month.

Total of columns (g) and (h) should agree with column (e).

(2) The amount of the Daily Fee Receipts taken from the Daily Fee Book shall be credited daily on the receipt side of the Nazir's Cash Book I, and sums sent to the Treasury debited in the same book on the debit side. In the same manner all sums withdrawn from the Treasury shall be credited in the Cash Book I and payments to copyists and other debited in that book. The remittances to the Treasury shall pass through Register (C) of the deposits and withdrawals through Register (I). The payments into the treasury shall be supported by the Treasury Officer's acknowledgment in the Court's Pass-book and the payments to the sectioners and refunds to applicants by the abstract of copying fees.

(3) The Deposit Fee Account shall be closed by the Nazir monthly, the total of the fee receipts in the Fee Book being entered in column (b) of the account which with the Fee-book, the Pass-book, and the abstract for payment of sectioners should be placed before the Judge for scrutiny and signature.

305. Application to Translation Fees.--- Rules 303 and 304 shall apply mutatis mutandis to translation Fees.

306. Distribution of fees among section writers and translators.---

Copying and translation fees shall be distributed among the section-writers and translators at the end of each month under the orders of the Judge passed on the abstract. But copying and translation fees for copies and translations made by members of the regular establishment and comparing fees shall be credited to Government.

307. Nazir Accountant.—Whenever in this Chapter the Nazir is referred to as performing any duty, the term Nazir includes, where there is no Nazir, the Accountant or any officer of the Court authorized by the Judge to perform the duty in question.

308. Nazir to visit civil jail daily.--- The Nazir shall exercise control over the warders and shall visit the civil jail daily and satisfy himself that each prisoners has received his subsistence money according to the prescribed scale. The Nazir shall promptly discharge any prisoners entitled to release, obtaining where necessary the orders of the District Judge.

309. Inspection of civil jail.--- The District Judge or under his orders any other Judge at the headquarters shall visit the civil jail once a month and inspect the following books which shall there be kept:--

(i) Register of Civil Prisoners.

- (ii) Visitors' book.

and shall examine the warrants under which the prisoners are kept in custody. The inspecting Judge if he is not the District Judge shall report any matters requiring orders to the District Judge.

310. Nazir in charge of dead stock Register:-- The Nazir shall have charge of all dead-stock and shall keep a dead-stock register in Form No.11 in Appendix C. He shall also have charge of the buildings and where a Police guard is not provided at night shall arrange for the watch and ward of the Court House.

CHAPTER XVI

Record Keeper: Records.

311. Decided matters to be sent to Record Keeper:-- All records of decided matters shall be delivered to the custody of the Record Keeper.

312. Duties of Record Keeper:-- (1) The Record Keeper shall take charge of the records of all decided matters, corresponding files, account books and registers delivered to him.

(2) He shall receive and keep in safe custody all documents entrusted to him.

(3) He shall be responsible for custody of the records and perform the following duties:--

- (i) supervise the work of copyists;
- (ii) maintain a Register of Applications for copies and translations in Form No.12 in Appendix C.
- (iii) prepare indents for stationery and printed forms and be in charge of them;
- (iv) maintain a Register of expenditure of stationery and forms;
- (v) supervise the postal dispatch work and the work of the book-binder;
- (vi) keep weighing machines, postal and Railway guides, service stamps register, post book and any other office supplies; and
- (vii) date and punch second holes in the Court fee stamps in decided matters but not so as to render it impossible or difficult to ascertain the value or nature of the stamps.

313. Arrangement of records of decided matters:-- The records of decided matters shall be arranged in chronological order of the dates of disposal and classified separately as (i) Suits including Execution, (ii) Miscellaneous Applications and (iii) Appeals.

The record of each class for each year shall be tied up in a separate bundle and labeled.

(2) *Arrangement of correspondence:--* The records of correspondence and accounts shall be arranged in chronological order of the year to which they relate and classified as (i) Correspondence and (ii) Accounts.

314. General Register:-- A General Record Register shall be kept in Form No.13 in Appendix C.

315. Plan of Record Room:-- A plan of the Record Room shall be prepared by the Record Keeper indicating the position and serial number of the several racks and almirahs in the Record Room or in each room of it if there be more than one, and the serial number of the several shelves in each rack and almirah. The plan shall be kept up-to-date and hung up in a conspicuous place in the Record-Keepers' office room.

316. Register of Requisitions for records:-- (1) The Record-Keeper shall also maintain in Form No.14 in Appendix C a Register of Requisitions for Records in which shall be entered forthwith, in the order in which they are received in the record office, all requisitions for records other than those received from the copying branch. All requisitions shall be disposed of promptly in their serial order, preference being given only to such requisitions as have been certified to be urgent by the chief ministerial officer.

(2) When a requisition is so defective that the Record Keeper cannot comply with it, it shall be returned with the defects specifically noted and the reason for non-compliance endorsed on it and the Record Keeper shall note the return in column 5 of the Register of Requisitions for Records.

(3) A requisition for records must not be returned on frivolous grounds. If the particulars given are sufficient to identify a record or if there are means of finding the record, it must be found even though the description given may in some respects be inaccurate.

317. Removal slip:-- (1) Whenever a record is removed from the record room, there shall be inserted in the place occupied by the record in its bundle a removal slip on which shall be entered a full description of the Record and the serial number of the requisitions as entered in the Register of Requisitions. Each such slip shall be initialed by the Record Keeper.

(2) When a record is received back in the record room, the Record Keeper shall:--

(i) carefully examine it to see that it is complete and in order. If the Record Keeper notices that any document is missing or that the record discloses any other defect, he shall at once report the matter to the presiding Judge;

(ii) make an entry in column 6 of the Register of Requisitions and initial it;

(iii) place back the record in its proper place and remove the removal slip.

318. Arrangement of Library:-- The Record Keeper shall keep a catalogue of all Law Reports, Acts, Collections of Rules and Orders, Text Books, Gazettes and other publications. All books and publications should be stamped with the Court seal immediately upon receipt and should be entered in the catalogue and arranged systematically in the Library as far as possible in the following manner:-

(1) English Law Reports;

(2) English Statutes;

(3) Indian Law Reports sub-divided into Allahabad, Bombay, Calcutta, Karachi, Lahore, Lucknow, Madras, Nagpur, Patna and Rangoon Reports;

(4) Indian Acts sub-divided into Central, Bombay, Sind and other Acts;

(5) General Rules and Orders, Local Rules and Orders, the Sind Chief Court Rules, the Sind Civil Courts Rules, the Sind Courts Criminal Circulars, the Civil Account Code, the Civil Service Regulations and Miscellaneous Collections;

(6) Dictionaries, Digests, English and Indian Text Books and other Books of Reference;

(7) Administration Reports and Gazettes sub-divided into Indian Bombay and Sind Government Gazettes.

A separate class for old editions of all publications may be reserved.

The Law Reports, Acts and Gazettes should be bound periodically. The latest edition of the unrepealed General Acts of India, the Bombay Code, the General and Local Rules and Orders, the Sind Chief Court Rules, the Sind Civil Court Rules, the Sind Courts Criminal Circulars, the Civil Account Code and the Civil Service Regulations should be kept up-to-date by pasting in the correction slips issued from time to time.

Copies and Translations.

319. Copy not to be made without order:-- Except as provided by these rules, no copy or translations shall be made or permitted to be made of any record, or portion of record, of any suit or matter unless an order granting it has been made on an application.

320. Contents of application:-- Every application for a copy or translation of any record of any portion of the record of a suit or matter shall be entitled in such suit or matter and shall set out a description of the particular document of which copy or translation is required and the full postal address of the applicant if he desires it to be sent to him by post. The application shall be signed by the applicant or his pleader and may be presented in person or sent by post to the Court having the custody of the record.

Provided that an application under the next succeeding rule shall be presented personally.

321. Application by stranger:-- (1) Where the application referred to in rule 320 is made by a person who is not a party to such suit or matter, it shall be supported by an affidavit stating the purpose for which the copy is required, and, if the same is required for an intended of pending, the nature of the said proceeding and the relevancy of the document to the case of the applicant.

(2) The Court may in its discretion cause notice of such application to be given to the parties to the said suit or matter; and where such notice is given, the provisions of the Code and of these rules with respect to summons to a defendant shall apply to the said notice.

(3) The Court, if satisfied that proper cause is shown and, if any notice has been issued to them under sub-rule (2), after hearing the parties, may subject to rule 322, make an order granting such application.

322. Who may grant copies or translations and of what records:--

(1) No copy shall be made of any official document except under the order in writing of the judge.

(2) No copy shall be granted in any case of notes of arguments recorded by a Judge.

(3) When a copy of a copy is granted, it shall be endorsed thereon that it has been copied from a copy.

(4) Subject to the provisions of sub-rules (1) to (3) a copy of translation shall be granted, as of course, by the chief ministerial officer to a party to a suit or matter of any record or any portion of any record of such suit or matter, whether decided or pending, except in such case as the Judge may otherwise direct.

323. Registration of application and estimate of copying and

other fees:-- (1) As soon as an order for a copy or translation has been made, the Record Keeper or under his supervision the Head Copyist, shall number and register the application in the order of its receipt in the Register of Application for copies and translations and shall enter on the application its serial number. He shall also at once, if possible, or during the same day but ordinarily not later than the following working day, ascertain the amount of copying, comparing and translation fees, when leviable, according to the scale prescribed in Chapter VIII, Appendix D and enter them on the application and communicate them to the applicant.

(2) No fees shall be charged for copying papers wanted for a public purpose by officers other than the Advocate General or the Government Pleaders of a Provincial Government or the Central Government or of the Government of Burma.

(3) The preparation of copies shall be undertaken in accordance with the serial order of applications unless otherwise ordered by the Judge.

Provided that on payment of an extra fee of four annas by a Court fee stamp upon the application and on extra payment of half the copying fees and comparing fees, if any, an applicant should be entitled to obtain a copy, if possible, within 24 hours and in any case within 48 hours, of any document among the records of the Court to which the application is made.

324. Preparation of copies not commenced until prescribed fees

deposited. (1) No copy or translation shall be commenced until the estimated amount of the copying and comparing fees and, as the case may be, translation fee, when leviable, have been deposited with the Record Keeper.

Provided that the Judge may sanction the preparation of copies or translations costs of which are to be recovered by value payable post.

325. Procedure when amount deposited insufficient:-- (1) If the amount of fees deposited is found to be insufficient a notice shall be given to the applicant to make good the deficit. Such notice shall be affixed on the notice board hung in a conspicuous place on the outer wall of the Record-Keeper's office room and, where the applicant resides outside the headquarters of the Court and has given his postal address, shall be sent to him by post also.

(2) If the deficit is not made good within seven days from the date the notice is affixed on the board under sub-rule (1), or, as the case may be, the date of delivery of the notice in the ordinary course of postal, communication, the application shall be rejected but only as regards the documents which cannot be prepared by reason of such deficit.

326. Section writers to make copies:-- Copies shall be promptly made by section-writers appointed for the purpose. But when no section-writer is available or when copies are required by law or these rules to be made free of cost, they shall be made during office hours by a member of the paid establishment.

327. Copies how made:-- Copies shall be strictly accurate and shall show the paging and the numbering of lines appearing on the original. Copies of the English record shall always be typed and of the other record shall be written in a clear hand on proper foolscap paper with the inner quarter blank margin. Paper shall be provided to the section-writers at their cost.

328. Copies to be compared before certified:-- Copies shall not be certified to be true copies until compared and initialed by a duly authorized member of the regular establishment.

329. Copies how certified:-- Certified copies shall be endorsed with the following particulars:--

- (1) the date of application for the copy;
- (2) the date of estimate of fees;
- (3) the date of deposit of estimate fees and the date of supply of stamp;
- (4) the date of certification by the chief ministerial officer; and
- (5) the date of delivery of the copy.

They shall be certified at the foot to be a "true copy" shall bear the seal of the Court on each page, and shall be dated and subscribed in full with his name and official title by the chief ministerial officer of the Court. The certifying officer shall initial every alteration and interlineations in the copy.

330. Cancellation of court-fee stamps on certified copies before issue:-- Certified copies shall not be issued until the court-fee stamps affixed to them have been cancelled by punching out a portion not being the figure head nor the expression of the value of the stamps and by writing across the paper and the stamps the date and signature of the certifying officer.

331. Posting of list of copies ready for office delivery:-- (1) A list of copies and translations ready for delivery shall be posted on the notice board of the Record Keepers' office.

(2) If a copy or translation is not claimed by the applicant within six months from the date of posting the aforesaid list, the copy shall be destroyed and the fact shall be noted in the remarks column of the Register of Applications for copies and translation.

(3) Where the applicant has applied that a copy should be sent to him by post, the copy shall be sent accordingly.

332. Uncertified copies may be certified:-- Uncertified copies may be converted into certified copies after comparison with the original upon the application in writing of the person to whom they have been granted and upon his depositing with the Record Keeper comparing fees at the prescribed scale and delivering to him the Court-fee stamps required by law.

333. Refund:-- Fees once paid cannot be refunded if the work for which the fees were paid has been done. If only part of the work has been done, a proportionate part of the fees paid may be refunded under the order of the Judge.

334. Supply of stationary articles:-- Stationery inclusive of pens, ink, pencils, blotting-papers, rulers, etc, will be furnished to the section-writers from the supply received by the Court on indent from the Provincial Government.

335. Who may make translations:-- Translations shall be made by duly qualified members of the establishment or by translators especially appointed.

336. Section-writers and translators responsible for safe-custody of record:-- Section-writers and translators shall be held responsible for the safe-custody of proceedings and documents entrusted to them. On no account shall they be permitted to take proceedings or documents away from the Court House.

Inspection.

337. Inspection allowed only on application in writing:-- Inspection of the record or a part of the record of a suit or matter may be allowed only after such notice as he may think necessary by an order of the Judge on an application made in writing in that behalf, entitled in such suit or matter and signed by a party or his pleader, and on the payment of a fee of rupee one (including the court fee payable on the application). Such fee shall be paid by Court fee stamp affixed on the application. The application shall set out the particular document or documents of which inspection is required.

Provided that a party of the pleader of a party engaged in a suit or matter fixed for the day in court may be permitted to inspect the record of such suit or matter in the presence of the chief ministerial officer or other officer in attendance in court without applying in writing for it and without payment of any fee.

338. Application by stranger:-- The provision of rule 321 shall apply, so far as may be, to an application for inspection of the record or any part of the record of a suit or matter by a person who is not a party to it.

339. Inspection before Record Keeper during office hours:-- Save as otherwise provided by the proviso to rule 337, inspection shall be made in the Record Keeper's room and in his presence during office hours. The Record-Keeper shall endorse on the application compliance with the order and the date thereof.

340. Copies of extracts not to be taken:-- An order of inspection shall entitle the applicant to read the record or any part thereof which inspection has been allowed by the Court. He may make a short memorandum of the date and nature of such record so as to enable him to describe it sufficiently in case a copy is required; but he shall not be entitled to make a copy of it or of any part of it or make extracts therefrom.

PART III

Rules made under special enactments.

CHAPTER XVII

Rules under the Succession Act, 1925 and Bombay Regulation VIII of 1827:

Preliminary

341. Interpretation:-- In Chapter:--

- (i) "Act" means the Succession Act 1925' and
- (ii) "will" include a "codicil".

A:-- Application for Probate, etc.:

342. Application for probate:-- Application for probate shall be made by petition in Form No.23 in Appendix B and shall be accompanied by :-

- (a) affidavit of one of the attesting witnesses, if procurable, in Form No.24 in Appendix ;
- (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.

343. Application for letters of administration:-- Application for letters of administration shall be made by petition in Form No.25 in Appendix B and shall be accompanied by the annexures (b) and (d) and the deposit mentioned in the last preceding rule.

344. Application for letters of administration C.T.A.:-- Application for letter of administration with the will annexed shall be made by petition in Form No.26 in Appendix B and shall be accompanied by the annexures (a), (b) and (d) and the deposit mentioned in rule 342.

345. Application for succession certificate:-- Application for succession certificate shall be made by petition in Form No.27 in Appendix B 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.

346. 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.

347. Delay in application:-- In any case where probate or administration of succession certificate is for the first time applied for; after the lapse of three years from the death of the deceased, the reason for the 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.

348. 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 duly executed as required by the Act or recited in 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.

349. In absence of attesting witnesses what 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.

350. 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.

351. Assigned 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.

352. 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.

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

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

355. Grants through out Pakistan:-- 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 Pakistan, 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.

356. 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.

B:-- Citation.

357. Notice of application to be given to Collector:-- Notice shall be given of all applications for probate or letters of administration to the Collector in Form No.28 in Appendix B.

358. 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 Court may direct notice of such application to issue to such other next-of-kin.

359. Citation to Administrator General:-- No grant of letters of administration, other than letters of administration *pendente lite*, shall issue to a creditor, 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 Sind.

360. 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.29 in Appendix B.

361. 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 Court, may, if it thinks fit, allow publication of citation in one or more newspapers only or may dispense with it altogether.

C.—Proof.

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

363. Blind or illiterate testator:-- The Court of 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.

364. Forms of administration and succession certificate bonds:-- An Administration bond shall be in Form No.30 in Appendix B. A succession certificate bond shall be in Form No.31 in Appendix B.

365. Amount of administration bond and succession certificate bond:-- Unless otherwise ordered by the Court, 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.

366. Insurance Companies as sureties:-- A bond from an approved insurance Company may be accepted in lieu of a bond from two sureties.

367. Attestation of bonds:-- Administration bonds shall be attested by the chief ministerial officer and the Nazir of the Court. If there be one officer holding both the posts, it shall be attested by him and also by such other ministerial officer of the Court as may be nominated by the Judge.

E.—Grants and Extensions thereof.

368. Grants limited to Province of Sind:-- All grants of probate or letters of administration (with or without the will annexed), shall, unless otherwise ordered, be drawn up so as to have effect only throughout the Province of Sind.

369. Affidavit of valuation of property to be annexed to grants:-- A copy of the affidavit of valuation of the property of the deceased accompany an application for probate or letters of administration shall be annexed to the grant of probate or letters of administration.

370. Extension of grant to have effect throughout Pakistan:-- An order for the extension of a grant, limited to the Province of Sind, to have effect throughout Pakistan 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 by the annexure (b) and the deposit mentioned in rule 342 in respect thereof.

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.

371. 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 of 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.

F.—Inventory and Accounts.

372. Form of inventory:-- (1) The inventory and the account required by section 317 of the Act to be exhibited shall be in Form Nos.32 and 33 respectively in Appendix B.

(2) A register shall be kept in Form No.15 in Appendix C and the particulars therein prescribed shall be entered from time to time as occasion requires.

G.—Continuous Proceedings.

373. 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.

374. Notice of caveat:-- Notice of the filing of a caveat shall be given to the petitioner or his pleader.

375. 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 and 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.

376. Notice to caveator to file affidavit:-- Where the caveator fails to file any affidavit in support of his caveat in compliance with rule 375 or in the compliance with the notice issued under rule 376, the caveat may be discharged by an order of the Court.

377. Consequence of not filing affidavit:-- Where the caveator fails to file any affidavit in support of his caveat in compliance with rule 375 or in compliance with the notice issued under rule 376, the caveat may be discharged by an order of the Court.

378. 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.34 in Appendix B.

379. Notice in probate:-- In a probate suit the party opposing a will may with his affidavit, give notice to the party setting up the will that he 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.

H.—Miscellaneous.

380. Certificate under section 274 (1)(b) or the Act:-- With every certificate to be sent to a High Court under the provisions of section 274 (1)(b) of the Act the Court shall send to the High Court to which it is subordinate a copy of the affidavit of valuation of the property and credits of the deceased and to the other High Court a copy of so much of the affidavit as aforesaid as relates to the estate within the jurisdiction of such High Court.

381. Notice by executor or administrator to creditors under section 360 and 367 of the Act:-- Where an executor or administrator has given notice to creditors and others in Form No.35 in Appendix B, such notice shall be deemed to satisfy the requirements of section 300 and 367 of the Act.

382. 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.

383. 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.

Note:-- For stamping succession certificates granted by Political Officers, see circular in Appendix A under Chapter XVII, p.183.

384. References from police and magistrates regarding unclaimed property to be accompanied by list and valuation:--

References and reports from the Police and Magistrate with regard to unclaimed property shall be accompanied by an accurate list and approximate valuation of the property.

385. 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 IX, Appendix D, before surrender to claimants or deposit in public treasury.

Note:-- For form of note to be appended to certificates and of the form of order see Forms No.36 and 37 in Appendix B.

CHAPTER XVII

Rules under the Indian divorce act, 1869.

386. Marriage certificate to be annexed to petition:-- All petitions under section 10, 18, 23, 27, 32 or 34 of the 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.

387. Contents of petition:-- (1) In the body of a petition under section 10, 18, 23, 23, 27, 32 or 34 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 address where the parties have cohabited including the address where they last resided together in Pakistan;
- (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 Pakistan 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 District Court, in which the petition is presented, 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 authorized by him or her to sign the same or to sue on his or her behalf.

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

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

389. Correspondent 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.

390. 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.

391. 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 Pakistan, 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 the 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.

392. Answer:-- A respondent or co-respondent, or a woman to whom leave to intervene has been granted under rule 390, may file in the Court an answer to the petition.

393. 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 390 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 a memorandum in writing, stating his or her address for service.

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

394. Service of decree made by District Judge:-- A copy of a decree for dissolution of marriage or of a decree of nullity of marriage or judicial separation made by a District Judge shall be served on the respondent and co-respondent in the manner provided by the Code for 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.

395. Submission of proceedings to the Chief Court:-- When the decree is one which under the Act requires confirmation, the District Judge shall, as soon as may be, submit the proceedings to the Chief Court for orders.

396. Alimony, maintenance and custody of children:-- The District 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 at the time the application is made resident in Pakistan.

397. Costs:-- A wife whether she be petitioner or respondent may have her costs upto 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.

CHAPTER XIX

RULES UNDER THE PARSI MARRIAGE AND DIVORCE ACT, 1936.

398. Interpretation:-- In this Chapter:-

(1) “the Act” means the Parsi Marriage and Divorce Act 1936;

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

399. 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 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.

400. 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 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.

401. Leave to the Court to sue:-- (1) Leave of the Court to sue under subsection (3) of section 29 of the 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.

402. 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 400 shall apply to such a case, mutatis mutandis.

Alimony ‘pendente lite’.

403. Application for alimony ‘pendente lite’:-- (1) In all matrimonial suits under the Act, except suits under section 31, the wife may file an application for alimony pendente lite, under section 39 of the 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.

404. 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.

(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 pleader, of her intention to do so.

(3) **Witnesses when to be examined:--** 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.

405. 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, that there is a change in the circumstances of the parties which warrants a variation, modification. 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.

406. Application for permanent alimony custody of children etc.:-

(1) Application 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 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 the Court may direct.

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

407. Stay of application and making of interim orders:-- Where an appeal from the decree in the suit is pending every application under rule 406 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 (for access), maintenance and education of children as it could have made if the application had been made pending the hearing of the suit.

408. Power of the Court to pass consent order:-- Nothing in rule 406 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.

409. 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 date as the Court may fix.

Registration of Divorces, etc.

410. (1) Registration of divorces, etc.:-- (1) The chief ministerial officer 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.

411. 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 XX

RULES UNDER THE GUARDIANS AND WARDS ACT, 1890.

412. 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 minor.

Appointment of Guardian.

413. 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.38 in Appendix B. Such petition shall be registered and numbered as a miscellaneous application.

414. Contents of application:-- The application, 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.

415. Where father of minor is living:-- Where the father of a minor is living and is not prepared 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.

416. Form of Notice:-- The notice required by section 11 of the Act shall be in Form No.39 in Appendix B.

417. Copy of application to Court of 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.

418. 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 the 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.

419. Security by guardian:-- The security bond required by section 34 of the Act shall be in Form No.40 in Appendix B. The amount of such security shall ordinarily be equal to the value of the moveable property and to twice the amount of the annual rents, profits or other income of moveable and immovable property to be received or accounted for by the guardian.

420. 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.

421. Form of certificate of guardianship:-- Upon the appointment or declaration of a guardian a certificate of guardianship shall be issued in Form No.41 in Appendix B. But where security is required, the certificate shall not be issued until the security is furnished.

422. Form of Register:-- The appointment or declaration of a guardian shall be entered in a register in Form No.16 in Appendix C and the particulars therein prescribed shall be entered from time to time as occasion requires.

423. 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.

424. Form of statement held under section 34(b):-- The statement provided in section 34(b) of the Act shall be in Form No.42 in Appendix B.

425. 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.

426.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 66 to 69 be by interlocutory application and rules 66 to 69 shall, so far as may be, apply to such application.

Application to deal with Immoveable Property of a Minor.

427. Application to deal with immoveable property of a minor:-- If application for leave to deal with immoveable 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.

428. 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.

429. Payment 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.

430. 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.

431. 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 April 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.

432. Inspection and audit of accounts:-- The copies submitted under rule 431 shall be exhibited and preserved with the record on the main petition and shall be open to inspection, with the permission of the Court, by person legitimately interested in the same on the payment of the fee prescribed by rule 337. The Court should ordinarily cause copies of the account submitted under rule 431 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 submitted to the Court. The court may allow such fees to the auditor as is thinks fit. In the case of the Nazir or other officer of the Court, such fees shall be credited to Government.

433. Where minor attains majority before 31st March in following year:-- When at the audit of accounts under rule 432 it appears to the Court that the ward will attain majority at a date before 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.43 in Appendix B.

434. Order under section 32 and 43 (1) of the Act regarding investment of surplus monies, etc.:-- (1) The Court shall in all proper cases consider the propriety of making orders under section 32 (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 Trusts Act, 1882, or in the Government Savings Bank or in deposit with the Imperial Bank.

Discharge or Removal of Guardian.

435. Discharge or removal of guardian:-- An application for the discharge or removal of a guardian shall, except where the minor has attained majority pray 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.

436. Guardian not to be discharged till accounts passed:-- Unless the Court for reasons recorded in writing otherwise order, 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.

437. 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 of 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.

438. Administration fees if Nazir appointed guardian of property of minor:-- When the Nazir or the office of the Court is appointed a guardian of the property of a minor, administration fees shall be charged as provided by rule 139 and credited to Government.

439. 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 authorised by the Court to this purpose.

440. 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 XXI

RULES UNDER THE OATHS ACT, 1873:

441. The following forms of oaths and affirmations are prescribed under section 7 of the Oaths Act, 1873:-

(1) *Form of witnesses.* Hindus and Mohamedans 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) Christian shall be required to hold the New Testament in the right hand 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.

442. Form for interpreters:-- 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”.

CHAPTER XXII.

RULES UNDER THE PARTITION ACT, 1893.

Procedure.

443. The provisions of rules 240 to 254 shall, so far as the same are applicable, apply to a sale under section 7 of the Partition Act, 1893.

Provided that rule 246 shall not apply to the said sale and property or any part thereof on such terms as the Court thinks fit.

CHAPTER XXIII.

RULES UNDER THE PROVINCIAL INSOLVENCY ACT, 1920.

Preliminary:

444. Definitions: (1) In this chapter, unless there is anything repugnant in the subject or context:--

(i) “Act” means the Provincial Insolvency Act, 1920.

(ii) “Court” includes a receiver when exercising the power of the Court in accordance with section 80 of the Act.

(iii) “interim receiver” means a receiver appointed by the Court under section 20 of the Act.

(iv) “proved debt” means the claim of a creditor so far as it has been admitted by the Court.

(v) “receiver” means a receiver appointed by the Court under section 56(1) of the Act; and (except, where the context otherwise requires) includes the Official Receiver.

(vi) “section” means a section of the Act.

445. Cause title and number:-- (1) Every petition, application, affidavit or order in any proceedings under the Act or under these rules shall be headed by a cause title in Form No.44 in Appendix B and shall be entitled ex parte the applicant.

(2) Every petition instituting proceedings in a matter shall, on being admitted by the Court, be entered in the register of insolvency petitions to be maintained in Form No.17 in Appendix C in all Courts exercising insolvency jurisdiction and shall be given a serial number in the register and all subsequent proceedings in the same matter shall bear the same number.

446. Petition by debtor:-- (1) Every petition by a debtor shall, unless on a special application made in that behalf the Court grants time, have annexed to it a schedule of the affairs of the debtor giving particulars required by clause (d) and (e) of section 13 (1) in Form No.45 in Appendix B.

(2) If the debtor has been arrested and imprisoned in execution of a decree, or an order of attachment has been made and is subsisting against his property, the petition shall give the particulars of the decree or order under which process has been issued.

(3) If the debtor has presented any previous petition in insolvency or has had an order of adjudication passed against him, the petition shall state the particulars thereof, including the serial number of the petition and manner in which the same was disposed of.

447. Filing of copies of debtor’s petition etc. and deposit of cost:-- Within seven days of the admission of an insolvency petition presented by the debtor or within such further time as may be ordered, the debtor shall:-

(a) supply as many copies of the petition and the schedule of his affairs as there are creditors with two additional copies for the use of the Court. Where the creditors do not exceed eight, such copies may be either written or typed and where the creditors exceed eight, such copies shall, unless otherwise ordered by the Court, be printed; and

(b) deposit a sum sufficient to defray the cost of serving notices of the petition.

448. Service of copies etc., on creditors:-- The copies of the petition, of the annexures of the schedule of affairs together with the notice of the order fixing the date of hearing shall be served on each creditor shown in the schedule of creditors.

449. Petition by creditors:-- (1) The petition of a creditor shall state the amount of the debt owing to him or if there are several petitioners, to each of them and when the

same is payable, the act of insolvency on which the petition is grounded and the date of commission thereof.

(2) If the petitioner is a secured creditor, he shall give full particulars of his security and value the same.

450. Filing of copies of creditor's petition and deposit of cost:-- A creditor shall together with his petition bring in Court as many copies thereof as there are debtors to be served and three additional copies for service on the Receiver and for the use of the Court, and shall deposit along with his petition a sum of Rs.25 only to cover expenses, and shall, if so required, deposit such further sum as may subsequently be ordered by the Court.

451. Schedule of affairs (1) On the admission of the creditor's petition the Court may order the debtor to file a schedule of his affairs in Form No.45 in Appendix B within fifteen days of the service of the copy of the petition or within such further time as the Court may fix.

(2) In the absence of any order requiring the debtor to file a schedule of his affairs, he shall within fifteen days of his adjudication or within such further time as the Court may fix file a schedule of his affairs.

452. Service of copy etc on debtor:-- The copy of the petition together with notice of the order fixing the date for hearing the petition and the order, if any, requiring the debtor to file a schedule of his affairs shall be served upon the debtor and any other person upon whom the Court orders notice to be served. The notice shall be issued in Form No.46 in Appendix B.

453. Particulars of insolvency petitions to be posted on notice board of the Court:-- The name description and residence of each debtor by whom or in respect of whom an insolvency petition is presented, together with the date fixed for hearing of such petition, shall, on such petition being admitted, be posted on the notice board of the Court and in the office of the Official Receiver, if any. But the question whether this rule has been duly complied with shall not be allowed at the hearing.

454. Death of debtor before hearing of petition:-- If a debtor against whom an insolvency petition has been admitted, dies before the hearing of the petition, the Court may order that notice of the order fixing the date for hearing the petition shall be served on legal representative or on such other person as the Court may think fit in the manner provided for the service of summons.

Proceedings by or against a Firm.

455. 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 in the following manner:-

“B and Co. by A. B. partner in the said firm “.

456. 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 Pakistan upon any person having at the time of service the control 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 Pakistan.

(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.

457. Debtor's petition by a firm:-- When a firm of debtors file 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.

458. Schedule:-- The debtors shall submit a schedule of their partnership affairs and each debtor shall submit a schedule of the separate affairs.

459. Creditor's petition by a firm:-- When a creditor files an insolvency petition against a firm, the petition shall state the name of the individual partners so far as the same are known to the petitioner, and the debtors shall, together with their schedules of affairs, file an affidavit setting out the names in full of the individual partners.

460. 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.

461. 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.

462. 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 set of separate creditors; and the proposal made to each such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount.

463. Separate firms:-- If any two or more of the members of a partnership constitute a separate and independent firm, the creditor 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 members 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.

Adjudication.

464. Date of hearing:-- (1) The time to be appointed for the hearing of the insolvency petition shall be fixed with regard to the places of residence of the several creditors.

(2) When any order of adjudication of insolvency has been made against any person or persons under the Act, publication of notice under section 30 of the Act shall be in Form Nos.47 in Appendix B.

465. Form of affidavit of proof:-- (1) All claims shall be proved by affidavit in Form No.49 in Appendix B.

(2) The affidavit may be made by the creditor or by some person authorised by him provided that if the deponent is not the creditor, the affidavit shall state the deponent's authority and means of knowledge.

(3) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor it shall be sufficient if one proof for all such claims is made either by the debtor, or by some other person on behalf of all such creditors. Such proof shall be in Form No.50 in Appendix B.

466. Creditor who has tendered proof may object to claim of another creditor before schedule framed:-- Until a schedule has been framed, any creditor who has tendered proof of his claim may object to the claim preferred by any other creditor, and shall if so required, state the grounds of his objection in writing. A creditor so objecting shall have a right of being heard in support of his objection.

467. Order rejecting claim to state reasons:-- As soon as may be after proof of any debt is tendered, the Court or the Official Receiver, (if empowered in that behalf), shall by order in writing admit the creditor's claim in whole or in part or reject it.

Provided that when a claim is rejected in whole or in part, the order shall state briefly the reasons for the rejection.

468. Form of notice:-- A notice in Form No.51 in Appendix B rejecting a claim, or admitting it in part only, shall be sent by the Court or the Official Receiver, as the case may be, by registered post to the person making the claim within seven days from the date of the order.

469. Costs:-- It shall be within the discretion of the Court or the Official Receiver, as the case may be, to award costs between the contesting creditors, which shall be recoverable in execution proceedings.

470. Schedule of creditors:-- As soon as the schedule of creditors has been framed, a copy thereof shall, if a receiver or interim receiver has been appointed, be supplied to him and all subsequent entries and alterations made therein shall be communicated to the receiver or interim receiver, except in cases where the Official Receiver, if any, himself frames the schedule.

471. Consideration of compositions and schedules of

arrangements:-- (1) If a debtor submits a proposal under section 38 (1), the Court shall fix a date for the consideration of the proposal, and notice thereof together with a copy of the terms of the proposal shall be sent to every creditor.

(2) At the meeting for the consideration of the proposal the debtor shall be entitled to address the Court in person or by pleader in support of the proposal and every creditor shall be entitled, in person or by pleader, to question the debtor and to address the Court.

472. Appointment of and security from receiver and interim

receiver:-- (1) Every appointment of a receiver or interim receiver shall be by order in writing signed by the Court. Copies of the order, sealed with the seal of the Court, shall be served on the debtor and forwarded to the person appointed.

(2) Every receiver and every interim receiver other than the Official Receiver shall be required to give such security as the court thinks fit. Provided that Nazir or other Government Officer who is appointed as receiver or interim receiver ex-officio, and who has already under the Public Accountants' Default Act XII of 1850 or otherwise given security that is still valid for the due account of all monies which shall come into his possession or control by reason of his office, shall not be required to give such security unless, owing to the extent of the assets likely to be realized or for other special reasons, the Court thinks it desirable to do so. A recognizance entered into by a receiver or interim receiver shall be in Form No.52 in Appendix B.

(3) The Court shall not require the Official Receiver to give security in each case in which he acts under section 57(2), but he shall, previous to his appointment or within such further time as the Court may allow, give general security by entering into a recognizance with one or more sufficient sureties in Form No.53 in Appendix B or by depositing Government securities in such sum as the Chief Court may fix in this behalf.

(4) If the surety dies or becomes insolvent, the receiver or the Official Receiver, as the case may be, shall immediately thereafter give notice thereof to the Court and shall give a fresh security forthwith.

(5) Where a petition is referred to the Official Receiver for disposal in exercise of his powers under section 80, the Court ordinarily shall, when the debtor is the petitioner and may, when a creditor is the petitioner at the same time appoint him "an interim receiver" under section 20, and confer on him all the powers conferrable on a receiver under Order XL, rule 1(1)(d) of the Code. Such official Receiver, upon making an order of

adjudication, shall at once apply to the Court for an order appointing him receiver for the property of the insolvent under section 56 and 57. The Official Receiver shall at the same time submit a draft in Form No.54 in Appendix B with the necessary modifications, for signature and sealing.

473. Removal or discharge of receiver or interim receiver:-- (1) The Court may remove or discharge any receiver or interim receiver other than the Official Receiver, and any receiver or interim receiver so removed or discharged shall, unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books, accounts or other documents relating to the debtor's property which are in his possession or under his control to such person as the Court may direct.

(2) If an order of adjudication is annulled, the receiver (if any) shall, unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books accounts or other documents relating to the debtor's property which are in his possession or under his control to the debtor or to such other person as the Court may direct.

474.Receover or interim receiver an officer of the Court:-- Every receiver or interim receiver shall be deemed for the purpose of the Act and of these rules to be an Officer of the Court.

475. Application by receiver or interim receiver:-- (1) Every application to the Court made by a receiver or interim receiver shall be in writing.

(2) The Court may order that notice of any application by the receiver or interim receiver and of the date fixed for the hearing of the application, shall be sent by registered post to all creditors who have proved.

476. Remuneration of receivers:-- (1) Subject to any special order of the Court under section 56(2)(b) and (5), the remuneration of receiver or interim receivers other than Official Receivers shall be in such proportion to the amount of the dividends distributed as the Court may direct, provided that it does not exceed 5 per cent of the amount of the dividends.

(2) When a receiver realizes the security of a second creditor, the Court may direct such remuneration as may appear proper to be paid to him having regard to the amount of work done in connection therewith.

(3) If a receiver other than the Official Receiver has been appointed in an insolvency in which the Court makes an order approving a proposal under section 39, the remuneration to be paid to the receiver shall be fixed by the Court, and the order approving the proposal shall make provisions for the payment of the remuneration and shall be subject to the payment thereof.

(4) Where the Official Receiver is appointed receiver of an estate whether interim or otherwise, he shall be entitled to charge for the duties performed by him as such receiver:--

(a) a commission at the rate of 6.1/4 per cent on the gross amount or value of assets realized or collected by him in each estate;

(b) a commission at the rate of 6 and half per cent, on the amount realized by the Official Receiver on sale of any mortgaged property and

(c) a commission of 6.1/4 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 35 on the ground that the debts of the insolvent are paid in full, a commission at the rate of 6 and half 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 (b) and (e), the court may, in its discretion, fix a sum less than the sum payable at the rate of 6 point one four per cent as Official Receiver's commission. And further where the order of adjudication is annulled or petition is withdrawn and assets have not been realized either in whole or in part, it shall be competent for the Court to fix such remuneration for the duties performed by the official receiver in respect of such part of the said assets as has not been realized by the Official Receiver before the date of the order of annulment or withdrawal of petition.

477. Receiver's Report:-- (1) Unless the Court otherwise directs the receiver or interim receiver shall as soon as may be after its appointment and in any case before the hearing of the debtor's application for discharge draw up a report upon the cause of the debtor's insolvency, the conduct of the debtor so far as it may have contributed to his insolvency and also his conduct during the insolvency proceedings in all matters connected with such proceedings. Such report shall also state the particulars required by sub-section (1) of section 42 of the Act.

(2) If the debtor submits a proposal under section 38(1), the receiver, shall state in his report whether in his opinion the proposal is reasonable and is likely to benefit the general body of the creditors and shall state the reasons for his opinion.

478. Debtor to furnish accounts:-- (1) Unless the Court otherwise directs the debtor shall furnish the receiver, or interim receiver, or, if a receiver or interim receiver has not been appointed the Court with a trading account and an account showing all moneys and securities paid, disposed of, encumbered or recovered by or from the debtor or on his account and his income and the source thereof for such period as the receiver or interim receiver, or if a receiver or interim receiver has not been appointed, the Court may direct, provided that the receiver or interim receiver shall not, without the previous sanction of the Court, direct the debtor to furnish account for more than two years before the date of the presentation of the insolvency petition.

(2) The debtor shall render all assistance in his power in serving creditors or persons alleged to be creditors, in the realization of his property and in the admission of claims preferred by his alleged creditors and render all such further assistance as the Court may reasonably require.

479. Interrogatories to be answered by insolvent:-- The receiver may, if he so desire, require the insolvent to answer in writing the interrogatories in Form

No.55 in Appendix B with such modification as he considers proper and may put him such further question as he deems fit.

Accounts.

480. The receiver or interim receiver shall keep a cash book and such books and other papers as are necessary to give a true account of his administration of the estate.

481. Deposit of moneys realized:-- The receiver shall deposit all valuable securities for safe custody with the Nazir or, if so ordered by the Court, in the Imperial Bank of India, and whenever a sum exceeding Rs: 500 shall stand to the credit of any one estate the receiver shall give notice thereof to the Court, and unless it shall appear that a dividend is to be presently declared he shall obtain the Court's order to invest the same in any security of the Government of Pakistan or in fixed deposit with any approved Bank.

482. Official Receiver to open "Unclaimed Dividend Account":-- The Official Receiver 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 insolvent's estate in which no further recovery is anticipated and in which no dividend can be declared and, with the sanction of the Court, invest in the name of the Official Receiver all money standing to the credit of the account in any security of the Government of India or in fixed deposit with any approved Bank.

483. Income from investments:-- (1) The Official Receiver shall transfer the interest accruing from all such investments to an account called: "The Unclaimed Dividend Revenue Account", and from the money at credit with such account shall pay such sums for stationery, wages and other office expenses as the Court may direct.

(2) At the end of every year all sums and securities standing to the credit of the Unclaimed Dividend Revenue Account shall be transferred to the account and credit of the Provincial Government after completion of the audit of the Official Receiver's accounts for the year.

Provided that if at any time any amount is required for any purpose, the Provincial Government shall pay the same.

484. 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.2,500 shall be transferred to the account and credit of the Provincial Government after the completion of the audit of the Official Receiver's accounts for the year, provided that if at any time, the amount standing to the credit of the said account is less than Rs.2,500, the deficit shall be paid by the Provincial Government to make up the said sum of Rs.2,500.

485. Payment of dividends after one year:-- Dividends after the lapse of one year shall be paid out of the "Unclaimed Dividend Account". But no dividend shall be paid after a lapse of six years except under the orders of the Court and on the Court being satisfied as to the circumstances condoning such delay.

486. Half-yearly statement of estates:-- The Official Receiver shall publish half-yearly in the Sind Government Gazette, viz., 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 disbursement (distinguishing dividends from other payments), of the balance remaining, of the mode and securities on which such balance is actually invested and of the probable out turn of assets not yet realized, and at the foot thereof shall specify the amount of commission received by him during the half year.

487. Audit of accounts:-- The Receiver including the Official Receiver shall submit his accounts by such times and in such forms as the Court may direct. Such accounts shall be audited by such qualified person or persons as the Court may direct. The costs of such audit shall be fixed by the Court and shall be paid out of the estate.

Committee of Inspection.

488. Constitutional composition of the Committee:--(1) When the Court authorises the appointment of a committee of inspection, such appointment shall be made by a meeting of creditors.

(2) The Committee shall consist of not less than three and not more than five members.

489. Control of Committee of Inspection over receiver:-- (1) The receiver shall submit the books of account together with any other requisite book and vouchers to the Committee of Inspection as and when required.

(2) The Committee of Inspection shall be constituted by the receiver on all matters of importance affecting the general body of creditors, and in particular on question relating to the valuation, redemption and realization of securities and the disclaimer of leases or property burdened with onerous covenants; and the proceedings had no such consultations together with any resolution of the Committee passed thereat, shall be duly recorded in a minute book.

Distribution of Dividends.

490. Distribution of dividends:-- (1) No dividend shall be distributed by a receiver without the previous sanction of the Court.

(2) No final dividend shall be declared or distributed by the receiver without complying with the provisions of section 64. Notice to declare a final dividend shall be given in Form No.63 in Appendix B.

(3) Notice in Form No.64 in Appendix B, that the distribution of a dividend has been sanctioned, shall be sent by the receiver or if there is no receiver, by the Court to every creditor, who has proved a debt by registered post within one month from the date of the order sanctioning the distribution.

(4) The amount of any dividend due to a creditor may at his request be transmitted to him by postal money order at his risk and expense and if the amount does not exceed Rs.5 shall be so transmitted, unless he appears to claim it in person or by duly authorised agent before the receiver or, if there is no receiver, before the Court within two months from the date of the order sanctioning the distribution of the dividend.

(5) An order shall not be made under section 65 without giving the receiver opportunity to show cause why the order should not be made.

(6) When the Court makes an order under section 65 of the Act for the payment of a dividend by the Official Receiver the amount ordered to be paid shall carry interest at the rate of six per cent per annum.

Discharge.

491. Application discharge:-- (1) An application for discharge shall not be heard until after the schedule of creditors has been framed.

(2) Every creditor who has proved shall be entitled in person or by pleader to appear at the hearing and oppose the discharge, provided that he has served upon the insolvent and upon the receiver (if any) not less than seven days before the date for the hearing, a notice stating the grounds of his opposition to the discharge.

(3) A creditor who has not served the prescribed notices shall not, unless the Court otherwise directs, be permitted to oppose the discharge of the debtor and a creditor who has served the prescribed notices shall not be permitted, unless the Court otherwise directs, to oppose the discharge on any ground not specified in the notice.

(4) At the hearing of the application, the Court may hear any evidence which may be tendered by a creditor who has served, the prescribed notices, or by the receiver, and also an evidence which may be tendered on behalf of the debtor and shall examine the debtor, if necessary, for the purpose of explaining any evidence tendered and may hear the receiver or the debtor in person or by pleader and any creditor in person or by pleader who has served the prescribed notice.

492. Notices:-- (1) The notices to be given under section 19(2), 30, 37(2), 38(1), 41(1) and 64 shall be published in two successive issue of the Official Gazette in English and Sindhi and, unless the Court dispenses with its publication, in two successive issues of a reputable English and one reputable Sindhi paper, and copies of the notices in English and in the language of the Court shall be affixed to the notice board of the Court.

(2) The notices to be given under section 19(2), 38(1), 41(1) and 64 shall be published and affixed in the manner provided in sub-rule (1) not less than fourteen days before the date fixed for the hearing.

(3) Notice of the date fixed for the hearing of an insolvency petition under section 19(1), if the petition is by the debtor, shall be sent by the Court by registered post to all creditors mentioned in the petition, and if the petition is by a creditor, shall be issued for service on the debtor not less than fourteen days before the said date.

(4) The notice to be given under section 33(3) shall be served only on the debtor and on the creditors who have proved their debts and may, if the Court so directs, be served on any or all such creditors by registered post.

(5) Notice of the date fixed for the consideration of a proposal under section 38(1) shall be sent by the Court by registered post to all creditors not less than fourteen days before the said date.

(6) Notice of the date fixed for the hearing of an application for discharge under section 41(1) shall be dispatched by the Court by registered post to all persons whose names have been entered in the schedule of creditors, not less than fourteen days before the said date.

(7) The notice to be given under section 64 shall be sent by the receiver by registered post to all persons whose claims to be creditors have been notified, but not proved, not less than one calendar month before the limit of the time fixed for proving claims.

(8) It shall not be necessary to give notice of the date to which the hearing of a petition or of an application for discharge or the consideration of a proposal is adjourned.

(9) The Court, may instead, of or in addition to forwarding a notice by registered post under this rule, cause it to be served in the manner prescribed for the service of summons.

(10) In the case of a notice to be served under sub-rule (3) to (6) or (9) the party on whose behalf the notice is to be served shall within seven days of the order directing notice to issue bring into court the necessary number of printed forms of process for service duly filled in.

493. Costs:-- (1) All proceedings under the Act down to and including making of an order adjudication shall at the cost of the party prosecuting them; but when an order of adjudication has been made, the costs of the petitioning creditor including the costs of the publication of all notices required by the Act or these rules which the petitioning credit is required to pay, shall be taxed and be payable out of the estate.

(2) The cost of the publication of:-

(a) an order fixing the date for the hearing of an insolvency petition under section 19(2) shall, when the petition is by the debtor, be paid by the debtor, and when the petition is by the creditor, be paid out of the sum deposited in Court by the creditor; and

(b) notice of a proposal for a composition under section 38(1) and notice of an application for discharge under section 41(1) shall be paid by the debtor;

(3) The publication of:-

(a) notice of adjudication under section 30;

(b) notice to creditors whose claims have been notified but not proved under section 64; and

(c) notice of an order annulling an adjudication under section 37(2)

shall be free of charge.

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

(5) If the assets available are not sufficient in any case for taking proceedings necessary for the administration of the estate, the receiver or interim receiver may call upon the creditors or any of them to advance the necessary funds and to indemnify him against the cost. Any assets realised by such proceedings shall be applied, in the first place towards the payment of such advances, with interest thereon at six per cent per annum.

(6) Where an insolvent has no available assets, the Official Receiver shall not be required to incur any costs, charges or expenses in relation to his estate without the express direction of the Court. Provided that he may with the previous sanction of the Court apply any money not exceeding Rs.250, in the matter of any one estate out of the money standing to the credit of the Unclaimed Dividend Revenue Account in defraying any necessary court fees, costs, charges and expenses in administering estates of 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.

(7) In all cases in which the Official Receiver 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.

(8) The following provisions shall apply to every case in which proceedings are taken, either by action, motion, or in any other manner against an Official Receiver in respect of anything done or default made by him when acting or in the bonafide and reasonable belief that he is acting in pursuance of the Act, or in execution of the powers given to the Official Receiver by the Act:-

(a) subject to the provisions of the next following clause the costs, damages and expenses which the Official Receiver 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.

(b) as soon as any such proceedings are commenced, it shall be the duty of the Official Receiver 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.

494. Summary Administration:-- If the Court makes an order under section 74 that the debtor's estate be administered in a summary manner:--

(a) there shall be no advertisement of a proceeding in the official Gazette or a local paper;

(b) the petition and all subsequent proceedings shall be endorsed "Summary Case",

(c) the notice of the hearing of the petition to the creditors shall be in Form No.65 in Appendix B;

(d) the receiver or interim receiver shall not carry on the business of the debtor under clause (c) of section 59, nor institute any suit under clause (d) of the said section nor accept as the consideration for the sale of any property of the debtor a sum of money payable at a future time under clause (f), nor mortgage nor pledge any part of the property of the debtor under clause (g);

(e) the court shall examine the debtor as to his affairs and the creditors shall be entitled to be heard and to cross-examine the debtor;

(f) the appointment of a receiver will generally not be necessary, and the Court may act under section 58 of the Act in order to reduce the cost of the proceedings.

495. Maintenance of registers:-- All courts and Official Receivers shall maintain registers of (1) insolvency petitions received, (2) insolvency petitions disposed of, and (3) proceedings in insolvency subsequent to orders of adjudication in Form No.17, 18 and 19 and Appendix C. They shall also submit to the Chief Court on the 15th day after the close of each half-year a return of all proceedings in insolvency in Form No.20 in Appendix C.

496. Maintenance of registers:-- In addition to registers prescribed in rule 495, Official Receivers shall maintain (1) a dividend register, (2) a register of assets and (3) a document register (inventory) in Forms Nos.21, 22, and 23 in Appendix C.

497. Expenditures of journeys undertaken for purposes of Administration:-- Expenditure incurred by the Official Receiver and his staff on journeys undertaken for the purpose of administration will be recoverable by the Official Receiver from the assets of the estate or estates concerned in accordance with the rules made by the Chief Court from time to time in that behalf.

CHAPTER XXIV

Rules under the destruction of records act, 1917.

General:

498. Records to be permanently preserved:-- The following records and documents shall be preserved permanently :-

(1) records of all suits involving questions of land-tenure or which refer to corporeal or incorporeal hereditaments or to exclusive rights or privileges or which illustrate local tribal usage;

(2) records of all suits brought by or against the Crown or its officers;

(3) records of cases which are not of a description cognizable by a Small Cause Court and which in the opinion of the Judge relate to matters of public interest or may hereafter be of historical value. Discretion under this sub-rule shall be carefully exercised;

(4) original wills, title deeds of or relating to immoveable property or authenticated copies of the same filed in the case, whether admitted in evidence or not;

(5) accounts or copies of accounts relating to public revenue. Original accounts of revenue management of or connected with alienations of revenue by this or former Governments;

(6) In other suits or matters:--

- (a) diary;
- (b) order sheet;
- (c) plaint, memorandum of appeal and miscellaneous applications, as the case may be;
- (d) petition of compromise, if given effect to in the decree, and also in the case of minors or lunatics, any order of the Court sanctioning the compromise;
- (e) award of the arbitrators or report of commissioners in matters relating to immoveable property if referred to or given effect to in the decree;
- (f) judgment, decree and any other final order, including copy of judgment, decree or order, if any, of the appellate Court;
- (g) all applications for execution, warrants issued thereon and the returns to such warrants, and applications for adjustment of decree; and
- (h) documents, the return of which or copies of which have been refused to the parties applying for the same.

(7) English correspondence with the Provincial or Central Government.

(8) Catalogues of the records destroyed.

(9) Printed books, Acts, Registers, Circular Orders and Forms except Forms regarding accounts, unless a special order is issued or the destruction of such as have become obviously useless.

499. Period for destruction of other record:-- Save as provided in rule 498 and with the exception of such documents as for special reasons recorded thereon in writing the Judge may think worthy of preservation, all records shall be destroyed after six years from the date of final decree or order, or, in the case of correspondence, of final disposal of it.

500. What record to be permanently preserved by appellate court:-- The following records shall be permanently preserved by the civil Courts having appellate jurisdiction:-

- (i) memorandum of appeal;
- (ii) a copy of the lower Court's judgment or order;
- (iii) preliminary and final judgments and decrees of the appellate Court and of the Chief Court and the Privy Council, if any.

501. Other record of appellate Court to be destroyed:-- Subject to the exceptions stated in rule 500, all records in civil appeals shall ordinarily be destroyed after the expiry of six years from the date of the final decision or order.

Procedure.

502. Marking of documents to be permanently preserved:-- (1) In preparing the list of papers, which is placed in each record before handing it to the Record-Keeper, a star (*) should be prefixed to the title and number of each document to be permanently preserved. When a document, in consequence of an order made as to it, comes under rule 498(6)(h), its name is to be marked in the same way. The name of documents that are to be returned to Courts or officers, should be marked accordingly. The papers themselves should in each case be similarly marked and should be placed at the top of the bundle composing the record, so as to be easily separable from the rest.

(2) The date of destruction of unmarked papers shall be noted on the list which is preserved under rule 498(8).

503. Useless records to be destroyed once a year:-- The destruction of useless records shall take place once a year immediately before or at the time of the annual vacation.

504. Applications for return of documents to be made early:-- Owners of documents who may wish to preserve documents filed by them should apply as soon as convenient for their return. A copy of rules 499 and 501 shall be posted on the Court notice-board.

505. Method of destroying useless record:-- Records to be destroyed should be destroyed by burning.

CHAPTER XXV

ARBITRATION

Proceedings under Chapter III and IV of the Act.

506. Proceedings under Chapter III and IV how entitled:-- (1) Every application under section 20(1) of the Arbitration Act 1940, (hereinafter in this rule and rules 507 and 520 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.

507. Form:-- A special case shall be submitted in Form No.67 in Appendix B. It shall set out clearly and distinctly the question 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.

508. Application to be forwarded to Court – notice of hearing:-- A special case shall be forwarded to the Court accompanied by the documents or copies of the documents therein referred to. The Court shall fix a day for hearing and issue a notice accordingly to the parties.

Awards.

509. Form of award:-- (1) An award shall so far as possible be in Form No.68 in Appendix B.

(2) *Award in form of special case:--* Where the arbitrators or umpire state an award wholly or in part in the form of a special case, they shall follow the provisions of rule 507 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.

510. 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 Court with a petition in Form No.69 in Appendix B 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 or 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 acknowledgments 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 Court with a petition in Form No.69 in Appendix B.

(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.

511. Service of notice of filing of award in Court:-- (1) The Court shall issue notice to the parties other than the party referred to in rule 510 (2) of the filing of an award in Form No.70 in Appendix B. If a special case is stated in the form of an award, the provisions of rule 508 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 510(2) shall deposit Rs.5 in the first instance in Court to meet the cost of such notice.

512. 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.

513. Applications for interim orders to be by interlocutory

applications:-- (1) All applications under section 18 of the Act shall be by 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 66 and 67.

(2) The affidavit filed with such application must among other things show that the provisions of rule 510 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 511 or pending expiry of the period allowed for making an application under section 15, 16 or 30 of the Act, as the case may be, is likely to prejudice him.

514. 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 wishes to show cause, the provisions of rule 68 shall, so far as may be, be followed.

Applications.

515. 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 67 to 69, 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 person affected thereby and upon whom notice must be served as hereinafter provided.

(5) Every such petition and every special case in an 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 one 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.

516. Notice to person concerned:-- Notice shall be served upon all persons specified in the application under rule 515(4), upon the arbitration, arbitrators or umpire against whom an application under section 11 of the Act is made and upon each other persons as may appear to the Court to be affected by or concerned with the application.

Stay of Proceedings.

517. 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.

(2) *Notice to issue before ordering of proceeding:*-- 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.

518. Pleadings' fees: Pleadings' fees shall be calculated at the rate, laid down in clause 2 of Chapter VI in Appendix D, 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.

518.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.70-A in Appendix B. Such notice shall be served at the cost of the party making the application.

519. (1) Unless otherwise ordered, all notices under this Chapter:--

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

(b) if the Court 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 acknowledgment, provided that at such place there is a regular postal service.

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

520. 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.

521. Title of applications, etc.:-- Applications, affidavits and proceedings under the Arbitration (Protocol and Convention) Act, 1937, (hereinafter in this rule and in rules 522 to 528 called “the said Act) shall be entitled in the matter of the said Act, and in the manner 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.

522. 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.

524. 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 of 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.

525. Document to be produced with petition:-- (1) The party seeking to enforce award shall produce with the 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 certificate 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.

(2) Procedure to be followed in case of non-production of documents with petition:-- 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 clause (ii) and (iii) of sub-rule (1), the Court may allow time within which such documents must be filed.

526. 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 525 shall be deemed to be 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 Government of Pakistan in the country in which it was made that the authentication of 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 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 Government of Pakistan 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.

527. Execution of decrees and orders:-- The provisions of the Code and the Rules and Forms of the Court relating to execution of decrees and orders shall, mutatis mutandis, be applicable to the execution of decrees and orders under the said Act.

528. Pleaders' fees:-- Pleaders' fees shall be calculated at the rates laid down in clause 2 of Chapter VI in Appendix D 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 XXVI

Rules under the transfer of property act, 1882.

529. Deposit of money due on mortgage:-- Every deposit under section 83 of the Transfer of Property Act, 1882, (herein after 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 mortgage under section 83 of the Act shall be entitled in such miscellaneous application.

530. Deposit of costs:-- Unless otherwise ordered, there shall be paid in to 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 prove for the mortgagee's costs of transferring the property and causing such transfer to be registered.

531. Order for payment of money into Court under section 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.

532. Mode of service:-- Subject to the provisions of section 102 and 103 of the Act, notice under section 83 of the Act shall be served in one of the modes prescribed for summons by the Code or by sending it by registered post to the address for service of the person to be served.

533. 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 reasons 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 of when otherwise ordered, the mortgagees shall be allowed all costs properly incurred by him.

534. 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 to do, transferred the property and possession free from encumbrances and caused such transfer to be registered and has accounted for the documents of title which were held by him, the Court shall make such order or orders as to it shall deem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

535. Endorsement 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 XXVII

Rules under the companies act, 1913.

General:

536. Act defined:-- In this chapter “the Act” means the Companies Act, 1913.

537. 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 Court of—
In the matter of the Companies Act, 1913, and of the
Company, Ltd;

(b) for all advertisements, notices and other proceeding not in Court—

“In the matter of the Companies Act, 1913, and of the
Company Limited”;

(c) in cases where it is required, the words “and reduced” shall be added to the description of the company.

538. Application to by petition and to be registered – Register of

Company Matters:-- All applications under the Act shall be made by petition and, excepting 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.24 of Appendix C.

539. 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 thereof.

Provided that the Court may, for sufficient reasons, grant leave to any other person duly authorised by the petitioner to make and file the affidavit.

540. Accompaniments of petition:-- Unless dispensed with by the Court (1) every petition under section 12 of the Act, (alteration of memorandum) section 54 of the Act, (re-organization of share capital), section 56 of the Act, (for in confirming reduction of share capital) or section 105-A of the Act, (or sanctioning the issue of shares at a discount) 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 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 of 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) proposal memorandum and articles of association,

- (c) special resolution sanctioning the substitution and
- (d) notice calling the meeting.

541. 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 Court, in the Official Gazette and in one English and one vernacular daily newspaper as may be ordered by the Court. Such advertisement shall be in Form No.71 in Appendix B. Such application shall be served on such persons as the Act requires and in other cases as the Court 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 newspaper or newspapers for such number of time as may be directed.

(3) The Court, may however, in such cases as it or he shall think fit, dispense with any advertisement required by the rules in this chapter.

542. 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 servant of the company, and in case no such person can be found there, then in such manner as the Court may direct. If the company is being wound up at the date of admission of miscellaneous application, notice, summons, order or document, service shall be effect upon the liquidator. If the register office or place of business referred to in this rule is situate beyond the original civil jurisdiction of the Court, service of the application, notice, summons, order or document, may, with the leave of the Court be effect by sending a copy thereof by prepaid registered post addressed to the company at such office or place of business.

543. Service on other persons:-- (1) Except where otherwise provided in this chapter, all notices, summons 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, summons 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 reasons 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 the petition, summons, order, notice or other document, with 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.

544. 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.

545. General English practice to apply:-- In cases not provided for 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.

546. Form of petition:-- An application under section 56 of the Act shall be in Form No.72 in Appendix B.

547. 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.

548. Directions to 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 notice 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 setting the list of creditors. The order on such application may be in Form No.73 in Appendix B.

549. List of creditors:-- The company shall, within the time allowed by the Court, file in the Court, a list in Form No.74 in Appendix B made out by some officer of the company competent to make the same, containing the names and addresses of the creditors to 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.

550. 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 fixed by the Court under rule 548 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.75 in Appendix B.

551. 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 for the company. Any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee.

552. Notice to creditors:-- The Company shall, within 7 days after the filing of the list of creditors referred to in rule 549, 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 estimate 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 show in the notice, he must send in his name and address and the particulars of his debt or claim and the name and address 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 Pakistan 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.76 in Appendix B.

553. 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 549 be advertised in such newspapers as the Court 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.77 in Appendix B.

554. Affidavit as to result of rules 552 and 553 :-- 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 rule 552 and 553 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 join in such affidavit and shall in such list distinguish which, if any, such debts and claims are wholly admitted or as to any 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 in Form No.78 in Appendix B. The company shall also file affidavit in Form No.79 in Appendix B, by the person who sent the notices referred to in rule 552.

555. 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 debtor claim, whether admitted or not, or claim is 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 in 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.80 in Appendix B 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.

556. Costs of proof:-- The cost of proof of a debt or claim or of any inquiry under rule 555 shall be in discretion of the Court.

557. 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 claim, if any, have been disallowed, the debts or claim of 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 debtors 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.

558. 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 list 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 may direct and shall be in Form No.81 in Appendix B.

559. 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.

560. Directions 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 the manner 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.

561. 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 the 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.

562. Approval of minutes:-- Within 7 days from the date of order confirming the reduction, the company shall file for approval of the Court 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 at the appointed time.

563. Publication of reasons of reduction, etc.:-- If the Court, shall, under section 65 of the Act, thinks fit to require the company to publish the reasons or causes of the reduction of the capital or any other information in relation whereto, 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 under same newspapers in which the registration of the order was published under rule 561.

WINDING UP.

Petition.

564. 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.82 in Appendix B.

585. 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 fee for copies in accordance with the provision to rule 323.

566. 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 Court 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 petition, the Court may, upon such terms as it thinks just, substitute as petitioner, any creditor or contributory who is in the opinion of the Court would have a right to present a petition, and who is desirous to prosecuting the petition. An order substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed in the chapter consents to withdraw his petition, be made at any time.

Provisional Liquidator.

567. Appointment of provisional liquidator:-- The Court may make the appointment of an official Liquidator for 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.

568. 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.83 in Appendix B.)

569. Provisional liquidator to hand over assets to official liquidator or receiver:-- On the making of a winding up order the provisional liquidator for shall, if he is not appointed official liquidator in his hands to official liquidator or the official receiver, as the case may be.

570. 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.

571. Notice under section 170(3). Notice under sub-section (3) of section 170 of the Act, shall be in Form No.84 in Appendix B.

572. 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.85 in Appendix B as the case may. A copy of such order shall be sent to the official liquidator or official receiver as the case may be.

(2) *Advertisement of order to wind up:--* Notice of every order for the winding up a company by the Court or 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.87 in Appendix B.

Official Liquidator.

573. Appointment of official liquidator:-- At the time making an order for winding up of a company of 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 advertisement shall be published within 14 days and not less than 7 days before the day fixed. (Form No.88 in Appendix B).

574. Procedure when official liquidator 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.

575. 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 orders 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.

576. Security 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 sums as the Court may approve. The recognizance of the official liquidator and his sureties shall be in Form No.89 in Appendix B and the sureties shall file an affidavit in form No.90 in Appendix B.

577. Solvency of securities 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 may require, satisfy the Court that his sureties are living and resident in the province of Sind and are solvent, and in default thereof he may be directed to give fresh security within such time as shall be directed by the Court.

578. 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 91 in Appendix B).

579. 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.

580. Remunerations:-- (1) The official liquidator shall, unless the Court otherwise directs, be allowed in his account, or otherwise paid, remuneration calculated as follows:-

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(a) Upon the total assets including produce of calls on contributories, realised or brought to credit and not being money 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 percent.
On the next Rs. 25,000 or fraction thereof.		2.1/2 percent
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 or 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 advocates for the parties concerned or with the parties.

581. 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 reason, 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 shall retain the duplicate thereof for his records.

582. Official liquidator may hold personal interviews 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 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.

583. Extension of time for submitting statement of affairs:-- Where any person required to submit a statement under section 177-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 fit, give a written certificate extending the time and this certificate shall be filed with the proceedings in the winding up.

584. 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.

585. 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 Courts makes an order dispensing with the requirements of the section, it may give such consequential directions as it thinks fit.

Report by official Liquidator.

586. Procedure for considering the official liquidator's

preliminary report:-- On the filing by the official liquidator of the preliminary report under sub-section (1) of section 177-B of the Act or of further report, if any, under sub-section (2) of the said section, the Court shall fix rate for consideration of such report 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.

587. 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 after 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 or 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.

588. 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.

589. 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.

590. Company's property to be 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 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.92 in Appendix B.

List of contributories.

591. Official liquidator to prepare list of contributories:-- Subject to any direction of the Court on the application referred to in rule 587, and as soon as possible the 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 of 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.93 in Appendix B. As regards representative contributories the official liquidator shall observe the requirements of section 184(2) of the Act.

592. Appointment of place and time for setting 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.94 in Appendix B 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 latter than fourteen days before the date fixed for the settlement.

593. 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 settled as a contributory and after such hearing shall finally settle the list which, when so settled, shall be the list of contributories of the company.

594. 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 of contributories stating in what character and for what number of shares 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 variation of the list shall be made to the Court within 21 days from the date of service on the contributory of such notice. The notice shall be in Form No.95 in Appendix B and shall be sent to each person by prepaid post registered for acknowledgment at the address mentioned in the list.

595. Applications filed out of time not to be entertained:-- The official liquidator may, from time to time, add to or vary the list of contributories and any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Provided that on liability of any contributory placed on the list settled by him and filed in Court shall be diminished except with the leave of the Court.

596. Variation of the list of contributories by the official liquidator:-- The official liquidator may, from time to time, add to or vary the list of contributories and any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Provided that on liability of any contributory placed on the list settled by him and filed in Court shall be diminished except with the leave of the Court.

597. 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.96 in Appendix B together with the affidavit of service of notice in Form No.97 in Appendix B.

598. Official Liquidator not personally liable for costs:-- Official liquidator shall not in any case be personally liable to pay any costs in relation to any application to set aside or vary act or decision in connection with the setting of the list of contributories,

Calls.

599. 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.

600. 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.98 in Appendix B. Notice of such application shall be served in Form No.99 in Appendix B 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.100 in Appendix B in such daily newspapers as the Court shall direct.

601. 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.101 in Appendix B making the call.

602. Service of notice of all:-- When a call has been made by 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.102 in Appendix B from the official liquidator specifying the amount or balance due from such contributory. Such order shall be in Form No.103 in Appendix B and need not be advertised unless the Court so orders for any special reasons.

603. Enforcement of payment of call:-- Payment of the amount due from any contributory on a call may be enforced by order of the Court to be made on application by the official liquidator supported by an affidavit in Form 104 in Appendix B. Such order may be in Form No.105 in Appendix B and may be executed as if it were a decree for money.

Sale of official liquidator.

604. Procedure of sales:-- Subject to the directions of the Court, any moveable 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.

605. 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 may direct notice to be given to such parties.

606. Disclaimer to be filed in Court:-- Where an official liquidator has been granted leave to disclaim a leaseholder 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.106 in Appendix B and a notice of disclaimer in Form No.107 in Appendix B.

607. Claimant to furnish a 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.

608. 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 leased nature and it appears to the Court that there is a mortgagee or underlessee of the property, the Court may direct notice to be given to such mortgagee or underlessee 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 interests in and security upon the property. If at the expiration of the time fixed by the Court such mortgagee or underlessee fails to make such election

and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or underlessee from all interest in or security upon the property.

Examination under section 195 and 196 of the Act.

609. Application for examination:-- An application for the examination of any persons 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.

610. Conduct of the examination:-- The conduct of an 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.

611. 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.108 in Appendix B and cause expenses at the scale prescribed in Chapter V in Appendix D 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.

612. 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, 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.

613. Procedure at public examination:-- Where an order has been made for the examination of any person under section 196 of the Act—

(a) the examination may be held before the Court or such other officer of the Court mentioned in 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.

614. Notice of public examination:-- The official liquidator shall give notice in Form No.109 in Appendix B 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 the 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.

615. Service of summons on persons to be examined under

section 196:-- The official liquidator shall cause a summons to be served in Form No.110 in Appendix B on (and shall also cause expenses at the scale prescribed in Chapter V in Appendix D 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.

Compromises and arrangements.

616. 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 an 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 therefore. 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.

617, 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 and 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.11 in Appendix B.

618. 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.

619.Verification of proof:-- An affidavit proving a debt may be made by the creditor himself or by some person authorized by him.

620. Form of proof:-- An affidavit shall be in Form No.112 in Appendix B and contain a statement of accounts showing the particulars of the debt and specify 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.

621. Statement as to security:-- An affidavit proving a debt shall state whether a creditor is or is not a secured creditor.

622. 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.113 in Appendix B of all the debts and claims sent to him, distinguishing which of the debts are claims or parts of debts and claims so claimed are in his opinion justly due and proper to be allowed without further evidence and which of them in his opinion ought to be proved by the creditors.

623. Allowance of debts:-- (1) (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.114 in Appendix B to the creditors whose debts or claims have been allowed in his affidavit of such allowance in such manner as the Court may direct.

624. Proof of debts:-- The official liquidator shall give notice in Form No. 115 in Appendix B 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.

625. 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 up of the company.

626. 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 who has proved his debt, expunge the debt or reduce its amount if it is satisfied that the proof has been improperly admitted.

627. Cost of proof:-- Unless otherwise ordered by the Court, a creditor shall bear the cost of proving his debt.

628. 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.116 in Appendix B 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.

629. Judge's certificate of debts:-- The result of the adjudication upon debts and claims shall be in the form 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 allowed 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.117 in Appendix B.

Dividends.

630. Notice of intended dividend:-- Not less 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.118 in Appendix B in such newspapers as the Court shall direct and shall also send by prepaid letter post in Form No.119 in Appendix B to such of the creditors mentioned in the statement of affairs as have not proved their debt.

631. Provisions of rules 622 to 628 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 622 to 628. The official liquidator shall apply, if necessary, to vary the list of creditors settled by the Court.

632. 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.

633. Declaration of dividends:-- No dividends shall be declared by the official liquidator without the sanction of the Court.

634. Notice of declaring and paying dividend:-- Unless otherwise ordered by the Court, the official liquidator shall give notice in Form No.120 in Appendix B of the dividend declared by advertisement in such newspapers as the Court shall fix and by sending a notice in Form No.121 in Appendix B by prepaid letter post to every creditor who has proved his debt.

635. 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 orders commission. No postal or other charges shall be levied.

636. 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.121 in Appendix B to pay such dividends to another person named therein.

Return of capital to contributories.

637. 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 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 been 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.122 in Appendix B with such variations as circumstances shall require and the official liquidator shall send a notice of return to each contributory in Form No.123 in Appendix B.

Meetings.

638. Application of rules as to meetings:-- Subject and without prejudice to any express provision 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 or whether under the directions of the Court or otherwise.

639. Summoning of meetings:-- The official liquidator shall summon all meeting of creditors and contributories by giving notice in writing in Form No.124 in Appendix B, not less than 7 clear days before the day appointed for the meeting to every creditor or contributory of the time, place and objection 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 inset such advertisement in the official Gazette.

640. 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 there at different times or places or both may, if thought expedient, be appointed for the meetings of creditors and the meetings of contributories.

641. 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, stationary, postage and the hire of a room shall be calculated at the rate of Re.1 for each person to whom notice is required to be sent for the first 25 at the rate of 8 annas for each person for the next 75 and at four annas for each person over 1000. The said sum may be repaid to the person depositing the same from the assets of the company if the Court so direct.

642. 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.125 in Appendix B.

643. Passing of resolution at creditors 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, to be deemed to be the value as shown in the books of the company and in other meeting the value for which the creditor has proved his debts.

644. 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.

645. Copy of resolution to be filed:-- The official liquidator shall file in the Court a copy certified by him of every resolution of a meeting of creditor or contributories.

646. 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.

647. 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.

648. Quorum:-- A meeting may not act for any purpose except the adjournment thereof unless there are present or represented there at least 3 creditors or contributories entitled to vote or all the 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.

649. Procedure in the absence of quorum:-- If within half an hour from the time appointed for the meeting, a quorum as specified 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 the 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.

650. 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.

651. 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.

652. 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 after deducting the value so given by the creditor.

653. Effect of voting by a secured creditor:-- If a secured creditor votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

654. 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.

655. Meetings under section 178-A of the Act:-- Rules 650 to 654 inclusive shall not apply to meetings held under section 178-A of the Act.

656. 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.126 in Appendix B.

657. 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.127 in Appendix B.

Proxies.

658. Voting by proxies:-- A creditor or contributory may vote in person or by proxy. Where a person is authorised 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 a Director of that corporation.

659. Form of proxies:-- Every proxy shall be in Form No.128 in Appendix B and every written part thereof shall be in the handwriting of the person giving the proxy or more person (other than the person to whom the proxy is given) duly authorized by him.

660. Forms to be sent with notice:-- Forms of proxies shall be sent to the creditors and contributories with the notice summoning the meeting. No name shall be inserted or printed in the Form before it is sent.

661. Who may be appointed 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 a contributory of the company; but a creditor or contributory may appoint the official liquidator to act as his proxy.

662. 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.

663. 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.

664. 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 mark thereto in the presence of a witness, who shall add to his own signature his description and residence.

Provided that all insertions in the proxy are in the handwriting 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.

665. 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 664 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.

666. Advertisement of date of hearing of application under

section 178-A(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 a notice of such date shall be given by advertisement by the official liquidator in such manner as the Court may direct.

(2) Official liquidator, creditor or contributory may be heard on application:-- 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.

667. 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 assets. Any such purchase made contrary to the provision 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.

668. 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 in 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.

669. 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.

670. 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 of whose instance such sanction is obtained, and shall be payable out of the company's assets.

671. Sanction of payment to Committee:-- Where the sanction of Court to payment to a member of a Committee of Inspection for service rendered by him in connection with the administration of 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 of 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.

672. Nature of books 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) 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, contributors 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 affair.

673. Nature of books when the business of the company is to be carried on:-- When the official liquidator has been authorised 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.

674. When accounts to be filed:-- Unless otherwise ordered, the official liquidator shall file his accounts twice every year. The first of such accounts 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.

675. Audit or accounts:-- (1) (1) The Court shall cause the accounts filed including the statements 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 be referred to the Court.

(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.

676. Forms of account:-- The accounts of the official liquidator (to be filed in duplicate as prescribed in the Act) shall be in Form No.129 in Appendix B and shall be verified by an affidavit in Form No.130 in Appendix B.

677. 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.130 in Appendix B on the date on which he shall have to file his accounts for the period.

678. Accounts to be opened in a bank:-- The official liquidator or provisional liquidator shall, as soon as may be after his appointment, open 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.131 in Appendix B.

679. Payment in moneys:-- All moneys received in the course of winding up shall be paid into such account immediately after receipt thereof.

680. 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 persons as is hereinafter mentioned in rule 683.

681. 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.

682. Delivery of securities 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 683.

683. Countersigning authority:-- Unless otherwise ordered by the Court, the person required to countersign under rules 680 and 682 shall, in cases where the powers mentioned in 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 Judge.

Provided that the Court may dispense altogether with such countersignature.

684. 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 or exchange and signed by the Judge or the member of the Committee of Inspection referred to in the last rule as the case may be. Such memorandum shall be in Form No.132 and No.133 in Appendix B.

685. Investment of moneys:-- All or any part of the money for the time being standing to the credit of the official liquidator in the bank and not immediately required for the purpose 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.134 in Appendix B) signed by the official liquidator and countersigned by the Court. 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.

686. 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 powers or powers of attorney as may be necessary) and placed to the credit of the accounts 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 statement, and regulations application thereto.

687. 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 of or under the control of the official liquidator, the winding up shall not be deemed to be concluded until the such funds have been distributed or property disposed of.

688. Form of affidavit and statement under section 244 of the

Act:-- Every statement enquired to be filed in Court or with the Registrar of Joint Stock Companies under section 244 of the Act shall be in Form No.135 and verified by an affidavit in Form No.136 in Appendix B.

689. 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 statements 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.

690. Statement to be laid before meeting by liquidator:-- The statement to be laid before the meeting summoned under section 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 689 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.

691. Procedure on the filing of the statement:-- Upon the filing in the Court of the statement referred to in rule 689, the procedure laid down in rule 586 shall be followed in respect of such statements.

692. Form of returns under section 208E(3) and section 209H(3):--

The returns to be made under sub-section (3) of section 208-E and section (3) of section 209-H of the Act, shall be in Forms Nos.137 and 138 in Appendix B, respectively.

693. Costs payable out of the assets:-- The assets of a company in 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 commenced 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 necessary disbursements of any liquidator appointed in the winding up by Court, other than expenses properly;
- (ii) the costs of any person properly employed by such liquidator;
- (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.

694. Filing of final accounts:-- Upon the 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 account, the official liquidator may apply for direction as to dissolution.

695. 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.

696. Dissolution of the Company:-- Upon the hearing of the application referred to in rule 694 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 books of the accounts entered into by the official liquidator and his sureties.

Provided that, unless otherwise ordered, the books and files of proceedings kept by the official liquidator shall be deposited in Court.

Miscellaneous.

697. 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 entitled upon payment of the cost, occasioned thereby to have notice of; but if 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.

698. 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 creditor 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 same advocate to represent them.

699. 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 in the Court. A book to be called the "Appearance Book" shall be kept in Form No.139 in Appendix B in which all such appearances shall be entered.

700. Filing and office copies of affidavits:-- 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.

701. Form of declaration of solvency:-- The declaration of solvency under section 207 of the Act shall be in Form No.140 in Appendix B.

702. Duties of advocate of official liquidator:-- The advocate of the official liquidator shall conduct all such proceedings as are ordinarily conducted by advocate in Courts; and where the attendance of his advocate is required on any proceeding in Court, 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.

703. Advocate's fees:-- Advocate's fees shall be taxed in accordance with the provisions of clause 2 of Chapter VI in Appendix D, unless a gross sum in lieu of taxed costs is fixed by the Court.

Where service of notice may be effect by an advocate's clerk as provided by the rules in this Chapter, a fee of Re.1 may be allowed.

704. Fees of inspection and copies of accounts filed under section 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.

705. 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.

706. 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 or the context may otherwise require, rules 639 to 644, 646 to 654, 656, 658 to 665 shall apply to meetings of creditors or contributories convened in a voluntary winding up.

707. 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.

708. Form of statements under sections 208-D and 200-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 be in Form No.141 in Appendix B.

709. Notice of appointment of liquidators 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.141 in Appendix B.

Meeting to consider compromise and arrangement under section 153 of the Act.

710. Forms 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 the Form No.142 in Appendix B, and shall be served in such manner as the Court may direct.

711. Directions of hearing of application:-- At the hearing of an application under rule 710, 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 value of the members or creditors, as the case may be;
- (e) such other directions as the Court may consider necessary in circumstances of the case.

712. 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 the record of the application referred to in rule 710.

713. General directions for holding of meetings:-- In the absence of or subject to any directions by the Court under rule 711:--

- (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 710, shall be held in the manner provided by rules 639 to 644, 646 to 654, 656 and 658 to 665, 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 706.

(b) the meetings of the creditors or 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 decision of the Chairman shall be subject to appeal to the Judge which shall be made within 8 days from the date of the order complained of or within such further period as the Judge may for sufficient cause allow even after the expiry of the aforesaid period of 8 days.

714. 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

715. 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 (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 XXVIII

Rules made under section 20(f) of the Pakistan Trust Act, 1882.

715-A. Trust property consisting of money may, until further order, be invested in debentures issued under the City of Karachi Municipal Act, 1953.

Note:-- This is in addition to the securities already recognized under section 20 of the Trusts Act, 1882.

PART IV

Administration and supervision.

CHAPTER XXIX

Judges.

716. Charge Report to be sent:-- Every Judge should report through his immediate superior to the Registrar, Appellate Side, Chief Court, the date on which he takes charge of a Court whether on joining service, transfer; deputation, return from deputation or return from leave.

717. Absence on leave:-- District Judge shall report their absence from their headquarters otherwise than on duty or during vacation or prescribed holidays from their

head-quarters, demi-officially to the Registrar, Appellate Side, Chief Court of Sind. Other Judges shall not so absent themselves without obtaining previously in writing the permission of the District Judge. Regular leave must in all cases be applied for officially by Judges in accordance with the provisions of the rules regulating the conditions of their service.

718. Mode of correspondence:-- In all administrative matters Judges shall, unless otherwise expressly provided, correspond with superior authorities only through their immediate Official Superiors. District Judges may correspond on all matters relating to the local administration of justice by demi-official letters addressed to the Chief Judge. All official correspondence intend for the Chief Court shall be addressed to the Registrar, Appellate Side, Chief Court of Sind

CHAPTER XXX

Administrative business.

719. Office hours:-- Office house shall ordinarily be from 10-30 a.m. to 5-30 p.m. on week days one-half hour's recess at a time to be fixed by the Judge and from 10-30 a.m. to 2 p.m. on April and October (the exact dates being settled in accordance with rule 8) they shall be from 7-30 a.m. to 2 p.m. on week days and from 7-30 a.m. to 11 a.m. on Saturdays.

720. Chief ministerial officer responsible for punctuality and discipline of staff:-- The chief ministerial officer shall be responsible for the punctual attendance and discipline of all members of the establishment other than the process-serving establishment. He shall for this purpose keep an Attendance Register and promptly bring to the notice of the Judge the absence or unpunctuality of any member.

721. Weekly arrears list:-- The chief ministerial officer shall submit to the Judge on the last working day of a week a weekly arrears list showing the arrears with each members of the establishment together with the explanation of the member concerned and the remarks of the chief ministerial officer thereon.

722. Clerks in arrears not entitled to holidays and vacation:-- No members of the establishment whose work is in arrears shall ordinarily be allowed to avail themselves of the holidays or vacations, it being clearly understood that the enjoyment of holidays and vacation is dependent upon the regular and punctual dispatch of the business by the members of the office.

723. Employment of outsider for assistance prohibited:-- No member of the establishment shall employ an outside for helping him in his work. Nothing in this rule shall affect the provisions of rule 94.

724. Supervisions over office to secure punctuality and dispatch of business:-- Judges shall exercise a strict supervision over their offices and insist on the punctual attendance of all members of the establishment and on the prompt and

regular dispatch of all business. They shall make due arrangement for the disposal of urgent business during sanctioned holidays and vacations.

725. Judges to make arrangement for order in office, etc.:-- Judges shall make proper arrangement for the maintenance of order in, and for the proper discharge of the work of order in, and for the proper discharge of the work of the office and for the prevention of the acceptance of illegal gratification by any member of the office staff and for the admission and exclusion of the public. Save as otherwise provided by rules 337 to 340, no member of the public or pleader shall be permitted to handle or touch any papers unless it be for the purpose of obtaining signature.

726. Office-order Book.:-- The chief ministerial officer shall be responsible also for the strict observance of all standing orders and shall keep an Office-Order Book in which entries shall be made of all orders of the Judge relating to the division of the office into branches and to the distribution and disposal of work.

Correspondence.

727. Confidential file in District Court:-- In a District Court the chief ministerial officer may be entrusted with the confidential file and be permitted after taking order to sign "by order" all routine correspondence on administrative matters, such as pay and allowances, contingencies, budget estimates and periodical returns, with the subordinate Courts. All correspondence with the Chief Court of Sind shall be carried on in English.

728. Files to be kept by Correspondence Clerk:-- The Correspondence Clerk shall under the supervision of the chief ministerial officer keep the Inward and Outward Registers and shall keep suitable files such as the following :--

- (1) Appointments, leave charge, vacations, powers and gradation list of Judges;
- (2) Appointment, leave, transfers, promotions, conduct of Pleaders, Petition-writers and Establishment;
- (3) Rules, Orders and Circulars, Books;
- (4) Building, Territorial Jurisdiction, Opinion on Bills, Correspondence with Comptroller, Sind and Administrator General, Miscellaneous Lists and Government Resolution; and
- (5) Administration and periodical Reports and Returns.

729. New file for each year:-- The Correspondence Clerk shall ordinarily open new files each year and the old files should thereupon be paged and indexed. Current files and files of the last two or three years should be retained at hand for ready reference but all other files should be handed over to the record-keeper.

730. Lists of returns to be kept:-- The Correspondence Clerk shall also keep lists of returns showing both returns to be submitted and returns to be received and the

prescribed dates of submission on receipt. The preparation and collection of returns shall be commenced in sufficient time before hand to ensure punctual submission.

Process servers Diary and Returns.

731. Diary:-- (1) Process servers who are entrusted with service of process shall write diaries of work done from day to day in Form No.143 in Appendix B.

(2)***Return of work done:--*** As soon as a process server returns to the head-quarters after serving process, the Nazir shall cause a return of work done to be prepared in Form No.144 in Appendix B, and shall submit the same to the judge forthwith.

(3) ***Quarterly abstract of bailiff's work:--*** An abstract of work done by the bailiffs of the subordinate Courts shall be forwarded quarterly in Form 145 in Appendix B to the District Court to which they are subordinate.

Register of witnesses summons:-- A register of service of summons on witnesses by parties under Order XVI, Rule 1(A) of the Code, shall be kept by the Nazir in Form No.25 in Appendix C.

732. Custody of pending proceedings:-- The chief ministerial officer or other officer in regular attendance in Court of the officer in charge of pending cases shall be responsible for the safe custody of all pending proceedings and documents connected therewith. Such proceedings and documents shall be kept locked in a box of cupboard when the office is closed. Important or valuable documents shall at the request of parties be kept by the record-keeper.

733. 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 Judge.

CHAPTER XXXI

Petition-Writers:

734. Who may be appointed petition writers:-- (1) Each District Judge and, subject to the control of the District Judge, each Subordinate Judge may grant licences to qualified persons of good character to be petition-writers to his Court. For the purpose of this rule the following persons shall be deemed to be qualified for appointment as petition-writers to:-

(i) Second Class Subordinate Courts:- adult persons who have passed in least the Vernacular Final Examination of V Standard English,

(ii) other Civil Court—persons who have passed at least the Matriculation Examination of an Indian, Pakistani or British University.

(2) Such licenses may be granted to stamp-vendors and section-writers to the Court if they have passed the prescribed examination, but shall not be granted to any clerk, bailiff or peon in the service of Government or to any clerk employed by any pleader.

(3) All licenses, which were issued under the rules and practice in force immediately before the commencement of these rules by the appropriate authority to persons to be petition-writers to any Court and were in force on such date, shall be deemed to have been issued under sub-rule (1).

735. Number of petition writers:-- The number of petition-writers for each Court shall be fixed from time to time by District Judge subject to any general or special order of the Chief Court in this behalf.

736. Petition-writers to be allowed place within Court precincts:-- The petition-writers shall have a place assigned to them within the precincts of the Court-House where they shall attend for transacting business daily during office hours, and at such place and on the notice of the Court shall be posted up a copy of the rules contained in this Chapter, including the Table of the Fees which such petition-writers are authorized to receive.

737. Books to be kept by petition-writers:-- Every petition-writer shall keep in his possession at the place of his business a copy of the Code of Civil Procedure, of the Limitation, Registration, Stamp and Court-fees and Dekhan Agriculturists' Relief Acts, and of such other Acts, Rules or Forms as the Chief Court may from time to time direct.

738. Endorsement by petition-writers on documents written by him:-- A petition-writer shall, at the foot of every document written by him, sign his name and make a memorandum of the fee which he has received for writing the same. Such amount, if it be in accordance with the authorized Table of Fees, shall be entered as costs in the cause.

739. Scale of Fees:-- A petition-writer shall be entitled to fees at the scale prescribed in Chapter X of Appendix D for the business transacted at the place prescribed under rule 736.

Provided that a petition-writer may at the request of any party write at any place and time other than those prescribed in rule 736. But he shall not in such case be entitled to charge additional fees, unless with the special sanction writing of the Judge.

740. When petition-writer may be ordered to refund fee, etc:-- If any document drawn by a petition-writer be rejected by reason of its being argumentative, prolix or irrelevant or for any any informality therein resulting from the carelessness of such writer, the petition writer who drew the same shall, if so ordered by the Court, refund the fee levied by him to the party from whom such fee was levied and shall also pay to him the value of the Court-fee stamps, if any, on such rejected document.

741. When petition-writer may be ordered to re-write document

drawn by him:-- If any plaint or other document drawn by a petition-writer be returned to the party presenting it for amendment, the petition-writer who drew the same shall if so ordered by the Court, refund the fee levied by him to the party from whom such fee was levied or re-write the application or amend the plaint without charging any extra fee.

742. Petition-writer not to act as pleader's clerk or tout:--

No petition-writer shall act as clerk to any pleader or as a tout to introduce clients to any pleader.

743. Petition-writer not to bid at sales held under orders of

Court:-- No petition-writer shall, without the previous permission of the Judge, directly or indirectly bid for any property sold under the orders of the Court in which is employed.

744. Register to be kept:--

Every petition-writer shall keep a register in Form No.26 in Appendix C and shall show it to the Judge when required.

745. Power of Judge to fine, suspend or dismiss petition-writer:--

The Judge of the Court may by order in writing impose fine to the extent of Rs.50, suspend or dismiss a petition-writer of his Court, who may take or demand any fee in excess of the authorized fee or be guilty of any act or omission in contravention of these rules or may otherwise misconduct himself. Every such order by the Judge of a Court subordinate to the District Court shall be subject to appeal to the District Judge. Every fine imposed under the rule shall be recoverable as if it were a fine imposed by a magistrate in the exercise of his ordinary jurisdiction.

746. Leave to petition-writer:--

The Judge of the Court may grant leave of absence for sufficient cause for any period to a petition-writer of his Court and may, if necessary, grant a temporary license to any person of good character and qualified under rule 734 to act as petition-writer during such absence or for such period thereof as he may deem necessary.

747. Petition writer cannot appear or plead:--

Nothing contained in this Chapter shall give any petition-writer any authority to appear or plead in any Court for any person.

CHAPTER XXXII

Pleaders' Clerk:

748. Definition: In this Chapter, unless the context otherwise require—

(i) “pleader” includes a partnership of pleaders; and

(ii) “registered clerk” means a clerk who is employed by a pleader in connection with his legal business and who is registered in accordance with the provisions hereinafter appearing.

749. Qualifications of registered clerk:-- The following persons shall be deemed qualified for being employed as registered clerks of pleader:--

(i) adult persons who have passed at least the Vernacular School Final Examination or V Standard English;

(ii) persons who at the time of the commencement of these rules hold a subsisting certificate of registration issued under the rules and practice in force immediately before the commencement of these rules or who hold a certificate of registration issued under the rules and practice in force at the time of such issue (such certificate not having been since cancelled) whether or not they have passed the examination referred to in clause (i).

750. Application for registration:-- (1) Every application for the registration of a clerk shall be made in writing by the pleader desiring to employ him to the District Judge. If such pleader is ordinarily practicing in a subordinate Court, the application shall be forwarded by him to the District Judge through the Subordinate Judge.

(2) Such application shall be accompanied by—

(i) a statement of the persons to be employed that he is willing to be employed as a registered clerk to the pleader concerned and that he will so long he continues to be the clerk to the pleader concerned, engage himself exclusively in the service of the said pleader for the purpose of his bona fide legal business;

(ii) a certificate of the Secretary of the Bar Association of the District that such person bears good moral character and that there are no reasonable grounds for suspecting him to have been or to be a tout;

(iii) a certificate showing that such person has passed the prescribed examination;

(iv) an undertaking in writing from such person that if he is registered as a clerk to the pleader, he shall, so long he continues to be his clerk work on a monthly salary and that he has not consented to be remunerated by payment of a percentage of pleaders fees or by payment of copying fees and paper charges received from a Court as costs taxed;

(v) a certificate from the pleader that after due inquiry he is satisfied that such person is fit to be so employed and that he has not been or is not a tout;

(vi) a declaration by such pleader that he will employ such person bona fide in his own service for the purpose of his legal business and that, so long as such person continues to be his clerk, he will pay him for his remuneration a monthly salary and not percentage of pleader’s fees or copy fees or paper charges received from Court as costs taxed.

(vii) a non-judicial stamp paper of the value rupee one.

751. Subordinate Judge's report on application:-- If the application is forwarded through a subordinate Judge, he shall see if the requirements of the last preceding rule are complied with. In forwarding the application to the District Judge he shall also make his report on the fitness or otherwise of such person to be so registered with particular reference to the legibility or otherwise of his handwriting. He shall for that purpose require such person to write before him or any person appointed by him for that purpose.

752. Register of clerks. Certificate of registration:-- (1) The District Judge shall, on receiving the application, if it is not forwarded through a Subordinate Judge, satisfy himself with regard to the legibility or otherwise of the handwriting of such person by requiring him to write before him or any person appointed by him for that purpose and may refer the application to the Bar Association of the District for its opinion and may make such further inquiry as he thinks fit.

(2) The District Judge may, in his discretion, refuse to register a clerk who has once been removed from the register on account of his dismissal or discharge.

(3) On being satisfied that the person proposed is a fit and proper person to be employed as a registered clerk, the District Judge shall enter his name in the register of clerks to be kept in Form No.27 in Appendix C and issue to the clerk a Certificate of Registration in Form No.28 in Appendix C.

(4) Such certificate shall be non-transferable and shall be available for the period ending 31st December of the year.

753. Renewal of certificate:-- (1) Every application by a pleader for the annual renewal of his registered clerk's license shall be made to the District Judge. The application shall state the name, father's name, age and residence of the registered clerk and the registration number and shall be accompanied by—

(i) the certificate referred to in clause (ii) of sub-rule (2) of rule 750 and

(ii) a non-judicial stamp paper of the value of rupee one.

(2) The last day for receiving applications for renewal of certificate shall be the 15th November of each year.

Provided that the District Judge may on good cause shown extend the time till 31st December of the year.

(3) If an application for the renewal of the certificate of a registered clerk is not received by the 15th November, or, if the time is extended as provided in sub-rule (2), by the 31st December, the District Judge shall order removal of the name of such registered clerk from the register.

754. Pleader to report discharge of his registered clerk. District Judge to remove such registered clerk from Register:-- Whenever a pleader ceases to employ a registered clerk he shall notify the fact to the District Judge. The District Judge shall thereupon order the removal of the registered clerk's name from

the register and the cancellation of his certificate and notify the fact of removal to the civil Courts in the District.

755. Re-Registration of clerk whose name is removed under rule 733(3) or rule 754:-- A registered clerk whose name has been removed from the register in accordance with the provisions of sub-rule (3) of rule 754, may be registered against on an application made in accordance with the provisions of rule 750.

Provided that such application shall, if the name has been removed under sub-rule (3) of rule 753, be accompanied by a non-judicial stamp paper of the value of one rupee and eight annas.

756. Only registered clerks to have access to Courts or offices:--

(1) No clerk other than a registered clerk shall as such be allowed access to any of the Courts of the District or to any of the offices attached thereto for the purpose of performing the ministerial part of the work of his pleader.

(2) A registered clerk shall, if so required by the chief ministerial officer or the Nazir, produce his certificate of registration to satisfy him that he is a registered clerk.

757. What ministerial acts may be done by registered clerk:-- (1) A registered clerk shall be entitled to transact with offices of any Court of the district business of the ministerial nature only such as :--

(i) presenting pleadings, applications and other proceedings in the same manner and to the extent as his pleader may do;

(ii) taking delivery of copies;

(iii) depositing money;

(iv) paying process fees and preparing processes; and

(v) identifying persons verifying affidavits before the chief ministerial officer or other officer of the Court empower in that behalf.

(2) A registered clerk is forbidden to address the Court or to inspect or handle records.

758. Registered clerk not to do business on behalf of another pleader:-- No registered clerk of one pleader shall do business in the Courts or offices thereof on behalf of any other pleader.

Provided that in the case of illness or absence on leave of a registered clerk of a pleader the Judge of the Court may on the application in writing and duly stamped of such pleader permit a registered clerk of another pleader to discharge the absentee's duties for a period not exceeding one month. A copy of the order granting such permission shall be granted to such clerk free of cost.

759. Suspension or removal of registered clerk:-- The District Judge may for reasons to be recorded in writing and after giving to the registered clerk an opportunity of showing cause order his suspension for the unexpired period of the year or any part thereof or order his removal from the Register and the cancellation of his certificate if he contravenes rule 758 or if he is reasonably suspected of having been or being a tout or if he is guilty of any misconduct such as unfit him for the exercise of his duties, or is convicted of an offence involving moral turpitude or is adjudged insolvent.

760. Person whose name struck off not eligible for re-registration:-- No person whose name has been struck off the Register under rule 759 shall be eligible for re-registration.

760-A. Persons registered as clerks immediately before commencement of these rules to be deemed to be registered clerk:-- All persons, whose names were entered in the register of clerk kept in accordance with the rules and practice in force immediately before the commencement of these rules and were not struck off from such register before such date, shall be deemed to be registered clerks for the purposes of this Chapter and certificate issued to such persons in accordance with such rules and practice shall be deemed to have been issued under this Chapter and shall be available up to 31st December of the year in which these rules come into force.

CHAPTER XXXII

Supervision.

Inspection of Court:

761. Inspection of District and subordinate Courts:-- The Chief Judge or a Judge of the Chief Court from time to time nominated by the Chief Judge shall ordinarily inspect the District Courts and such subordinate Courts as may be selected at such intervals of not less than one year as the Chief Judge may fix in his discretion from time to time.

762. Inspection of subordinate Courts by District Judges:-- District Judges shall themselves or by their Joint or Assistant Judges inspect ordinarily once every year all the subordinate civil Courts.

763. Notice of inspection:-- Notice shall be given about one month before hand to the Courts concerned of the probable dates of inspection. The Courts concerned shall thereupon issue necessary instructions to their offices for the preparation of statements in Form No.29 in Appendix C.

764. Opportunity to be given to Judge to explain defects:-- If any seeming defects or irregularities are notice in the course of the inspection, the Judge whose Court is inspected shall be given an opportunity to explain them personally.

765. Copy of inspection notes to be sent to the Judge concerned: A copy of the notes of inspection shall, as soon as possible after the inspection, be sent to

the Judge of the Court concerned for his information and guidance with such instructions within the scope of his authority as the inspecting Judge may think fit to give. If the Judge of the Court concerned has left the station before or after the inspection and defects and irregularities are found in his work, a copy or extracts from so much of the inspection report as concern him shall be forwarded to him.

766. District Judges to send summary of inspection report to the Chief Court:-- District Judges shall submit to the Chief Court as soon as possible after the inspection a summary of their report on inspection of the subordinate civil Courts in their districts.

767. Judges concerned may send explanation through District Judge:-- If there is in the notes of inspection any comment on irregularities or defects on which the Judge concerned desires to offer any explanation, he may send it to the District Judge who shall forward it to the Chief Court with his remarks thereon.

768. Convening of judicial conference:-- District Judges may convene at their headquarters a conference of the Judges and pleaders of the District with a view to discussing matters affecting the administration of justice generally in the district or particular Courts. Such conference may be convened at such intervals and for such number of days as may be found necessary, having regard to the business to be transacted. A copy of the Conference Report shall be sent to the Chief Court.

Returns.

769. Submission of periodical returns:-- District Judges shall submit punctually the periodical returns in Form Nos. 30, 31 and 32 in Appendix C and shall insist on strict punctuality in the submission of the corresponding returns by the Judges of the Courts subordinate to them. Where there is no material for filing in any form a report to that effect should be made. Blank returns shall not be submitted.

770. Annual Administration Report:-- District Judges shall also at the close of the year without delay commence the collection of the statistics required for the Annual Administration Report and shall submit the returns with their Report punctually by the 1st March each year to the Chief Court.

771. Statements of accounts of Law Libraries to be sent annually by District Judges:-- District Judges shall exercise supervision over the law Libraries attached to their Courts and submit annually statements of accounts to the Chief Court.

_____ **THE END** _____