

*Amended by  
4/60, 43/60,*

ACT No. VIII OF 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 22nd March 1859).

*An Act for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*

Preamble. WHEREAS it is expedient to simplify the Procedure of the Courts of Civil Judicature not established by Royal Charter ; It is enacted as follows :—

CHAPTER I.

OF THE JURISDICTION OF THE CIVIL COURTS.

1. The Civil Courts shall take cognizance of all suits of a Civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay, respectively, or by any Act of the Governor General of India in Council.  
Civil Courts have cognizance of all suits unless specially barred.
2. The Civil Courts shall not take cognizance of any suit brought on a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.  
Civil Courts not to take cognizance of suits previously heard and determined.
3. The judgments of the Civil Courts shall not be subject to revision otherwise than by those Courts under the rules contained in this Act applicable to reviews of judgment and by the constituted Courts of Appellate Jurisdiction.  
Revision of judgments of the Civil Courts.

4. No

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4. No person whatever shall, by reason of place of birth, or by reason of descent, be in any Civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

No person excepted from jurisdiction by reason of place of birth or of descent.

5. Subject to such pecuniary or other limitations as are or shall be prescribed by any law for the time being in force, the Civil Courts of each grade shall receive, try, and determine all suits hereby declared to be cognizable by those Courts, if in the case of suits for land or other immoveable property such land or property shall be situate within the limits to which their respective jurisdictions may extend, and in all other cases if the cause of action shall have arisen, or the defendant at the time of the commencement of the suit shall dwell, or personally work for gain, within such limits.

Jurisdiction of Civil Courts.

6. Every suit shall be instituted in the Court of the lowest grade competent to try it. But it shall be lawful for the District Court to withdraw any suit instituted in any Court subordinate to such District Court and to try such suit itself or to refer it for trial to any other Court subordinate to its authority and competent in respect of the value of the suit to try the same, whenever it may see sufficient cause for so doing. In like manner the Sudder Court may order that the cognizance of any suit or appeal which may be instituted in any Court subordinate to such Sudder Court shall be transferred to any other Court subordinate to its authority and competent in respect of the value of the suit or appeal to try the same.

Court in which suit to be instituted.

Transfer of suits.

7. Every suit shall include the whole of the claim arising out of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

Suit to include the whole claim. Relinquishment of part of claim.

8. Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

Joinder of causes of action in the same suit.

9. If

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9. If two or more causes of action be joined in one suit and the Court shall be of opinion that they cannot conveniently be tried together, the Court may order separate trials of such causes of action to be held.

Court may in certain cases order separate trials of such causes of action.

10. A claim for the recovery of land and a claim for the mesne profits of such land shall be deemed to be distinct causes of action within the meaning of the two last preceding Sections.

Claims for recovery of land and for mesne profits to be deemed distinct causes of action.

11. If the suit be for land or other immoveable property situate within the limits of a single District, but within the jurisdiction of different Courts, the suit may be brought in the Court within the jurisdiction of which any portion of such land or other immoveable property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court ; but in such case the Court in which the suit is brought shall apply to the District Court for authority to proceed with the same.

Suits for immoveable property situate within different jurisdictions of the same District.

12. In like manner if the property be situate within the limits of different Districts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other immoveable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Sudder Court for authority to proceed with the same ; if the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate.

Suits for immoveable property situate in different Districts.

13. If the Districts within the limits of which the property is situate are subject to different Sudder Courts, the application shall be submitted to the Sudder Court to which the District, in which the suit is brought, is subject ; and the Sudder Court to which such application is made, may, with the concurrence of the Sudder Court to which the other District is subject, give authority to proceed with the same.

Suits for immoveable property situate in Districts subject to different Sudder Courts.

14. If, in a suit for land situate on the borders of the Court's local jurisdiction, the defendant object to the hearing of the suit on the ground that the land is not included within the local jurisdiction of the Court, the Court shall have power to determine the point ; and if the Court shall find that the land

Suit for land situate on the borders of the Court's local jurisdiction, and alleged by the defendant to be within another local jurisdiction.

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land is included within its local jurisdiction, it shall proceed to try the suit.  
Provided that, if it be shown that the land in dispute  
Proviso. has been adjudged by competent authority to belong to an  
estate, village, or other known division of land situate within the local jurisdic-  
tion of another Court, the Court in which the suit is brought shall reject the  
plaint, or return it to the plaintiff in order to its being presented in the proper  
Court.

15. No suit shall be open to objection on the ground that a merely de-  
claratory decree or order is sought thereby, and it shall  
Declaratory suit. be lawful for the Civil Courts to make binding declara-  
tions of right without granting consequential relief.

CHAPTER II.

PRELIMINARY RULES.

16. All applications to any Civil Court, and all appearances of parties in  
any Civil Court, except when otherwise specially provid-  
ed by this Act, shall be made by the party in person, or  
Parties may appear in person or by recognized agent or by pleader.  
by his recognized agent, or by a pleader duly appointed  
to act on his behalf.

17. The recognized agents of parties by whom  
such applications and appearances may be made are—  
Recognized Agents.

1st.—Persons holding general powers of attorney from parties not within  
the jurisdiction of the Court, authorizing them to make  
such applications and appearances on behalf of such  
parties.  
Persons holding powers of attorney from absent persons.

2ndly.—Persons carrying on trade or business for and in the name of parties  
not within the jurisdiction of the Court in matters con-  
nected with such trade or business only, where no other  
agent is expressly authorized to make such applications  
or appearances.  
Persons carrying on trade or business for absent persons.

3rdly.—Persons being ex-officio or otherwise authorized to act for  
Government in respect of any suit or judicial pro-  
ceeding.  
Persons authorized to act for Government.

4thly.—Persons

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*4thly.*—Persons specially appointed by order of Government, at the request of any Sovereign Prince or Independent Chief, whether residing within or without the British Territories, to prosecute or defend a suit on his behalf

Persons specially appointed to prosecute a suit for any Sovereign Prince.

Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognized agent, unless the Court shall otherwise direct; and any thing which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given to or processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct; and all the provisions of this Act relative to the service of notices or processes on a party to a suit shall be applicable to the service of notices and processes on such recognized agent.

Acts required to be done by a party to a suit in person may be done by his recognized agent.

Service of notices &c. on recognized agents.

18. The appointment of a pleader to make any such application or appearance as aforesaid shall be in writing, and shall be filed in the Court. When so filed, it shall be considered to be in full force until revoked by a writing filed in the Court. All notices given to, or processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

Appointment of pleader.

Service of notices &c. on pleaders.

19. When an Officer or Soldier in the Service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any member of his family or any other person to commence, conduct, and manage the suit or the defence as the case may be, in his stead. The authority shall be in writing, and shall be signed by the Officer or Soldier in the presence of his Commanding Officer, who shall countersign the same and it shall be filed in the Court. When so

Officers or Soldiers, who cannot obtain leave of absence, may authorize any person to appear for them.

filed

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filed, the counter-signature of the Commanding Officer shall be sufficient proof that the authority was duly executed, and that the Officer or Soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

20. Any person who may be authorized, as in the last preceding Section mentioned, by an Officer or Soldier, to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the Officer or Soldier could do if present; or he may appoint a pleader of the Court to prosecute or defend the suit on behalf of such Officer or Soldier. And all notices or processes relative to the suit which may be served upon any person who shall be so authorized as aforesaid by an Officer or Soldier, or upon any pleader who shall be appointed as aforesaid by such person to act for or on behalf of such Officer or Soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

The person so authorized may appear personally or appoint pleader.

21. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

Exemption of certain women from personal appearance.

22. The Government may at its discretion exempt from personal appearance in Court any person whose rank in the opinion of the Government entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the Principal Civil Court of each District shall from time to time be forwarded to such Court by the local Government, and a list of such persons (if any) shall be kept in such Court and in the several subordinate Courts of the District.

Government may exempt certain persons from personal appearance.

23. Every process required to be issued under this Act, shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court; and the sum required to defray the cost of such service shall be paid into Court before the process is issued.

Cost of serving process.

Requisite sum to be paid into Court before process issued.

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24. If any plaint, written statement, or declaration in writing required by this Act to be verified shall contain any averment which the person making the verification shall know or believe to be false or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false verification of plaint, statement, &

CHAPTER III.

OF A SUIT TILL FINAL DECREE.

OF THE INSTITUTION OF SUITS.

25. All suits shall be commenced by a plaint which, except when otherwise specially provided by this Act, shall be presented to the Court by the plaintiff in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.

Suits to be commenced by plaint.

26. The plaint shall be distinctly written in the language in ordinary use in proceedings before the Court, and shall contain the following particulars:—

Particulars to be given in the plaint.

- 1.—The name, description, and place of abode of the plaintiff.
- 2.—The name, description, and place of abode of the defendant, so far as they can be ascertained.
- 3.—The relief sought for, the subject of the claim, the cause of action and when it accrued : and, if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed.

The following are instances :

If the suit be for money due on a bond or other written instrument :—Pay-  
ment of \_\_\_\_\_ due on (a bond or other written instrument  
as the case may be) for the sum of \_\_\_\_\_, bearing  
\_\_\_\_\_ date

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date the \_\_\_\_\_ day of \_\_\_\_\_, and payable on the \_\_\_\_\_ day of \_\_\_\_\_  
namely,—

Principal .....  
Interest .....  
Amount paid (if any) .....

Balance due.....

If the plaintiff claim exemption from any law of limitation, say—"The plaintiff was an infant (or as the case may be) from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_."

If the suit be for the price of goods sold :—Payment of \_\_\_\_\_ on account of \_\_\_\_\_ maunds of (*rice, indigo, sugar, or as the case may be*) sold on the \_\_\_\_\_ day of \_\_\_\_\_, and the price of which became payable on the \_\_\_\_\_ day of \_\_\_\_\_ as per account at foot.

If the suit be for damages for an injury done :—Payment of \_\_\_\_\_ on account of injury done to the plaintiff [*here set out the nature of the injury, and state the particulars of the pecuniary loss (if any)*].

4.—When the claim is for any property other than money, its estimated value.

The following is an instance :

If the suit be for an estate or for a share in an estate paying revenue to Government :—Possession of the estate (or of \_\_\_\_\_ share in the estate,) called \_\_\_\_\_, situate in the Zillah of \_\_\_\_\_ the sudder jumma of which is \_\_\_\_\_ and estimated value \_\_\_\_\_, of which the plaintiff was dispossessed (or forcibly or fraudulently dispossessed if the case be so,) on the \_\_\_\_\_ day of \_\_\_\_\_; (or to which the plaintiff became entitled by inheritance from \_\_\_\_\_, or by gift, purchase, or otherwise, as the case may be, on or about the \_\_\_\_\_ day of \_\_\_\_\_).

5.—When the claim is for land or for any interest in land, the nature of the tenure or interest must be specified; and if the claim be for land forming part of a village or other known division, or for a house, garden, or the like, its situation shall be described by the setting forth of boundaries, or in such other manner as may suffice for its identification.



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6.—In all suits by or against the Government, or one of its Officers in his Official capacity, or any Corporation, or any Company authorized to sue and be sued in the name of an Officer or Trustees, the words “ The Government,” or “ The Collector of \_\_\_\_\_,” or otherwise as the case may be, or the name of the Corporation, or the name or names of the Officer or Trustees of the Company, shall be inserted in Nos. 1 and 2 instead of the name and description of the plaintiff or defendant. But in all other cases it shall be necessary to specify the names of all the parties.

27. The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following, or to the like effect :—  
Plaint to be subscribed and verified.

*I (A. B.) the plaintiff named in the above plaint do declare that what is stated therein is true to the best of my information and belief.*

28. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the Court may allow the plaint to be subscribed and verified on behalf of the plaintiff by any person whom the Court may consider competent to make the verification. In suits by a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the plaint shall be subscribed and verified on behalf of the Corporation or Company by any Director, Secretary, or other principal Officer of the Corporation or Company who may be able to depose to the facts of the case.  
If plaintiff by reason of absence be unable to subscribe and verify the plaint.  
In suits by a Corporation or Company, a Director or Secretary shall verify the plaint.

29. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the Court may reject the plaint, or at its discretion may allow the plaint to be amended.  
Court may reject plaint, if it do not contain the required particulars, &c.  
Amendment of plaint.

30. If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court, the plaint shall be returned to the plaintiff in order to its being presented in the proper Court.  
Plaint to be returned, if the claim is beyond the jurisdiction of the Court.

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31. If

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31. If it appear to the Court that the claim is improperly valued, or being properly valued that the plaintiff is written upon stamped paper of inadequate value, and the plaintiff, on being required by the Court to correct such improper valuation or to supply such additional stamp paper as may be necessary, shall not comply with the requisition, the Court shall reject the plaintiff.

Plaint to be rejected, if improperly or insufficiently valued.

32. If upon the face of the plaintiff, or after questioning the plaintiff, it appear to the Court that the subject matter of the plaintiff does not constitute a cause of action, or that the right of action is barred by lapse of time, the Court shall reject the plaintiff. Provided that the Court may in any case allow the plaintiff to be amended, if it appear proper to do so.

Plaint to be rejected, if it appear to the Court that plaintiff has no cause of action or that right of action is barred by lapse of time.

Amendment of plaintiff.

33. If it appear to the Court that the cause of action did not arise, or that the defendant is not dwelling or personally working for gain within the limits of the jurisdiction of the Court, or if the claim relate to land or other immoveable property, that such land or other property is not situate within such limits, the Court shall return the plaintiff to the plaintiff in order to its being presented in the proper Court.

Plaint to be returned, if it appear to the Court that it has not jurisdiction.

34. A suit by a party ordinarily residing out of the British territories in India, and not possessing any land or other immoveable property within those territories independent of the property in suit, shall not be entertained unless the plaintiff, at the time of presenting the plaintiff or within such time as the Court shall order, furnish security for the payment of all costs that may be incurred by the defendant in the suit. In the event of such security not being furnished, the Court shall return the plaintiff to the plaintiff.

Security for costs to be furnished by plaintiff at the time of presenting the plaintiff, if he resides out of the British territories in India.

Plaint to be returned if security be not furnished.

35. If in any stage of a suit it shall appear to the Court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the Court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit. In the event of such security not being furnished within

Security for costs may be required in any stage of suit, if it appear that plaintiff resides out of India.

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the time so fixed, the Court shall pass judgment against the plaintiff by default, unless he be permitted to withdraw from the suit under the provisions of Section 97.

36. Whenever a plaintiff is rejected under any of the foregoing Sections an appeal shall lie from the order rejecting the plaintiff. The rejection of a plaintiff on any of the grounds mentioned in Sections 29 and 31 shall not preclude a plaintiff from presenting a fresh plaintiff in respect of the same cause of action.

37. If the suit be for land or other immoveable property situate partly within the jurisdiction of the Court and partly within the jurisdiction of some other Court or Courts, the Court shall proceed according to the rules contained in Section 11, Section 12, or Section 13, as the case may be.

38. If the Court consider the plaintiff admissible, the particulars mentioned in Section 26 shall be entered in a book to be kept for the purpose, and called the Register of Civil Suits; and the entries shall be numbered in every year according to the order in which the plaintiff is presented. The Register shall be kept in the form contained in the Schedule (A) hereunto annexed.

39. When the plaintiff sues upon any written document or relies upon any such document as evidence in support of his claim, he shall produce the same in Court when the plaintiff is presented, and shall at the same time deliver a copy of the document to be filed with the plaintiff; if the document be an entry in a shop-book or other book, the plaintiff shall produce the book to the Court together with a copy of the entry on which he relies. The Court shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall return the document to the plaintiff. The plaintiff may, if he think proper, deliver the original document to be filed instead of the copy. The Court may, if it see sufficient cause, direct any written document so produced to be impounded and kept in the custody of some Officer of

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of the Court, for such period and subject to such conditions as to the Court shall seem meet. Any document not produced in Court by the plaintiff when the  
Document not produced when plaintiff filed, to be inadmissible in evidence. **plaint is presented, shall not be received in evidence on his behalf at the hearing of the suit without the sanction of the Court.**

40. If the plaintiff require the production of any written document in the possession or power of the defendant, he may, at the time of presenting the plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.  
If plaintiff require production of document in possession of defendant.

OF SUMMONING THE DEFENDANT.

41. When the plaint has been registered, a summons under the signature of the Judge and the seal of the Court shall be issued to the defendant to appear and answer the claim, on a day to be therein specified, in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions. The Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly.  
On plaint being registered, summons to issue to defendant.  
Summons to be either to settle the issues, or for the final disposal of the case.

42. If the Court see reason to require the personal attendance of the defendant, the summons shall order the defendant to appear personally in Court on the day therein specified. If the Court see reason to require the personal attendance of the plaintiff on that day, it may make an order for such attendance. Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is *bonâ fide* residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the limits of the jurisdiction of the Court.  
Personal appearance of defendant or plaintiff.  
If resident within 50 miles.  
Or within the local jurisdiction of the Court.

43. The summons to appear shall order the defendant to produce any written document in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.  
Summons shall order defendant to produce documents.

44. The

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44. The summons shall be in the Form contained in the Schedule (B) hereunto annexed or to the like effect.

45. The day for the appearance of the defendant shall be fixed by the Court with reference to the place of residence of the defendant, and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant a sufficient time to enable him to appear and answer in person or by a pleader on such day.

46. In suits against a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the Court may, if it think proper, require the personal attendance of any Director, Secretary, or other principal Officer of the Corporation or Company who may be able to answer all material questions relating to the suit.

SERVICE OF SUMMONS ON THE DEFENDANT.

47. The summons shall be delivered to the Nazir or other proper Officer of the Court to be served by himself or one of his subordinates, and such Officer shall be responsible for its due service.

48. Service of the summons shall be made by delivering or tendering a copy thereof under the signature of the Judge and seal of the Court ; and when there are more defendants than one, service of the summons shall be made on each defendant.

49. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

50. Besides the recognized agents described in Section 17, any person residing within the jurisdiction of the Court may be appointed an agent to receive the service of summonses and other processes.

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51. The appointment of such agent shall be in writing, and the original appointment, or a copy thereof if the appointment be a general one, shall be filed in the Court.

Appointment of such agent to be in writing and to be filed in Court.

52. The Government pleader in each Court shall be accounted the agent of the Government for the purpose of receiving services of summonses and other judicial processes against the Government, issuing out of the Court in which he may be the pleader of Government.

Agent of Government.

53. When the defendant cannot be found, and has no agent empowered to accept the service of the summons, it may be made on any adult male member of his family residing with him.

If defendant cannot be found, and has no agent, service may be made on a male member of his family.

54. In all cases where the summons is served on the defendant personally or any agent or other person on his behalf, the serving Officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons or on a copy thereof under the seal of the Court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient, if it be otherwise proved to the satisfaction of the Court.

In all cases the person served is to be required to endorse the summons.

But service is sufficient without.

55. When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving Officer shall fix the copy of the summons on the outer door of the house in which the defendant is dwelling ; and if he is not dwelling in the place mentioned in the summons, the serving Officer shall return the summons to the Court from whence it issued with an endorsement thereon that he has been unable to serve it. Provided that, if the serving Officer is informed that the defendant is to be found or has his dwelling in a place within the jurisdiction of the Court other than that indicated in the summons, the Officer may proceed to that place to serve the summons.

If the summons cannot be served, a copy shall be fixed to the door of the dwelling house.

If defendant do not dwell in the place mentioned, the summons shall be returned with an endorsement of non-service.

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56. The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons or on a copy thereof under the seal of the Court, the time when and the manner in which it was served.

If served, time and manner of service to be endorsed on summons.

57. When a summons is returned to the Court without having been served, if the plaintiff shall satisfy the Court that there is reasonable ground for believing that the defendant is keeping out of the way of its Officer for the purpose of avoiding the service of the summons, the Court shall order the summons to be served by fixing up a copy thereof upon some conspicuous place in the Court-house, and also upon the door of the house in which the defendant shall have last resided, if it be known where he last resided ; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

When summons is returned unserved, Court to order substituted service, if satisfied that the defendant is avoiding service.

58. Whenever service shall be substituted by order of the Court by virtue of the power contained in the last preceding Section, the Court shall fix such time for the appearance of the defendant as the case may require.

When service is substituted, the time for appearance to be fixed.

59. If the defendant be resident within the jurisdiction of any Court other than that in which the suit is instituted, and have no agent empowered to accept the service, the Court in which the suit is instituted shall transmit the summons, either by an Officer of the Court or by Post, to any Court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require ; and the Court to which the summons is transmitted, shall, upon receipt of the summons, deliver the same to the Nazir or other proper Officer of such Court, to be served in the manner above directed ; and upon the return of the summons by the serving Officer, it shall be re-transmitted to the Court from whence it originally issued.

How the summons is to be served when the defendant is resident within the jurisdiction of another Court and has no agent to accept service.

60. If

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60. If the defendant be resident out of the British territories in India, and

How the summons is to be served when the defendant resides out of the British territories in India and has no agent to accept service.

be regulated by the

Time for appearance.

fixed for the hearing

In case of non-appearance of defendant, Court may direct suit to proceed subject to conditions:

at liberty to proceed with his suit in such manner and subject to such conditions as to the Court may seem meet.

have no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he may reside, and forwarded to him by post : in such case the time for the appearance of the defendant shall

time which may be required for communication by post between the place at which the Court is held and the place where the defendant resides ; and if, on the day of the suit or on any day to which the hearing may be adjourned, the defendant shall not appear in person or by pleader, the plaintiff may apply to the Court, and it shall be lawful for the Court to direct that the plaintiff shall be

61. When the suit is for land or other immoveable property, and the sum-

In suits for immoveable property, service may in certain cases be made on agent in charge of such property.

immoveable property.

mons for any reason cannot be served on the defendant in person and the defendant has no agent empowered to accept the service, the summons may be served on any agent of the defendant in charge of such land or other

62. When the defendant is in the service of the Government, the Court may

How service may be made on Government Servants.

that the summons may be most conveniently so served. If the defendant be

Service on Officers and Soldiers.

an Officer or Soldier, the Court shall transmit a copy of the summons to the Commanding Officer of the Corps to which the defendant belongs, for the purpose of being served on him. The Officer to whom the summons is transmitted, after causing the summons to be served on the person to whom it is addressed if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon. If from any cause the summons cannot be served upon the person to whom it is addressed, it shall be returned to the Court by which it was transmitted with information of the cause which has prevented the service. In such case the Court shall adopt such other means of serving the summons as it may deem proper.

63. When



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63. When the suit is against a Corporation or a Company authorized to sue and be sued in the name of an Officer or Trustees, the Service on a Corporation or Company. summons may be served by leaving the same at the registered Office (if any) of the Company, or sending it through the Post Office by a letter addressed to such Office, or by giving it to any Director, Secretary, or other principal Officer of the Corporation or Company.

64. Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter or other appropriate communication under the signature of the Judge and seal of the Court, when the person whose appearance is required is of a rank which entitles him to such mark of consideration. The letter or other communication shall contain all the particulars required to be stated in the summons, and shall be treated in all respects as a summons. In what case letter may be substituted for a summons.

65. When a letter or other communication is substituted for a summons under the authority of the last preceding Section, it may be transmitted through the Post Office, or by a special messenger selected by the Court, or in any other manner which the Court may deem sufficient; unless the party shall have an agent empowered to accept service of judicial process, in which case delivery to such agent shall be deemed sufficient service. Service how to be made in such case.

66. Whenever it is provided that any summons, letter, or other communication may be transmitted to the person to whom it is addressed through the Post Office, proof that the same was correctly addressed to such person at his place of residence, and that it was duly posted and registered according to Section XXXVIII of Act XVII of 1854 (*for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office*), shall be sufficient proof of the due service and delivery of the summons, letter, or other communication, in the absence of evidence to the contrary. Proof of due service and delivery of summons, letter, &c., transmitted through the post.

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OF SUITS AGAINST GOVERNMENT AND PUBLIC OFFICERS.

67. If the suit be against the Government, the summons shall be served on the Government Pleader. The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government, and may extend the time at its discretion on the application of the Government Pleader. The Court may also, if it think proper, direct the attendance of a person who may be able to answer all material questions relating to the suit.

In suits against Government, summons to be served on Government Pleader.

Appearance and answer.

68. If the suit be against an Officer of the Government for an act which the plaintiff alleges to have been done by such Officer in his official capacity, the summons shall be served upon such Officer in the manner hereinbefore provided.

In suits against Government Officers for alleged official acts, summons to be served on them.

69. If the Officer on receiving the summons shall consider it proper to make a reference to Government before answering to the plaint, he may move the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channels ; and the Court upon such motion may extend the time for so long as shall appear to it to be requisite.

Court may grant extension of time to enable Officer to make a reference to Government.

70. If the Government shall undertake the defence of the suit, the Government Pleader shall be furnished with authority to appear and answer to the plaint ; and upon motion made by him, the Court shall order a note to that effect to be entered in the Register.

If Government undertake defence, Government Pleader to appear and move that a note of his appearance be entered in the Register.

71. If such motion shall not be made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties except that the defendant shall not be liable to arrest before judgment.

If no such motion be made, case to proceed as in a suit between private parties.

But defendant not liable to arrest before judgment.

72. If

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72. If in any such suit the Court shall require the personal appearance of the defendant, and the defendant shall satisfy the Court that he cannot absent himself from his duty without injury to the public service, the Court shall exempt him from such appearance, but he shall be liable to be examined in any way in which an absent witness may be examined.

Defendant may in certain cases be exempted from personal appearance.

HOW PERSONS NOT BEFORE THE COURT MAY BE MADE PARTIES TO A SUIT.

73. If it appear to the Court, at any hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in the subject matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit as the case may be. In such case the Court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.

Court may adjourn hearing and direct that parties appearing to be interested in a suit shall be made parties to the suit.

OF ARREST BEFORE JUDGMENT.

74. If in any suit, not being a suit for land or other immoveable property, the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay the execution of any decree that may be passed against him, is about to leave the jurisdiction of the Court his property or any part thereof, the plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the suit.

In suits for moveable property, when defendant is about to leave the jurisdiction &c., plaintiff may apply that security be taken.

75. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction with the intent of avoiding or delaying the plaintiff, or that he has disposed of or removed from the jurisdiction of the Court his property or any part thereof with the

Court may issue warrant to bring up defendant to show cause why he should not give bail.

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the intent to obstruct or delay the execution of any decree, it shall be lawful for the Court to issue a warrant to the proper Officer, enjoining him to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.

76. If the defendant fail to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit ; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs. Any order made by the Court under the provisions of this Section shall be open to appeal by the defendant.

If defendant fail to show cause, Court may order him to give bail.

Appeal.

77. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit.

Deposit in lieu of bail.

78. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant until the execution of the decree if the Court shall so order.

Defendant to be committed to custody if he cannot give security.

79. If it shall appear to the Court that the arrest of the defendant was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of such arrest. Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such arrest.

Compensation to defendant arrested on insufficient grounds.

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80. If

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80. If in any suit the defendant is about to leave the British territories in India with intent to remain absent so long that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant, the plaintiff may make an application to the Court to the effect and in the manner aforesaid, and the procedure thereupon shall be in all respects the same as hereinbefore provided.

When the defendant is about to leave India, the application to be made to the Court.

OF ATTACHMENT BEFORE JUDGMENT.

81. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, the plaintiff may apply to the Court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property moveable or immoveable, belonging to the defendant, shall be attached until the further order of the Court.

In what cases plaintiff may apply before judgment for security from defendant to fulfil decree, in default for an attachment of defendant's property.

82. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof ; and the plaintiff shall, at the time of making the application, declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

Application how to be made.

83. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to issue a warrant to the proper Officer, commanding him to call upon the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required the said property or the value of the same or such portion thereof as may be sufficient to fulfil the decree,

Form of warrant to be issued.

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decree, or to appear and show cause why he should not furnish security. The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property specified in the application.

84. If the defendant fail to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

If cause be not shown or security be not furnished, property may be attached.

Withdrawal of attachment.

85. The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant.

How the attachment is to be made.

Appeal.

86. In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money.

Claims to property attached before judgment, how to be investigated.

87. In all cases of attachment before judgment, the Court which passed the order for the attachment shall at any time remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment.

Attachment may be removed when security is furnished.

88. If it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of

Compensation for attachment applied for on insufficient grounds, &c.

of

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of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. Provided that the Court

Proviso. shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such attachment.

89. Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect the rights of persons not parties to the suit, or bar the execution of decrees.

90. If it shall appear to the Court by whose order the property may have been attached before judgment, that there is reasonable ground for supposing that the decree, in satisfaction of which the sale of the property is applied for, was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution, if the decree be a decree of that Court; or if it be a decree of another Court, may stay the proceedings for a reasonable time to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.

Court may stay the sale of property already under attachment, when execution of a decree fraudulently obtained is applied for.

91. Whenever lands paying revenue to Government, or a tenure liable to summary sale under the provisions of Regulation VIII. 1819 of the Bengal Code (*to declare the validity of certain tenures and to define the relative rights of Zemindars and Putnee Talookdars, &c.*), form the subject of a suit, if the party in possession of such lands or tenure shall neglect to pay the Government revenue, or the rent due to the proprietor of the estate as the case may be, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the lands or tenure; and the Court in its decree may award against the defendant the amount so paid, with interest thereupon at such rate as to the Court may seem

Special case in which party may be put in immediate possession of land the subject of suit.

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seem fit, or may charge the amount so paid, with interest thereupon, at such rate as the Court may order, in any adjustment of accounts which may be directed in the final decree upon the suit.

OF INJUNCTIONS.

92. In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, it shall be lawful for the Court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and preventing him from wasting, damaging, or alienating the property, as to the Court may seem meet. And in all cases in which it may appear to the

Cases in which an injunction to stay waste, &c. may be granted.

Or in which a receiver or manager may be appointed.

Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper. If the property be

When the Collector may be appointed receiver.

land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be receiver and manager of such land, unless the Government shall by any general order prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

93. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an injunction

In suits to restrain breach of contract, &c.

breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an injunction



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**injunction to restrain** the defendant from the repetition, or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right ; and such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance : provided always that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

**Injunction to restrain repetition or continuance of breach.**

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94. Any order made under either of the last two preceding Sections shall be open to appeal by the defendant.

Appeal.

95. The Court may in every case before granting an injunction direct such reasonable notice of the application for the same to be given to the opposite party as it shall see fit.

**Before granting injunction, Court may direct reasonable notice to be given to the opposite party.**

96. If it shall appear to the Court that the injunction was applied for on insufficient grounds, or if the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such sum, not exceeding one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction. Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of the issue of the injunction.

**Compensation to defendant for needless issue of injunction.**

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OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

97. If the plaintiff at any time before final judgment satisfy the Court that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, it shall be competent to the Court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit, the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.

Court may allow plaintiff to withdraw from a suit, with liberty to bring a fresh suit.

98. If a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith. On the application of the plaintiff reciting the substance of such agreement, compromise, or satisfaction, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorizing him to receive back from the Collector the full amount of stamp-duty paid on the plaint if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness has been examined.

Adjustment or compromise.  
Court may grant certificate for refund of stamp duty on plaint, if suit be adjusted.

Provided however that no such certificate shall be granted if the adjustment between the parties be such as to require a decree to pass on which process of execution can be taken out.

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OF THE DEATH, MARRIAGE, AND BANKRUPTCY OR INSOLVENCY OF PARTIES.

Suit not to abate by death in certain cases.

99. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survive.

100. If there be two or more plaintiffs or defendants, and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

Proceeding in case of death of one of several plaintiffs or defendants, if the cause of action survives.

101. If

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101. If there be two or more plaintiffs, and one of them die, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone but shall survive to them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representative in the Register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall be interested in and shall be bound by the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

102. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the Register of the suit, and the suit shall thereupon proceed; if no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award to the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

103. If any dispute arise as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

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104. Proceeding in case of death of one of several defendants, or of a sole or sole surviving defendant. If there be two or more defendants, and one of them die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the action survives, the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and whom he desires to be made the defendant in his stead ; and the Court shall thereupon enter the name of such representative in the Register of the suit in the place of such defendant, and shall issue a summons to him to appear on a day to be therein mentioned to defend the suit ; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

105. Marriage of a female plaintiff or defendant not to abate the suit. The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone ; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also ; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree.

106. Bankruptcy or insolvency when not to abate the suit. The bankruptcy or insolvency of the plaintiff in any suit which the Assignee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the Assignee shall decline to continue the suit and to give security for the costs thereof within such reasonable time as the Court may order ; if the Assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit.

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OF NOTICES TO PRODUCE, AND HOW THEY ARE TO BE SERVED.

107. Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he believes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the suit, and the production of such document, writing, or other thing has not previously been required, under the provisions of Sections 40 and 43, he shall at the earliest opportunity deliver to the Court two notices in writing to the party in whose possession or power he believes the document, writing, or other thing to be, calling upon him to produce the same ; and one of such notices shall be filed in Court, and the other shall be delivered by the Court to the Nazir or other proper Officer, to be served upon such party.

Two notices in writing to be delivered to the proper Officer of the Court.

108. In all cases in which a party to a suit has not appointed a pleader to act for him, all notices and other judicial processes shall be served upon such party in the manner hereinbefore provided for the service of a summons upon a defendant to appear and answer.

Service of notices and other judicial process how to be made on a party who has not appointed a pleader to act for him.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCES OF NON-APPEARANCE.

109. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by a pleader, and the suit shall then be heard unless the hearing be adjourned to a future day which shall be fixed by the Court.

Parties must appear in person or by pleader.

110. If, on the day fixed for the defendant to appear and answer, or any other day subsequent thereto, to which the hearing of the suit may be adjourned, neither party shall appear, either in person or by a pleader, when duly called upon by the Court, the suit shall be dismissed. Whenever a suit is dismissed under the provisions of this Section, the plaintiff shall be at liberty to bring a fresh suit, unless precluded by the rules for the limitation of actions ; or if he shall within the period of thirty days satisfy the Court that there was a sufficient excuse for his non-appearance, the Court may issue a fresh summons upon the plaint already filed.

If neither party appear, suit to be dismissed with liberty to the plaintiff to bring a fresh suit.

Or if sufficient excuse for non-appearance, a fresh summons may be issued.

H

111. If

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111. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was duly served, the Court shall proceed to hear the suit *ex parte*. If the defendant appear on any subsequent day to which the hearing of the suit is adjourned, and shall assign good and sufficient cause for his previous non-appearance, he may upon such terms as the Court may direct as to payment of costs or otherwise be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.

If plaintiff only appear, Court may proceed *ex parte* if due service of summons be proved.

If defendant appear on day of adjourned hearing, and assign good cause for his previous non-appearance, he may be heard.

112. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall not be proved to the satisfaction of the Court that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.

If plaintiff only appear, and due service of summons be not proved, Court may order issue of second summons.

113. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was served on the defendant but not in sufficient time to enable the defendant to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and may direct notice of such day to be given to the defendant.

If plaintiff only appear, and service of summons be proved, but the service was not in due time, Court may adjourn hearing and direct notice to be given to defendant.

114. If the defendant shall appear in person or by a pleader, and the plaintiff shall not appear in person or by a pleader, the Court shall pass judgment against the plaintiff by default, unless the defendant admit the claim, in which case the Court shall pass judgment against the defendant upon such admission. When judgment is passed against a plaintiff by default he shall be precluded from bringing a fresh suit in respect of the same cause of action.

If defendant only appear, Court to pass judgment by default against plaintiff, unless defendant admit the claim.

No fresh suit after such judgment.

115. When

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115. When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them : and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them ; provided that the authority shall in all cases be in writing, and shall be filed in the Court ; when so filed, it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act, were a pleader of the Court.

When there are several plaintiffs or defendants, each may authorize the other to appear for him.

116. If there are two or more plaintiffs, and one or more of them shall appear in person or by a pleader or by a co-plaintiff duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-plaintiff duly authorized, it shall be competent to the Court to proceed with the suit at the instance of the plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case ; and if there are two or more defend-

Consequence of non-appearance of one or more of several plaintiffs.

ants, and one or more of them shall appear in person or by a pleader or by a co-defendant duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-defendant duly authorized, the Court shall proceed with the suit to judgment, and shall at the time of passing judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

Consequence of non-appearance of one or more of several defendants.

117. If any plaintiff or defendant who shall have been ordered or summoned to appear personally under the provisions of Section 42, shall not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, such plaintiff or defendant shall be subject to all the provisions of the foregoing Sections applicable to plaintiffs and defendants respectively, who do not appear either in person or by pleader.

Consequence of non-appearance, without sufficient cause shown, of any party to a suit summoned or ordered to appear in person.

118. In support of the cause shown by a plaintiff or defendant for failure to appear in person, the Court shall receive any declaration in writing on unstamped paper, if signed by such plaintiff or defendant and verified in the manner hereinbefore provided for the verification of plaints.

Court to receive declaration in support of cause shown.

119. No

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119. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases in which judgment may be passed *ex parte* against a defendant, he may apply, within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the suit. In all cases of judgment against a plaintiff by default, he may apply, within thirty days from the date of the judgment, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment by default and shall appoint a day for proceeding with the suit. But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party. In all cases in which the Court shall pass an order under this Section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions.

No appeal from judgments passed *ex parte* or by default.

When and how judgment *ex parte* against a defendant may be set aside.

When and how judgment by default against a plaintiff may be set aside.

No judgment to be set aside without notice to opposite party.

Order for setting aside judgment shall be final.

In appealable cases, an appeal from order of rejection.

Proviso.

OF WRITTEN STATEMENTS.

120. The parties or their pleaders may tender at the first hearing of the suit written statements of their respective cases, and the Court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions.

Written statements may be tendered by the parties at the first hearing of the suit.

Written statements to be on stamp paper.

121. If



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121. If in a suit for debt the defendant desire to set-off against the claim of the plaintiff the amount of any debt due to him from the plaintiff, he shall tender a written statement containing the particulars of his demand, and the Court shall thereupon enquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognizable by the Court, the defendant shall not be allowed to set-off the same unless he abandon the excess.

Particulars of set-off to be given in a written statement.

Abandonment of excess of set-off over claim.

122. No written statement shall be received after the first hearing of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before final judgment, to call for a written statement, or an additional written statement from any of the parties. When such statements are called for by the Court, they shall be received on plain paper.

No written statement to be received after first hearing unless called for by the Court.

Court may at any time call for a written statement.

123. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other ; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court. Written statements shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and no written statement shall be received unless it be so subscribed and verified.

How written statements are to be framed.

Written statements to be subscribed and verified.

124. If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Court may reject the same, and return it to the party with the order of rejection endorsed thereon ; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for or allowed by the Court.

Court may reject a written statement which is argumentative, prolix, or irrelevant.

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OF THE EXAMINATION OF THE PARTIES.

125. At the first hearing of the suit, and if necessary at any subsequent hearing, any party who appears in person or is present in Court, or the pleader of any party who appears by a pleader, or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person, may be examined orally by the Court. Such examination shall (unless the pleader be the person examined) be upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses. The substance of the examination shall be reduced to writing and form part of the record.

Oral examination of party &c.

Oath.

Substance of the examination to be written.

126. If any party who appears in person or is present in Court shall without lawful excuse refuse to answer any material question relating to the suit which the Court may think proper to put to such party, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Consequence of refusal of a party to answer.

127. If the pleader of any party who shall appear by a pleader shall refuse or be unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall attend in person on such day; and if the party so directed to attend shall without lawful excuse fail to appear in person on the day to be so appointed, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Consequence of refusal or inability of pleader to answer.

OF THE PRODUCTION OF DOCUMENTS.

128. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit to be produced when called upon by the Court, all their documentary evidence of every description which may not already have been filed in Court, and all documents, writings, or other things which may have

Documentary evidence to be produced at first hearing.

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have been specified in any notice which may have been served on them respectively within a reasonable time before the hearing of the suit ; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production thereof at the first hearing.

129. All exhibits produced by the parties shall be received and inspected by the Court ; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Exhibits to be received and inspected by the Court.

Rejection of exhibits.

130. If the exhibit be a deed, instrument, or writing chargeable with stamp duty under any Regulation or Act for the time being in force, and it shall appear to the Court that the deed, instrument, or writing, although written on stamp paper, does not bear a sufficient stamp, the Court shall nevertheless receive the same in evidence saving all just exceptions on other grounds, if the party producing it or requiring its production shall pay into Court the deficiency of the stamp duty and a penalty equal to ten times the amount of the deficiency. Provided that, if it shall appear to the Court that there are reasonable grounds for believing that the deed, instrument, or writing was not properly stamped with the intention of evading the stamp laws, the Court may reject the same.

Documents insufficiently stamped may be received on payment of deficient duty and penalty.

Proviso.

131. An entry of the fact of such payment and of the amount thereof shall be made in a book to be kept in the Court, and shall also be endorsed on the back of such deed, instrument, or writing under the signature of the Judge of the Court. The Court shall at the end of every month make a return to the Collector of Revenue of the District of the monies (if any) which it has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the suit, and the name of the party from whom such monies were received, and the date (if any) and description of the document, for the purpose of identifying the same ; and the Court shall pay over the said monies to the Collector of Revenue, or to such person as he may

Account of monies so received to be kept.

Monthly return to be made to Collector.

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may appoint to receive the same ; and the Collector of Revenue, or other proper authority, shall, upon production of the deed, instrument, or writing, with the endorsement hereinbefore mentioned, cause such additional stamp as may be necessary to be affixed to such deed, instrument, or writing in respect of the sums so paid as aforesaid.

132. When an exhibit is received by the Court and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record. Provided that if the exhibit be an entry in any shop book or other book, the party on whose behalf such book is produced shall furnish a copy of the entry, which copy shall be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the party producing it.

Admitted exhibits to be marked and filed.

Proviso.

133. No stamp duty shall be leviable in respect of the production or filing of any exhibit, any thing contained in any Regulation or Act notwithstanding.

No stamp duty in respect of the production or filing of exhibits.

134. When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in Section 132 with the addition of the word "rejected" and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons (as on suspicion of forgery), to detain it.

Rejected exhibits to be marked and returned.

Unless detained by the Court.

135. When the time for preferring an appeal from the decision passed in the suit has elapsed, or if an appeal has been preferred from such decision then after the appeal has been finally disposed of, any person, whether a party to the suit or not, who may be desirous of receiving back any exhibit produced by him in the suit, shall be entitled, on application to the Court in which such exhibit may be, to receive back the same, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice.

After the time for appeal has elapsed, exhibit admitted in evidence may be returned.

136. Any

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136. Any exhibit may be returned before the time mentioned in the last preceding Section, if the Court in which the document may be shall think proper, for special reasons, to order its return. But in every case a copy, properly certified, and made at the expense of the applicant, shall be substituted for the original in the record of the suit.

Exhibit may be returned before the time limited, for special reasons.

Certified copy to be kept.

137. Whenever an exhibit once received by a Court of Justice and admitted in evidence is returned, a receipt shall be given by the party receiving it in a receipt-book kept for the purpose.

Receipt to be given for returned exhibit.

138. Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own record or from any other public Office or Court, the record of any other suit or case, or any other official papers (not being documents relating to affairs of State the production of which may be contrary to good policy), and inspect the same, when the inspection of such record or papers shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Court may send for papers from its own records or from other public Offices or Courts.

Except State papers.

OF THE SETTLEMENT OF ISSUES.

139. At the first hearing of the suit the Court shall enquire and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the issues of law and fact on which the right decision of the case may depend. The Court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations of fact contained in the written statements, if any, tendered by the parties or their pleaders.

Framing of issues.

140. If the Court shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may compel the attendance of such person, or

Court may examine witnesses or documents before framing the issues.

the

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the production of the document by the person in whose hands it may be, by summons or other suitable process.

141. At any time before the decision of the case, the Court may amend the issues or frame additional issues on such terms as to it shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

Amendment of issues.  
Additional issues.

OF ISSUES BY AGREEMENT OF PARTIES.

142. When the parties to a suit are agreed as to the question or questions of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that upon such finding some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that upon such finding one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act, specified in the agreement, and having reference to the matter in dispute.

Questions of fact or law may by agreement be stated by the parties in the form of an issue.

143. If the Court shall be satisfied, after an examination of the parties or their pleaders, and taking such evidence as it may deem proper, that the agreement was duly executed by the parties and that the parties have a *bonâ fide* interest in the decision of such question, and that the same is fit to be tried and decided, it may proceed to record and try the same, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court, and may, upon the finding or decision on such issue, give judgment for the sum so agreed on or so ascertained as aforesaid, or otherwise according to the terms of the agreement ; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Court if satisfied that the agreement was executed *bonâ fide*, may give judgment.

WHEN

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WHEN THE SUIT MAY BE DISPOSED OF AT THE FIRST HEARING.

144. If at the first hearing of a suit it shall appear that the parties are not at issue on any question of law or fact, the Court may at once give judgment.

If the parties are not at issue on any question of law or fact.

145. When the parties are at issue on some question of law or fact, and issues have been framed by the Court as hereinbefore provided, if the Court shall be satisfied that no further argument or evidence than such as the parties or their pleaders can at once supply is required upon any such of the issues of law or fact as may be sufficient for the decision of the suit, the Court, after hearing such argument and evidence, may proceed to determine such issue or issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit ; otherwise the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence or for such further argument as the case may require. Provided that if the summons shall have been issued for the final disposal of the suit and either party shall fail without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment.

If the parties are at issue on questions of law or fact.

Court, if satisfied, may determine the issues and give judgment.

Proviso where summons is for final disposal.

OF ADJOURNMENTS.

146. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to either of them, and may from time to time adjourn the hearing of the suit ; and in all such cases the Court shall fix a day for the further hearing of the suit. Provided that in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Court shall otherwise direct.

Court may grant time, or adjourn to a future day.

Proviso.

147. If on any day to which the hearing of the suit may be adjourned, the parties or either of them shall not appear in person or by pleader, the Court may proceed to dispose of the suit in the manner specified in Section 110, Section 111, or Section 114 as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

How Court is to proceed if the parties fail to appear on the day fixed.

148. If

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148. If either party to a suit to whom time may have been granted shall fail to produce his proofs, or to cause the attendance of his witnesses, or to perform any other act for which time may have been allowed, the Court shall proceed to a decision of the suit on the record, notwithstanding such default.

Court to proceed to a decision notwithstanding either party fail to produce proofs or witnesses.

OF SUMMONING WITNESSES.

149. The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

Application for summons.

150. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

No stamp duty on application for summons.

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate. The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same,

Expenses of witnesses to be paid before issue of summons.

Scale of expenses.

Tender of expenses to witness.

If sum be not sufficient.

or



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or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other person summoned for a longer period than one day, the Court may from time to time order the party at whose instance he was summoned to pay into Court such sum as may be sufficient to defray the expenses of his detention for such further period, and in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

Expenses if witness is detained.

152. Every summons for the attendance of a witness or other person shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the witness or other person may be called on to produce shall be described in the summons with convenient certainty.

Time, place, and purpose of attendance to be specified in summons.

153. Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence; and any person, summoned merely to produce a document, shall be deemed to have complied with the summons, if he caused such document to be produced instead of attending personally to produce the same.

Summons to produce a document.

SERVICE OF SUMMONS ON A WITNESS.

154. Every summons to a witness or other person shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

How and when the summons shall be served.

155. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend, but when he cannot be found, the service may be made on any adult male member of his family residing with him.

Service to be on the witness, or a male member of his family.

L

156. When

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156. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving Officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

When the summons cannot be served, it is to be returned to the Court.

157. The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons the time when and the manner in which it was served.

Time and manner of service to be endorsed on the summons.

158. If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Court in which the suit is pending, to any Court having jurisdiction at the place where the witness resides by which it can be most conveniently served; and the Court to which the summons is sent shall, upon receipt thereof, deliver the same to the Nazir or other proper Officer of such Court, to be served in the manner above directed; and upon the return of the summons by the serving Officer, it shall be transmitted to the Court from whence it originally issued.

How a summons on a witness who resides in another jurisdiction is to be served.

159. If the summons for the attendance of any person either to give evidence or to produce a document, cannot be served in either of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving Officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of the party on whose application the summons was issued, make an order for the attachment of the moveable and immoveable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following Section.

When a witness absconds, his property may be attached.

160. If

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160. If, on the attachment of the property, such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it shall deem fit. If such witness or other person shall not appear, or appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons. If the witness or other person shall pay into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

OF THE EXAMINATION OF PARTIES AS WITNESSES.

161. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

A party to a suit appearing in person may be examined either in his own behalf or on behalf of any other party.

162. If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the Court for an order requiring the attendance of the party, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

Special application to be made for the examination of a party as a witness.

163. The Court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence ; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

The Court may first issue a notice to show cause.

164. In

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164. In support of the cause shown, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed by him and verified in the manner hereinbefore provided for the verification of complaints, and delivered into the Court by himself or his pleader.

Court shall receive a written declaration in support of the cause shown.

165. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

If no sufficient cause be shown, summons to issue.

166. If the Court shall think it necessary for the ends of justice to examine any party to the suit or to inspect any document in his possession or power, the Court may, of its own accord in any stage of the suit, cause such party to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power on a day to be appointed in the summons, and may examine such party as a witness in open Court or may cause such party to be examined in such other manner as the Court may direct.

Court may of its own accord at any time summon a witness.

ATTENDANCE OF WITNESSES, AND CONSEQUENCE OF NON-ATTENDANCE.

167. Any person who shall be summoned to appear and give evidence in a suit shall be bound to attend at the time and place named in the summons for that purpose.

Persons summoned to give evidence must attend.

168. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155 shall, without lawful excuse, fail to comply with the summons, the Court may order such person to be apprehended and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160 with respect to a witness or other person on whom the service of a summons cannot be effected.

Consequences of non-attendance by a witness.

169. If

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169. If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to produce the document. If after the expiration of such time the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law for the time being in force for the punishment of persons refusing to give evidence.

170. If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

171. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court.

WHEN AND HOW WITNESSES ARE TO BE EXAMINED.

172. On the day appointed for the hearing of the suit or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the Court, by

Witnesses to be examined at the hearing of the suit in open Court.

In what form evidence shall be taken in appealable cases.

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by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit, or their pleaders, or such of them as are in attendance, and shall, if necessary be corrected, and shall be signed by the Judge. If the evidence be

In what case a witness may require his deposition to be interpreted to him.

taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given.

When evidence may be taken in English.

Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand. It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing or any

Objection made to questions.

party or his pleader shall require it. If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Court shall record such remarks as it may think material respecting the demeanor of the witness while under examination.

Memorandum of substance of the evidence to be made by Judge as each witness is examined.

In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the

In what form evidence shall be taken in cases not appealable.

record. In cases in which an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length ; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the

If Judge be unable to make a memorandum of the evidence, reason of inability to be recorded.

record. If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable shall cause such memorandum to be made in writing from his dictation in open Court and shall sign the same, and such memorandum shall form part of the record.

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173. If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinbefore prescribed ; and the deposition so taken down may be read in evidence at any hearing of the suit.

174. All witnesses shall be examined upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

OF COMMISSIONS TO EXAMINE ABSENT WITNESSES AND MAKE LOCAL ENQUIRIES.

175. When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court ; the Court may, of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, order a Commission to issue for the examination of such witness on interrogatories or otherwise ; and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just. If the

When the witness resides within the Court's jurisdiction. witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any Officer of the Court, or to any subordinate Court, or to any other person or persons whom the Court issuing the Commission may think

When the witness resides beyond the Court's jurisdiction, and not within the Supreme Court's jurisdiction, but within the jurisdiction of the Sudder Court, proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission and not within the local jurisdiction of Her Majesty's Supreme Court, but within the jurisdiction of the Sudder Court, the Commission shall ordinarily be issued to the Court within whose jurisdiction the witness may

reside, and which can most conveniently execute the same ; but, under special

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special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

176. If the witness be resident within the local jurisdiction of Her Majesty's Supreme Court, the Commission shall ordinarily be issued to the Court of Small Causes held under Act IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*), but may, under special circumstances, be directed to any person or persons whom the Court issuing the Commission may think proper to appoint.

When the witness is within the local jurisdiction of the Supreme Court.

177. When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the Sudder Court or of Her Majesty's Supreme Court, but within the British territories in India or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness ; provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a District, such subordinate Court shall not issue the Commission but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court.

When the witness is not within the jurisdiction of the Sudder Court or the Supreme Court, but within the British territories or the territories of any Native Prince or State in alliance with the British Government.

178. When the evidence of a witness is required, who is resident at some place beyond the said territories and not within the territories of a Native Prince or State in alliance with the British Government, the Sudder Court, if the suit in which the evidence of the witness is required be pending in that Court and the Court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission to examine the witness ; if the suit be not pending in the Sudder Court, that Court may issue the Commission on the application of the Court in which the suit is pending. In all such cases, the Commission may be issued to any person or persons whom the Sudder Court may think proper to appoint.

When the witness is beyond the said territories and not within the territories of any Native Prince or State in alliance with the British Government.

179. After



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179. After the Commission has been duly executed it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued, unless otherwise directed by the order for issuing the Commission ; in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

Commission to be returned to the Court issuing it with the depositions of the witnesses.

When depositions may be read in evidence.

180. In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a Commission to an Officer of the Court appointed to execute such Commissions, or, if there be no such Officer, to any suitable person, directing him to make such investigation and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him ; and also to call for and examine documents and other papers relevant to the subject of enquiry ; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed

Commission for local investigations.

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subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit and shall form part of the record ; but it shall be competent to the Court, or to the parties to the suit or any of them, with the permission of the Court, to examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation,

The report and depositions to be taken as evidence in the suit. Commissioner may be examined in person.

181. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Court to appoint such Officer or other person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance ; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them, in which case the Court shall make such further enquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

A Commissioner may be appointed to investigate and adjust accounts.

182. Whenever a Commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the expenses of the Commission to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.

Expenses of Commission to be paid into Court, before issue thereof.

OF JUDGMENT AND DECREE.

183. When the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court either immediately or on some future day of which due notice shall be given to the parties or their pleaders.

When judgment is to be pronounced.

184. The

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184. The judgment shall be written in the vernacular language of the Judge. Provided that, if the vernacular language of the Judge be not English and the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the Judgment may be written in English.

Judgment to be written in the vernacular language of the Judge.

Proviso.

185. The judgment shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. Whenever the judgment is written in any other language than that which is in ordinary use in the Court, the judgment shall be translated into the language in ordinary use in the Court, and the translation shall also be signed by the Judge.

Judgment what to contain.

Judgment to be translated.

186. In all suits in which issues have been framed, the Court shall state its finding or decision on each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Court to state its decision on each issue.

Proviso.

187. The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Court shall have full power to award and apportion costs in any manner it may deem proper.

Judgment to direct by whom costs are to be paid.

188. Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of Commissioners either in taking evidence or in local investigations or in investigations into accounts.

What is included under the denomination of costs.

189. The decree shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid, and shall be signed by the Judge and sealed with the seal of the Court.

Decree.

190. When

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190. When the suit is for land or other immoveable property with specified boundaries, if the decree be for the recovery of a portion only of such property, it shall specify the boundaries of the land or property adjudged.

Decree for the recovery of a portion of immoveable property.

191. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree for the delivery of moveable property.

192. When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the Court with the consent of the plaintiff may decree the specific performance of the contract within a time to be fixed by the Court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not performed.

Decree for damages for breach of contract.

193. When the suit is for a sum of money due to the plaintiff, the Court may in the decree order interest to be paid on the principal sum adjudged from the date of suit to the date of payment at such rate as the Court may think proper.

\*In suits for money, decree may order certain interest to be paid on the principal sum adjudged.

194. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments with or without interest.

Payment by instalments.

195. If the defendant shall have been allowed to set-off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The decree of the Court with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

If set-off be allowed.

Effect of decree.

196. When the suit is for land or other property paying rent, the Court may provide in the decree for the payment of mesne profits or rent on such land or other property from the date of the suit until the date of delivery of possession to the decreeholder with interest thereupon at such rate as the Court may think proper.

When the suit is for land, the Court may provide in the decree for payment of mesne profits with interest.

197. When

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197. When the suit is for land and for mesne profits which have accrued thereon during a period prior to the date of suit, and the amount of such profits is disputed, the Court may either determine the amount prior to passing a decree for the land or may pass a decree for the land and reserve the enquiry into the amount of mesne profits for the execution of the decree according as may appear most convenient.

198. Certified copies of the decree and judgment shall be furnished to the parties or their pleaders on application to the Court, and on the production of the necessary stamps where stamps are required by any law for the time being in force. The application may be made either orally or by writing on unstamped paper.

CHAPTER IV.

EXECUTION OF DECREES.

199. If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom it shall have been adjudged.

200. If the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by the seizure, if practicable, of the specific moveable and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment if necessary; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money.

201. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant. When the decree is against Government or against

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against any Officer acting on behalf of Government, if the Officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government, and execution shall not issue on the decree unless the same shall remain unsatisfied for the space of three months from the date of such report.

202. If the decree be for the execution of a conveyance or for the endorsement of a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court, for execution upon the proper stamp (if any is required by law), and the signature thereof by the Judge shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

Decrees for execution of conveyances, or endorsement of negotiable instruments.

203. If the decree be against a party as the representative of a deceased person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or, if no such property can be found and the defendant fail to satisfy the Court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against the defendant personally.

Decree against representatives of deceased persons.

204. Whenever a person has become liable as security for the performance of a decree or of any part thereof, the decree may be executed against such person to the extent to which he has rendered himself liable, in the same manner as a decree may be enforced against a defendant.

Decree against sureties.

205. The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any Railway, Banking, or other Public Company or corporation, and all other property whatsoever, moveable or

What property liable to attachment and sale in execution of a decree.

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or immoveable, belonging to the defendant, and whether the same be held in his own name or by another person in trust for him, or on his behalf.

206. All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favor the decree has been made or to whom it has been transferred.

Payment of monies under decrees &c.

Adjustment of decree to be made through the Court.

APPLICATION FOR EXECUTION.

207. When any party in whose favor a decree has been made is desirous of enforcing the same, he shall apply to the Court whose duty it is to execute the decree either in person or through his pleader in the suit or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make the application, if the Court shall see sufficient cause for allowing him or them to make such application ; and the Court shall in such case pass such order as it may deem necessary for protecting the interests of the other decree-holders.

Application for execution how to be made.

208. If a decree shall be transferred by assignment or by operation of law from the original decree-holder to any other person, application for the execution of the decree may be made by the person to whom it shall have been so transferred or his pleader ; and if the Court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.

Application by whom to be made, if decree be transferred from original decree-holder to another person.

209. If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both decrees.

Cross-decrees.

The

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The above rules shall apply to decrees sent to a Court for execution as well as to decrees in the same Court.

Whenever a suit shall be pending in any Court against the holder of a decree of such Court, by the person or persons against whom the decree was passed, the Court may, if it appear just and reasonable to do so, stay execution on the decree either absolutely or on such terms as it may think just, until a decree shall be passed in the pending suit.

210. If any person against whom a decree has been made shall die before execution has been fully had thereon, application for execution thereof may be made against the legal representative or the estate of the person so dying as aforesaid ; and if the Court shall think proper to grant such application, the decree may be executed accordingly.

If the person against whom a decree is made shall die before execution, application may be made against his legal representative or estate.

211. If the decree be ordered to be executed against the legal representative, it shall be executed in the manner provided in Section 203 for the execution of a decree for money to be paid out of the property of a deceased person.

Decree how to be executed against legal representative.

212. The application for execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely, the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ; the amount of the debt or damages due upon it, or other relief granted by the decree ; the amount of costs, if any were awarded ; the name of the person against whom the enforcement of the decree is sought ; and the mode in which the assistance of the Court is required whether by the delivery of property specifically decreed, the arrest and imprisonment of the person named, or attachment of his property, or otherwise as the case may be.

Form of application for execution of a decree.

213. When the application is for an attachment of any land or other immoveable property belonging to the defendant, it shall be accompanied with an inventory or list of such property containing such a description of the property as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief and so far as he has been able to ascertain the same. And where the property is an estate paying revenue

Further particulars when the application is for an attachment of immoveable property,



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revenue to Government or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the Register of the Collector's Office, specifying the revenue of such estate, and the names and (where registered) the shares of the registered proprietors.

214. Where the application is for an attachment of the defendant's

The application for an attachment of moveable property may be general, or may be accompanied with an inventory of the property to be attached.

moveable property or any part thereof, it may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description thereof; or the applicant may apply for a general attachment of the defendant's moveable property wheresoever the same can be found, to the amount of the judgment and costs.

215. The Court, on receiving any application for execution of a decree,

Procedure on receiving the application.

containing the particulars above mentioned, or such of them as may be applicable to the case, shall cause the same to be compared with the original decree contained in the record of the suit, and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made in the Register of the suit. If the particulars shall not be found to correspond with the original decree, the Court shall either return the application for correction to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

MEASURES REQUIRED IN CERTAIN CASES PRELIMINARY TO THE ISSUE OF THE

WARRANT.

216. If an interval of more than one year shall have elapsed between the

In certain special cases, notice to show cause why the decree should not be executed shall be issued.

date of the decree and the application for its execution, or if the enforcement of the decree be applied for against the heir or representative of an original party to the suit, the Court shall issue a notice to the party against whom execution may be applied for requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. Provided that

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no such notice shall be necessary in consequence of an interval of more than one year having elapsed between the date of the decree and the application for execution, if the application be made

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made within one year from the date of the last order passed on any previous application for execution ; and provided further that no such notice shall be necessary in consequence of the application being against an heir or representative, if upon a previous application for execution against the same person, the Court shall have ordered execution to issue against him.

217. When such notice is issued, if the party shall not attend in person or by a pleader, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by a pleader, and shall offer any objection to the enforcement of the decree, the Court shall pass such order as in the circumstances of the case may appear to be just and proper.

218. Where the application is for a general attachment of the moveable property of the defendant, it shall be competent to the Court, if it shall think proper, before issuing an order for such attachment, to require the applicant to give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

219. Before granting the order for a general attachment or at the instance of the plaintiff at any time after judgment and before complete execution of the decree, the Court may summon the person against whom the application is made and examine him as to the property liable to be seized in satisfaction of the judgment. The Court may also, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it may think necessary and examine him in respect to such property, and may require the person summoned to produce all deeds and documents in his possession or power relating to such property.

220. In all cases in which a summons may be issued for the attendance of a party to a suit or any other person at any time after judgment, the rules applicable to the summoning and examination of parties and witnesses after issues recorded, shall apply to the party or witnesses so summoned.

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ISSUE OF THE WARRANT.

221. When all necessary preliminary measures have been taken, where any such are required, the Court, unless it see cause to the contrary, shall issue the proper warrants for the execution of the decree.

Warrant when to issue.

222. Every warrant for the execution of a decree shall bear the date of the day on which it is issued, and shall be signed by the Judge and sealed with the seal of the Court, and delivered to the Nazir or other proper Officer of the Court. A day shall be specified in the warrant on or before which it must be executed, and the Nazir or other proper Officer shall endorse upon the warrant the day and the manner in which it was executed, or if it was not executed the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be endorsed.

OF THE EXECUTION OF DECREES FOR IMMOVEABLE PROPERTY.

223. If the decree be for a house, land, or other immoveable property in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and if need be, by removing any person who may refuse to vacate the same.

How immoveable property is to be delivered when in the occupancy of a defendant or of some person under him.

224. If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the warrant in some conspicuous place on the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property.

How it is to be delivered when in the occupancy of ryots.

225. If

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225. If the decree be for the division of an estate or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made by the Collector under the orders of the Court according to the rules in force for the partition of an estate paying revenue to Government.

Division of estate or separation of share how to be made.

226. If in the execution of a decree for land or other immoveable property; the Officer executing the same shall be resisted or obstructed by any person, the person in whose favor such decree was made may apply to the Court at any time within one month from the time of such resistance or obstruction. The Court shall fix a day for investigating the complaint and shall summon the party against whom the complaint is made to answer the same.

Obstruction to execution of decree for immoveable property.

227. If it shall appear to the satisfaction of the Court that the obstruction or resistance was occasioned by the defendant or by some person at his instigation on the ground that the land or other immoveable property is not included in the decree, or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as may be proper under the circumstances of the case.

Obstruction by defendant.

228. If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was without any just cause and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the plaintiff and without prejudice to any proceedings to which such defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, commit the defendant or such other person to close custody for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

How defendant may be dealt with, if he persists in obstructing the complainant.

229. If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person, other than the defendant, claiming *bonâ fide* to be in possession of the property on

Obstruction by a *bonâ fide* claimant other than the defendant.

his

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his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the Court shall without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case.

230. If any person other than the defendant shall be dispossessed of any land or other immoveable property in execution of a decree and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was *bonâ fide* in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

231. The decision passed by the Court under either of the last two Sections shall be of the same force as a decree in an ordinary suit, and shall be subject to appeal under the rules applicable to appeals from decrees; and no fresh suit shall be entertained in any Court between the same party or parties claiming under them in respect of the same cause of action.

OF THE EXECUTION OF DECREES FOR MONEY BY ATTACHMENT OF PROPERTY.

232. If the decree be for money, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the Court shall cause the property to be attached in the manner following.

Attachment of property in execution of decree for money.

Q

233. Where

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233. Where the property shall consist of goods, chattels, or other moveable property in the possession of the defendant, the attachment shall be made by actual seizure, and the Nazir or other Officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof.

Attachment by seizure of moveable property in possession of defendant.

234. Where the property shall consist of goods, chattels, or other moveable property to which the defendant is entitled subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

Attachment by prohibitory order of moveable property, to which defendant is entitled subject to a lien.

235. Where the property shall consist of lands, houses, or other immoveable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise.

Attachment by prohibitory order of immoveable property.

236. Where the property shall consist of debts not being negotiable instruments, or of shares in any Railway, Banking, or other public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof, and the Manager, Secretary, or other proper Officer of the Company or Corporation from permitting any such transfer or making any such payment, until such further order.

Attachment by prohibitory order of debts not being negotiable instruments, and of shares in public Companies, &c.

237. Where the property shall consist of money, or of any security, in deposit in any Court of justice or in the hands of any Officer of Government, which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or Officer requesting that the money or security may be held subject to the further order of the Court

Attachment by notice of money or securities in deposit in a Court of Justice or with a Government Officer.

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Court by which the notice may be issued. Provided that, if such money or security is in deposit in any Court of Justice, any question of title or priority which may arise between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the Court in which such money or security is in deposit.

Proviso.

238. Where the property shall consist of a negotiable instrument, the attachment shall be made by actual seizure, and the Nazir or other Officer shall bring the same into Court, and such instrument shall be held subject to the further orders of the Court.

Attachment of negotiable instruments by seizure.

239. In the case of goods, chattels, or other moveable property not in the possession of the defendant, the written order shall be fixed up in some conspicuous part of the Court-house and a copy of the order shall be delivered or sent registered by post to the person in possession of the property. In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to such lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court-house; and when the property is land or any interest in land, the written order shall also be fixed up in the Office of the Collector of the Zillah in which the land may be situated. In the case of debts, the written order shall be fixed up in some conspicuous part of the Court-house, and copies of the written order shall be delivered or sent registered by post to each individual debtor. And in the case of shares in the capital or joint-stock of any Railway, Banking, or other public Company or Corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the Manager, Secretary, or other proper Officer of the Company or Corporation.

When the attachment is by prohibitory order, how the order is to be made known.

240. After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends or shares to the defendant during the continuance of the attachment, shall be null and void.

Any private alienation of property after attachment to be void.

241. In

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241. In every case in which a debtor shall be prohibited from making payment of his debt to the creditor, he may pay the amount into Court and such payment shall have the same effect as payment to the party entitled to receive the debt.

242. In all cases of attachment under the preceding Sections, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank-notes, or a sufficient part thereof, shall be paid over to the party applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank-notes, so far as may be necessary for the satisfaction of the decree, shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.

243. When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immoveable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree, and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this Section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

244. When



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244. When in any District, where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 248, the property attached shall consist of any such land, or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.

When Court may authorize Collectors to stay public sale of land.

On security being given.

245. If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment ; and if the defendant shall desire it and shall deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment ; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

Order for withdrawal of attachment after satisfaction of the decree.

OF CLAIMS TO ATTACHED PROPERTY.

246. In the event of any claim being preferred to, or objection offered against, the sale of lands or any other immoveable or moveable property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding Section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section 220. And if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying

How claims and objections to sale of attached property are to be investigated.

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paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, the Court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immoveable or moveable property was in possession of the party against whom execution is sought, as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, the Court shall disallow the claim. The order which may be passed by the Court under this Section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

247. The claim or objection shall be made at the earliest opportunity to the Court which shall have ordered the attachment ;  
Claims and objections to be preferred at the earliest opportunity. and if the property to which the claim or objection applies, shall have been advertized for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding Section. Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice. The order disallowing the investigation shall not be subject to appeal, and the claimant shall be left to prosecute his claim by a regular suit.

OF SALES IN EXECUTION OF DECREES.

248. Sales in execution of decrees shall be conducted by an Officer of the Court or by any other person whom the Court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned. Provided that if the property to be sold shall consist of negotiable securities or of shares in any Railway, Banking, or other public Company or Corporation, it shall be competent to the Court, instead of directing  
Sales to be by public auction. Exception as to negotiable securities and shares in public Companies.

ing

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ing the sale to be made by public auction, to authorize the sale of such securities or shares through a broker at the market-rate of the day. If the property to be sold shall be land paying revenue to Government and the Government shall so direct, the sale shall be conducted by the Collector on the requisition of the Court.

249. In all cases of intended sale by public auction, whether of moveable or immoveable property, in execution of a decree, a proclamation of the intended sale, specifying the time and place of sale, the property to be sold, the revenue assessed upon the estate when the property to be sold is an estate or a part of an estate paying revenue to Government, and the amount for the recovery of which the sale is ordered, together with any other particulars that the Court may think necessary, shall be made in the current language of the District. The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein. Such proclamation shall be made on the spot where the property is attached by beat of drum or in such other mode as may be customary ; and a written notification to the same effect shall be affixed in the Court-house of the Judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land the written notification shall also be affixed in the Office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District where the Court which ordered the sale is subordinate to such Court. The sale shall not take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the notification shall have been affixed in the Court-house of the Judge ordering the sale.

250. The usual process for attachment and sale when the property to be attached consists of goods, chattels, or other personal estate other than debts, may be issued either successively or simultaneously as the Court directing the sale may in each instance think proper.

251. In

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251. In all cases of sale of moveable property, the price of every lot shall be paid for at the time of sale or as soon after as the Officer holding the sale shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase money, the Officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Mode of payment on sale of moveable property.

252. No irregularity in the sale of moveable property under an execution shall vitiate the sale ; but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in Court.

Irregularity not to vitiate sale of moveable property, but any person injured may recover damages by suit.

253. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Deposit by purchaser in case of sale of immoveable property.

254. The full amount of purchase money shall be made good by the purchaser before sunset of the fifteenth day from that on which the sale of the property took place, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day ; and in default of payment within such period, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

At what time full amount of purchase money to be made good.

Procedure on default.

Defaulting purchaser answerable for loss by resale.

255. Every re-sale of immoveable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales.

Notification on re-sale of immoveable property.

256. No

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256. No sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

257. If no such application as is mentioned in the last preceding Section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to appeal; and such order, unless appealed from, and if appealed from, then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

258. Whenever a sale of immoveable property is set aside, the purchaser shall be entitled to receive back his purchase money with or without interest in such manner as it may appear proper to the Court to direct in each instance.

259. After a sale of immoveable property shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

260. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser

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purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

261. Where the property sold shall consist of goods, chattels, or other moveable property in the possession of the defendant, or to the immediate possession of which the defendant is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of moveable property in the possession of defendant.

262. Where the property sold shall consist of goods, chattels, or other moveable property to which the defendant is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall as far as practicable be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

Delivery of moveable property to which defendant is entitled subject to lien.

263. If the property sold shall consist of a house, land, or other immoveable property, in the occupancy of a defendant or some person on his behalf or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immoveable property may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immoveable property in the occupancy of defendants, &c.

264. If the property sold shall consist of land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

Delivery of immoveable property in the occupancy of ryots, &c.

265. Where the property sold shall consist of debts not being negotiable instruments or of shares in any Railway, Banking or other public Company or Corporation, the delivery thereof shall be by a written order of the Court prohibiting the

Delivery of debts not being negotiable instruments, and of shares in public Companies.

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the creditor from receiving the debts and the debtor from making payment thereof to any person or persons except the purchaser, or prohibiting the person in whose name the shares may be standing, from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the Manager, Secretary, or other proper Officer of the Company or Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

266. Where the property sold shall consist of negotiable securities of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

Delivery of negotiable securities of which actual seizure has been made.

267. If the endorsement or conveyance of the party in whose name any negotiable security or any share in a public Company or Corporation is standing, shall be required to transfer the same, the Judge may endorse the security or the certificate of the share, or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form or to the like effect—"A. B. by C. D. Judge of the Court of (*or as the case may be*) ; in a suit by E. F. *versus* A. B." Until the transfer of such security or share, the Judge may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same; and any endorsement made or document executed or receipts signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or executed or signed by the party himself.

Transfer of securities and shares.

268. If the purchaser of any immoveable property sold in execution of a decree shall be resisted or obstructed in obtaining possession of the property, the provisions contained in Sections 226, 227, and 228 relating to resistance or obstruction to a party in whose favor a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction.

Resisting or obstructing purchasers in obtaining possession of property.

269. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any

Obstruction by claimants other than defendants.

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any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid shall be dispossessed, the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be, shall enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

270. Whenever property is sold in execution of a decree, the person on whose application such property was attached shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

Attaching creditor to be first paid out of proceeds of property sold.

271. If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who prior to the order for such distribution may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

Surplus to be rateably distributed among decree-holders who have taken out execution prior to the order for distribution.

Proviso where property is sold subject to a mortgage.

272. If it shall appear to the Court, upon the application of a decree-holder, that any other decree under which property has been attached was obtained by fraud or other improper means, the Court may order that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose, if such other decree be a decree of that Court, or, if it be a decree of another Court, may stay the proceedings to enable the applicant to obtain a similar order from the Court by which the decree was made.

Court may on application order another decree-holder to be satisfied out of proceeds of property attached under a decree obtained fraudulently.



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OF ARREST IN EXECUTION OF DECREES FOR MONEY.

273. Any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade) and of the places respectively where such property is to be found, or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

On what grounds, application for discharge may be made.

Form of application.

Verification.

274. Upon such application being made, the Court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances, and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant making the necessary deposit for paying the fees of such Officer; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.

Procedure on application.

275. The discharge of the defendant under the last preceding Section shall not protect him from being arrested again and imprisoned if it should be shown that, in the application made by him, he had been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him.

Defendant liable to be again arrested if proved guilty of fraudulent concealment of property, &c.

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him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith ; nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.

OF THE EXECUTION OF DECREES BY IMPRISONMENT.

276. When a defendant is committed to prison in execution of a decree, the Court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding four annas per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper Officer of the Court or of the gaol where the defendant may be in custody, by monthly payments in advance, before the first day of each month ; the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

Subsistence-money of a defendant in gaol how fixed and furnished.

277. The Court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as shall appear necessary. The order fixing such allowance may from time to time be revised and altered on due cause being shown.

Court may vary the allowance in case of illness or for other special cause.

278. A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding five hundred Rupees, or for a longer period than three months if the decree be for the payment of money not exceeding fifty Rupees.

Release of defendant.

Imprisonment not to be longer than 2 years.

6 months if decree for money not exceeding 500 Rs.

3 months if not exceeding 50 Rs.

279. Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the costs of the decree and shall be recoverable by the attachment and sale of the property of the defendant under the foregoing rules ; but the defendant

Subsistence-money to be added to amount of decree.

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defendant shall not be detained in custody or arrested on account of any sums so disbursed.

280. Any person in confinement under a decree may apply to the Court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade,) and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

Application by person imprisoned under a decree, for discharge on a surrender of the whole of the debtor's property.

Verification.

281. On such application being made, the Court shall cause the plaintiff to be furnished with a copy of the account of the defendant's property, and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith. If within such period the plaintiff shall fail to make such proof, the Court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified or at any subsequent period prove to the satisfaction of the Court that the defendant has been guilty of any of the acts above-mentioned, the Court shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if it shall think proper, send the defendant to the Magistrate to be dealt with according to law.

Procedure on such application.

Defendant to be discharged on plaintiff failing to prove fraud or concealment by defendant.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years.

282. A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding Section, but his property shall continue liable, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than

Though the defendant be discharged, his property is liable for the decree.

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than one hundred Rupees and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than one hundred Rupees, and on account of a transaction bearing date as above, the Court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree.

When Court may declare a defendant absolved from further liability.

283. All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, shall be determined by order of the Court executing the decree and not by separate suit; and the order passed by the Court shall be open to appeal.

How questions regarding amount of mesne profits and interest, and sums paid in satisfaction of decree, are to be determined.

OF EXECUTION OF A DECREE OUT OF THE JURISDICTION OF THE COURT BY WHICH IT WAS PASSED.

284. A decree of any Civil Court within any part of the British territories in India, or established by the authority of the Governor General of India in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other such Court in the manner following.

How a decree of one Court may be executed within the jurisdiction of another Court.

285. The plaintiff in such case may apply to the Court whose duty it is to execute the decree, to transmit a copy thereof, together with a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, and a copy of any order for execution of such decree that may have been passed, to the Court by which the applicant may wish the decree to be executed.

Application for such execution.

286. The Court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared: and the same, after being signed by the Judge and sealed with the seal of the Court, shall be transmitted to the Court

Copy of decree and order for execution to be transmitted.

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Court indicated by the applicant if that Court be within the same District, otherwise to the principal Civil Court of original jurisdiction in the District in which the applicant may wish the decree to be executed; and the Court to which such copies and certificate are transmitted shall cause the same to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless it shall, under any peculiar circumstances to be specified in an order, require such proof.

287. The copy of any decree, or of any order for execution, when filed in the Court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the District, be executed by such Court, or any Court subordinate thereto, to which it may entrust the execution of the same.

Decree or order transmitted, to be executed as that of the Court.

288. When application shall be made to any Court to execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to execute the same according to its own rules in the like cases; provided that such Court shall have no power to enquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was made had no jurisdiction to make the same.

Execution how to be enforced by Court applied to.

289. The Court to which such application is made or referred for execution as aforesaid, shall take cognizance of and punish all wrongful acts or irregularities done or committed in executing such decree; and all persons disobeying or obstructing the execution of such decree shall be punishable by such Court in the same manner as if the decree had been made by such Court.

Wrongful acts or irregularities in executing decree to be punished by Court applied to.

290. The Court to which such application is made may, upon good and sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or the execution thereof, which such Court of

Court applied to may in certain cases stay execution, &c.

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first instance or Court of Appeal might have made if execution had been issued by such Court of first instance, or if application for execution had been made to such Court; and in case the property or person of the defendant shall have been seized under an execution, the Court which issued the execution may order the restitution of the property or the discharge of the person of the defendant pending the result of such application.

291. Before making an order to stay execution or for the restitution of property or the discharge of the defendant under the last preceding Section, the Court may require such security from, or impose such conditions upon, the defendant, as it may deem reasonable.

Before staying execution, Court may require security from, or impose conditions upon defendant.

292. Any order of the Court in which the decree was passed or of such Court of Appeal as aforesaid, shall be binding upon the Court to which the application for execution was made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last mentioned Court.

Order of Court passing decree or of Appellate Court to be binding upon Court applied to.

293. No discharge of a defendant under the provisions of Section 290 shall prevent him from being retaken in execution of the decree.

Liability of defendant discharged, to be re-taken.

294. All orders of a Court for executing the decree of another Court shall be subject to the same rules, in respect to appeal, as if the decree had been originally passed by the Court making such order.

What appeal from orders for execution under this Act.

295. If, in execution of a decree, a warrant of arrest or other process is to be enforced within the limits of a Garrison, Cantonment, Military Station, or Military Bazar, the Officer entrusted with the execution of such warrant or other process shall carry the same to the Commanding Officer, or in his absence to the Senior Officer actually present in the Garrison, Cantonment, Station, or Military Bazar; and the Commanding Officer or such Senior Officer, upon such warrant or other process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of

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of his command and delivered, according to the exigency of the warrant, to the Civil Officer charged with the execution thereof.

296. The rules contained in this Chapter shall be applicable to the execution of any judicial process for the sale of property or for the payment of money which may be ordered by a Civil Court in any Civil proceeding.

Rules contained in this Chapter to be applicable to all Civil process for sale of property, &c.

CHAPTER V.

OF PAUPER SUITS.

297. A suit may be brought *in formâ pauperis* in the Court having jurisdiction over the claim, subject to the following rules.

Suits may be brought *in formâ pauperis*.

298. No pauper suit shall be brought for the recovery of any sum of money on account of damages for loss of caste, slander, abusive language, or assault.

What suits excepted.

299. The application to the Court for permission to sue *in formâ pauperis* shall be by petition, which shall be written on a stamp paper of the value of eight annas.

Application to be by petition on stamp paper.

300. The petition shall contain the particulars required by Section 26 of this Act, in regard to complaints, and shall have annexed to it a Schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of complaints.

Petition what to contain.

301. The petition shall be presented to the Court by the petitioner in person; but if the petitioner satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female, who, according to the custom and manners of the country ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions.

How to be presented.

Examination of petitioner, if a female, how to be taken.

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questions relating to the application and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

302. If the petition be not framed or presented in the manner laid down in the last two preceding Sections, the Court shall reject the petition.

Petition to be rejected if not in form.

303. If the petition be in form and duly presented, the Court shall proceed to examine the petitioner, or the agent of the petitioner as the case may be, regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent, the Court may also, if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses.

If in form, Court how to proceed.

If presented by an agent, Court may order petitioner to be examined in like manner as an absent witness.

304. If it appear to the Court upon such examination that the defendant, or the matter of the suit, is not within the jurisdiction of the Court, or that the claim is barred by the Statute of Limitations, or that the allegations of the petitioner do not constitute a reasonable ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently or with a view to obtain the benefit of this Chapter, the Court shall refuse to allow the petitioner to sue as a pauper.

Court may reject the application.

305. If upon such examination the Court shall see no reason to refuse the application on any of the grounds stated in the last preceding Section, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the petitioner may adduce in proof of his pauperism, and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

Notice to opposite party.

306. On the day appointed for the hearing, or as soon after as the business of the Court will permit, the Court shall consider any objections made by the opposite party, and shall examine any witnesses produced by either party and make

After a summary enquiry, the Court to pass a final order.



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make a memorandum of the substance of their evidence, and shall either allow or refuse to allow the petitioner to sue as a pauper.

307. Previously to passing a final order in the case, the Court may, if it deem fit, institute a local enquiry, in the manner laid down in Section 180 of this Act, regarding the property of the petitioner or regarding the amount or value of any property claimed.

Court may direct a local enquiry.

308. If the application of the petitioner be granted, it shall be numbered and registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

Course of proceeding to be observed, if application be admitted.

309. On the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

On the decision of the suit, costs how to be calculated.

310. The refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

Refusal to allow to sue as a pauper, to bar any subsequent application of the like nature.

311. The orders passed by the Court under the provisions of this Chapter shall not be subject to appeal.

No appeal from orders under this Chapter.

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CHAPTER VI.

REFERENCE TO ARBITRATION.

312. If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

Reference to arbitration on application of the parties.

313. The application shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument in writing, which shall be presented to the Court at the time of making the application, and shall be filed with the proceedings in the suit.

Application how to be made.

314. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint the arbitrator or arbitrators.

Nomination and appointment of arbitrators.

315. The Court shall, by an order under its seal, refer to the arbitrator or arbitrators the matters in difference in the suit which he or they may be required to determine, and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

Order of reference.

316. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties ; or if they cannot agree, as the Court may determine.

When the reference is to two or more, the order shall provide for difference of opinion.

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317. When a reference is made to arbitration by an order of Court, the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators or umpire may desire to have examined, as the Court is authorized to issue in suits tried before it ; and persons not attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrator or arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

318. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order from the want of the necessary evidence or information or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to the Court or to the umpire a notice in writing stating that they cannot agree. Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

319. If, in any case of reference to arbitration by an order of Court, the arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators or umpire, in the place of the person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire ; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court, upon the application

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plication of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this Section, the arbitrator or arbitrators or umpire so appointed shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

320. When an award in a suit shall be made either by the arbitrator or arbitrators or by the umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made together with all the proceedings, depositions, and exhibits in the suit.

Award how to be submitted to Court.

321. It shall be lawful for the arbitrator or arbitrators or umpire, upon any reference, by an order of Court, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

Arbitrator may state special case.

322. The Court may on the application of either party modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision. The Court may also on such application make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Court may, on application, modify or correct an award in certain cases.

And make order respecting the costs of arbitration.

323. In any of the following cases the Court shall have power to remit the award or any of the matters referred to arbitration to the re-consideration of the same arbitrator or arbitrators or umpire, upon such terms as it may think proper (that is to say)—

In what cases Court may remit the award or any of the matters referred to arbitration, for re-consideration.

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration.

If the award is so indefinite as to be incapable of execution.

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If an objection to the legality of the award is apparent upon the face of the award.

324. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within ten days after the same has been submitted to the Court.

Award not to be set aside except on ground of corruption.

Application to set aside the award.

325. If the Court shall not see cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the Court shall have refused such application, the Court shall proceed to pass judgment according to the award or according to its own opinion on the special case if the award shall have been submitted to it in the form of a special case ; and upon the judgment which shall be so given decree shall follow and shall be carried into execution in the same manner as other decrees of the Court. In every case in which judgment shall be given according to the award, the judgment shall be final.

Judgment to be according to the award.

326. When any persons shall by an instrument in writing agree that any differences between them or any of them shall be referred to the arbitration of any person or persons named in the agreement or to be appointed by any Court having jurisdiction in the matter to which it relates, application may be made by the parties thereto or any of them that the agreement be filed in such Court. On such application being made, the Court shall direct such notice to be given to any of the parties to the agreement, other than the applicants, as it may think necessary, requiring such parties to show cause, within a time to be specified, why the agreement should not be filed. The application shall be written on a stamp paper of one-fourth of the value prescribed for plaints in suits and shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, if the application have been presented by all the parties or, if otherwise, between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the agreement

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the agreement shall be filed and an order of reference to arbitration shall be made thereon. The several provisions of this Chapter so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court and to the award of arbitration and to the enforcement of such award.

327. When any matter has been referred to arbitration without the intervention of any Court of Justice, and an award has been made, any person interested in the award may within six months from the date of the award make application to the Court having jurisdiction in the matter to which the award relates, that the award be filed in Court. The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as an award made under the provisions of this Chapter.

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CHAPTER VII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

HOW QUESTIONS MAY BE RAISED FOR THE DECISION OF A CIVIL COURT  
BY ANY PERSONS INTERESTED.

328. Parties interested or claiming to be interested in the decision of any question of fact or law, may enter into an agreement which shall be subject to the same stamp duty as prescribed for plaints in suits, that upon the finding of a Court in the affirmative or negative of such question of fact

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fact or law, a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or shall refrain from doing or performing some particular act specified in the agreement. Where the agreement is for the delivery of some property moveable or immoveable, or for the doing or performing or the refraining to do or perform any particular act, the estimated value of the property to be delivered, or to which the act specified may have reference, shall be stated in the agreement.

329. The agreement may be filed in any Court having jurisdiction in the matter, and, when so filed, shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

330. After the agreement shall have been filed, all the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

331. The case shall be set down for hearing as an ordinary suit; and if the Court shall be satisfied, after an examination of the parties or their pleaders, or taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question of fact or law stated therein, and that the same is fit to be tried or decided, it shall proceed to record and try or hear the same, and deliver its finding or opinion thereon in the same way as in an ordinary suit; and shall, upon its finding or deciding upon the question of fact or law, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement, and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER

CHAPTER VIII.

OF APPEALS.

332. Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of three or more Judges of that Court.

Appeal to lie from all decrees except when expressly prohibited.

Appeal to Sudder Court to be heard by three or more Judges.

HOW APPEALS ARE TO BE PREFERRED.

333. Appeals shall be made in the form of a memorandum which shall be presented in the Appellate Court within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of the Appellate Court for not having presented it within such limited period; that is to say, within thirty days if the appeal be to a District Court, and within ninety days if the appeal be to the Sudder Court. The days shall be reckoned from and exclusive of the day on which judgment was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree appealed against.

Appeals to be preferred by a memorandum to be presented to the Appellate Court within specified time.

334. The memorandum of appeal shall set forth concisely, and under distinct heads, the grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. The appellant shall not without the leave of the Court urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

What the memorandum is to contain.

335. The memorandum of appeal shall be in the following form, or to the following effect, and shall be accompanied by a copy of the decree appealed against—

Form of memorandum.

*Memorandum*



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*Memorandum of Appeal.*

(Name, &c. as in Register.) Plaintiff.

(Name, &c. as in Register.) Defendant.

[Name of Appellant] Plaintiff [or Defendant] above-named appeals to the Sudder Court at [or Zillah Court at] as the case may be], against the decree of in the above suit, dated the day of ; for the following reasons, namely, [*here state the reasons.*]

336. If the memorandum be not drawn up in the manner hereinbefore prescribed, the Court may reject it or may return it to the party for the purpose of being corrected. If the memorandum be not presented within the prescribed period and no sufficient cause be shown for the delay, the appeal shall be rejected.

337. If there be two or more plaintiffs or two or more defendants in a suit, and the decision of the Lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favor of all the plaintiffs or defendants.

OF STAYING AND EXECUTING DECREES UNDER APPEAL.

338. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against such decree ; but the Appellate Court may, for sufficient cause shown, order that execution be stayed. If application for execution be made before the time allowed for appeal has expired, and the Lower Court has not received intimation of an appeal having been preferred, the Lower Court, if sufficient cause be shown, may stay the execution. Before making an order to stay execution, the Court making the order shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

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339. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court making an order for execution of a decree against which an appeal has been preferred, may require security for restitution of property, &c. Court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the Appellate Court.

340. In suits instituted or defended under the authority and at the expense of Government, no such security as is mentioned in the last two preceding Sections shall in any case be required from Government or from any public Officer.

No such security to be required from Government or any public Officer.

OF PROCEDURE IN APPEALS FROM DECREES.

341. When a memorandum of appeal is presented in the prescribed form and within the time allowed, the Appellate Court, or the proper Officer of that Court, shall endorse thereon the date of presentment, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals. Such Register shall be in the form contained in the Schedule (C) hereunto annexed.

How the appeal is to be entered.

Form of the Register.

342. It shall be in the discretion of the Appellate Court to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to appear and answer. Provided that the Court shall demand such security in all cases in which the appellant is residing out of the British Territories in India and is not possessed of any land or other immoveable property within those territories independent of the property to which the appeal relates; and in the event of such security not being furnished at the time of presenting the memorandum of appeal or within such time as the Court shall order, the Court shall reject the appeal.

Appellate Court may, at its discretion, require security for costs from appellant.

Proviso.

343. When the memorandum of appeal has been registered, the Appellate Court shall send intimation thereof to the Lower Court. If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Lower Court shall, upon the receipt of the intimation, transmit

Appellate Court to send intimation to Lower Court of appeal being registered.

Lower Court to transmit papers to Appellate Court.

to

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to the Appellate Court with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Either party may give notice of exhibits of which he requires copies to be made and deposited in the Lower Court.

Either party may give notice in writing to the Lower Court specifying any exhibits of which he requires copies to be made and deposited in the Lower Court, and copies of such exhibits shall be prepared at the expense of the party giving the notice and shall be deposited in the Lower Court.

344. A day shall be fixed by the Appellate Court for the hearing of the appeal. The day shall be so fixed, with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear in person or by a pleader on such day.

Day for hearing the appeal, how to be fixed.

345. Notice of the day which has been fixed for hearing the appeal shall be affixed in the Appellate Court and a like notice shall be sent by the Appellate Court to the Lower Court and shall be served on the respondent in the same way as

Publication and service of notice of the day fixed for hearing the appeal.

hereinbefore provided for the service of a summons to a defendant to appear and answer, and all rules applicable to such summons and to proceedings with reference to the service thereof shall apply to the service of such notice. The notice to the respondent shall contain an intimation that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence. Provided that, if the respondent has appointed a pleader to appear in his behalf in the Appellate Court, the service of the notice on such pleader shall be sufficient.

Form of notice.

346. If, on the day fixed for hearing the appeal or any other day subsequent thereto to which the hearing of the appeal may be adjourned, the appellant shall not appear in person or by a pleader, the appeal shall be dismissed for default. If the appellant shall appear in person or by a pleader, and the respondent shall not appear in person or by a pleader, the appeal shall be heard *ex parte* in his absence.

Consequence of non-appearance.

347. If an appeal be dismissed for default of prosecution, the appellant may, within thirty days from the date of the dismissal, apply to the Appellate Court for the re-admission of the appeal; and if it shall be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from appearing

Re-admission of appeals dismissed for default of prosecution.

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ing when the appeal was called on for hearing, the Court may re-admit the appeal.

348. Upon the hearing of the appeal, the respondent may take any objection to the decision of the Lower Court which he might have taken if he had preferred a separate appeal from such decision.

Respondent may object to decision of Lower Court in the same manner as if he had preferred separate appeal.

349. The Appellate Court, after hearing the appeal, shall proceed to give its judgment in the manner hereinbefore prescribed for giving judgment in Courts of original jurisdiction.

The Appellate Court how to give judgment.

350. The judgment may be for confirming or reversing or modifying the decree of the Lower Court. But no decree shall be reversed or modified, nor shall any case be remanded to the Lower Court on account of any error, defect, or irregularity either in the decision or in any interlocutory order passed in the suit not affecting the merits of the case or the jurisdiction of the Court.

No decision to be reversed for irregularity.

351. If the Lower Court shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Appellate Court essential to the rights of the parties, and the decree of the Lower Court upon such preliminary point shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remand the case, together with a copy of the decree in appeal, to the Lower Court, with directions to restore the suit to its original number in the Register, and proceed to investigate the merits of the case, and pass a decree therein.

When a case may be remanded by Appellate Court.

352. It shall not be competent to the Appellate Court to remand a case for a second decision by the Lower Court, except as provided in the last preceding Section.

Power to remand limited as above.

353. When the evidence upon the record of the Lower Court is sufficient to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

When the evidence is sufficient, the Appellate Court must determine the case though the lower Court has decided on other grounds.

354. If

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354. If the Lower Court shall have omitted to raise or try any issue or to determine any question of fact which shall appear to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question of fact, the Appellate Court may frame an issue or issues for trial by the Lower Court and may refer the same to the Lower Court for trial. Thereupon the Lower Court shall proceed to try such issue or issues and shall return to the Appellate Court its finding thereon together with the evidence. Such finding and evidence shall become part of the record in the suit ; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of any objection to the finding ; and after the expiration of the period so fixed, the Appellate Court shall proceed to determine the appeal.

Trial of issues by Lower Court on reference from Appellate Court.

355. It shall not be competent to the parties in an appeal to produce additional evidence in the Appellate Court, whether of exhibits or witnesses ; but if it appear that the Lower Court refused to admit competent evidence, or if the Appellate Court require any exhibits to be produced or witnesses examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the Appellate Court may allow additional exhibits to be received and any necessary witnesses to be examined, whether such witnesses shall have been previously examined in the Court below or not ; provided that, whenever additional evidence is admitted by an Appellate Court, the reasons for the admission shall be recorded on the proceedings of such Court.

Parties not allowed to produce additional evidence in Appellate Court ; but Court may call for such evidence.

356. Whenever additional evidence is permitted to be received, it shall be competent to the Appellate Court to take such evidence before itself, or to require the Lower or any other Court or to empower any person to take such evidence, and to transmit the evidence so taken to the Appellate Court. It shall also be competent to the Appellate Court to prescribe the manner in which such evidence shall be taken.

How additional evidence is to be taken.

357. In all cases where additional evidence is permitted to be taken, the Appellate Court shall define the point or points to which the evidence is to be confined, and record the same on its proceedings.

Points to be defined.

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358. The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the suit, examining the parties or their pleaders, and awarding costs, or otherwise, as are hereinbefore contained in regard to Courts of original jurisdiction.

Powers of Appellate Court in regard to granting of time, examination of parties, &c.

359. The judgment of the Appellate Court shall be pronounced in open Court. It shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge or by the Judges concurring therein at the time of pronouncing it. The judgment shall be written in the English language; but if the Judge shall not be able to write an intelligible judgment in that language, the judgment shall be written in the vernacular language of the Judge. When the language in which the judgment is written is not the language in ordinary use in proceedings before the Court, the judgment shall be translated into such language, and the translation shall be signed by the Judge or Judges. Any Judge dissenting from the judgment of the Court shall state his opinion in writing, which shall form part of the record.

Judgment of the Appellate Court.

In what language it is to be written.

Dissent to be recorded.

360. The decree of the Appellate Court shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and description of the parties appellant and respondent and the memorandum of appeal, and shall specify clearly the relief granted or other determination of the appeal. It shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the original suit are to be paid. The decree shall be signed by the Judge or Judges who passed it and shall be sealed with the seal of the Court. If there be a difference of opinion among the Judges of the Court, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree, but the opinion of such Judge shall be recited in the decree. Certified copies of the decree shall be furnished to the parties in the same manner as hereinbefore provided in regard to the decrees of Courts of original jurisdiction.

What the decree is to contain.

361. A copy of the decree or other order disposing of the appeal, certified by the Appellate Court or the proper Officer of such Court, and sealed with the seal of the Court, shall be transmitted to the Court which passed the first decree in the

A certified copy of the decree to be transmitted to the Lower Court.

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the suit appealed from, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the original Register of the suit.

362. Application for execution of the decree of an Appellate Court shall be made to the Court which passed the first decree in the suit, and shall be executed by that Court, in the manner and according to the rules hereinbefore contained for the execution of original decrees.

APPEALS FROM ORDERS.

363. No appeal shall lie from any order passed in the course of a suit and relating thereto prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

364. No appeal shall lie from any order passed after decree and relating to the execution thereof except as is hereinbefore expressly provided.

365. All orders as to fines or the levying thereof or as to imprisonment under this Act (except when the imprisonment is in execution of a decree) shall be subject to appeal.

366. When an appeal from any order is allowed, the period for preferring the appeal and the procedure thereon shall be in all respects the same as in an appeal from a decree.

CHAPTER IX.

OF APPEALS IN FORMA PAUPERIS.

367. Any party to a suit who may be unable to pay for the stamps required for the prosecution of an appeal from the decision passed therein, may be allowed to appeal as a pauper from such

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such decision subject to all the rules contained in the last preceding Chapter and in Chapter V in so far as they are applicable.

368. The application to be allowed to appeal *in formâ pauperis* shall be written on a stamp paper of the value of one Rupee if the appeal lie to the District Court, and on a stamp paper of the value of two Rupees if the appeal lie to the Sudder Court, and shall be presented in the Appellate Court within the period allowed for the presentation of a memorandum of appeal.

369. The application shall contain the particulars required to be set forth in the memorandum of appeal and shall be drawn up in the like manner. It shall have annexed to it a Schedule of any moveable or immoveable property belonging to the applicant with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made.

370. If the Appellate Court, upon a perusal of the application and of the judgment and decree of the Court below, shall see no reason to think that the decision of that Court is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust, it shall reject the application. If the application be not rejected upon any of the grounds abovementioned, enquiry shall be made into the alleged pauperism of the applicant, and such enquiry may be conducted either by the Appellate Court or by the Court from whose decision the appeal is made under the orders of the Appellate Court. Provided that, if the applicant was allowed to sue *in formâ pauperis* in the Court below, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court shall see special cause to direct such enquiry.

371. The order passed by the Appellate Court on an application to be allowed to appeal *in formâ pauperis*, whether for the admission or rejection of the application, shall be final ; but, if the application be rejected, the Appellate Court may, if it think proper, allow the applicant a reasonable time for preferring an appeal on a stamp of the value prescribed for appeals from decrees.



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CHAPTER X.

OF SPECIAL APPEALS.

372. Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.

Special appeals to Sudder Court.

Grounds of special appeal.

373. The application for the admission of a special appeal shall be presented in the Sudder Court within the period prescribed for the presentation of a memorandum of appeal, and shall be accompanied by copies of the judgments and decrees of the Lower Appellate Court and of the Court of first instance. The application shall be written on a stamp paper of the value prescribed for regular appeals ; but if the applicant be unable to pay for the stamps required for the prosecution of the appeal, the Sudder Court may admit him to appeal as a pauper, subject to all the rules contained in Chapter IX in respect to appeals from decrees *in formâ pauperis* in so far as the same may be applicable.

Application to be presented to the Sudder Court.

374. The application shall set forth concisely the grounds of objection to the decision appealed against without argument or narrative, and such grounds shall be numbered consecutively. The applicant shall not, without the leave of the Court, be heard in support of any other ground of objection ; but the determination of the Court may be upon any ground on which a special appeal would lie.

Form of application.

375. If the application be not drawn up in the manner hereinbefore prescribed, the Court may reject it or may return it to the party for the purpose of being corrected. When the application is correctly drawn up, it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule D hereunto annexed, and the case shall proceed in all other respects as a regular appeal and shall be subject to all the rules hereinbefore provided for such appeals so far as the same may be applicable.

Application how to be dealt with.

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CHAPTER XI.

REVIEW OF JUDGMENT.

376. Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a District Court in appeal from which no special appeal shall have been admitted by the Sudder Court—or by a decree of the Sudder Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred no proceedings in the suit have been transmitted to Her Majesty in Council—and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a review of judgment by the Court which passed the decree.

*Review of judgment.*

*On discovery of new evidence &c.*

377. The application shall be made within ninety days from the date of the decree unless the party preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the application be made within the period above-mentioned, it shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required ; but if made after the expiration of that period, it shall be written on the stamp paper prescribed for plaints.

*Within what time and on what paper the application should be made.*

378. If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final. Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited.

*The order of the Court for granting or refusing the review is final.*

*Proviso.*

379. If

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379. If the Court to which the application for a review of its judgment has been presented be a Court consisting of two or more Judges, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering the judgment to which the application refers, it shall not be competent to any other Judge or Judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in a Court consisting of two or more Judges must be made to the Judge or Judges that passed the decree.

380. When an application for a review of judgment is granted, a note thereof shall be made in the Register of suits or appeals (as the case may be), and the Court shall give such order in regard to the re-hearing of the suit as it may deem proper in the circumstances of the case.

Procedure on application for a review being granted.

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CHAPTER XII.

MISCELLANEOUS.

381. The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of the Subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the Officers, and from time to time to alter any such rule or form ; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force.

Sudder Court empowered to make rules of practice &c., for the Subordinate Civil Courts.

Provided such rules are not inconsistent with this or any other law.

382. Except so far as relates to the examination of witnesses under Commission and to the execution of decrees out of the jurisdiction of the Courts by which they were passed, this Act shall not extend to any suit instituted in any Court

Act not to extend, except in certain cases, to Supreme and Presidency Small Cause Courts.

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Court of Judicature established by Royal Charter or in any Court for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.

383. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in Civil cases of Village Moonsiffs or Village or District Panchayets under the provisions of the Madras Code ; or the jurisdiction or procedure of Military Courts of Request ; or the jurisdiction or procedure of a single Officer duly authorized and appointed under the rules in force in the Presidencies of Fort St. George and Bombay respectively, for the trial of small suits in Military Bazars at Cantonments and Stations occupied by the Troops of those Presidencies respectively ; or by Panchayets in regard to suits against Military persons, according to the rules in force under the Presidency of Fort St. George.

Saving of jurisdiction and procedure of Village Moonsiffs and Village and District Panchayets in Madras—

of Military Courts of Request—

of single Officers appointed to try small suits in Madras and Bombay—

and of Military Panchayets in Madras.

384. Nothing in this Act shall be held to affect the jurisdiction exercised by certain Jagheerdars and other authorities invested with powers under the provisions of Regulation XIII. 1830 of the Bombay Code (*for vesting certain Jagheerdars, Surinjameedars, and Enamdars with the power of deciding suits within the boundaries of their respective estates*) and Act XV of 1840 (*for extending Regulations XV. 1827 and XIII. 1830 of the Bombay Code to the Agents of Foreign Sovereigns*) or their procedure in the exercise of such jurisdiction ; or to affect suits instituted under Regulation XI. 1816 of the Bengal Code (*for receiving, trying, and deciding claims to the right of inheritance or succession in certain Tributary estates in Zillah Cuttack*), or cases of the nature defined in Regulation XXIX. 1827 (*for bringing under the operation of the Regulations the Bombay Territories in the Dekkan and Khandesh*), Regulation VII. 1830 (*for bringing under the operation of the Regulations the Territories comprised in the Southern Mahratta Country*), Regulations I. and XVI. 1831 of the Bombay Code (*for extending the jurisdiction of the Agent of Government in the Dekkan and Khandesh and of the Political Agent in the Southern Mahratta Country over suits in which certain privileged persons are concerned*), Act XIX of 1835 (*relating to the jurisdiction and authority of the Assistant to the Agent for Sirdars in the Dekkan*), and Act XIII of 1842 (*to enable the holders of revenue which has been alienated to them by the State to collect that revenue within the Presidency of Bombay*), except

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except that such suits and cases and the regular and special appeals to the Civil Courts allowed therein, shall be received, heard, and determined under the rules laid down in this Act, unless where those rules are inconsistent with any specific provisions contained in the Regulations and Acts above quoted.

385. This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor General of India in Council or by the Local Government to which such territory is subordinate, and notified in the Gazette.

386. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Interpretation.  
Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Number.  
Gender. Words importing the masculine gender shall include females.

The local jurisdiction of a Principal Civil Court of original jurisdiction shall be deemed a district for the purposes of this Act ; and the words " District Court " shall mean such Court.

" District."  
" District Court."  
In any part of the British territories in India to which this Act may be extended under the provisions of Section 385, the expression " Sudder Court " shall be deemed to include the highest Civil Court of Appeal in such part of the said territories.

" Sudder Court."  
387. This Act shall come into operation in the Presidency of Bengal from the 1st day of July 1859 and in the Presidencies of Madras and Bombay from the 1st day of January 1860 or from such earlier day as the Local Government in those Presidencies respectively shall fix and shall publicly notify in the Gazette of the Presidency three months

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months at least before the date so fixed. But if, in any suit pending at the time when this Act shall come into operation, it shall appear to the Court that the application of any provision of this Act would deprive any party to the suit of any right in reference to the procedure of the suit, whether of appeal or otherwise, which but for the passing of this Act would have belonged to him, the Court shall proceed according to the law in force before this Act takes effect.

Pending suits.

388. From and after the time when this Act shall come into operation in any part of the British territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other Law or Regulation.

Where Act comes into operation, procedure of Civil Courts to be regulated by it only.



SCHEDULE B.

\_\_\_\_\_  
No. of Suit.

In the Court of \_\_\_\_\_ at \_\_\_\_\_

Plaintiff.

Defendant.

(Name, description, and address.)

Whereas [*here enter the name, description, and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the Register*]: you are hereby summoned to appear in this Court in person on the day of \_\_\_\_\_ at \_\_\_\_\_ in the forenoon [*if not specially required to appear in person, state—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"*] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here; "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"*]: and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.



