

Order XXVI

COMMISSIONS

COMMISSIONS TO EXAMINE WITNESSES

Rule-1: Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

See also rules 234-257, C. R. & O

For exemption from appearance, see section 132.

Protracted examination on commission with irrelevant questions is an abuse on which disciplinary action should be taken in flagrant cases.

Rajkumar -vs- Ramsundar, 55 CLJ 120 PC

Rule-2: Order for commission.—An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Rule-3: Where witness resides within Court's jurisdiction.—A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Rule-4: Persons for whose examination commission may issue.—(1) Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction;
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
- (c) any person in the service of the Republic who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being the High Court Division within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

See also rules 247-257, C.R. & O.

Form of commission to examine absent witness, Form No. 7, App. H, Sch. I=H.C. Form No. (J) 36.

Rule-5: Commission or Request to examine witness not within Bangladesh.—Where any Court to which application is made for the issue of commission for the examination of a person residing at any place not within Bangladesh is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

See also rules 258-262, C.R. & O.

Form of letter of request, Form No. 8, App. H, Sch. I.

Rule-6: Court to examine witness pursuant to commission.—Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

See also rules 254, 255 and 256, C.R. & O.

Rule-7: Return of commission with depositions of witnesses.—Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

See also rules 248 and 257, C. R. & O.

Rule-8: When depositions may be read in evidence.—Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Republic who cannot, in the opinion of the Court, attend without detriment to the public service, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the

evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

COMMISSIONS FOR LOCAL INVESTIGATIONS

Rule-9: Commissions to make local investigations.—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court within such time not exceeding three months as may be fixed by the Court:

Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.

The words, "within such time not exceeding three months as may be fixed by the Court," were added by Ordinance XLVIII of 1983.

See also rules 263-274, C.R. & O and para 17, Civil Suit Instructions Manual.

The order for local investigation should be drawn up by the Judge himself and must contain the matters enumerated in rule 264, C.R. & O.

Form commission for local investigation, Form No. 9, App. H, Sch. I = H. C. Form No. (J) 37.

Form of proceeding to be drawn up if enquiry is ordered, H. C. Form No. (J) 38 and see also rule 265, C. R. & O.

Rule-10: Procedure of Commissioner.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Report and depositions to be evidence in suit. Commissioner may be examined in person.—(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

As to objections against commissioner's report, see para 17 (17), Civil Suit Instructions Manual.

Where the result of local investigation is unsatisfactory the court is not bound to order another inquiry. It can decide the case on the other evidence on record.

Garibullah -vs- Modha, 50 IC 301
Judabendra -vs- Gajendra, 28 CLJ 203
Manindra -vs- Saradindu, 27 CLJ 595

COMMISSIONS TO EXAMINE ACCOUNTS

Rule-11: Commission to examine or adjust accounts.—In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

See also rules 275-279, C.R. & O.

Form of commission to examine accounts, Form No. 9, App. H. Sch. I= H. C. Form No. (J) 37

Rule-12: Court to give Commissioner necessary instructions.—

(1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Proceedings and report to be evidence. Court may direct further inquiry.—(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

See also rules 275-279, C. R. & O.

COMMISSIONS TO MAKE PARTITIONS

Rule-13: Commission to make partition of immoveable property.—Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

See also rule 274, C.R. & O.

Form of commission to make partition, Form No. 10 App. H, Sch. I= H. C. Form No. (J) 39.

Rule-14: Procedure of Commissioner.—(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court within such time not exceeding three months as may be fixed by the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

The words, "Court within such time not exceeding three months as may be fixed by the Court", after the words, "and transmitted to the", and the proviso in sub-rule (2) were inserted by Ordinance XLVIII of 1983.

As a rule the commissioner should first be examined with reference to the objection, then the parties should be allowed to give evidence if there is ground for further inquiry.

Nasir -vs- Sarfaraz. 1935 L 501

GENERAL PROVISIONS

Rule-15: Expenses of Commission to be paid into Court.—Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

See also rules 621-630, C.R. & O.

Rule-16: Powers of Commissioners.—Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

Rule-17: Attendance and examination of witnesses before Commissioner.—(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of Bangladesh, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being the High Court Division) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Rule-18: Parties to appear before Commissioner.—(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

COMMISSIONS ISSUED AT THE INSTANCE OF FOREIGN TRIBUNALS

Rule-19: Cases in which High Court Division may issue commission to examine witness.—(1) If the High Court Division is satisfied—

- (a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,
- (b) that the proceeding is of a civil nature, and
- (c) that the witness is residing within the limits of the High Court Division's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in Bangladesh and transmitted to the High Court Division through the Government, or
- (b) by a letter of request issued by the foreign court and transmitted to the High Court Division through the Government, or
- (c) by a letter of request issued by the foreign court and produced before the High Court Division by a party to the proceeding.

Rule-20: Application for commission.—The High Court Division may issue a commission under rule 19—

- (a) upon application by a party to the proceeding before the foreign Court, or
- (b) upon an application by a law officer of the Government acting under instructions from the Government.

Rule-21: To whom commission may be issued.—A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court Division, to any person whom the Court thinks fit to execute the commission.

Rule-22: Issue, execution and return of commissions, and transmission of evidence to foreign Court.—The provisions of rules 6,15,16,17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court Division, which shall forward it to the Government, along with the letter of request for transmission to the foreign Court.

EXCLUSION OF TIME TAKEN BY COMMISSIONER

Rule-23: Exclusion of time taken by Commissioner.—Where a commission is issued for any purpose at any stage of a suit, the time taken by the Commissioner for returning the commission after execution or for submitting the report, as the case may be, shall be excluded from the time fixed for doing anything or performing any act at that stage.

This rule was added by Ordinance XLVIII of 1983.

Order XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Rule-1: Suits by or against Government.—In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

All suits by or against Government shall be disposed of as speedily as possible irrespective of the order in which they may stand in the register.

See rule 280, C.R. & O.

Rule-2: Persons authorized to act for Government.—Persons being *ex-officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Rule-3: Plaints in suits by or against Government.—In suits by or against the Government, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79.

Rule-4: Agent for Government to receive process.—The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

Rule-5: Fixing of day for appearance on behalf of Government.—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 channel, 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.

Rule-6: Attendance of person able to answer questions relating to suit against Government.—The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of

the Government, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Rule-7: Extension of time to enable public officer to make reference to Government.—(1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to 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 channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Rule-8: Procedure in suits against public officer.—(1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

See also rule 281, C. R. & O.

Rule-8A: No security to be required from Government or a public officer in certain cases.—No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Rule-8B: Omitted by Act VIII of 1973 as amended by Act LIII of 1974.

Order XXVIA

SUITS INVOLVING ANY SUBSTANTIAL QUESTION AS TO THE INTERPRETATION OF CONSTITUTIONAL LAW

Rule-1: Notice to the Attorney General.—In any suit in which it appears to the Court that any substantial question as to the interpretation of constitutional law is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for Bangladesh if the question of law concerns the Government.

Rule-2: Court may add Government as party.—The Court may at any stage of the proceedings order that the Government shall be added as a defendant in any suit involving any substantial question as to the interpretation of constitutional law if the Attorney General for Bangladesh, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

Rule-3: Costs when Government added as party.—Where under rule 2 Government is added as a defendant in a suit, the Attorney General or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders.

Rule-4: Application of Order to appeals.—In the application of this Order to appeals the word “defendant” shall be held to include a respondent and the word “suit” an appeal.

Order XXVIII

SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

Rule-1: Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them.—(1) Where any officer, soldier, sailor or airman, actually in the service of the Republic in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman is serving in military, naval or air force staff employment, the head or other superior officer of the officer in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation — In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, ship, detachment or depot to which the officer, soldier, sailor or airman belongs.

Rule-2: Person so authorized may act personally or appoint pleader.—Any person authorized by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

Rule-3: Service on person so authorized, or on his pleader, to be good service.—Processes served upon any person authorized by an officer, soldier, sailor or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Order XXIX

SUITS BY OR AGAINST CORPORATIONS.

Rule-1: Subscription and verification of pleading.—In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

A suit by or against a registered company must be instituted in the name of the company.

I. G. S. N. & Co. Ltd. -vs- Lalmohan, 43 C 441

A suit by an unregistered or unincorporated society is to be brought in the names of all members of the society. Where the members are numerous, the provisions of Order 1 rule 8 may be availed of.

Hriday -vs- Akhil, 49 CLJ 357

Panchaiti -vs- Gauri, 20 A 167

Rule-2: Service on corporation.—Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

- (a) on the secretary, or on any director, or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Cf. Section 223, Company Act, 1994 (Act XVIII of 1994)

Rule-3: Power to require personal attendance of officer of corporation.—The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

Consequence of non-appearance, see Or. 9 r. 12.

Order XXX

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Rule-1: Suing of partners in name of firm.—(1) Any two or more persons claiming or being liable as partners and carrying on business in Bangladesh may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

A single person carrying on business in a firm name must sue in his own name.

Samrathrai -vs- Kasturbhai, 1930 B 216

If he dies, substitution must be made:

Haribandhu -vs- Harimohan, 57 C 931

One partner can bring a suit in the firm name even when the other partners refuse to sue. The other partners are not necessary parties, but they can ask for indemnity against costs from the suing partner.

Bhadreswar Coal Co. -vs- Satish, 40 CWN 824

Suit by unregistered firm not maintainable

See sections 69 and 74 (b), Partnership Act, 1932 (Act IX of 1932).

Surendra -vs- Manohar, 39 CWN 67

Basanta -vs- Lala 39 CWN 1080

Ramsundar -vs- Madhu, 40 CWN 1180

Rule-2: Disclosure of partners' names.—(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant,

forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Rule-3: Service.—Where persons are sued as partners in the name of their firm, the summons shall be served either –

- (a) upon any one or more of the partners, or
- (b) at the principal place at which the partnership business is carried on within Bangladesh upon any person having, at the time of service, the control or management of the partnership business there.

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Bangladesh:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within Bangladesh whom it is sought to make liable.

The words, “as the Court may direct,” indicate that the court’s order should be obtained as to the mode of service.

*I.C. Compagnie -vs- Mehta & Co. 54 C. 1057. Contrary view
See Keen Rabinson & Co. -vs- Lily Biscuit Co. 59 C 496*

In a suit brought against a firm in its firm name, a person who has not been served with a summons as a partner cannot enter appearance and defend the suit unless he admits that he is a partner.

Sreemutty Dhai -vs- Bhadarmull, 40 CWN 677

Rule-4: Right of suit on death of partner.—(1) Notwithstanding anything contained in section 45 of the Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

- (a) to apply to be made a party to the suit, or
- (b) to enforce any claim against the survivor or survivors.

This rule applies only where a suit is brought in the name of the firm.

Manmohan -vs- Bidhubhusan, 28 CLJ 268

Rule-5: Notice in what capacity served.—Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

In the absence of a notice as to the capacity of the person, the person served shall be deemed to be served as a partner and if he wants to contest that, he must appear under protest under Or. 30 r. 8.

Baishnab -vs- Bank of Bengal, 19 CWN 1008

Rule-6: Appearance of partners.—Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

The word, “individually,” is not synonymous with “in person.” No partner can, therefore, be forced to appear in person.

Bridges & Co. -vs- Samas Din & Co. 47 IC 422

The appearance of one partner is appearance of the firm i.e. of all partners.

Ghisulal -vs- Gumbhirmall, 39 CWN 606

Rule-7: No appearance except by partner.—Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Rule-8: Appearance under protest.—Any person served with summons as a partner under rule 3 may appear under protest denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

When appearance is entered under protest, the effect is to nullify the service altogether as regards the defendant firm. A party appearing under protest is not entitled to file written statement on his own behalf even on denying that he is a partner.

I.C.C. Compagnie -vs- Mehta & Co. 54 C 1057

Rule-9: Suits between co-partners.—This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Rule-10: Suit against person carrying on business in name other than his own.—Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

A person trading as a firm or in an assumed name may be sued in his trade name, but he cannot sue in that name.

Samarathrai -vs- Kasturbhai, 1930 B. 216;
Ramdas -vs- Ram, 158 IC 25

If a sole proprietor dies, a suit after his death must be brought against his legal representative.

Habib -vs- Samuel Fitz & Co. 1926 A 161

If the suit is brought against the single proprietor in his trade name and on his death during its pendency a decree is passed without bringing his legal representatives on record, the decree being against a dead person is a nullity.

Haribandhu -vs- Harimohan 57 C. 931

Order XXXI

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Rule-1: Representation of beneficiaries in suits concerning property vested in trustees, etc.—In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

See section 3, Succession Act, regarding “executor” and “administrator”.

Rule-2: Joinder of trustees, executors and administrators.—Where there are several trustees, executors or administrators, they shall be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator’s will, and trustees, executors and administrators outside Bangladesh, need not be made parties.

Rule-3: Husband of married executrix not to join.—Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Order XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

Rule-1: Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Minor is a person who has not completed the age of 18 years. In the case of a minor of whose person or property a guardian has been appointed by a Court, it is 21 years. (See section 3, Majority Act).

Where a suit is instituted on behalf of an alleged minor but it is found that he was not in fact a minor, the plaint should be returned for amendment

Taqui -vs- Obaidullah, 21 C 866

Where a suit was brought by a minor without next friend but the defendant although aware of it took no objection and the plaintiff attained majority before the decree, the irregularity was waived.

Fuli -vs- Khokai, 55 C 712

Where minority is in question, an issue should be framed.

Narsi vs- Sachindra, 54, B 75

Rule-2: Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

This rule applies to cases where the plaint on the face of it appears to have been filed by a person who was a minor.

Beniram -vs- Ramlal, 13 C 189

Rule-3: Guardian for the suit to be appointed by Court for minor defendant.—(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

For duties of guardian in the suit or appeal.

See rule 121, C. R. & O.

See rule 631, C. R. & O. for expenses of guardian appointed by the court.

Where a suit is decreed without appointment of a guardian *ad litem*, it is a nullity as against the minor.

Dakeshur -vs- Rewat, 24 C 25; Umapati -vs- Sheikh, 37 CLJ 496
Chundy -vs- Abbas, 37 CWN 1170

Summons on minor should be served in the ordinary way.

Jatindra -vs- Srinath 26 C 267; Abdul -vs- Eggar 35 C 182

Form of notice to minor defendant and guardian for appointment of the guardian for the suit Form No. 11, App. H, Sch. I = H. C. Form No. (P) 2.

Form of notice to minor defendant and guardian for appointment of another person to be guardian for the suit, H. C. Form No. (P) 2 (i).

Rule-4: Who may act as next friend or be appointed guardian for the suit.—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Except as otherwise provided in this Order, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

The words, "Except as otherwise provided in this Order," in sub-rule (4) were substituted for the words, "Where there is no other person fit and willing to act as guardian for the suit", by rule made by Calcutta High Court under section 122 vide Notification No. 8318-G dated the 13th June, 1927 published in the Calcutta Gazette dated the 23rd June, 1927 Part-I, Page-1341.

Sub-rule (3) controls both sub-rules (1) and (2)

Ananda vs- Upendra, 26 CWN 781.

There can be no appointment of a person as guardian without his express consent.

Narendra -vs- Jogendra, 19 CWN 537

Umapati -vs- Sheikh, 37 CLJ 496

Surendra -vs- Aghore, 25 CWN 525

Satish -vs- Hashem, 54 C 450

Balkishen -vs- Choudhury, 17 CWN 219

Rule-5: Representation of minor by next friend or guardian for the suit.—(1) Every application to the Court on behalf of a minor, other an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact or such minority, with costs to be paid by such pleader.

Rule-6: Receipt by next friend or guardian for the suit of property under decree for minor.—(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

- (a) by way of compromise before decree or order, or
- (b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Rule-7: Agreement or compromise by next friend or guardian for the suit.—(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

For compromising a suit or a case by the next friend or guardian of a minor the following steps are necessary:-

- (1) an application by the next friend or guardian for permission to compromise;
- (2) grant of leave by the court to compromise; (3) the consent of the next friend or guardian to the proposed compromise.

Aman -vs- Narayan, 20 A 98

If a next friend or guardian unreasonably withholds consent to a beneficial compromise, the court may remove him and appoint some other person.

Hemangini -vs- Bhagwati, 27 CWN 792

Court must consider whether the compromise will benefit the minor.

Monohar -vs- Jadunath, 10 CWN 898 PC

Rule-8: Retirement of next friend.—(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

Rule-9: Removal of next friend.—(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within Bangladesh, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Rule-10: Stay of proceedings on removal, etc. of next friend.—(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Rule-11: Retirement, removal or death of guardian for the suit.—(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Rule-12: Course to be followed by minor plaintiff or applicant on attaining majority.—(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:—

“A. B., late a minor, by C.D. his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex-parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Rule-13: Where minor co-plaintiff attaining majority desires to repudiate suit.—(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Rule-14: Unreasonable or improper suit.—(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Rule-15: Application of rules to persons of unsound mind.—The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Rule-16: Saving for Princess and Chiefs.—Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Order XXXIII

SUITS BY PAUPERS

Rule-1: Suits may be instituted in *forma pauperis*.—Subject to the following provisions, any suit may be instituted by a pauper.

Explanation—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth ^{five} one hundred Taka other than his necessary wearing-apparel and the subject-mater of the suit.

The exemption in this Order does not apply to payment of process-fees. A firm can be a “person” under this rule.

Perumal -vs- Thirumala, 41 M 624

The court has inherent power to allow the defendant to defend in *forma pauperis*.

Doorga -vs- Nittokally, 5 C 819

The words, “is not possessed of,” mean that the applicant has no actual control over the property e.g. a dower debt due by husband.

Mabia -vs- Sheikh, 45 CLJ 68

Ornaments ordinarily worn by a woman are of the same class as wearing-apparel.

Mabia -vs- Sheikh, 45 CLJ 68

Rule-2: Contents of application.—Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

The right being a personal right, the application for leave to sue as pauper cannot be continued by his legal representative on the death of the applicant. He may present a fresh application.

Lalit -vs- Satish 33 C 1163

Rule-3: Presentation of application.—Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

In the case of a person exempted under sections 132 and 133, his duly authorised agent may present.

Wazirunnessa -vs- Ilahi, 24 A 172

Authorised agent does not include a recognised agent or pleader.

Sakina -vs- Charanjit, 28 IC 448

Rule-4: Examination of applicant.—(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.—(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

The applicant can be examined regarding the merits of the claim and pauperism. No other person can be examined on the merits of the claim. The examination of other persons should be confined to pauperism only as indicated in rr. 6, 7.

Jogendra -vs- Durga, 46 C 651

Rule-5: Rejection of application.—The Court shall reject an application for permission to sue as a pauper—

- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

In determining whether there is any cause of action the court may consider not only the allegation in the plaint but also the statement made by the applicant in his examination; but it cannot examine witnesses for deciding the question of limitation or any other question other than the pauperism.

Jogendra -vs- Doorga 46 C 651

Nowab -vs- Harish, 13 CLJ 593

Rule-6: Notice of day for receiving evidence of applicant's pauperism.—Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

No evidence can be taken on the question of plaintiff's title but only in respect of his pauperism.

Shauran -vs- Abdus Samad, 45 A 548

Jogendra -vs- Durga. 46, C 651

Form of notice to apposite party for hearing evidence of pauperism, Form No. 12, App. H, Sch. I = H. C. Form No. (P) 3.

Rule-7: Procedure at hearing.— (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

The only matter on which evidence may be taken is the question of pauperism or otherwise. No evidence can be taken on the question of plaintiff's title.

Shauran -vs- Abdus, 45 A 548;
Jogendra -vs- Durga, 45 C. 651;
Kalliani -vs- Matahil, 53 IC 239

Rule-8: Procedure if application admitted.—Where the application is 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 a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Rule-9: Dispaupering.—The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

When plaintiff is dispaupered he shall be ordered to pay court-fees. See r. 11

Rule-10: Costs where pauper succeeds.—Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

If the plaintiff succeeds the amount of court fee shall be recoverable by the Government from the party whom the court directs to pay—it may be plaintiff or defendant—but it shall be a first charge on the subject-matter of the suit. Thus, if the plaintiff's suit is decreed and the defendant is directed

to pay the court-fees to Government and costs to the plaintiff and if in execution of the decree for costs by the plaintiff, sale proceeds are realised by attachment and sale of the defendant's property, the Government have a prior claim for payment of the court-fees out of the sale-proceeds.

Gyanoda -vs- Butto, 33 C 1040

Discretion under this rule is unfettered by any rule and the court may pass such order as justice requires.

Rohini -vs- Kusum, 55 C 488

Rule-11: Procedure where pauper fails.—Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

The court shall order the plaintiff, or any person added as a co-plaintiff of the suit to pay the court-fees as were payable by the plaintiff if he had not been permitted to sue as a pauper.

Withdrawal may be with or without leave under Or. 23 rule 1.

Where the suit is settled out of the court and is dismissed at the request of the parties, it is a "failure" within this rule.

Secretary of State -vs- Narayan, 35 B 448

Rule-11A: Procedure where pauper suit abates.—Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Government from the estate of the deceased plaintiff.

Rule-12: Government may apply for payment of court-fees.—

The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or rule 11A.

Rule-13: Government to be deemed a party.—All matters arising between the Government and any party to the suit under rule 10, rule 11, rule 11A, or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Although section 47 of the Code was omitted by Ordinance XLVIII of 1983, the rule has been left untouched.

Rule-14: Recovery of amount of court-fees.—Where an order is made under rule 10, rule 11 or rule 11A the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

Rule-15: Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.—An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

This rule applies to an application which reached the stage mentioned in Or. 33, r. 7.

Rajendra -vs- Tustumoyee, 60 C 630

Rule-16: Costs.—The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

Order XXXIV

SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY

Rule-1: Parties to suits for foreclosure, sale and redemption.—

Subject to the provisions of this Code, all persons having an interest either in the mortgage – security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

See sections 85-90, 92-94, 96, 97 and 99, Transfer of Property Act, 1882 (Act IV of 1882).

The prior mortgagee is not a necessary party in a suit for foreclosure or sale by a puisne mortgagee.

Gurdeo -vs- Chandrika, 36 C. 193;
Debendra -vs- Ramratan, 30 C 599 FB

A puisnee mortgagee is a necessary party to a suit by a prior mortgagee as he is entitled to redeem and if he is not made a party his right to redeem is not affected by the decree.

Hetram -vs- Shadiram, 40 A 407 PC;
Umesh -vs- Zahur, 18 C 164 PC

A puisne mortgagee may sue for sale without making a prior mortgagee a party; if he seeks to redeem a prior mortgage in the suit he may make him a party.

Sayamali vs- Anisuddin, 50 CLJ 152 FB

An outsider who claims a title independently of the rights of the mortgagor and mortgagee should not be made a party.

Radhakunwar -vs- Reoti, 38 A 488 PC

A question of paramount title ought not to be agitated in a mortgage suit.

Tinkari -vs- Narendra, 59 C 548

Rule-2: Preliminary decree in foreclosure suit.—(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree—

- (a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—
 - (i) principal and interest on the mortgage,
 - (ii) the costs of suit, if any, awarded to him, and
 - (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon;

or

- (b) declaring the amount so due at that date; and
- (c) directing—
 - (i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and
 - (ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or

declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Rule 2 was substituted for the original rule by section 4 of the Transfer of Property (Amendment) Supplementary Act, 1929 (Act XXI of 1929)

A sub-mortgagee may sue for foreclosure to the same extent as the mortgagee.

Muthu-vs-Venkata, 20 M 35
Zaki -vs- Deonath, 10 CLJ 470

Form of decree where accounts are directed to be taken, Form No. 3, App. D, Sch. I = H. C. Form No. (J) 30.

Form where the court declares the amount due, Form No. 3-A, App. D, Sch. I = H. C. Form (J) 30 (i).

Rule-3: Final decree in forclosure suit.—(1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

- (a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,
and, if necessary,—
- (b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,
and, also, if necessary,—
- (c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming

through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Sub-rule (1) enables the mortgagor to pay even after the day fixed for payment and before the passing of the final decree. It expressly provides that the mortgagor has to apply for a decree after payment. Sub-rule (3) makes it clear that the mortgage-debt is not only extinguished, but all liabilities are discharged.

Form of decree, Form No. 4, App. D, Sch. I = H. C. Form No. (J) 31.

Rule-4: Preliminary decree in suit for sale.—(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interests.

(3) The Court may in its discretion direct in the decree for sale that if the proceeds of the sale are not sufficient to pay the mortgage debt, the mortgagor shall pay the balance personally.

Powers to decree sale in foreclosure suit.—(4) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any

other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(5) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Sub-rule (3) was inserted by rule made by the Calcutta High Court under Section 122 vide Notification No. 3516-G dated the 3rd February, 1933 published in the Calcutta Gazette dated the 9th February, 1933. Part-I, Page-245.

Sub-rule (3) enables the court, in a case where there are proper materials before it, to order in the decree for sale that if the sale proceeds are insufficient to pay the amount due on the mortgage, the mortgagor shall pay the balance personally.

Sub-rule (1) lays down that the plaintiff has to apply for a final decree.

Suit for sale can only be brought by a simple mortgagee, an English mortgagee, an equitable mortgagee and the holder of a charge under section 100, Transfer of Property Act. The power to pass a decree for sale in a foreclosure suit in the case of an anomalous mortgage is contained in sub-rule (3).

Form of preliminary decree where accounts are directed to be taken, Form No. 5, App. D, Sch. I = H. C. Form No. (J) 32.

Form of decree where court declares the amount due. Form No. 5A, App. D, Sch. I = H. C. Form (J) 32 (i).

Form of decree where subsequent incumbrancers are parties, Form No. 9, 10, 11, App. D, Sch. I = H. C. Form No. (J) 32 (ii).

Rule -5: Final Decree in suit for sale.—(1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the

defendant in this behalf, pass a final decree or, if such decree has been passed, an order—

- (a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,
and, if necessary,—
- (b) ordering him to transfer the mortgaged property as directed in the said decree,
and, also, if necessary,—
- (c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

This rule does not extinguish the right of redemption until the sale is confirmed.

Kalipada -vs- Basanta, 59 C 117

If the mortgagor pays the amount due into court he has to apply for a re-transfer and if he pays the amount after sale and before confirmation he has to apply for an order of retransfer.

Sub-rule (3) provides that if the mortgagor has not paid the amount due, the mortgagee has to apply for a final decree for sale. Where an application for final decree is dismissed for default, a final decree must be passed on a fresh application within the period of limitation, for a suit once decreed preliminarily cannot be dismissed by the same court.

Sriramulu -vs- Sriramulu, 56 M 310

Jodha -vs- Gokaran, 47 A 546

See also Lachmi Narain -vs- Balmukund, 29 CWN 391 PC

Limitation for an application for final decree, see section 181, Limitation Act.

Form of final decree for sale under Or. 34, r. 5 (3). Form No. 6, App. D, Sch. I = H. C. Form No. (J) 33.

Form of final decree in a suit for foreclosure, sale or redemption where the mortgagor pays the amount of the decree, H. C. Form No. (J) 33 (ii).

Rule-6: Recovery of balance due on mortgage in suit for sale.—

Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

A mortgage in Bangladesh does not necessarily import a personal obligation to pay. In such case the question is one of construction of the mortgage instrument and the personal liability may become barred. A decree for sale made in a mortgage suit, unless it contains an express admission as to personal liability, is not in any way an affirmation that such liability exists, or ever has existed.

Pell -vs- Gregory, 52 C 828 FB

The words, "legally recoverable from the defendant otherwise than out of the property sold," mean that the balance must be a balance which the mortgagee is not precluded by the terms of the mortgage from realising otherwise than out of the property sold, or a balance which is not barred by limitation.

Musaheb -vs- Inayatullah, 14 A 513

Rahamat -vs- Abdul 34 C 672

If a mortgagee dies after preliminary decree, a succession certificate is necessary before a personal decree can be passed.

Sahadev -vs- Sakhawat, 12 CWN 145

Abdul -vs- Satya 35 C 767

Form of decree under this rule, Form No. 8, App. D, Sch. I = H. C. Form No. (J) 34

Rule-7: Preliminary decree in redemption suit.—(1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage security, together with interest thereon; or

(b) declaring the amount so due at that date;

and

(c) directing—

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interests, the defendant shall be entitled to apply for a final decree—

- (a) in the case of mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or
- (b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

From of decree, Forms Nos. 7-7C, App. D, Sch. I = H. C. Form No. (J) 35-
(J) 35 (iii)

Rule-8: Final decree in redemption suit.—(1) Where, before a final decree debaring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from his under sub rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order-

- (a) ordering the defendant to deliver up the documents referred to in the preliminary decree,
- and, if necessary,—
- (b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,
- and, also, if necessary,—
- (c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

- (a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or
- (b) in case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

Form of decree, Form No. 7D, 7E, 7F, App. D, Sch. I = H. C. Form Nos. (J) 31 (i), (J) 33 (i), (J) 33 (ii).

Rule-8A: Recovery of balance due on mortgage in suit for redemption.—Where the net proceeds of any sale held under the last proceeding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.

Form of decree, Form No. 8, App. D, Sch I = H. C. Form No. (J) 34.

Rule-9: Decree where nothing is found due or where mortgagee has been overpaid.—Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him: and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

This rule applies to a case where nothing is found due to the mortgagee or when he has been overpaid.

Rule-10: Costs of mortgagee subsequent to decree.—In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

As to conduct disentitling mortgagee to costs, see

Kuppuswami -vs- Zamindar, 27 M 341

Rule-11: Payment of interest.—In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows namely:—

- (a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage-
 - (i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,
 - (ii) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems reasonable from the date of the preliminary decree, and
 - (iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage money,—at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum; and
- (b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable-
 - (i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and
 - (ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges, and expenses as may be payable under rule 10.

Rule-12: Sale of property subject to prior mortgage.—Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

See section 96, Transfer of Property Act.

Rule-13: Application of proceeds.—(1) Such proceeds shall be brought into Court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

Persons “interested in the property sold” include subsequent mortgagees according to their respective priorities.

Padmanabh -vs- Khemu, 18 B 684

Rule-14: Suit for sale necessary for bringing mortgaged property to sale.—(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended.

This rule does not apply to cases where the sale takes place in execution of a decree for money upon a claim not arising out of a mortgage.

Jagadish -vs- Bhubaneshwar, 27 CWN 37

A sale held in contravention of this rule is not void but voidable.

Asutosh vs- Behari, 35 C 61 FB



Rule-15: Mortgages by the deposit of title deeds and charges.—All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to charge within the meaning of section 100 of the Transfer of Property Act, 1882.

Order XXXV**INTER PLEADER**

Rule 1: Plaint in interpleader-suits.—In every suit of interpleader the plaintiff shall, in addition to other statements necessary for plaints, state—

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

Form of plaint, App A, Pleadings, No. 40.

Rule 2: Payment of thing claimed into Court.—Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Rule 3: Procedure where defendant is suing plaintiff.—Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Rule 4: Procedure at first hearing.—(1) At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or
- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

- (a) that an issue or issues between the parties be framed and tried, and
 - (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,
- and shall proceed to try the suit in the ordinary manner.

Rule-5: Agents and tenants may not institute interpleader-suits.—Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

ILLUSTRATIONS:

- (a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.
- (b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Rule-6: Charges for plaintiff's costs.—Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

Order XXXVI

SPECIAL CASE

Rule-1: Power to state case for Court's opinion.—(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

- (a) 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
- (b) some property, moveable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Rule-2: Where value of subject-matter must be stated.—Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Rule-3: Agreement to be filed and registered as suit.—(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Rule-4: Parties to be subject to Court's jurisdiction.— Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Rule-5: Hearing and disposal of case.—(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them,
- (b) that they have a *bona fide* interest in the question stated therein, and
- (c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

Order XXXVII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

Rule-1: Application of Order.—This order shall apply only to the High Court Division and to the District Court.

Rule-2: Institution of summary suits upon bills of exchange, etc.— (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

- (a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and
- (b) for such subsequent interest, if any, as the Court may order under section 34 of this Code; and
- (c) for such sum for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

- (3) A decree passed under this rule may be executed forthwith.

This is an enabling rule. Plaintiff has the option to bring a summary suit or a suit in the ordinary manner.

Form of summons, Form No. 4, App. B, Sch. I = H. C. Form No. (P) 7.

Rule-3: Defendant showing defence on merits to have leave to appear.—(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

As a rule leave should be granted unconditionally if a *prima facie* case is shown or a triable issue is raised; but where *bona fides* is doubted leave should be conditional.

Peria -vs- Subramania, 1924 M 612

Rule-4: Power to set aside decree.—After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Rule-5: Power to order bill, etc., to be deposited with officer of Court.—In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Rule-6: Recovery of costs of noting non-acceptance of dishonoured bill or note.—The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Rule-7: Procedure in suits.—Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

Order XXXVIII

ARREST AND ATTACHMENT BEFORE JUDGMENT

ARREST BEFORE JUDGMENT

Rule-1: Where defendant may be called upon to furnish security for appearance.—Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

- (a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—
 - (i) has absconded or left the local limits of the jurisdiction of the Court, or
 - (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or
 - (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or
- (b) that the defendant is about to leave Bangladesh under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

As to the principles to be applied in the exercise of the power under this rule, see rule 284, C. R. & O and para 30, Civil Suit Instructions Manual.

The affidavit filed in support of an application under this rule should be critically examined.

As to compensation for obtaining arrest on insufficient grounds, see section 95 Form of warrant, Form No. 1, App. F, Sch. I = H. C. Form No. (P) 14.

Rule-2: Security.—(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last proceeding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum or money which the defendant may be ordered to pay in the suit.

If the defendant can give the security himself, he will give it for the claim by deposit of money or property. Otherwise he will get some one to go bail for his appearance.

Goldberg -vs- Sarojini. 56 C 700

Form of security, Form No. 2, App. F, Sch. 1.

Rule-3: Procedure on application by surety to be discharged.—(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summon or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

After discharging the surety the court should give some time to the defendant to find another surety without ordering his immediate arrest .

Gopal -vs-E. 1929 L 163

Form of summons to defendant, Form No. 3, App. F, Sch. I = H. C. Form No. (P) 15.

Rule-4: Procedure where defendant fails to furnish security or find fresh security.—Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty Taka:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Form of order for committal, Form No. 4, App. F, Sch. I.

ATTACHMENT BEFORE JUDGMENT

Rule-5: Where defendant may be called upon to furnish security for production of property.—(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, 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 satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

As to the principles to be applied in the exercise of the power under this rule, see rule 284, C. R. & O and para 30, Civil Suit Instructions Manual.

In order to apply this rule, the court must be satisfied (1) not only that the defendant is about to dispose of his property or about to remove it from its jurisdiction, but (2) also that his object is to obstruct or delay the execution of any decree that may be passed, and a party must have definite evidence to satisfy the court and general or vague allegations that the defendant is about to remove property are insufficient.

Chandrika -vs- Hira, 73 IC 721

Badri -vs- Chokke, 48 A 510

Khoka -vs- Ramchandra, 44 IC 240

Senaji -vs- Pannaji, 46 B 431

Unimarine S.A. Panama -vs- Bangladesh, 31DLR (AD) 112

Merely because the defendant attempted to sell some property pending the suit, it does not follow that he had the intention contemplated in the rule.

Nowroji -vs- Deccan Bank Ltd. 45 B 1256

The defendant must have a present intention of disposing of property with the intent to delay or obstruct execution. The mere fact that in the past he mortgaged property or otherwise disposed of it would be insufficient.

Manmatha -vs- Nagendra 1926 C 855

Durga -vs- Nalin, 38 CWN 771

Under this rule the court may direct either to furnish security, or (b) to appear and show cause why he should not furnish security. It may also in the order direct a conditional attachment of property. But a conditional order of attachment cannot be passed under sub-rule (3) without an accompanying order either to furnish security or to show cause.

Abdul -vs- Nur 57 IC 907

A conditional order of attachment requires to be made absolute and it may be passed after the issue of notice under Or. 38 r. 5 (1) and failure to furnish security or to show cause.

Court cannot attach before judgment property outside the local limits of the jurisdiction.

Surendra -vs- Bansi, 22 CWN 160

Zubeda -vs- Komanna, 88 IC 430

The attachment of the property can be effected even after passing of the decree.

Mohiuddin Molla -vs- Province of East Pakistan, 14 DLR (SC) 112

The Court's power under this rule is an extraordinary power whereby a party in the suit may be prevented from use and enjoyment of his own properties before any decree has at all been passed against him, and when there is no certainty that a decree will at all be passed against him. This power must, therefore, be used with utmost caution and should be sparingly exercised.

Shamsul Huda -vs- Mozammel Huq, 27 DLR 256

Form of order to call for security with or without conditional attachment, Form No. 5, App. F, Sch. I = H. C. Form No. (P) 16;

Form of security for the production property, Form No. 6, App. F, Sch. I;

Form of attachment in proof of failure to furnish security, Form No. 7, App. F, Sch. I = H. C. Form No. (P) 17.

Rule-6: Attachment where cause not shown or security not furnished.—(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Sub-rule (1) of the rule is applicable after issue of notice under sub-rule (1) of Order 38, rule 5. There can be no order of attachment before judgment under this rule until after the defendant has either failed to furnish security or to show cause.

Abdul -vs- Nur, 57 IC 907

Karnafully Traders Ltd. -vs- Joya Engineering Corporation 25 DLR 428

Where a court issues notice upon the defendant to show cause why an attachment should not issue before judgment and at the same time directs him not to part with properties in any way such order is not in accordance with Or. 38, r. 5.

Mahendra -vs- Gurudas, 23 CLJ 392

Form of attachment before judgment on proof of failure to furnish security, Form No. 7, App. F, Sch. I = H. C. Form No. (P) 17.

Rule-7: Mode of making attachment.—Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

The mode of attachment is the same as in the attachment after decree and fresh attachment after decree in unnecessary if a conditional attachment has been made absolute.

Naresh -vs- Jogesh, 37 CWN 1164

Rule-8: Investigation of claim to property attached before judgment.—Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

The same procedures as provided in Or. 21, rr. 58-63 are to be followed.

Sashi vs- Nanda, 48 CLJ 594

Rule-9: Removal of attachment when security furnished or suit dismissed.—Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

When a suit is dismissed, either on merits or for default, the attachment ceases automatically although no formal order withdrawing the attachment has been recorded. It is not revived by the reversal of the decree in appeal or by restoration.

Abdul -vs- Amin, 45 C 780

Sasirama -vs- Meherban, 13 CLJ 243

Sailes -vs- Jai, 87 IC 756

So also is the case when the suit abates

Jyotish -vs- Hur. 47 CLJ 282

Rule-10: Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.—Attachment before judgment shall not affect the rights, existing prior to the attachment, 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.

A decree-holder is entitled to have the property attached and sold in spite of an attachment before judgment by the plaintiff and the latter has no right of priority.

Bisheswar -vs- Ambika, 37 A 575

Sewdut -vs- Sreekanta, 10 CWN 634

Rule-11: Property attached before judgment not to be re-attached in execution of decree.—Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Fresh attachment is not necessary in execution after decree when there is an attachment before judgment, but, in order to render fresh attachment unnecessary a conditional attachment under Or. 38, rule 5(3) is required to be made absolute.

Naresh -vs- Jogesh, 37 CWN 1164

Although fresh attachment after decree is not required, an application for execution under Or. 21, rule 11 must be filed as usual.

Rule-12: Agricultural produce not attachable before judgment.—

Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Rule-13 Small Cause Court not to attach immoveable property.— Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immoveable property.

Order XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

TEMPORARY INJUNCTIONS

Rule-1: Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

(2) In case of disobedience, or of breach of the terms of such temporary injunction or order, the Court granting the injunction or making such order may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(3) The property attached under sub-rule (2) may, when the Court considers it fit so to direct, be sold and, out of the proceeds, the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto.

Sub-rules (2) and (3) were added by rule made by the Calcutta High Court under section 22, vide Notification No. 3516-G dated the 3rd February, 1933 published in the Calcutta Gazette dated the 9th February 1933 Part-1, Page-245.

As to the principles governing the granting of temporary injunction, see para 31, Civil Suit Instructions Manual and rule 273, C.R. & O. See also instructions in Chapter XLV of the Report of the Civil Justice Committee reproduced in the Civil Suit Instructions Manual, Pages-42-45.

An injunction under this rule cannot be issued to a court but only to a party

Sant -vs- Ishar, 51 IC 108

No injunction against a person not a party to the suit can be granted. Court has no power to issue a temporary injunction to restrain the defendant from executing a decree lawfully obtained by him.

Varada -vs- Narsinha, 92 IC 615

In granting temporary injunction the court will first see that there is a bonafide contention between the parties, and then on which side, in the event of obtaining a successful result of the suit, will be the balance of inconvenience if the injunction do not issue bearing in mind the principle of retaining immovable property in status quo.

Begg Dunlop & Co. -vs- Satish, 46 C 1001

Krishna -vs- Hem, 21 CLJ 462

Durgadas -vs- Nalin, 61 C 814

Three well-established principles governing the grant of temporary injunction are, first, the plaintiff must establish a prima facie case; secondly, it must be shown that the plaintiff will suffer irreparable injury if the injunction prayed for is not granted; and, lastly, the balance of convenience lies in favour of the plaintiff and in favour of granting the temporary injunction prayed for.

Mosammat Aymun Nassa -vs- Md. Obaidul Haque, 35 DLR 25

Abdul Jalil Munshi -vs- Abu Bakar Siddique, 35 DLR (AD) 43

Election tribunals cannot be regarded as "civil courts" as contemplated under the Code of Civil Procedure. As such, the Election Tribunals are not competent to grant temporary injunction under Order 39 of the Code.

Md. Sharifulla -vs- Election Tribunal, 31 DLR 119

Form of temporary injunction, Form No. 8, App. F, Sch I. = H. C. Form No. (P) 18.

Rule-2: Injunction to restrain repetition or continuance of breach.— (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

The words, "or other injury of any kind," in sub-rule (1) mean any legal injury or wrongful act other than that arising from breach of contract, e.g., trespass to property, or cases of tort.

Rule-3: Before granting injunction Court to direct notice to opposite party.—The Court shall in all cases, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, except in the case of sale of goods for default in payment, at the stipulated time, of a debt in respect of which the goods were pledged with any bank, the Court may, where it appears that the object of granting injunction would be defeated by the delay, dispense with such notice.

As a rule notice must be given to the opposite party unless the matter is so urgent that injunction would be defeated by the delay or irreparable mischief might ensue if injunction was delayed.

Hari Pandurang -vs- Secy of State, 27 B 424
Dr Ahad Ali Khan -vs- Enayet Ullah Mondal, 16 DLR 4
Gaisuddin Ahmed -vs- Province of East Pakistan, 17 DLR 611
Abu Mozaffar Mutwalli -vs- Sasanka Sekhor 18 DLR 166

See also para 31, Civil Suit Instructions Manual.

Rule-4: Order for injunction may be discharged, varied or set aside.—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.

Rule-5: Injunction to corporation binding on its officers.—An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

INTERLOCUTORY ORDERS

Rule-6: Power to order interim sale.—The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Rule-7: Detention, preservation, inspection, etc., of subject-matter of suit.—(1) The Court may, on the application on any party to a suit, and on such terms as it thinks fit,—

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

Under this rule, the court may make an order for inspection of a house to determine the alleged damage or alleged injury to it or to determine its age or to prepare an inventory or to produce the property pledged.

Dhoroney -vs- Radha, 24 C. 117

Amjad -vs- Ali, 15 CWN 353

Amulya -vs- Ananda, 37 CWN 143

Giribala -vs- Prokash, 49 CLJ 484

Jitendra -vs- Ashoke, 30 CLJ 64

Rule-8: Application for such orders to be after notice.—(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

Rule-9: When party may be put in immediate possession of land the subject-matter of suit.—Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, and other party to the suit claiming to have an interest in such land or tenure may, 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 land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Rule-10: Deposit of money, etc. in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

This rule applies only when the party making the admission holds the property or other thing which the party in whose favor the order is made, seeks to have delivered to him.

Raja Parthasarathi -vs- Raja Rangiah, 27 M. 168.

5/12/97

Order XL *90*

APPOINTMENT OF RECEIVERS

Rule XL. Appointment of receivers.—(1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

A receiver may be appointed even in proceedings other than a suit.

Asad -vs- Mohammad, 43 C 986

“Just and convenient” mean that the court should appoint a receiver for the protection of property or prevention of injury, according to legal principle, and not because the court simply thinks convenient to do so.

Habibulla vs- Abtia, 23 CLJ 567

Hemendra -vs- Prakash, 35 CWN 1066

As to the principles to be applied in the exercise of the power,

Benoy -vs- Satis, 55 C 720

Prosonomoyi -vs- Beni, 5 A 556

Satya -vs-. Rani, 18 CWN 537;

Alkama -vs- Syed, 29 CWN 836

The receiver is the servant of the Court.

Manick -vs- Surrat, 22 C 648

The receiver is a public officer

Jagadis -vs- Dehebndra, 58 C 850

Since the receiver is merely an officer of the court, he cannot sue or be sued without the leave of the court appointing him.

Miller -vs- Ramranjan, 10 C. 1014

A receiver appointed with power under clause (d) cannot be sued without notice under section 80.

Jagadis -vs- Debendra, 58 C 850

Property in the hands of a receiver cannot be attached without previous leave.

Khan -vs- Ali, 16 B 577

“Remove any person” refers to a person other than the receiver. It refers to persons in possession of the property prior to the order appointing a receiver.

Sripati -vs- Bibhuti, 53 C 319

Form of appointment of receiver, Form No. 9, App. F, Sch. I = H. C. Form No. (J) 24.

~~Rule-2: Remuneration~~—The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

~~Rule-3: Duties~~.—Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

The court has a discretion to appoint receiver without security, but it should be done in most exceptional cases.

Brij Indar -vs- Jai Indar 36 CWN 882 PC

Form of bond, Form No. 10, App. F, Sch. I = H. C. Form No. (M) 25.

Rule-4: Enforcement of receiver's duties.—Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his willful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

The provision for attachment implies that it is the only way for enforcement of receiver's liability and an order for arrest or imprisonment is illegal.

Gurumurthe -vs- Ramaswami, 1931 M 760

Rule-5: When Collector may be appointed receiver.—Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

Order XLI

APPEALS FROM ORIGINAL DECREES

Rule-1: Form of appeal. What to accompany memorandum.—(1)

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.—(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Memo. of appeal must be presented in open court. It cannot be sent by post. See also rules 10 and 286, C. R. & O. Section 5, Limitation Act applies in case of an appeal but an appeal presented after expiry of the period of limitation should not be admitted without notice to all parties concerned.

Pleaders presenting memorandum of appeal must append a certificate, see rr. 286 - 288 C.R. & O. and 292 - 306, C. R. & O.

Rule-2: Grounds which may be taken in appeal.—The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

The appellant must not be permitted to make out a new case or a case different from and inconsistent with the case set up in the lower court.

Indur -vs- Radha, 19 C 507 PC

The question of limitation may be allowed to be argued though not raised before when the point arises on the face of the plaint and no question of fact has to be enquired into.

Balaram -vs- Mangta, 34 C 941 SB

✓ **Rule-3: Rejection or amendment of memorandum.**—(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

✓ **Rule-4: One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.**—Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs, or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

The object of rule 4 is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court may reverse or vary the decree in favor of all the parties who are in same interest as the appellant.

Ratanlal -vs- Lalmon, 1970 SC 108

Appeal by one of several plaintiffs is competent.

Mohabir -vs- Jage, 1971 SC 742

STAY OF PROCEEDINGS AND OF EXECUTION

Rule-5: Stay by Appellate Court.—(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.—(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay ; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

This rule applies to stay by appellate court of execution of a decree appealed from or stay by the trial court of execution of an appealable decree.

An appellate court may stay proceedings in execution of a decree when an appeal has been preferred from the decree, but it has no jurisdiction to stay execution of a decree when an appeal is preferred from an order, e.g., an order rejecting an application under Order 9, rule 13.

Bhagwat -vs- Sheogolam, 31 C 1081

Appellate Court has no jurisdiction to stay execution on the assurance of a pleader that an appeal will be filed and at that stage the application should be made under sub-rule (2) to the Court which passed the decree and without unreasonable delay:

Purshotan -vs- Hargu, 43 A 131
Charturbhuj -vs- Basdeo, 25 CWN 928

An order by an appellate Court staying execution becomes operative the moment it is passed and a sale held before communication of the order to the executing court is invalid.

Hukam -vs- Kamalanand, 33 CWN 927

Where after filing of appeal no order staying execution of the decree was made, the executing court on its own can not stay execution of decree which will be beyond its jurisdiction.

Mrs. S. Nurun Nahar Begum -vs- Secy, Defence, 28 DLR 309

Court making on order under this rule can cancel or vary it at any time.

Amir vs- Ahmed, 9 A 36

Form of security bond, Form No. 2, App. G, Sch. I=H. C. Form No. (M) 26.

Rule-6: Security in case of order for execution of decree appealed from.—(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment- debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

This rule applies only where (1) an order has been made for the execution of the decree or (2) an appeal is pending from that decree.

The appellate court can not pass an order under this rule for stay until an order has been made for the execution of the decree.

Janardan -vs- Nilkanth. 25 B 583

Sub-rule (2) makes it clear that the power of staying sale of immovable property is exercisable by the court which passed the decree.

Har Narain -vs- Sadhu, 54 A 874

Form of security bond, Form No. 3, App. G, Sch. I=H. C. Form No. (M) 27.

Rule-7: Repealed by A. O., 1937

Rule-8: Exercise of powers in appeal from order made in execution of decree.—The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

This rule applies to cases where a person does not object to a decree but appeals from an order passed in execution of that decree.

Pasupati -vs- Nanda 28 C 734

PROCEDURE ON ADMISSION OF APPEAL

Rule-9: Registry of memorandum of appeal.—(1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.—(2) Such books shall be called the Register of Appeals.

Form of Register of appeal, Form No. 15, App. H, Sch. I = H. C. Form Nos. (R) 6(i), (R) 6(ii), (R) 6(iii).

Rule-10: Appellate Court may require appellant to furnish security for costs. Where appellant resides out of Bangladesh. (1)

The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of Bangladesh, and is not possessed of any sufficient immovable property within Bangladesh other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

This rule applies not only to appeals from substantive decrees, but also to appeals from interlocutory orders under section 104.

Dagdu -vs- Chandrabhan, 24 B 314

Form of security of costs of appeal, Form No. 4, App. G, Sch. I = H.C. Form No. (M) 28.

Rule-11: Power to dismiss appeal without sending notice to Lower Court.—(1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

Dismissal of an appeal under sub-rule (1) is a decree.

Altap -vs- Jamsur, 30 CWN 334

A summary dismissal under sub-rule (1) does not dispense with the writing of a judgment in accordance with Or. 41, r.31 which controls this rule.

Surendra -vs- Raghunath, 27 CWN 501;

Hardasi -vs- Gadadhar, 43 CLJ 499

Bipin -vs- Jogendra, 65 IC 479

Rule-12: Day for hearing appeal.—(1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

See also rule 291, C.R. & O.

Rule-13: Appellate Court to give notice to Court whose decree appealed from.—(1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to Appellate Court.—(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree appealed from.—(3)

Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

For procedure for transmission of record from the Record Room, see rule 454, C. R. & O.

Form of notice, Form No. 5, App. G, Sch I;

Form of letter advising dispatch of record, H. C. Form No. (M) 11;

Form of letter to accompany record, H. C. Form No. (M) 12.

Rule—14: Publication and service of notice of day for hearing appeal.—(1)

Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent in the manner provided for the service on a defendant of a summons to appear and answer. Simultaneously with the issue of such summons a copy of the notice shall be served by registered post with acknowledgement due addressed to the respondent and all the provisions applicable to summons upon a defendant in a suit, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.—(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3) It shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on its motion, or *ex parte*, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of or at any proceeding subsequent to the decree of that Court or on the legal representatives of any such respondent:

Provident that—

- (a) The Court may require notice of the appeal to be published in any newspaper or newspapers as it may direct.
- (b) No such order shall preclude any such respondent or legal representative from appearing to contest the appeal.

Sub-rule (3) was inserted by rule made by the Calcutta High Court under section 122 by Notification No. 10428-G dated the 25th July, 1928 published in the Calcutta Gazette dated the 2nd August, 1928 Part-I, Page-1643.

Rules relating to service of notice, etc., issued by the High Court Division, see rules 86-90, C. R. & O.

Form of notice to respondent, Form No. 6, App. G, Sch. I =H.C. Form No. (P) 51. Form of report to the High Court Division of service of notice to respondent, H. C. Form No. (J) 42.

Rule-15. Contents of notice.—The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

15A. Where, after admission of an appeal in the High Court Division, the rules of the High Court Division require the appellant to take any steps in the prosecution of the appeal, and the appellant fails to take such steps within the time allowed or extended under the said rules, the Court, may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit.

This rule was added by the Dhaka High Court vide notification No. 4497 G dated the 6th June, 1952, published in the Dhaka Gazette, 1952, Part-1 Page-264.

PROCEDURE ON HEARING

Rule-16: Right to begin.—(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Rule-17: Dismissal of appeal for appellant's default.—(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing appeal *ex parte*.— (2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Where the appellant does not appear the court is authorized to dismiss the appeal for default, but it has no power to decide the appeal on merits in his absence.

Taher -vs- Otaruddi, 56 C 412

Rule-18: Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.—Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

Rule-19: Re- admission of appeal dismissed for default.—(1) Where an appeal is dismissed under rule 11, sub-rule (2), or rule 15A or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re- admit the appeal on such terms as to costs or otherwise as it thinks fit.

(2) Provisions of section 5 of the Limitation Act, 1908 shall apply to applications under sub-rule (1).

Rule-20: Power to adjourn hearing and direct persons appearing interested to be made respondents.—Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

This rule applies not only to case where the court itself discovers the defect but also to cases where the appellant applies for addition of party.

Chirajdin -vs- Samanda, 1926 L 689

The power of the appellate court to make a person who was a party to the proceedings in the court below to be added as a party is not affected by any rule of limitation.

Girish -vs-Sasi, 33 C 929

Form of notice to a party to a suit not made a party to the appeal, Form No. 7, App. G, Sch. I = H. C. Form No. (P) 52.

Rule-21: Re- hearing on application of respondent against whom *ex parte* decree made.—Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re- hear the appeal, and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re- hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Rule-22: Upon hearing respondent may object to decree as if he had preferred separate appeal.—(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross- objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of objection and provisions applicable thereto.—(2) Such cross- objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

If no cross-objections are filed at all by a respondent, the appellate court has no power to grant any relief to him in a case where the granting of such relief is not necessarily incidental to the relief granted to the appellant.

Casperz -vs- Kishori, 23 C 922 PC

Cross-objection raising a question as between co-respondents inter se is not permitted.

Co-operative H. Bank -vs- Surendra, 26 CWN 263

Form of memo. of cross-objection, Form No. 8, App. G, Sch. I.

✓ **Rule-23: Remand of case by Appellate Court.**—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

The evidence recorded in the original trial can be used during the trial after remand. There can be no remand under this rule unless the following conditions exist:—

- (a) the disposal of the suit, i.e., the entire suit and not a portion of it, by the lower court,
- (b) disposal must be on a preliminary point; and
- (c) reversal of the decree by the appellate court.

Even if a suit is decided on a preliminary point, it is further necessary to find that the preliminary point has been wrongly decided before a remand can be made.

Banwari -vs- Samman 11 A 488
Jawahir -vs- Fateh, 1926 Patna 514
Gaindo -vs- Radhe 1932 L 219
Haliballah -vs- Latta, 34 A 612

Where a suit is decided on several preliminary points the appellate court should not make an order of remand after deciding only one of the preliminary points. All preliminary points should be decided.

B.N. Railway -vs- Behari 52 C. 783

Where all evidence has been duly placed before the trial court and it has decided the suit on merits on the several issues involved, the appellate court has no power to remand. If it does not agree with the decisions, it must come to proper findings of its own, but it is a shirking of duty and entirely wrong to send the case on remand.

Pramatha -vs- Nagendra, 33 CWN1211
Muzhar -vs- Bodha, 17 A 112 PC
Injad -vs- Mohini, 27 CWN 1025

A remand order should not be lightly made if the evidence on the record is sufficient for the appellate court to decide the question itself.

Promotho Nath Chowdhury -vs- Kamir Mandal, 17 DLR SC 392

A case should not be remitted for a new trial to enable a party to prove the existence of an agreement in writing which was essential to his case and which he had failed to do during the hearing.

Emanuel Grech -vs- Antonio Grich, 6 DLR PC 598

Remand cannot be allowed to bring a position which would change the nature and character of the suit.

Haran Chandra Daradi -vs- Ejhar Molla 36 DLR 41

The appellate court has also inherent power (section 151) to remand a suit for the ends of justice even though a suit has not been disposed of on a preliminary point.

Ghuznavi -vs- Allahabad Bank, 44 C 929 FB
Brij Inder -vs- Kanshi, 45 C 94 PC
Bhairab -vs- Kali, 37 CLJ 491

Rule-24: Where evidence on record sufficient, Appellate Court may determine case finally.—Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Where all the evidence is on the record, the appellate court is competent to determine the suit finally although the suit has been decided on a preliminary point. There is no need for a remand under Or. 41, r. 23

Bandi -vs- Madalapalli, 3 M 96

The rule does not enable an appellate court to declare a right in favor of a party where no issue has been framed on the point, and the right has not been set up in the lower court.

Official Trustee -vs- Krishna, 12 C 239 PC

Rule-25: Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

Under this rule specific issues are sent to the trial court for findings and not to retry or decide the case. After the return of the findings, the appeal is to be heard under Or. 41, r. 26.

If the appellate court is of opinion that a particular issue should be framed and tried or that certain findings of fact are necessary for the proper disposal of an appeal and that further evidence should be taken on these points, the proper procedure is to make an order under this rule and not remand the whole case.

Mansur Ali -vs- Jamiran, 44 CLJ 101

Rakhit -vs- Puddo 9 CWN 54

Krishna vs- Manindra, 1926 C 954

See also rules 308 and 309, C. R. & O.

Rule-26: Findings and evidence to be put on record. Objections to finding.—(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

Determination of appeal.—(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Rule-27: Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

This rule should be read with rules 28 and 29. The admissibility of additional evidence under this rule depends not upon the relevancy or materiality of the evidence sought to be admitted or upon the fact whether or not the applicant had an opportunity of adducing it at some earlier stage, but upon whether or not the appellate court requires the evidence to enable it to pronounce judgment or for any other substantial cause.

In re Premlal, 21 C 484

It must be the court that requires the additional evidence though the defect may be pointed out by a party or a party may move the court to supply the defect.

The legitimate occasion for the use of additional evidence is when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not when a discovery is made of fresh evidence.

Parsotim -vs- Lalmohon, 35 CWN 786 PC

Kessowji -vs- G. I. P R. 11 CWN 721 PC

Bank of Bengal -vs- Lucas, 54 C 185

The essential condition in which the appellate court may allow additional evidence is that the evidence was not available at the trial and that reasonable diligence would not have made it available.

Kesar Mal, -vs- N.K.V. Valiappa Chetiar 7 DLR PC 1

Production of additional evidence in appellate court is permissible when it was not available to the party in spite of reasonable diligence and also that it was likely to have a determining influence on the court.

Cecil Weldon Andrew -vs- Helen Andrew 9 DLR 682 PC

Order 41 rule 27 provides that the party to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate

court. This is a general provision prohibiting admission of additional evidence at the appellate stage. This general provision has been relaxed in certain circumstances. One such circumstance is that if the court from whose decree the appeal has been preferred has refused to admit the evidence, which is sought to be admitted.

Ibrahim -vs- Abbas Sheikh 16 DLR 65
See also Abdul Latif -vs- Ayesha Begum, 25 DLR 108
Montar Ullah -vs- Farat Ullah 26DLR 31
Azizur Rahman -vs- The Barma Oil Co. 13 DLR 458
Sunil Krishna Biswas -vs- Kalilash Ch. Sen, 36 DLR, AD, 220

Rule-28: Mode of taking additional evidence.—Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Rule-29: Points to be defined and recorded.—Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

JUDGMENT IN APPEAL

Rule-30: Judgment when and where pronounced.—The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

A definite date should be fixed for delivery of judgment if not pronounced after conclusion of argument and notice of the date should be given to the parties or pleaders. The practice of reserving judgment without fixing a certain day for its pronouncement is not permissible.

See also para 29 (1) and (2), Civil Suit Instructions Manual.

Rule-31: Contents, date and signature of judgment.—The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;

(c) the reasons for the decision; and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

See also rules 136-153, C. R. & O. and para 29, Civil Suit Instructions Manual.

It is imperative that the appellate court should state the reasons for its decision.

Santishwar -vs- Lakhikanta, 13 CWN 177

Reasons should be stated not only when the decree is set aside or varied but even when it is confirmed.

Rani -vs- Brojo, 25 C 97

Nitya -vs- Nani, 35 CWN 660

The court of appeal should have indicated briefly the reasons for dismissing an appeal.

Mohd. Sagir Bhatti -vs- Federation of Pakistan, 10 DLR SC 169

The appellate court whether reversing or affirming a decree of the trial court must arrive at its own independent findings on the issues involved in the case.

Maheruddin Khair -vs- Jogendra Kishore, 27 DLR 398

Law enjoins that the appellate court must give reasons whether affirming or reversing a finding and it is more so, when the appellate court is reversing it.

Md. Ibrahim -vs- Md. Alauddin, 27 DLR 413

Only to say that "the appeal is dismissed with costs," or "appeal rejected," "I see no reason to differ from the finding of the lower court" is no judgment in accordance with law. In such case the decree should be set aside and the case remanded for disposal of the appeal according to law.

Rami -vs- Brojo, 25 C. 97

Saharulla -vs- Bangoo, 13 CWN 143

Saravana -vs- Sessa, 31 M. 469 FB

Rule-32: What judgment may direct.—The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Rule-33: Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

ILLUSTRATION

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The appellate Court decides in favor of X. It has power to pass a decree against Y.

By this rule, the appellate court has been given the fullest power to do complete justice between the parties, though the appeal does not extend to the whole of the decree and though some of the parties appeal and others do not. The court has ample power to pass such order as may be necessary for the ends of justice and when so doing a party who has not appealed may be benefited by the order.

Naresh -vs- Hyder, 49 CLJ 83
Tricamdass -vs- Gopinath, 44 C 759 PC

But the power must be exercised in the interest of and for the furtherance of justice, and not as a mode of evading other statutory rules and orders.

Bhutnath -vs- Sashimukhi, 30 CWN 885

Rule-34: Dissent to be recorded.—Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

DECREE IN APPEAL

Rule-35: Date and contents of decree.—(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.—Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

See also rules 154 to 163, C. R. & O.

Rule-36: Copies of judgment and decree to be furnished to parties.—Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Rule-37: Certified copy of decree to be sent to Court whose decree appealed from.—A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree 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 register of civil suits.

See also rule 312, C. R. & O.

Order XLII

APPEALS FROM APPELLATE DECREES

Rule-1: Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

Order XLIII

APPEALS FROM ORDERS

Rule-1: Appeals from orders.—An appeal shall lie from the following orders under the provisions of section 104, namely:—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (i) an order under rule 57 of Order XXI, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue;
- (ii) an order under rule 60 of Order XXI releasing a property from attachment;
- (iii) an order under rule 61 of Order XXI disallowing a claim to property attached;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 2, rule 4 or rule 7 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than the High Court Division refusing the grant of a certificate under rule 6 of Order XLV;
- (w) an order under rule 4 of Order XLVII granting an application for review.

Rule-i(a) has been inserted by rule made by the Calcutta High Court under section 122 vide Notification No. 3516-G, dated the 3rd February, 1933, published in the Calcutta Gazette dated the 9th February 1933, Part-1, Page- 245,

Rule-2: Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from orders.

This rule should be read with section 104 which enumerates other appealable orders.

In view of clause (a) no appeal lies against an order of an appellate court returning a “memo of appeal” for presentation to the proper court—an appeal lies when a “plaint” is returned.

Raghunath -vs- Shamo, 31 C. 344
Nuruddin -vs- Pran 40 A 659

Order XLIV

PAUPER APPEALS

Rule-1: Who may appeal as pauper.—Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Procedure on application for admission of appeal.—Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

The proviso is imperative and the appellant must satisfy the court on the points stated therein.

Vidyabanti -vs- Jai, 1925 L 391

Form of application, Form No. 10, App. G, Sch I

Form of notice of appeal, Form No. 11, App. G, Sch I = H. C. form No. (P) 50.

Rule-2: Inquiry into pauperism.—The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the order of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

Order XLV

APPEALS TO THE APPELLATE DIVISION

Rule-1: “Decree” defined.—In this Order, unless there is something repugnant in the subject or context, the expression “decree” shall include a final order.

Rule-2: Application to Court whose decree complained of.—Whoever desires to appeal to the Appellate Division shall apply by petition to the Court whose decree is complained of.

Limitation is six months from the date of decree under article 179, Limitation Act. Under section 12, Limitation Act the time required for obtaining copy of judgment is to be excluded.

Rule-3: Certificate as to value or fitness.—(1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to the Appellate Division.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Rule-4: Consolidation of suits.—For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

“Judgment” under this rule refers to the judgment appealed against and not the judgment of the trial court.

Rule-5: Remission of dispute to Court of first instance.—In the event of any dispute arising between the parties as to the amount of value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the Appellate Division, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court

of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Rule-6: Effect of refusal of certificate.—Where such certificate is refused, the petition shall be dismissed.

Rule-7: Security and deposit required on grant of certificate.—(1) Where the certificate is granted, the applicant shall, within six weeks from the date of the grant of the certificate or such further period as the Court may upon cause shown allow except when the Government is the applicant—

- (a) furnish security in cash or in Government securities for the costs of the respondent except when the Government is the applicant, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the Appellate Division a correct copy of the whole record of the suit, except,—
 - (1) formal documents directed to be excluded by any Rule of the Appellate Division in force for the time being;
 - (2) papers which the parties agree to exclude;
 - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
 - (4) such other documents as the High Court Division may direct to be excluded:

Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided, further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

“Date of the decree” means the date on which the decree is pronounced and not the date on which it is signed.

Harendra -vs- Haridasi, 14 CWN, 20

Rule-8: Admission of appeal and procedure thereon.—Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to the Appellate Division under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Rule-9: Revocation of acceptance of security.—At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Rule-9A: Power to dispense with notices in case of deceased parties.—Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule(2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court-house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

Rule-10: Power to order further security or payment.—Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the Appellate Division, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Rule-11: Effect of failure to comply with order.—Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of the Appellate Division,

and in the meantime execution of the decree appealed from shall not be stayed.

Rule-12: Refund of balance deposit.—When the copy of the record, except as aforesaid, has been transmitted to the Appellate Division, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Rule-13: Powers of Court pending appeal.—(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Appellate Division may make on the appeal, or
- (c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which the Appellate Division may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Rule-14: Increase of security found inadequate.—(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;
- (b) if the original security was furnished by the respondent, the

Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Rule-15: Procedure to enforce orders of the Appellate Division.—

(1) Whoever desires to obtain execution of any order of the Appellate Division shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Appellate Division was preferred.

(2) Such Court shall transmit the order of the Appellate Division to the Court which passed the first decree appealed from, or to such other Court as the Appellate Division by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in Bangladesh under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order for the adjustment of financial transactions between the Government and His Majesty's Government in the United Kingdom.

(4) Unless the Appellate Division is pleased otherwise to direct, no order of the Appellate Division shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

Rule-16: Appeal from order relating to execution.—The orders made by the Court which executes the order of the Appellate Division, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

Order XLVI

REFERENCE

Rule-1: Reference of question to High Court Division.—Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court Division.

There can be no reference in a proceeding other than a suit or an appeal in a suit.

Damodar -vs- Kittappa, 56 M 16

Tancred -vs- Mullick, 1925 C 391

Rule-2: Court may pass decree contingent upon decision of High Court Division.—The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court Division on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court Division upon the reference.

Rule-3: Judgment of High Court Division to be transmitted, and case disposed of accordingly.—The High Court Division, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court Division.

The court making the reference cannot allow a party to withdraw a suit instead of disposing of the case in accordance with the judgment of the High Court Division.

Yule and Co. -vs- Mahomed, 24 C 129

Rule-4: Costs of reference to High Court Division.—The costs (if any) consequent on a reference for the decision of the High Court Division shall be costs in the case.

Rule-5: Power to alter, etc., decree of Court making reference.—

Where a case is referred to the High Court Division under rule 1, the High Court Division may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Rule-6: Power to refer to High Court Division questions as to jurisdiction in small causes.—(1) Where at any time before judgment a

Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court Division with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court Division may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Rule-7: Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.—(1)

Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court Division with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court Division may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court Division under this rule, the High Court Division may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

The word "shall" in sub-rule (1) is mandatory.

Suresh -vs- Kristo Rangini, 21 C 249

Order XLVII

REVIEW

Rule-1: Application for review of judgment.—(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

This rule should be read with section 114.

Any person aggrieved by a decree or order, or decision specified in clauses (a), (b), or (c) of sub-rule (1) may apply for a review on any of these grounds:—

- (1) discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order was made;
- (2) mistake or error apparent on the face of the record; or
- (3) for any other sufficient reason.

It has been held by the Judicial Committee that the words, “any other sufficient reason,” mean a reason sufficient on grounds at least analogous to those specified immediately previously, viz., (1) or (2).

Review application should be filed before the appeal is lodged.

Secretary of State -vs- Hindustan, I. Co., 36 CWN 40

An appeal may be filed after an application for review, but once the appeal is heard the review cannot be proceeded with.

Pyari -vs- Kalu, 44 C 1001

A review is incompetent after appeal is preferred.

Indrajit -vs- Pratap, 2 Patna 675

Pandu -vs- Devji, 7 B 287

Rule-2: To whom applications for review may be made.—An application for review of a decree or order of a Court, not being the High Court Division, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

In the case of a decree passed by a Judge other than the High Court Division—

- (1) If the review is sought on grounds other than the grounds specified in this rule, the application must be made to the very judge who passed the decree and not to his successor.

Sarangapari -vs- Narayanasami, 8 M 567

but such an application may be disposed of by his successor, provided that the Judge who passed the decree has ordered notice to issue under Or 47, rule 4, proviso (a)

Ganpat -vs- Jivan, 16, B 603

- (2) If the review is sought on the grounds mentioned in this rule viz. discovery of new matter or clerical or arithmetical mistake or error apparent on the face of the record, the application may be made to the Judge who passed the decree or his successor-in-office.

Kathyumma -vs- Muhammad, 1926 M. 1083

In the case of a decree passed by a High Court Division Judge, the review application may be made to that Judge or his successor-in-office whatever may be the grounds on which the review is sought.

Rule-3: Form of applications for review.—The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Rule-4: Application where rejected.—(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.—(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

- (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and
- (b) so such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

A review application may be summarily rejected under sub-rule (1). No review can be admitted without notice which is imperative.

Abdul -vs- Hem, 42 C 433

Rule-5: Application for review in Court consisting of two or more Judges.—Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

The rule is imperative. An application for review preferred to a District Judge cannot be transferred to an Additional District Judge. If the District Judge is transferred, his successor can hear the application.

Bansidhar -vs- Ratanlal, 1930 A 785

Rule-6: Application where rejected.—(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Rule-7: Order of rejection not appealable. Objections to order granting application.—(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

- (a) in contravention of the provisions of rule 2,
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be resorted to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Rule-8: Registry of application granted, and order for re-hearing.—Where an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Where a review is granted for additional evidence, neither party will be allowed to adduce evidence which was available and which with reasonable diligence could have been produced at the first trial.

Bhainram -vs- Ambika, 53 C 856

Rule-9: Bar of certain applications.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Order XLVIII

MISCELLANEOUS

Rule-1: Process to be served at expense of party issuing.—(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.—(2) The court fee chargeable for such service shall be paid when the process is applied for, or within such time, if any, as the Court may, when ordering its issue, fix for the purpose.

The words, "when the process is applied for, or within such time, if any, as the Court may, when ordering its issue, fix for the purpose," in sub-rule (2) were substituted for the words, "within a time to be fixed before the process is issued" by rule made by the Calcutta High Court under section 122 vide Notification No. 1154-G dated the 17th January, 1934 published in the Calcutta Gazette dated the 25th January, 1934, Part-I, Page-149.

See register in Form No. (R) 37, C. R. & O. Vol. II

Rule-2: Orders and notices how served.—All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Rule-3: Use of form in appendices.—The forms given in the appendices or such other forms as may be prescribed by the High Court of Judicature at Fort William in Bengal, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

The words, "or such other forms as may be prescribed by the High Court of Judicature at Fort William in Bengal", were inserted by rule made by the Calcutta High Court under section 122 vide Notification No. 7987-G, dated the 18th April, 1935 published in the Calcutta Gazette dated the 25th April, 1935, Part-I, Page-776.

The words, "High Court of Judicature at Fort William in Bengal," in this rule should probably be substituted by the words, "Supreme Court," by amendment.

Order XLIX

HIGH COURT DIVISION

Rule-1: Who may serve processes of High Court Division.—

Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court Division, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the advocates in the suits, or by persons employed by them, or by such other persons as the High Court Division, by any rule or order, directs.

Rule-2: Saving in respect of High Court Division.—Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by the High Court Division.

Rule-3: Application of rules, — The following rules shall not apply to High Court Division in the exercise of its ordinary or extraordinary original civil jurisdiction, namely—

- (1) rule 10 and rule 11, clauses (b) and (c), of order VII;
- (2) rule 3 of order X;
- (3) rule 2 of order XVI;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
- (5) rules 1 to 8 of Order XX ; and
- (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to the High Court Division in the exercise of its appellate jurisdiction.

Order L

SMALL CAUSE COURTS

Rule-1: Small Cause Courts.—The provisions hereinafter specified shall not extend to Courts constituted under the Small Causes Courts Act, 1887. or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act, that is to say—

so much of this schedule as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;
- (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;
- (iii) the settlement of issues; and

the following rules and orders,—

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII, rules 5 to 12 (evidence);

Orders XLI to XLV (appeals);

Orders XLVII, rules 2, 3, 5, 6, 7 (review);

Order LI.

Order LI

Presidency Small Cause Courts.—Omitted by A. O. 1949.

THE FIRST SCHEDULE. APPENDIX-A — PLEADING (*Title of Suits*
Description of Parties in Particular Cases. Plaints)

(3) **Plaints****No. 1**

MONEY LENT

(Title)

A. B., the above-named plaintiff, states as follows:-

1. On the day of 19 , he lent the defendant [Taka] repayable on the day of

2. The defendant has not paid the same, except [Taka] paid on theday of..... 19 ,

[If the plaintiff claims exemption from any law of limitation, say:-]

3. The plaintiff was a minor [or insane] from theday of till theday of..... ,

4. *[Facts showing when the cause of action arose and that the Court has Jurisdiction.]*

5. The value of the subject-matter of the suit for the purpose of jurisdiction is [Taka] and for the purpose of court-fees is [Taka].

6. The plaintiff claims [Taka], with interest at percent from the day of..... 19 ,

No. 2

MONEY OVER PAID

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of19 , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at [Taka] per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by E.F., who was paid by the defendant for such assay, and E.F. declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant [Taka].

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[As in paras 4 and 5 of From No. 1, and Relief claimed]

No. 3GOODS SOLD AT A FIXED PRICE AND DELIVERED
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E.F. sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, or sundry goods].

2. The defendant promised to pay [Taka] for the said goods on delivery [*or* on the day of, *some day before the* *plaint was filed*].

3. He has not paid the same.

4. E. F. died on the day of 19 . By his last will he appointed his brother, the plaintiff, his executor.

[*As in paras 4 and 5 of form No. 1*]

7. The plaintiff as executor of E.F. claims [*Relief claimed*].

No. 4GOODS SOLD AT A REASONABLE PRICE AND DELIVERED
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth [Taka]

3. The defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed*]

No. 5GOODS MADE AT DEFENDANT'S; REQUEST, AND NOT ACCEPTED
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E.F. agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs] and that E.F. should pay for the goods on delivery [Taka]

2. The plaintiff made the goods, and on the day of 19 , offered to deliver them to E.F., and has ever since been ready and willing so to do.

3. E.F., has not accepted the goods or paid for them.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 6

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and removed by the purchaser within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [one crate of crockery] at the auction at the price of [Taka].

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.

5. On the day of 19 , the plaintiff re-sold the [crate of crockery], on account of the defendant, by public auction, for [Taka]

6. The expenses attendant upon such re-sale amounted to [Take].

7. The defendant has not paid the deficiency thus arising, amounting to [Taka]

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 7SERVICES AT A REASONABLE RATE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. Between the day of 19 , and the day of 19 , at, plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such service.
2. The services were reasonably worth [Taka].
3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 8SERVICES AND MATERIALS AT A REASONABLE COST
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at the plaintiff built a house [*known as No.,.....in.....*], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.
2. The work done and materials supplied were reasonably worth [Taka].
3. The defendant has not paid the money.

[As in paras, 4 and 5 of Form No. 1, and Relief claimed]

No. 9USE AND OCCUPATION
(Title)

A. B., the above-named plaintiff, executor of the will of X.Y., deceased, states as follows:—

1. That the defendant occupied the [house No., Street], by permission of the said X.Y., from the day of 19, until the day of 19 , and no agreement was made as to payment for the use of the said premises.

THE FIRST SCHEDULE. APPENDIX-A — PLEADING (Plaints)

2. That the use of the said premises for the said period was reasonably worth [Taka].

3. The defendant has not paid the money.

[As in paras. 4, and 5 of Form No. 1]

6. The plaintiff as executor of X.Y., claims [Relief claimed].

No. 10

ON AN AWARD

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E.F. and G.H., and the original document is annexed hereto.

2. On the day of 19, the arbitrators awarded that the defendant should [pay the plaintiff [Taka].

3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 11

ON A FOREIGN JUDGMENT

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of19 , at in the State [or Kingdom], of the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff [Taka], with interest from the said date.

2. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 12AGAINST SURITY FOR PAYMENT OF RENT
(Title)

A. B., the above-named plaintiff states as follows:—

1. On theday of 19 , E.F. hired from the plaintiff for the term of years, the [house No., Street], at the annual rent of [Taka[, payable [monthly],

2. The defendant agreed, in consideration of the letting of the premises to E.F., to guarantee the punctual payment of the rent.

3. The rent for the month of19 , amounting to[Taka], has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add:-]

4. On the day of19 , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[As in paras 4 and 5 of Form No. 1 and Relief claimed]

No. 13BREACH OF AGREEMENT TO PURCHASE LAND
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is thereto annexed.

[Or, onthe day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for [Taka].

2. On the day of 19 , the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras 4 and 5 of Form No. 1 and Relief claimed]

No. 14NOT DELIVERING GOODS SOLD
(Title)

A. B., above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour to the plaintiff on the day of 19 , and that the plaintiff should pay therefor [Taka] on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits, which would have accrued to him from such delivery.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 15WRONGFUL DISMISSAL
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an account, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services [Taka][monthly].

2. On the day of 19 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the day of 19 , the defendant wrongfully discharged the plaintiffs, and refused to permit him to serve as aforesaid, or to pay him for his services.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 16BREACH OF CONTRACT TO SERVE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should employ, the defendant at an [annual] salary of [Taka], and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19, offered so to do].

3. The defendant [entered upon the service of the plaintiff on the above-mentioned day, but afterwards on the day of 19, he refused to serve the plaintiff as aforesaid.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 17AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [Or state the tenor of the contract]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 18ON A BOND FOR THE FIDELITY OF A CLERK
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff took E.F., into his employment as a clerk.

2. In consideration thereof, on the day of 19 , the defendant agreed with the plaintiff that if E.F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding [Taka].

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of [Taka], subject to the condition that if E.F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[Or 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the day of 19 , and the day of 19 , E.F. received money and other property amounting to the value of [Taka], for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 19BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant, by a registered instrument, let to the plaintiff [the House No., Street] for the term of years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the day of 19 , during the said term. E.F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend [Taka] in moving, and lost the custom of G.H., and I.J., by such removal.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 20

ON AN AGREEMENT OF INDEMNITY (Title)

A. B., the above-named plaintiff, states as follows:-

1. On the day of 19, the plaintiff and defendant, being partners in trade under the style of A. B. and C.D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the day of 19 , [a judgment was recovered against the plaintiff and defendant by E.F., in the [High Court Division] * * at, upon a debt due from the firm to E.F., and on the day of 19 ,] the plaintiff paid [Taka] [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

No. 21PROCURING PROPERTY BY FRAUD
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth [Taka] over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of [Taka].

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered.*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended [Taka].

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 22FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented to the plaintiff that E.F. was solvent and in good credit, and worth [Taka] over all his liabilities [*or that E.F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.*]

2. The plaintiff was thereby induced to sell to E.F. [rice] of the value of [Taka] [on months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

4. E.F. [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras 4 and 5 of Form No. 1, and Relief claimed.*]

No. 23POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the day of 19 , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

No. 24CARRYING ON A NOXIOUS MANUFACTURE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called....., situated in

2. Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them, were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

No. 25

OBSTRUCTING A RIGHT OF WAY
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. On the day of 19 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].

4. *(State special damage, if any)*

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

NO. 26

OBSTRUCTION A HIGHWAY
(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[As in paras, 4 and 5 of Form No. 1 and Relief claimed].

No. 27

DIVERTING A WATER-COURSE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19, defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 28

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

No. 29INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendants were common carriers of passengers railway between
and
2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.
3. While he was such passenger, at [or near the station of or between the stations of and], a collision occurred on the said railway caused by the negligence and unskillfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a [salesman].

[As in paras 4 and 5 of Form No. 1, and Relief claimed]

[Or thus:-2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby etc., *as in para 3.*]

No. 30INJURIES CAUSED BY NEGLIGENT DRIVING
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at
The defendant is a merchant of
2. On the day of 19 , the plaintiff was walking [northward] along [Mirpur Road], in the City of [Dhaka], at about 3 o'clock in the afternoon. He was obliged to cross 4[New Elephant Road], which is a street running into [Mirpur Road] at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of [New Elephant Road] into [Mirpur Road]. The pole of the

carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras, 4 and 5 of Form No. 1, and Relief claimed].

No. 31

FOR MALICIOUS PROSECUTION (Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 .., the defendants obtained a warrant of arrest from [a Magistrate of the said City, or as the case may be] on a charge of, and the plaintiff was arrested thereon, and imprisoned for [day, or hours, and gave bail in the sum of [Taka] to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 .., the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E.F., or in consequences the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred, expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[As in paras 4 and 5 of Form No. 1, and Relief claimed].

No. 32

MOVEABLES WRONGFULLY DETAINED
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is [Taka].

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of 19 , the plaintiff demanded the same from the defendant but he refused to deliver them.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims—

- (1) delivery of the said goods, or [Taka], in case delivery cannot be had;
- (2) [Taka] compensation for the detention thereof.

No. 33

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant C.D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth [Taka] over all..... his liabilities].

2. The plaintiff was thereby induced to sell and deliver to C.D. [one hundred boxes of tea], the estimated value of which is [Taka].

3. The said representations were false, and were then known by C.D. to be so [or at the time of making the said representations, C.D. was insolvent, and knew himself to be so].

4. C.D. afterwards transferred the said goods to the defendant E.F. without consideration [or who had notice of the falsity of the representation].

[As in paras 4 and 5 of Form No. 1]

7. The plaintiff claims:—

- (1) delivery of the said goods, or [Taka], in case delivery cannot be had;
- (2) [Taka] compensation for the detention thereof.

No. 34RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of19 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at....., contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price of [Taka] in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed. But the land has not been transferred to him.

3. On the day of19 , the plaintiff paid the defendant [Taka] as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras 4 and 5 of Form No. 1]

7. The plaintiff claims-

(1)[Taka], with interest from the day of19 ;

(2) that the said agreement be delivered up and cancelled.

No. 35AN INJUNCTION RESTRAINING WASTE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale without the consent of the plaintiff.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed*].

No. 36INJUNCTION RESTRAINING NUISANCE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the House No., Street, [Chittagong].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street]:

3. On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[As in paras, 4 and 5 of Form No. 1]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37PUBLIC NUISANCE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Advocate General [or of the Collector or other officer appointed in this behalf] to the institution of this suit.

[As in paras, 4 and 5 of Form No. 1]

5. The plaintiff claims-

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;
- (2) an injunction restraining the defendant from obstructing the passage of the public along said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE
(Title)

A. B., the above-named plaintiff, states as follows:—

[As in Form No. 27]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR
AN INJUNCTION
(Title)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists *[or state any facts showing that the property is of a kind that cannot be replaced by money]*.

2. On the day of19 , he deposited the same for safe-keeping with the defendant.

3. On the day of19 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, out or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras 4 and 5 of Form No. 1]

8. The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of injuring or concealing the said [painting].
- (2) that he be compelled to deliver the same to the plaintiff.

No. 40

INTERPLEADER
(Title)

A. B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned *G.H.* deposited with the plaintiff [describe the property] for [safe-keeping].
2. The defendant *C.D.* claims the same [under an alleged assignment thereof to him from *G.H.*]
3. The defendant *E.F.* also claims the same [under an order of *G.H.* transferring the same to him].
4. The plaintiff is ignorant of the respective rights of the defendants.
5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.
6. The suit is not brought by collusion with either of the defendants.

[As in paras 4 and 5 of Form No. 1]

9. The plaintiff claims:—

- (1) that the defendants be restrained, by injunction from taking any proceedings against the plaintiff in relation thereto;
- (2) that they be required to interplead together concerning their claims to the said property;
- [(3) that some person be authorised to receive the said property pending such litigation;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 41ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER
CREDITORS
(Title)

A. B., the above-named plaintiff, states as follows:—

1. E.F., late of, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [here insert nature of debt and security, if any.]

2. E.F., died on or about the day of By his last will, dated the day of he appointed C.D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be].

3. The will was proved by C.D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the movable [and immovable or the proceeds of the immovable] property of E.F., and has not paid the plaintiff his debt.

[As in paras 4 and 5 of Form No. 1]

7. The plaintiff claims that an account may be taken of the movable [and immovable] property of E.F., deceased, and that the same may be administered under the decree of the Court.

No. 42ADMINISTRATION BY SPECIFIC LEGATEE
(Title)

[Alter form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] E.F., late of died on or about the, day of, . By his last will, dated the day of be appointed C.D. his executor, and bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the movable property of E.F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.

No. 43

ADMINISTRATION BY PECUNIARY LEGATEE
(Title)

[Alter form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] *E.F.*, late of
..... died on or about the day of By his last
will, dated the day of, he appointed *C.D.* his executor,
and bequeathed to the plaintiff a legacy of [Taka].

In paragraph 4 substitute "legacy" for "debt".

Another form
(Title)

E.F., the above-named plaintiff, states as follows:—

1. *A. B.* of *K.* in the died on the day of
..... By his last will, dated the day of, he
appointed the defendant and *M.N.* [who died in the testator's lifetime] his executors,
and bequeathed his property, whether movable or immovable, to his executor in
trust, to pay the rents and income thereof to the plaintiff for his life; and after his
decease, and in default of his having a son who should attain twenty-one, or a
daughter who should attain that age or marry, upon trust as to his immovable
property for the person who would be the testator's heir-at-law, and as to his
movable property for the persons who would be the testator's next-of-kin if he had
died intestate at the time of the death of the plaintiff, and such failure of his issue as
aforesaid.

2. The will was proved by the defendant on the day of
..... The plaintiff has not been married.

The testator was at his death entitled to movable and immovable property: the
defendant entered into the receipt of the rents of the immovable property and got in
the movable property; he has sold some part of the immovable property.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims—

- (1) to have the movable and immovable property of *A. B.* administered
in this Court, and for that purpose to have all proper directions given
and accounts taken;
- (2) such further or other relief as the nature of the case may require.

No. 44EXECUTION OF TRUSTS
(Title)

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of *E.F.* and *G.H.*, the father and mother of the defendant [or an instrument of transfer of the estate and effects of *E.F.* for the benefit of *C.D.*, the defendant and the other creditors of *E.F.*]

2. A. B., has taken upon himself the burden of the said trust, and is in possession of (or of the proceeds of) the movable and immovable property transferred by the said instrument.

3. *C.D.* claims to be entitled to a beneficial interest under the instruments.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property. [and the proceeds of the sale of the said, or of part of the said, immovable property, or movable, or the proceeds of the sale of, or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C.D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C.D.*, and such other persons so interested as the Court may direct, or that *C.D.* may show good cause to the contrary.

[*N.B.*—Where the suit is by a beneficiary, the plaint may be modelled *mutatis mutandis*, on the plaint by a legatee].

No. 45FORECLOSURE OR SALE
(Title)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant,
2. The following are the particulars of the mortgage:—
 - (a) (date);
 - (b) (names of mortgagor and mortgagee);
 - (c) (sum secured);
 - (d) (rate of interest);

- (e) (Property subject to mortgage);
- (f) (amount now due);
- (g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

[If the plaintiff is mortgagee in possession, add]

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims:-

- (1) payment, or in default [sale or] foreclosure [and possession];
[Where Order 34, rule 6, applies].
- (2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be re-served to the plaintiff to apply for a decree for the balance.

No. 46

REDEMPTION
(Title)

A. B., the above-named plaintiff, states as follows:—

- 1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.
- 2. The following are the particulars of the mortgagee:-
 - (a) (date).
 - (b) (names of mortgagor and mortgagee);
 - (c) (sum secured);
 - (d) (rate of interest);
 - (e) (Property subject to mortgage);
 - (f) (amount now due);
 - (g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

[If the plaintiff is mortgagee in possession, add]

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47SPECIFIC PERFORMANCE (NO. 1)
(Title)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [*or sell to*] the plaintiff and signed by the defendant, he contracted to buy of [*or sell to*] the plaintiff certain immoveable property therein described and referred to, for the sum of [Taka].

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or to accept a transfer and possession of the said property*] and to pay the costs of the suit.

No. 48Specific Performance (No. 2)
(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 .., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the day of 19 .., the plaintiff tendered [Taka] to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 .., the plaintiff again demanded such transfer. [*Or the defendant refused to transfer the same to the plaintiff*]

4. The defendant has not executed any instrument of transfer

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras, 4 and 5 of Form No. 1]

8. The plaintiff claims:—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*]

(2) [Taka] compensation for withholding the same.

No. 49

PARTNERSHIP

(Title)

A. B., the above-named plaintiff, states as follows:—

1. He and C.D., the defendant, have been for years [or months] past carrying on business together under articles of partnership in writing [or under a deed. or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners.[Or the defendant has committed the following breaches of the partnership articles:—

- (1)
- (2)
- (3)

[As in paras. 4 and 5 of Form No. 1]

5. The plaintiff claims-

- (1) dissolution of the partnership;
- (2) that accounts be taken;
- (3) that a receiver be appointed.

(N.B.— In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

(4) Written Statements

Generals defences

Denial/The defendant denies that (set out facts).

The defendant does not admit that (set out facts).

The defendant admits that but says that

The defendant denies that he is a partner in the defendant firm of

Protest/The defendant denies that he made the contract alleged or any contract with the plaintiff.

- The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

The suit is barred by article or article of the second schedule to the [Limitation Act, 1908]/**Limitation**

The Court has no jurisdiction to hear the suit on the ground *that (set forth the grounds)*/**Jurisdiction**

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

The defendant has been adjudged an insolvent/ **Insolvency**

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

The defendant was a minor at the time of making the alleged contract/ **Minority**

The defendant as to the whole claim (or as to [Taka] , part of the money claimed, *or as the case may be*) has paid into court [Taka] and says that this sum is enough to satisfy the plaintiff's claim [or the part aforesaid]/**Payment into Court**

The performance of the promise alleged was remitted on the (Date)/**Performance remitted**

The contract was rescinded by agreement between the plaintiff and defendant/**Rescission**

The plaintiff's claim is barred by the decree in suit (*give the reference*)/**Res Judicata**

The plaintiff's estopped from denying the truth of (*Insert statements as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*)/**Estoppel**

Since the institution of the suit, that is to say, on the day of (set out facts)/ **Ground of defence subsequent to institution of suit**

No. 1

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

- 1. The defendant did not order the goods.
- 2. The goods were not delivered to the defendant.
- 3. The price was not [Taka].

[Or]

- 4. } {1.
- 5. } except as to [Taka]..... same as {2.
- 6. } {3.

7. The defendant [or A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C.D., the plaintiff's agent] on the day of 19 ..

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 ..

No. 2

DEFENCE IN SUITS ON BONDS

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No.3

DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit .
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 4

DEFENCE IN ANY SUITS FOR DEBT

1. As to [Taka] 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

	[Taka]
1907, January, 25th	150
1907, February, 1st	50
Total=	200

2. As to the whole [or as to [Taka], part of the money claimed] the defendant made tender before suit of [Taka] and has paid the same into Court.

No. 5

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of street, [Dhaka], livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said

2. The defendant does not admit that the said carriage was turned out of [New Elephant Road] either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6

DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [or matters] complained of.

No. 7

DEFENCE IN SUITS FOR DETENTION OF GOODS

1. The goods were not the property of the plaintiff.
2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1907. May 3rd To carriage of the goods claimed from [Dhaka] to [Chittagong]:—

45 maunds at [Taka] 2 per maund [Taka] 90.

No. 8

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

No. 9

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

No. 10

DEFENCES IN SUITS RELATING TO NUISANCES

1. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.
3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e. whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars:—
1870, plaintiff's mill began to work.
1871, plaintiff came into possession.
1883, First complaint.

5. As to the Plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]*

No. 11

DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff *(if more than one transfer is alleged, say which is denied.)*

3. The suit is barred by article of the second schedule to the [Limitation Act, 1908]
4. The following payment have been made, viz.:—
 (Insert date) 1,000
 (Insert date) 500
5. The plaintiff took possession on the of , and has received the rents ever since.
6. That plaintiff released the debt on the of
7. The defendant transferred all his interest to A. B. by a document dated

No. 12

DEFENCE TO SUIT FOR REDEMPTION

1. The plaintiff's right to redeem is barred by article of the second Schedule to the [Limitation Act, 1908]
2. The plaintiff transferred all interest in the property to A. B.
3. The defendant, by a document dated theday of transferred all his interest in the mortgage debt and property comprised in the mortgage to A. B.
4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits)

No. 13

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).
3. The plaintiff has not performed the following conditions—
 (*Conditions*).
4. The defendant did not—(*alleged acts of part performance*).
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(state why).

6. The agreement is uncertain in the following respects—(state them).
7. (*or*) The plaintiff has been guilty of delay.
8. (*or*) The plaintiff has been guilty of fraud(*or* misrepresentation)..
9. (*or*) The agreement is unfair.
10. (*or*) The agreement was entered into by mistake.
11. The following are particulars of (7),(8),(9),(10) (*or as the case may be*).
12. The agreement was recinded under conditions of sale, No. 11(*or* by mutual agreement).

(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Limitation Act, accord and satisfaction, release, fraud, etc.)

No. 14

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. A. B's will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which produced the net sum of [Taka], and the testator had sum movable property which the defendant got in, and which produced the net sum of [Taka].

2. The defendant applied the whole of the said sums and the sum of [Taka] which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15

PROBATE OF WILL IN SOLEMN FORM

1. The said will and codicil of the deceased were not duly executed according to the [Succession Act, 1925] [*or* of the Hindu wills Acts, 1870].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's, present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

- (1) that the Court will pronounce against the said will and codicil propounded by the plaintiff;
- (2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16

PARTICULARS (O. 6, r. 5) (*Title of suit*)

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivery pursuant to the order of the
 of.
 (*Here set out the particulars ordered in paragraphs if necessary*)

APPENDIX B

PROCESS

No. 1

SUMMONS FOR DISPOSAL OF SUIT (O. 5 r. 1, 5)
(Title)

To

[Name, description and place of residence]

WHEREAS
has institute a suit against you for you are
hereby summoned to appear in this Court in person or by a pleader duly instructed,
and able to answer all material questions relating to the suit, or who shall be
accompanied by some person able to answer all such questions, on the
day of 19 . at o'clock in the noon, to
answer the claim; and as the day fixed for your appearance is appointed for the final
disposal of the suit, you must be prepared to produce on that day all the witnesses
upon whose evidence and all the documents upon which you intent to rely in support
of your defence.

Take notice that, in default of your appearance on the day before mentioned,
the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of
..... 19 .

Judge

- NOTICE- 1. Should you apprehend your witnesses will not attend of their own
accord, you can have a summons from this Court to compel the
attendance of any witness, and the production of any document that
you have a right to call upon the witness to produce, on applying to
the Court and on depositing the necessary expenses.
2. If you admit the claim, you should pay the money into Court together
with the costs of the suit, to avoid execution of the decree, which
may be against your person or property, or both.

No. 2

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr.1, 5)
(Title)

To
[Name, description and place of residence]

WHEREAS
has instituted a suit against you for
you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of19 , ato'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intent to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of..... 19 ,

Judge

- NOTICE-1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons form this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.
- 2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 3

SUMMONS TO APPEAR IN PERSON. (O.5, r.3)
(Title)

To
[Name, description and place of residence]

WHEREAS
has institute a suit against you foryou are hereby summoned to appear in this Court in person on the day of19 , ato'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intent to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, thisday of.....19 ,

Judge

No. 4

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT. (O.37, r.2)
(Title)

To

[Name, description and place of residence]

WHEREAS has instituted a suit against you under order XXXVII of the Code of Civil Procedure, 1908, for [Taka], balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit , and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of [Taka] and the sum of [Taka] for costs [together with such interest, if any, from the date of the institution of the suit as the court may order].

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this day of19 ,

Judge

No. 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED
AS CO- PLAINTIFF. (O. 1, r.10)
(Title)

To

[Name, description and place of residence]

WHEREAS has instituted the above suit against for and, whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before the day of 19 , signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this day of 19 ,

Judge

NO. 6

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT. (O. 22, r. 4)
(Title)

To

WHEREAS the plaintiff instituted a suit in this Court on the day of 19 , against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said..... deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the day of 19 , at A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 ,

Judge

No. 7

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT. (O. 5, r.21)
(Title)

To

WHEREAS it is stated that defendant/witness in the above suit is at present residing in; It is ordered that a summons returnable on the day of 19 , be forwarded to the Court of for service on the said defendant/witness with a duplicate of this proceeding.

The court-fee of chargeable in respect to the summons has been realised in this Court in stamps. Dated 19 ,

Judge

No. 8

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A
PRISONER (O.5, r.24)
(Title)

To

The Superintendent of the Jail at , Under the provisions of order v, rule24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant, and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

No. 9

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR
SOLDIER. (O. 5, rr.27, 28)
(Title)

To

UNDER the provisions of Order V, rule27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

No. 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT (O.5, r.23)
(Title)

Read proceeding from the forwarding..... for service on in Suit No. of 19 of that Court.

Read Serving officer's endorsement stating that the and proof of the above having been duly taken by me on oath of andit is ordered that the be returned to the with a copy of this proceeding.

Judge

NOTE:—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 11

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR
NOTICE. (O.5, r. 18)
(Title)

The Affidavit of son of
make oath/affirm and say as follows:-

(1) I am a process-server of this Court.

(2) On the day of19 , I received a
summons/notice..... issued by the Court of in Suit No.
..... of 19 , in the said Court, dated the day of
19 , for service on

(3) The said was at the time personally known to
me, and I served the said summons/notice on him/her on
the day of 19 , at about o'clock..... in
the noon at him/her about o'clock in the noon at
by tendering a copy thereof to him/her and requiring his/her signature to the original
summons/notice

- (a)
- (b)

(a) Here state whether the person served signed or refused to sign the process,
and in whose presence.

(b) Signature of process-server.

or

(3) The said not being personally known to
..... accompanied me to and pointed out to me a person
whom he stated to be the said, and I served the said summons/notice
on him/her on on the day of
19 , at about o'clock in the noon at by tendering a copy
thereof to him/her and requiring his/her signature to the original summons/notice.

- (a)
- (b)

(a) Here state whether the person served sign the process, and in whose
presence.

(b) Signature of process-server.

Or

(3) The said and the house in which he ordinarily resides being personally known to me, I went to the said house, in and thereon the day of 19 , at about o'clock in the noon, I did not find the said

- (a)
- (b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

- (b) Signature of process-server.
- Or.

(3) One accompanied me to and there pointed out to me which he said was the house in which ordinarily resides. I did not find the said there.

- (a)
- (b)

(a) Enter fully and exactly the manner in which the process was served with special reference to order 5, rules 15 and 17.

- (b) Signature of process-server.
- Or

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/Affirmed by the said before me this day of 19

Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.

No. 12

NOTICE TO DEFENDANT (O.9, r. 6)

(Title)

[Name, description and place of residence]

To

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so

appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No. 13

SUMMONS TO WITNESS (O. 16, rr. 1, 5)
(Title)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [Personally] to appear before this Court on the day of 19 , at o'clock in the forenoon, and to bring with you [Or to send to this ---- Court].

A sum of [Taka] , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

- Notice:—
- (1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.
 - (2) If you are detained beyond the day aforesaid, a sum of [Taka] will be tendered to you for each day's attendance beyond the day specified.

No. 14

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10)
(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the day of 19 at o'clock in the forenoon and from day to day until he shall have to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 15

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r.10)
(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of order XVI of the Code of Civil procedure, 1908, issued, requiring the attendance of the witness in this Court on the day of: 19 at..... o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

No. 16

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS (O. 16, r. 10)
(Title)

To

The Bailiff of the Court
.....cited

WHEREAS the witness cited has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days.

GIVEN under my hand and the seal of the Court, this days of 19 .

Judge

No. 17

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10)
(Title)

To

The Bailiff of the Court

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19

No. 18

WARRANT OF COMMITTAL. (O.16, r. 16)
(Title)

To

The officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the above- named suit has made application to this Court that security be taken for the appearance of to give evidence (or to produce a document), on the day of 19 ; and whereas the Court has called upon the said to furnish such security, which he has failed to do ; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of..... 19 .

Judge

No. 19

WARRANT OF COMMITTAL. (O. 16, r.18)
(Title)

To

The officer in charge of the Jail at,

WHEREAS, whose attendance is required before this Court in the above-named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of 19 . at which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19--- .

Judge

APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

No. 1

ORDER FOR DELIVERY OF INTERROGATORIES. (O. 11, r. 1)

In the Court of
Civil suit No. of 19

A. B. plaintiff,
against

C.D., E.F. and G.H. Defendants

Upon hearing and upon reading the affidavit of
filed the day of 19 ; It is ordered that the
be at liberty to deliver to the interrogatories in writing, and that the
said do answer the interrogatories as prescribed by order XI, rule 8,
and that the costs of this application be

No. 2

INTERROGATORIES (O. 11, r.4)
(Title as in No. 1, supra)

Interrogatories on behalf of the above-named [plaintiff or defendant C.D.] for
the examination of the above-named [defendants E.F. And G.H. or plaintiff].

- 1. Did not, etc.
 - 2. Has not, etc.
- etc. etc. etc.

[The defendant E.F. is required to answer the interrogatories numbered
.....]

[The defendant G.H. is required to answer the interrogatories numbered
.....]

No. 3

ANSWER TO INTERROGATORIES. (O. 11, r.9)
(Title as in No. 1, supra)

The answer of the above-named defendant E.F. to the interrogatories for his
examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath say
as follows:—

- 1. } Enter answers to interrogatories in paragraphs numbered con
- 2. } Secutively
- 3. I object to answer the interrogatories numbered on the ground that [*state grounds of objection*].

No. 4

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 11, r.12)
(*Title as in No. 1, supra*)

Upon hearing.; It is ordered that the do within days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be.....

No. 5

AFFIDAVIT AS TO DOCUMENT (O. 11, r.13)
(*Title as in No. 1, supra*)

I, the above- named defendant *C.D.*, make oath and say as follows:—

- 1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.
- 2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].
- 3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.
- 4. The last- mentioned documents were last in my possession or power on [*state when and what has become of them and in whose possession they now are*].
- 5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document what-soever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION (o.11, r.14)
 (Title as in No. 1, supra)

Upon hearing and upon reading the affidavit of filed the day of 19 .. ; It is ordered that the do, at all reasonable times, on reasonable notice, produce at situated at, the following documents, namely,, and that the be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings to be stayed and that the costs of this application be

No. 7

NOTICE TO PRODUCE DOCUMENTS. (o. 11, r.16)
 (Title as in No. 1, supra)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*plaint or written statement or affidavit*], dated the day of 19 ..] .

[*Describe documents required*]

X. Y., pleader for the

To Z., pleader for the

No. 8

NOTICE TO INSPECT DOCUMENTS (O.11, r.17)
 (Title as in No. 1, supra)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the documents numbered in that notice*] at [*insert place of inspection*] On Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the day of 19 .. , on the ground that [*state the ground*]:—

No. 9

NOTICE TO ADMIT DOCUMENTS (O. 12, r. 3)

(Title as in No. 1 supra)

Taka notice that the plaintiff [*or defendant*] in this suit proposes to adduce in evidence the several documents hereunder specified and that the same may be inspected by the defendant [*or plaintiff*], his pleader or agent at on between the hours of; and the defendant [*or plaintiff*], is hereby required within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written signed or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G.H. pleader [*or agent*] *for plaintiff*

..... [*or defendant*]

To E.F., *pleader* [*or agent*] *for defendant* [*or plaintiff*]

[*Here describe the documents and specify as to each document whether it is original or a copy*]

No. 10

NOTICE TO ADMIT FACT (O. 12, r. 5)

(Title as in No. 1 supra)

Take notice that the plaintiff [*or defendant*] in this suit requires the defendant [*or plaintiff*] to admit for the purposes of this suit only the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required within six days from the service of this notice to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G.H., pleader [*or agent*] *for plaintiff* [*or defendant*]

To E. F. *Pleader* [*or agent*] *for defendant* [*or plaintiff*]

The facts, the admission of which is required, are—

1. That M. died on the 1st January 1890.
2. That he died intestate
3. That N. was his only lawful son
4. That O. died on the 1st April, 1896
5. That O. was never married.

No. 11

ADMISSION OF FACTS PURSUANT TO NOTICE (O. 12, r. 5)

(Title as in No. 1 supra)

The defendant [or plaintiff] in this suit for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

E.F. *pleader* [or agent] *for defendant* [or plaintiff].

To G.H. *pleader* [or agent] *for plaintiff* [or defendant].

Facts admitted	Qualifications or limitations, if any, subject to which they are admitted
1. That M. died on the 1 st January, 1890	1.
2. That he died intestate	2.
3. That N. was his lawful son ..	3. But not that he was his only lawful son
4. That O. died	4. But not that he died on the 1st April, 1896
5. That O. was never married ..	5.

No. 12

NOTICE TO PRODUCE (GENERAL FORM (O. 12, r. 8)

(Title as in No. 1 supra)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly.

G.H., *pleader* [or agent] *for plaintiff* [or defendant]

To E. F., *pleader* [or agent] *for defendant* [or plaintiff]

APPENDIX D
DECREEES

No. 1

DECREE IN ORIGINAL SUIT (O. 20, rr. 6,7)
 (Title)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed thatand that the sum of [Taka] be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to date of realisation.

Given under my hand and the seal of the Court, this..... day of 19....

Judge

Cost of Suit

Plaintiff		Tk	Defendant		Tk
1.	Stamp for plaint ..		Stamp for power ..		
2.	Do for power ..		Do for petition ..		
3.	Do for exhibits ..		Pleader's fee ..		
4.	Pleader's fee on Tk ..		Subsistence for witnesses		
5.	Subsistence for witnesses		Service of process ..		
6.	Commissioner's fee ..		Commissioner's fee ..		
7.	Service of process ..				
Total ..			Total ..		

No. 2

SIMPLE MONEY DECREE (SECTION 34)
 (Title)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered that thedo pay to the the sum of [Taka] with interest thereon at the rate of per cent. per annum from to the date of realization of the said sum and

do also pay [Taka], the costs of this suit, with interest thereon at the rate of per cent, per annum from this date to the date of realization.

Given under my hand and the seal of the Court, this..... day of 19....

Judge

Costs of Suit

Plaintiff			Defendant	
	Tk			Tk
8. Stamp for plaint ..			Stamp for power ..	
9. Do for power ..			Do for petition ..	
10. Do for exhibits ..			Pleader's fee ..	
11. Pleader's fee on Tk ..			Subsistence for witnesses ..	
12. Subsistence for witnesses ..			Service of process ..	
13. Commissioner's fee ..			Commissioner's fee ..	
14. Service of process ..				
Total ..			Total ..	

No. 3

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2—Where accounts are directed to be taken) .

(Title)

THIS suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent, per annum or at such rate as the Court deems reasonable)
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing

such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent, per annum);

- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed:—

- (i) that the defendant do pay into Court on or before the day of, or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of [Taka] for the costs of the suit awarded to the plaintiff:
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgaged property

No. 3A

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2—Where Court declares the amount due)
(*Title*)

THIS suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of [Taka] for the costs of this suit awarded to the plaintiff, making in all the sum of [Taka]:—

2. And it is hereby ordered and decreed as follows:—

- (i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the said sum of [Taka].....;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability

whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quite and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

*Description of the mortgaged property***No. 4**FINAL DECREE FOR FORECLOSURE
(Order XXXIV, rule 3)
(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage:

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; [and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to his day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No. 5

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4—Where accounts are directed to be taken)

(Title)

THIS suit coming on this day, etc.; It is hereby ordered and decreed that it be referred toas the Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of [Taka] for the costs of the suit awarded to the plaintiff;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that, the money realised by such sale shall be paid into Court and shall be duly applied (after deduction there from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgaged property

No. 5A

PRELIMINARY DECREE FOR SALE
(Order XXXIV, rule 4—Where Court declares the amount due)
(Title)

THIS suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of [Taka] for the costs of the suit awarded to the plaintiff, making in all the sum of [Taka]

2. And it is hereby ordered and decreed as follows:—

- (i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, the said sum of [Taka]
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or nay person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect

of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for the personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No. 6

FINAL DECREE FOR SALE (Order XXXIV, rule 5) (Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

No. 7

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT
BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED
(Order XXXIV, rule 7)—Where accounts are directed to be taken
(Title)

THIS suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

- i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);
- ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;
- iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum).
- iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report of the Commissioner being received, it shall be confirmed and

countersigned, subject to such modification as may be necessary after consideration of such objection as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the day ofor any later date up to which time for payment may be extended by the court, such sum as the Court shall find due and the sum of [Taka] for the costs of the suit awarded to the defendant;
- (ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plain mentioned, and all such document shall be delivered over to the plaintiff, or to such person as he appoints, and defendant shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall the henceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No. 7A

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT
BY MORTGAGOR A DECREE FOR SALE IS PASSED
(Order XXXIV, rule 7)—Where accounts are directed to be taken
(Title)

THIS suit coming on this day, etc; It is hereby ordered and decreed that it be referred toas the Commissioner to take the accounts following:--

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six percent, per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent, per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of, and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

3. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find

- due and the sum of [Taka] for the costs of the suit awarded to the defendant;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgaged property

No. 7B**PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT
BY MORTGAGOR A DECREE FOR SALE IS PASSED**

(Order XXXIV, rule 7)—Where the Court declares the amount due)

(Title)

THIS suit coming on this..... day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of [Taka] for the costs of the suit awarded to the defendant, making in all the sum of [Taka].

3. And it is hereby ordered and decreed as follows: —

- (i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of [Taka].....;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such cost, charges and expense as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE*Description of the mortgaged property*

No. 7C

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT
BY MORTGAGOR A DECREE FOR SALE IS PASSED
(Order XXXIV, rule 7)—Where the Court declares the amount due
(Title)

THIS suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of [Taka] for the cost of this suit awarded to the defendant, making in all the sum of [Taka]

2. And it is hereby ordered and decreed as follows: —

- (i) that the plaintiff do pay into court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of [Taka].....;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the

defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgaged property

No. 7D

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT
OF PAYMENT BY MORTGAGOR
(Order XXXIV, rule 8)
(Title)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned [and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No. 7EPRELIMINARY DECREE FOR SALE IN A REDEMPTION SUIT ON DEFAULT
BY MORTGAGOR
(Order XXXIV, rule 8)
(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such cost, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

No. 7FFINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMPTION WHERE THE
MORTGAGOR PAYS THE AMOUNT OF THE DECREE
(Order XXXIV, rules 3,5 and 8)
(Title)

THIS suit coming on this day for further consideration and it appearing that on the day of the mortgagor or the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of; It is hereby ordered and decreed that:—

- (i) the mortgagee do execute and deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor [or, as

- the case may be, who has redeemed the property] or an acknowledgement of the payment of the amount due in the his favour;
- (ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgement in the manner aforesaid,—

- (i) the said sum of [Taka] be paid out of Court to the mortgagee;
- (ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor [or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor [or other person making the payment], the said deed of reconveyance or the acknowledgement in the office of the Sub-registrar of; and
- (iii) [if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor [or such person as aforesaid who has made the payment].

No. 8

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF
 THE MORTGAGED PROPERTY
 (Order XXXIV, rules 6 and 8A)
 (Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to [Taka] and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is [Taka]

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows: —

That the mortgagor (plaintiff, or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of [Taka] with further interest at the rate of six per cent, per annum from the day of (the date of payment out of Court referred to above) up to the date of realisation of the said sum and the costs of this application.

No. 9

PRELIMINARY DECREE FOR FORECLOSURE OR SALE

[Plaintiff	.....	.....	.....	.....	1 st	Mortgagee
						vs.
Defendant No. 1	.....	.....	.....	.....	1 st	Mortgagor
Defendant No. 2	.....	.....	.....	.....	1 st	Mortgagee]

(Order XXXIV, rules 2 and 4)
(Title)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of [Taka] for the costs of this suit awarded to the plaintiff, making in all the sum of [Taka].....

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due there under has become payable at the date of the suit)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—]

3. And it is hereby ordered and decreed as follows:—

- (i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of [Taka] due to the plaintiff; and
- (b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of [Taka] due to defendant No. 2; and
- (ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of

the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant no. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage).

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

- (i) *[in the case of a mortgage by conditional sale or on anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or
- (ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
- (iii) **[in the case where a sale is ordered under clause 4(ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in

payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

- (a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

- (i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or

- (ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed [*in the case where a sale is ordered under clause 5 above*]—

- (i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may

adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

- (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit:

SCHEDULE
Description of the mortgaged property

No. 10

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE
 OR SALE ON SUBSEQUENT MORTGAGE

[Plaintiff	....	....	....	....	....	1 st	Mortgagee
vs.							
Defendant No. 1	....	....	....	....	....	1 st	Mortgagor
Defendant No. 2	....	....	....	....	....	1 st	Mortgagee]

(Order XXXIV, rules 2 and 7)
 (Title)

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of [Taka] for the costs of this suit awarded to defendant No. 2 making in all the sum of [Taka]

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage money due thereunder has become payable at the date of the suit)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—

3. And it is hereby ordered and decreed as follows:—

- (i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of [Taka] due to defendant No.2; and
- (b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Taka due to the plaintiff; and
- (ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free, from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payments as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree.

- (i) [*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale*] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the property; or
- (ii) [*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
- (iii) [*in the case where a sale is ordered under clause 4(ii) above*] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and
- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

- (a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudge due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the defendant No. 2 might have done under clause 4 above*)—

(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed (*in the case where a sale is ordered under clause 5 above*)—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No. 11

PRELIMINARY DECREE FOR SALE

[Plaintiff	....	....	....	....	Sub or derivative mortgagee
				vs.	
Defendant No. 1	....	....	....	....	Mortgagor
Defendant No. 2	....	....	....	Original	Mortgagee]

(Order XXXIV, rule 4)
(Title)

THIS suit coming on this day, etc.; it is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of [Taka] for principal, the sum of [Taka] for interest on the said principal, the sum of [Taka] for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of [Taka] for the costs of the suit awarded to defendant No. 2, making in all the sum of [Taka]

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:—

(i) that defendant No. 1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the said sum of [Taka] due to defendant No. 2.

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2(i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered

over to defendant No.1, or to such person as he appoints, and defendant No.2 shall, if so required, re-convey or retransfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

- (iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance if any shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the

plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(*declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder*).

8. And it is hereby further ordered and decreed that the parties are as liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give some directions as it thinks fit,

SCHEDULE

Description of the mortgaged property

No. 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

It is hereby declared that the, dated the day of 19, does not truly express the intention of the parties to such

And it is decreed that the saidbe rectified by

No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

It is here by declared that the, dated the day of 19, and made between and, is void as against the plaintiff and all other the creditors, if any, of the defendant.

No. 14INJUNCTION AGAINST PRIVATE NUISANCE
(Title)

Let the defendant , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL
(Title)

Let the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16INJUNCTION RESTRAINING USE OF PRIVATE ROAD
(Title)

Let the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriageway for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT
(Title)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In Creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.
In suits by next-of-kin

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit]

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the "shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E.F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the (and shall give security by bond for the due performance of his duties to the amount of [Taka].....

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) and inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that, G.H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the "and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of.....

15. And, lastly, it is ordered that this suit [or proceeding] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

No. 18

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE
(Title)

1. It is ordered that the defendant do, on or before the day of , pay into Court sum of [Taka] , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of [Taka] for interest, at the rate of [Taka] per cent, per annum, from the day of to the day of , amounting together to the sum of [Taka]

2. Let the of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of [Taka] ordered to be paid into court as aforesaid, as follows:—

- (a) The costs of the plaintiff to Mr. his Pleader or and the costs of the defendant to Mr. his Pleader.
- (b) And (*if any debts are due*) with the residue of the said sum of [Taka] after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the certificate, of the together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES
(Title)

1. It is declared that the defendant is personally liable to pay the legacy of [Taka] bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the, pay to the plaintiff the amount of what the shall certify to be due for principal and interest;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No. 20

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN
(Title)

1. Let the of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of [Taka], the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E.F.* the intestate, within one week after the taxation of the said costs by the said, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of [Taka] after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

- (a) Let the defendant, within one week after the taxation of the said costs by the as aforesaid, pay one-third share of the said residue to the plaintiffs A.B., and C.D., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-ken of the said E.F., the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the as aforesaid, pay the remaining one-third share of the said residue to G.H., as the brother and the other next-of-kin of the said E.F., the intestate.

No. 21

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP, AND THE TAKING OF PARTNERSHIP ACCOUNTS (Title)

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the..... day of and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership;
2. An account of the debts and liabilities of the said partnership;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plant mentioned, and the stock-in-trade, be sold on the premises, and that the may on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of, and that the do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

No. 22

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS (Title)

It is ordered that the fund now in Court, amounting to the sum of [Taka] be applied as follows:-

1. In payment of the debts due by the partnership set forth in the certificate of the amounting in the whole to [Taka]
2. In payment of the costs of all parties in this suit, amounting to [Taka]

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of [Taka] to the plaintiff as his share of the partnership- assets, of the sum of [Taka], being the residue of the said sum of [Taka] now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of [Taka] be paid to the said plaintiff (or defendant) in part payment of the sum of [Taka] certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before theday of pay to the plaintiff [or defendant] the sum of [Taka] being the balance of the said sum of [Taka] due to him, which will then remain due.

No. 23

DECREE IN FOR RECOVERY OF LAND AND MESNE PROFITS
(Title)

It is hereby decree as follows:-

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed,

2. That the defendant do pay to the plaintiff the sum of [Taka] with interest thereon at the rate of per cent, annum to the date of realization on account of Mesne profits which as accrued due prior to the institution of the suit.

Or

That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder]

[the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree]

SCHEDULE

APPENDIX E

EXECUTION

No. 1

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE
RECORDED AS CERTIFIED (O.21, r. 2)

(Title)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that sum of [Taka] recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why the payment/ adjustment aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this day of 19

No. 2

PRECEPT (Section 46)

(Title)

UPON hearing the decree-holder it is ordered that this precept be sent the Court of at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule

Dated the day of 19

Judge

No. 3

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT (O.21, r. 6)

(Title)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered:

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19

Judge

No. 4

CERTIFICATE OF NON-SATISFACTION OF DECREE (O. 21, r. 6)
(Title)

Certified that no (I) satisfaction of the decree of this Court in suit No. of 19 .., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19 ..

Judge

(1) *If partial, strike out "no" and state to what extent.*

No. 5

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT
(O. 21, r. 6)

Number of suit and the Court by which the decree was passed	Number of parties	Date of application for execution	Number of the execution case	Processes issued and dates of service thereof	Cost of execution	Amount realized	How the case is disposed of	Remarks
1	2	3	4	5	6	7	8	9
					Taka	Ps.		
Signature of Muharrir in charge					Signature of Judge			

No. 6

APPLICATION FOR EXECUTION OF DECREE (O. 21, r. 11)

(Title)

In the Court of I, decree holder, hereby apply for execution of the decree herein below set forth:-

1	2	3	4	5	6	7	8	9	10
No of Suit	Number of parties	Date of decree	Whether any appeal preferred from decree	Payment or adjustment made, if any	Previous application, if any, with date and result	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree	Amount of costs, if any, awarded	Against whom to be executed	Mode in which the assistance of the Court is required
789 of 1897	A.B. — Plaintiff C.D. — Defendant	October 11 th , 1897	No.	None	[Taka 72-25] recorded on application, dated the 4 th March, 1899	[Taka 314-51] principal [interest at 6 per cent. per annum, from date of decree till payment]	As awarded in the decree 47 64 Subsequently incurred 8 12 ----- Total 55 76	Against the defendant C.D.	<p>[When attachment and sale of moveable property is sought]</p> <p>I pray that the total amount of [Taka] together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendants moveable property as per annexed list and paid to me.</p> <p>[When attachment and sale of immoveable property is sought]</p> <p>I pray that the total amount of [Taka] together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.</p>

I, declare that what is stated herein is true to the best of my knowledge and belief..... Signed
....., decree-holder. Dated the day of 19

[When attachment and sale of immoveable property is sought]

The undivided one-third share of the judgment-debtor in a house situated in the village of , value [Taka] 40, and bounded as follows:—

East by G's house; West by H's house; South by public road; North by private land and J's house.

I , declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

..... Signed , decree-holder.

No. 7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE [(O. 21, r. 16)]
(Title)

To

WHEREAS has made application to this Court for execution of decree in suit No. of 19 , on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No. 8

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN EXECUTION OF A DECREE
 FOR MONEY (O. 21, r. 30)
 (Title)

To
 The Bailiff of the Court,

Decree			
Principal			
Principal			
Interest			
Cost			
Costs of execution ..			
Further interest ..			
Total			

WHEREAS was ordered by decree of this Court passed on the day of 19 in Suit No. of 19 , to pay to the plaintiff the sum of [Taka] as noted in the margin; and whereas the said sum of [Taka] has not been paid; These are to command you to attach the movable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said and unless the said shall pay to you the said sum of [Taka] together with [Taka] , the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

SCHEDULE

Judge

No. 9

WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY ADJUDGED BY DECREE
(O. 21, r. 31)
(Title)

To

The Bailiff of the Court

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (or a share in the moveable property specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered;

These are to command you to seize the said moveable property (or a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19 .

SCHEDULE

Judge

No. 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O 21, r.34)
(Title)

To

TAKE notice that on the day of 19 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the day of 19 , is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of property

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC (O. 21, r. 35)
(Title)

To
The Bailiff of the Court

WHEREAS the undermentioned property in the occupancy of has been decreed to the plaintiff in this suit. You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 19 ..

SCHEDULE

Judge

No. 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE (O. 21, r. 37)
(Title)

To
WHEREAS has made application to this Court for execution of decree in Suit No. of 19 .. by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 .., to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this day of 19 ..

No. 13

WARRANT OF ARREST IN EXECUTION (O. 21, r. 38)
(Title)

To
The Bailiff of the Court.....

Decree					
Principal					
Interest					
Cost					
Execution					
Total					

WHEREAS was adjudged by a decree of the Court in Suit No. of 19 , dated the day of 19 , to pay to the decree-holder the sum of [Taka] as noted in the margin, and whereas the said sum of [Taka] has not been paid to the said decree-holder in satisfaction of the said decree; These are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of [Taka] together with [Taka] for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been execution, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of19 .

Judge

No. 14

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL (O. 21, r. 40)

(Title)

To

The Officer in Charge of the Jail at

WHEREAS who has been brought before this Court this day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court the day of 19 , and by which decree it was ordered that the said should pay ; And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby [* * * *] commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this day19 .

Judge

No. 15

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE
(Sections 58, 59)
(Title)

To

The Officer in Charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free
..... judgment-debtor now in your custody.

Dated

Judge

No. 16

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF
MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR
RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF
(O. 21, r, 46)
(Title)

To

WHEREAS
has failed to satisfy a decree passed against on the day of
..... 19 , in suit No. of 19 in favour of
..... for [Taka] ; It is ordered that the defendant be, and is
hereby, prohibited and restrained until the further order of this Court, from receiving
from the following property in the possession of the said
that is to say, , to which the defendant is entitled, subject to any claim
of the said , and the said is hereby prohibited and
restrained, until the further order of this Court, from delivering the said property to
any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of
..... 19 .

Judge

No. 17

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY
NEGOTIABLE INSTRUMENTS (O. 21, r. 46)

(Title)

To

WHEREAS
has failed to satisfy a decree passed against on the day of
..... 19 , in suit No. of 19 , in favour of for
[Taka] ; It is ordered that the defendant be, and is hereby, prohibited
and restrained, until the further order of this Court, from receiving from you a
certain debt alleged now to be due from you to the said defendant, namely,
..... and that you , the said be, and
you are hereby, prohibited and restrained, until the further order of this Court, from
making payment of the said debt, or any part thereof, to any person whomsoever or
otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day of
..... 19 .

Judge

No. 18

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL
OF A CORPORATION (O. 21, r. 46)

(Title)

To

..... Defendant and
to Secretary of Corporation.

WHEREAS has failed to satisfy a decree passed
against on the day of 19 , in suit No.
..... of 19 , in favour of, for [Taka] ; It is
ordered that you, the defendant, be, and you are hereby, prohibited and restrained,
until the further order of this Court, from making any transfer of shares
in the aforesaid Corporation, namely, or from receiving
payment of any dividends thereon; and you the Secretary
of the said corporation are hereby prohibited and restrained from permitting any
such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day
..... 19 .

Judge

No. 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY
OR LOCAL AUTHORITY (O. 21, r. 48)

(Title)

To

WHEREAS

judgment-debtor in the above-named case, is a (*describe officer of judgment-debtor*) receiving his salary (*or allowances*) at your hands; and whereas, decree-holder in the said case, has applied in this Court for the attachment of the salary (*or allowances*) of the said to the extent ofdue to him under the decree you are hereby required to withhold the said sum of from the salary of the said in monthly instalments of and to remit the said sum (*or monthly instalments*) to this Court.

GIVEN under my hand and the seal of the Court, thisday of19

Judge

No. 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT (O.21, r. 51)

(Title)

To

The bailiff of the Court

WHEREAS an order has been passed by this Court on the day of 19 , for the attachment of ; You are hereby directed to seize the said and bring the same into Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 21

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT ON JUSTICE OR [PUBLIC OFFICER] (O.21, r.52):

(Title)

To

Sir ,

The plaintiff having applied, under rule 52 of order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what*

account, etc.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
Sir,
Your most obedient Servant,
Judge

Dated the day of 19

No. 22

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT (O.21, r. 53)
(Title)

To
The judge of the Court of ,
Sir,

I have the honour to inform you that the decree obtained in your Court on the day of 19 , by in suit No. of 19 , in which he was and was -----has been attached by this Court on the application of the , in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,
Judge

Dated the day of 19

No. 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE (O. 21, r. 53)
(Title)

To
Whereas an application has been made in this Court by the decree holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of in suit No. of 19 , in which was and was; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in anyway.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No. 24

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY
(O. 21, r. 54)

(Title)

To

..... Defendant.

Whereas you have failed to satisfy a decree passed against you on the day of 19 , in Suit No. of 19 , in favour of for [Taka] ; It is ordered that you, that said be, and your are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and your are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19 .

SCHEDULE

Judge

No. 25

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A
THIRD PARTY. (O. 21, r. 56)

(Title)

To

WHEREAS the following property has been attached in execution of a decree in Suit No. of 19 , passed on the day of 19 , in favour of for [Taka] ; It is ordered that the property so attached, consisting of [Taka] in money and [Taka] in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said to

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No. 26

NOTICE TO ATTACHING CREDITOR (O.21, r. 58)
(Title)

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in suit No. of 19 , this is to give you notice to appear before this Court on the day of 19 , either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY
(O. 21, r. 66)
(Title)

To

The Bailiff of the Court

THESE are to command you to sell by auction, after giving days previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of 19 , in execution of a decree in favour of in suit No. of 19 , or so much of the said property as shall realise the sum of [Taka] , being the of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before day of 19 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 28

Notice of the day fixed for settling a Sale Proclamation (O. 21, r. 66)
(Title)

To

..... Judgment-debtor.

Whereas in the above-named suit, the decree-holder, has applied for the sale of; You are hereby informed that the day of 19 , has been fixed for setting the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No. 29

PROCLAMATION OF SALE (O. 21, r. 66)
(Title)

Notice is hereby given that, under rule 64 of order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of [(1) Suit No. of 19 , decided by the of in which was plaintiff and was defendant.] the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule blow; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No. bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

Conditions of Sale

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, misstatement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of order XXI.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 percent on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this day of 19 ..

Schedule of Property

Judge

No. of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government	Detail of any incumbrances to which the property is liable	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value

No. 30

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE
(O.21, r.66)
(Title)

To

The Nazir of the Court.....

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 , has been fixed for the sale of the said property copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of 19 .

Schedule

Judge

No. 31

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT (o. 21, r. 71)
(Title)

Certified that the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of , purchaser, there was a deficiency in the price of the said property amounting to [Taka] , and that the expenses attending such re-sale amounted to [Taka] , making a total of [Taka] , which sum is recoverable from the defaulter.

Dated the day of 19 .

..... *officer holding the sale.*

No. 32

Notice to person in possession of moveable property sold in execution (O.21, r.79)
(Title)

To

WHEREAS
has become the purchaser at a public sale in execution of the decree in the above suit
of now in your possession, you
are hereby prohibited from delivering possession of the said
to any person except the said

GIVEN under my hand and the seal of the Court, this day of
..... 19 .

Judge

No. 33

Prohibitory order against payment of debts sold in execution to any other than the
purchaser (O. 21, r. 79).
(Title)

To

..... and to

WHEREAS has become
the purchaser at a sale in execution of the decree in the above suit of
..... being debts due from you
..... ; It is ordered that you
..... be, and you are hereby, prohibited from receiving, and
you from making payment , of the said debt to any person
or persons except the said

GIVEN under my hand and the seal of the Court , this day of
..... 19 .

Judge

No. 34

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION

(O.21, r. 79)

(Title)

To

..... and Secretary of
..... Corporation.

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of in the name of you standing ordered that you ; It is be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon ; and you , Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said the purchaser aforesaid.

GIVEN under my hand and the seal of the court, this day of
.....

Judge

No. 35

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE OR

SELL PROPERTY (O. 21, r. 83)

(Title)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 , for the sale of the under-mentioned property of the judgment-debtor , and whereas the Court has; on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court both hereby authorise the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate ; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

Description of property

GIVEN under my hand and the seal of the Court, this day of
..... 19 .

Judge

No. 36

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE (O.21, rr. 90, 92)
(Title)

To

Whereas the under mentioned property was sold on the day of 19 ; in execution of the decree-holder [*or judgment-debtor*], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [*or fraud*] in publishing [*or conducting*] the sale, namely that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Description of property

Judge

No. 37

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE (O. 21, rr. 90, 92)
(Title)

To

WHEREAS, the purchaser of the under-mentioned property sold on the day of 19 , in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that the judgment-debtor, had no saleable interest therein:

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 ,

Description of property

No. 38

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94)
(Title)

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 19 , of in execution of decree in this suit, and that the sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 39

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION
(O.21, r. 95)
(Title)

To

The Bailiff of the Court,.....

WHEREAS has become the certified purchaser of at a sale in execution of decree in suit No. of 19 ; You are hereby ordered to put the said ; the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE (O.21, r.97)
(Title)

To

WHEREAS , the decree- holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the day of 19 , at A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 41

WARRANT OF COMMITAL (O.21, r. 98)
(Title)

To

The Officer in Charge of the Jail at

WHEREAS the under-mentioned property has been decreed to the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [*or* obstructed] and is still resisting [or obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison,

You are hereby commanded and required to take and received the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 ..

Judge

No. 42

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND (Section 72)
(Title)

To

....., Collector of

Sir,

In answer to your communication No., dated, representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the honour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,
Sir,
Your obedient Servant,

Judge

APPENDIX F

SUPPLEMENTAL PROCEEDINGS

No. 1

WARRANT OF ARREST BEFORE JUDGMENT (O. 38, r. 1)
(Title)

To

The Bailiff of the Court.....

Decree						
Principal	..	..	..
Interest	..	..	..
Cost	..	..	..
Total						

WHEREAS, the plaintiff in the above suit, claims the sum of [Taka] as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to ; These are to command you to demand receive from the said the sum of [Taka] as sufficient to satisfy the plaintiff's claim, and unless the said sum of [Taka] is forthwith delivered to you by or on behalf of the said , to take the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of [Taka] for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this day of19 ..

Judge

No. 2

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT
(O. 38, r. 2)
(Title)

WHEREAS at the instance of, the plaintiff in the above suit,the defendant has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I have voluntarily become surety and myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19 .

Witness

- 1.
2.

No. 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE (O. 38, r. 3) (Title)

To

WHEREAS , who became surety on the day of 19 , for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the ----- day of 19 , at A.M. when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 4

ORDER FOR COMMITTAL (O. 38, r. 4) (Title)

To

WHEREAS plaintiff in this suit, has made 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; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 5

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR
FULFILMENT OF DECREE.(O. 38, r. 5)
(Title)

To
The Bailiff of the Court.

WHEREAS has proved the satisfaction of the Court
that the defendant in the above suit

These are to command you to call upon the said defendant
..... on or before the day of 19 , either to furnish
security for the sum of [Taka] to produce and place at the disposal of
this Court when required or the value thereof, or such
portion of the value as may be sufficient to satisfy any decree that may be passed
against him; or to appear and show cause why he should not furnish security; and
you are further ordered to attach the said and keep the same under safe
and secure custody until the further order of the Court; and you are further
commanded to return this warrant on or before the day of
.....19 , with an endorsement certifying the date on which and the manner
in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day
of19 .

Judge

No. 6

SECURITY FOR THE PRODUCTION OF PROPERTY (O.38, r. 5)
(Title)

WHEREAS at the instance of , the plaintiff in the above
suit, the defendant has been directed by the Court to furnish security in
the sum [Taka] to produce and place at the disposal of the Court the
property specified in the schedule hereunto annexed;

Therefore I have voluntarily become surety and do hereby bind
myself, my heirs and executors, to the said Court, that the said defendant shall
produce and place at the disposal of the Court, when required, the property specified
in the said schedule, or the value of the same, or such portion thereof as may be
sufficient to satisfy the decree; and in default of his so doing, I bend myself, my
heirs and executors, to pay to the said Court, at its order, the said sum of [Taka]
..... or such sum not exceeding the said sum as the Court may adjudge.

Schedule

Witness my hand at this day of19 .

Witnesses.

- 1.
- 2.

No. 7

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY

(O. 38, r. 6)

(Title)

To

The Bailiff of the Court

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said ----- to furnish such security, which he has failed to do; These are to command you to attach , the property of the said....., and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 8

TEMPORARY INJUNCTIONS (O. 39, r.1)

(Title)

Upon motion made unto this Court by , pleader of [or Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of , or the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof [if after notice and defendant not appearing: add, and also the evidence of as to service of notice of this motion upon the defendant C.D.] This Court do order that an injunction be awarded to restrain the defendant C.D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No.9, Oilmongers Street, Hindupur, in the Taluk of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this day of 19 .

Judge

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—]

..... to restrain the defendants and from parting without of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the, etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases] to restraint the defendant *C.D.*, his servants, agents or workmen, from printing, publishing or vending a book, called, or any part thereof, until the, etc.

[Where part only of a book is to be restrained]

..... to restrain the defendant *C.D.*, his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [or which is contained in page to page both inclusive] until, etc.

[In Patent cases] to restrain the defendant *C.D.*, his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's, plaint [or petition, etc. or written statement, etc.,] mentioned, belonging to the plaintiff's, or either of them, during the remainder to the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.,

[In cases of Trade marks] to restrain the defendant *C.D.*, his servants, agents or workmen, from selling, or exposing for the sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff *A. B.*, until the, etc.,

[To restrain a Partner from in anyway Interferring in the business]

..... to restrain the defendant C.D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 9

APPOINTMENT OF A RECEIVER (O. 40, r. 1)

(Title)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19 , in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on You will be entitled to remuneration at the rate of percent, upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 10

BOND TO BE GIVEN BY RECEIVER (O. 40, r. 3)

(Title)

Know all men by these presents, that we, andand , are jointly and severally bound to of the Court of in [Taka] to be paid to the said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of19 , Whereas a
 plaint has been filed in this Court byagainst
 for the purpose of [*here insert the abject of suit*]:

And whereas the said has been appointed, by order of the
 above-mentioned Court, to receive the rents and profits of the immoveable property
 and to get in the outstanding moveable property of in the
 said plaint named:

Now the condition of this obligation is such, that if the above-bounden
 shall duly account for all and every the sum and sums of money
 which he shall so receive on account of the rents and profits of the immoveable
 property, and in respect of the moveable property, of the said at
 such periods as the said Court shall appoint, and shall duly pay the balances which
 shall from time to time be certified to be due from him as the said Court hath
 directed or shall hereafter direct, then this obligation shall be void, otherwise it shall
 remain in full force.

Signed and delivered by the above-bounden in the presence of

Note:— If deposit of money is made, the memorandum thereof should follow
 the terms of the condition of the bond.

APPENDIX G

APPEAL, REFERENCE AND REVIEW

No. 1

MEMORANDUM OF APPEAL (O. 41, r.1)

(Title)

The above-named appeals to the Court at from the decree of in suit No. of 19 , dated the day of 19 , and sets forth the following grounds of objection to the decree appealed from, namely :-

No. 2

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE (O. 41, r. 5)

(Title)

To

THIS security bond on stay of execution of decree executed by witnesseth:—

That, the plaintiff, in suit No. of 19....., having sued..... the defendant, in this Court and decree having been passed on the day of 19..... in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of [Taka], mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule

Witnessed by

(Signed)

- 1.
2.

No. 3

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL (O. 41, r. 6)

(Title)

To

This security bond on stay of execution of decree executed by witnesseth :-

That, the plaintiff in Suit No..... of 19....., having sued, the defendant, in this Court and a decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of, [Taka] mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19.....

*Schedule**(Signed)*

Witnessed by

I.

No. 4

SECURITY FOR COSTS OF APPEAL (O.41, r.10)

(Title)

To

This security bond for costs of appeal executed by witnesseth :-

This appellant has preferred an appeal from the decree in Suit No. of 19....., against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not

transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, in shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19

Schedule

Witnessed by

- 1.
- 2.

No. 5

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL (O.41, r. 13)
(Title)

To

You are hereby directed to take notice that the in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the day of 19

You are requested to send with all practicable despatch all material papers in the suit.

Dated the day of 19

Judge

No. 6

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL
(O. 41, r.14)
(Title)

Appeal from the of the Court ofdated the day of19

To

..... respondent.

Take notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that theday of19..... has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of19 ..

[Note:— If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 7

NOTICE TO PARTY TO A SUIT NOT MADE APARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT (O. 41, r.20)

(Title)

To

WHEREAS you were a party in suit No. of 19..... , in the Court of and whereas the has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to the Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of19....., atA.M

If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, thisday of19 ..

Judge

No. 8

MEMORANDUM OF CROSS OBJECTION (O. 41, r.22)

(Title)

WHEREAS the has preferred an appeal to the Court at from the decree of in Suit No..... of 19 , dated the day of19 , and whereas notice of the day fixed for hearing the appeal was served on the day of19 , thefiles this memorandum of cross objection under rule 22 of order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely :—

No. 9

DECREE IN APPEAL (O.41, r.35)

(Title)

Appeal No..... of 19..... from the decree of the Court of
 dated the day of 19 Memorandum of Appeal
 Plaintiff
 defendant

The above-named appeals to the.....Court at
from the decree of in the above suit, dated
 theday of19 , for the following reasons,
 namely :—

This appeal coming on for hearing on the day of
19 , before in the presence of
for the appellant and of for the respondent,
 it is ordered-

The costs of this appeal, as detailed below, amounting to [Taka], are to
 be paid by The costs of the original suit are to be paid by

GIVEN under my hand this day
 of 19

Judge

Costs of Appeal

Appellant	Amount		Respondent	Amount	
	Taka	Ps.		Taka	Ps.
1. Stamp for memorandum of appeal			1. Stamp for memorandum of appeal		
2. Do for power ..			2. Do for power ..		
3. Service of processes			3. Service of processes		
4. Pleader's fee on Tk.			4. Pleader's fee on Tk.		
TOTAL ..			TOTAL ..		

No. 10

APPLICATION TO APPEAL IN FORMA PAUPERIS (O. 44, r. 1)
(Title)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the day of 19 ..

(Signed)

Note:— Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11

NOTICE OF APPEAL *in forma pauperis* (O. 44, r. 1)
(Title)

WHEREAS the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 .., has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this day of 19 ..

Judge

No. 12

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE [APPELLATE
 DIVISION] SHOULD NOT BE GRANTED (O. 45, r. 3)
(Title)

To

TAKE notice that has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to the [Appellate Division]

The day of 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

GIVEN under my hand and the seal of the Court, this day of 19 .

Registrar

No. 13

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE [Appellate Division]
(O. 45, r. 8)
(Title)

To

WHEREAS , the in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said to [the Appellate Division] has been admitted on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

Registrar

No. 14

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED (O. 47, r. 4)
(Title)

To

TAKA notice that has applied to this Court for a review of its decree passed on the day of 19 . in the above case. The day of 19 , is fixed for you to show cause why the Court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

APPENDIX H

MISCELLANEOUS

No. 1

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED (O. 14, r. 6)
(Title)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 , and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be):

We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such issue, will pay to the said the sum of [Taka] (or such sum as the Court shall hold to be due thereon), and I, the said , will accept the said sum of [Taka] (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [or that upon such finding I, the said will do or abstain from doing, etc., etc.]

..... Plaintiff
..... Defendant

Witnesses:—

- 1.
- 2.

Dated day of 19 .

No. 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL (Section 24)

In the Court of the District Judge of No. of 19 .

To

WHEREAS an application, dated the day of 19 has been made to this Court by the in Suit No. of 19 , now pending in the Court of the at in which is plaintiff and is defendant, for the transfer of the suit for trial to the Court of the at :—

You are hereby informed that the day of 19 has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 3

NOTICE OF PAYMENT INTO COURT (O. 24, r. 2)
(Title)

TAKE notice that the defendant has paid into Court [Taka] and says that sum is sufficient to satisfy the plaintiff's claim in ful.

X.Y. Pleader for the defendant.

To. Z Pleader for the plaintiff.

No. 4

NOTICE TO SHOW CAUSE (GENERAL FORM)
(Title)

To

WHEREAS the above-named has made application to this Court that

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of 19 , at o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex-parte*.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 5

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF/DEFENDANT (O. 13, r. 1)
(Title)

No.	Description of document	Date, if any, which the document bears	Signature of party or pleader
1	2	3	4

No. 6

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION (O. 18, r. 16)
(Title)

To Plaintiff (or defendant)

WHEREAS in the above suit application has been made to the Court by that the examination of , a witness required by the said , in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's Jurisdiction (*or any other good and sufficient cause to be Stated*);

TAKE notice that the examination of the said witness will be taken by the Court on the day of 19

Dated the day of 19

Judge

No. 7

COMMISSION TO EXAMINE ABSENT WITNESS (O. 26, rr. 4, 18)
(Title)

To

WHEREAS the evidence of the is required by the in the above suit; and whereas; you are requested to take the evidence on interrogatories [*or viva voce*] of such witness , and you are hereby appointed commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of [Taka] , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19

No. 8

LETTER OF REQUEST (O. 26, r. 5)
(Title)

(Heading:—To the President and Judges of, etc., etc., *or as the case may be*)

WHEREAS a suit is now pending in the in which
A. B. is plaintiff and C.D. is defendant; and in the said suit the plaintiff claims.

(Abstract of claim)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E.F., of
G.H., of
I.J., of

And it appearing that such witnesses are resident within the Jurisdiction of your honourable Court;

Now I, as the of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination,

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note:—If the request is directed to a Foreign Court, the words "through the [Government] for transmission" should be inserted after the words "other witnesses" in the last line of this form.)

No. 9

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS
(Or. 26, rr. 9, 11)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of [Taka], being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 ..

Judge

No. 10

COMMISSION TO MAKE A PARTITION (O. 26, r. 13)
(Title)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated day of 19 ; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and Judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalising the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having Jurisdiction on your application.

A sum of [Taka], being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 ..

Judge

No. 11

NOTICE TO MINOR DEFENDANT AND GURDIAN (O. 32, r. 3)
(Title)

To

.....*Minor Defendant*
.....*Natural Guardian*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you, are hereby required to take notice that unless within days from the service upon you of this notice, an application is made to this Court for the appointment of you or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 12

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM
(O. 33, r. 6)
(Title)

To

WHEREAS..... has applied to this Court for permission to institute a suit against in *forma pauperise* under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the day of 19 , has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof;

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the paupersim of the applicant, you may do so on appearing in this court on the said day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 13

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE
(Section 145)
(Title)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit; and whereas a decree was passed on the day of 19, against the said defendant for the payment of, and whereas application has been made for execution of the said decree against you:

Take notice that you are hereby required on or before the day of 19, to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

CIVIL PROCEDURE CODE
THE FIRST SCHEDULE. APPENDIX - H — (MISCELLANEOUS)

No. 14

REGISTER OF CIVIL SUITS (O. 4, r. 2)

Court of the of at

REGISTER OF CIVIL SUITS IN THE YEAR 19

		Plaintiff		Defendant		Claim		Appearance		Judgment		Appeal		Execution			Return of Execution									
Date of presentation of plaint	Number of suit	Name	Description	Place of residence	Name	Description	Place of residence	Particulars	Amount or value	When the cause of action accrued	Day for parties to appear	Plaintiff	Defendant	Date	For whom	For what, or amount	Date of decision of appeal	Judgment in Appeal	Date of application	Date of order	Against whom	For what and amount, if money	Amount of cost	Amount paid into Court	Arrested	Minute of other return than Payment or Arrest, and date of every Return

NOTE:— Where there are numerous plaintiffs, or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

CIVIL PROCEDURE CODE
THE FIRST SCHEDULE. **APPENDIX – H** — (MISCELLANEOUS)

No. 15

REGISTER OF APPEALS (O. 41, r. 9)

COURT (OR HIGH COURT DIVISION) AT

REGISTER OF APPEALS FROM DECREE IN THE YEAR 19.

Date of memorandum	Number of appeal	Plaintiff			Respondent			Decree appealed from			Appearance			Judgment			
		Name	Description	Place of residence	Name	Description	Place of residence	Of what Court	Number of Original Suit	Particulars	Amount of value	Day for parties to appear	Appellant	Respondent	Date	Confirmed, reversed or varied	For what or amount

THE THIRD SCHEDULE

(SEE S. 69)

EXECUTION OF DECREES BY COLLECTORS

(1) **Power of Collector.**—Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) Proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

(2) **Procedure of Collector in special cases.**—Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

(3) **Notice to be given to decree-holders and to persons having claims on property.**—In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such

decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

(4) Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.—Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

(5) Where District Court may issue notices and hold-inquiry.—The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

(6) Effect of decision of Court as to dispute.—The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

(7) Scheme for liquidation of decrees for payment of money.—Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or

- (b) if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—
- (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or
 - (ii) by mortgaging the whole or any part of such property; or
 - (iii) by selling part of such property; or
 - (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or
 - (v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient, If any dispute arises as to the amount due on any incumbrance with which the Collector purposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrator, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the [Government].

(8) Recovery of balance (if any) after letting or management.—Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

(9) Collector to render accounts to Court.—(1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the

exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to [the Government] in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgement-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
 - (i) in keeping down the interest on incumbrances on the property;
 - (ii) where the judgement-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
 - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

(10) Sales how to be conducted.—Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by the public auction or private contract, as he thinks fit.

(11) Restrictions as to alienation by judgement-debtor or his representative and prosecution of remedies by decree-holders.—(1) So long as the Collector can exercise or perform in respect of the judgement-debtor's immoveable property or any part thereof, any of the powers or duties conferred or imposed on him by

THE THIRD SCHEDULE. — Execution of Decrees by Collectors

paragraphs 1 to 10, the judgement-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgement-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

(12) Provision where property is in several districts.—Where the property of which the sale has been ordered is situated in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the [Government] may by general rule or special order direct.

(13) Powers of Collector to compel attendance and production.—In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

THE FOURTH SCHEDULE

(See Section 155)

ENACTMENTS AMENDED

1	2	3	4
Year	No	Short title	Amendment
1870	VII	The Court-fees Act, 1870	In article 1 of Schedule I, after the word "plaint" the words "Written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted. From article 11 of Schedule II the words "from and order rejecting a plaint or" shall be omitted. For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely:— "Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908".

THE FIFTH SCHEDULE.— [Enactment's repealed] Rep. By the Second Repealing and Amending Act, 1914 (XVII of 1914, s. 3 and Second Schedule.

THE CIVIL PROCEDURE CODE, 1908
(Act No. V of 1908)

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