

Civil Court Rules of the High Court of Judicature at Patna

(VOLUME 1)

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Preliminary

[Nothing in the Civil Court Rules will interfere with the general powers of supervision of the District Judge over the Courts and officers subordinate to him.] [G.L. 5/62.]

1. All Courts shall ordinarily sit at 10.30 A.M. and rise at 4.30 P.M., standard time. It is expected that the Judges will so arrange the business of their Courts as to supply work for these hours. *[G.L. 7/44, G.L. 1/46, G.L. 2/50.]*

Note 1.—Between 1st April and 30th June, the exact date being settled in consultation with the Heads of Offices in the station, the Courts may commence their sittings at 6 A.M., or as soon thereafter as convenient. When this arrangement is in force the Court expect that Judicial Officers will sit for at least five hours each day. However, if the local weather conditions so necessitate or for any other sufficient reason or cause the subordinate Courts may sit in the morning at any time of the year with the prior approval of the High Court.

Note 2.—Judges are at liberty to rise for half an hour or less at about 1.30 P.M. (or at about 8.30 A.M. in the case of morning sittings).

2. Every Civil Court shall maintain a Diary in the prescribed form. Each case fixed for any day shall be entered in advance immediately upon a date or adjourned date being fixed, and the entry as to each case shall show the purpose for which it is set down on each particular date, such as for final disposal at the first hearing, or for settlement of issues, or for trial after adjournment. The Diary will show briefly the progress made in each case, and when witnesses are examined in any case, the number of such witnesses shall be stated. A running total in red ink should be inserted from day to day, in order to show the total number of witnesses examined during each quarter of the year. A new serial number should be started at the commencement of each quarter. [G.L. 6/55]

Note 1.—The above instructions are intended for strict observance, and the hours of the sitting and the rising of the Court must be regularly and carefully entered. In the case of any unusually short sitting on any day, a short note explaining the reason shall be given in the diary.

Note 2.—When an officer has to perform Revenue or Criminal duties in addition to his work as a Civil Judicial Officer, he will, when at headquarters, note in the diary whether the day has been spent wholly or partly in the performance of any one class of such duties. The whole of the days spent by him on tour will be credited, in the non-Regulation districts, to Revenue alone.

Comments & Case Law

[Every civil court has to maintain a diary in the prescribed form which among other things, contains the adjourned dates. *M/s Maliram Mahabir Prasad vs. Shanti Debi*, 1991(2) BLJ 290 : 1991(1) PLJR 480 : 1991 (2) BLJR 1219 : AIR 1992 Pat. 66.]

3. A daily list of cases shall be posted in some conspicuous place in every Court-house for the information of the parties and their pleaders. The cases should, as far as possible, be arranged in the order in which they are likely to be taken up. Execution and Miscellaneous cases may be shown either in the same list or in a separate list. The list shall be prepared and posted on the preceding working day at 4.30 P.M., or in the case of morning sittings before 11 A.M. In the list the cases will be sufficiently described by their number, year and class. [*H.C. letter no. 11392, dated 15th November, 1957.*]

Note.—Judgments ready for delivery should ordinarily be notified in the cause list for the day.

4. At the close of each day a list shall be prepared and posted up in the Court-house showing all cases for the hearing or adjourned hearing of which dates have

been fixed during the day, and dates so fixed. [G.L. 5/46, G.L. 10/45, G.L. 8/49, H.C. letter no. 14401—16, dated 8th December, 1965.]

Note 1.—The number of cases fixed for each day should be restricted to such number as, after making allowance for unavoidable postponements, the Court may reasonably expect to be in a position to deal with.

Note 2.—Lists shall be prepared in the language of the Court and shall remain posted for seven working days after which they shall be filed in office for future reference, if necessary. At the end of every quarter the lists for the previous quarter will be destroyed.

Note 3.—The daily list referred to in Rule 3 will be used at the end of the day as the list referred to in Rule 4.

Note 4.—The list shall be signed by the Presiding Judge and exhibited before he leaves the Court.

Comments & Case law

[Rule 4 provide that at the close of each day a list shall be prepared and posted up in the Court house showing all cases for the hearing or adjourned hearing of which dates have been fixed during the day. The date of the case has to be fixed by passing a judicial order on the order sheet of the concerned case and only after such date is fixed the case be shown in the cause list. *M/s Maliram Mahabir Prasad vs. Shanti Debi*, 1991(2) BLJ 290 : 1991(1) PLJR 480 : 1991 (2) BLJR 1219 : AIR 1992 Pat. 66.]

5. Without the consent of the parties and in the absence of urgent necessity no Civil Trial should proceed on Sundays or holidays gazetted under Section 15 (2) of Act XII of 1887.

6. The Government of Bihar have declared the following as Court language in the State of Bihar in supersession of all previous notifications and orders on the subject—

“Hindi” to be written in “Devanagri” character;

1[* * * * *]

7. With the permission of the Presiding Judge any Advocate or Pleader may address the Court in English when any of the pleaders on the opposite side is acquainted with that language or whenever the senior of such pleaders or his client consents to this being done.

8. Plaints may be presented any time during the Court hours. [G.L. 1/36, G.L. 4/62.]

9. Petitions, applications, etc., should always be taken in open Courts, and usually at the commencement of the daily sitting of the Court. The majority of petitions can be disposed of by an order passed in Court as soon as they are filed. Where a reference to the record or to other papers is necessary before an order can be made, petitions should, unless they are of an exceptionally urgent nature, be brought up with such record or papers on the following open day and orders should then be passed in Court.

Note.—The District Judge shall fix for his Court and for all Courts subordinate to him a time for the presentation of such applications, petitions, etc., as can be presented to the Presiding Officer only. [G.L. 4/62.]

1. Deleted by C.S. No. 32, dated 11.8.1972.

10. No documents or proceeding required to be presented to or filed in Court, which is sent by post or telegraph, shall be received or filed in Court. [G.L. 12/65.]

11. The administrative work connected with Civil Courts will be carried on in the office, which will be divided into Departments, and each such Department will be in charge of a Judicial Officer.

12. The Regular Seal of the Court shall be placed in custody of a responsible officer of the Court and documents required to be sealed with it should be sealed under his superintendence. Similar precautions shall be taken with respect to the Date Seal, which is affixed to all documents and papers on their presentation to Court. The Regular Seal is to be used for sealing judgments, decrees, writs, processes, sale-certificates, copies or other documents made or issued judicially. [G.L. 2/27, G.L. 5/61.]

The date seal shall be affixed to all documents and papers presented to Court in such a way as to show clearly the date on which they were presented. If any Court-fee labels appear on them, the Date Seal shall be affixed a second time in such a way as to deface the Court-fee labels.

PART I

General Rules Relating to Practice and Procedure

CHAPTER I

Pleadings, Petitions and Affidavits

13. Parties should file pleadings, petitions, applications and affidavits in the language of the Court as far as practicable, or in English and type-written, if possible.

14. Every pleading, petition, affidavit or application filed in Court shall be—

- (1) type-written or written on foolscap water-marked plain demi-paper, one side of the paper only being used and a quarter margin together with at least one inch of space at the top and bottom of each sheet being allowed;

Note.—The paper indicated is that generally known as “pie” or “cartridge” paper and is sold by all stamp-vendors.

- (2) couched in proper language;
- (3) dated, and signed by the person presenting it and also, where necessary, by such other person as may by law be required to sign such pleading, petition, affidavit or application;
- (4) signed by the scribe or typist, who shall state the capacity in which he writes it.

Note 1.—This Rule shall apply as far as possible to *vakalatnamas*, *mukhtar namas*, process-fee sheets and similar other papers.

Note 2.—A *Mukhtar* is not permitted to sign pleadings. When a plaint or written statement is presented or tendered by a *Mukhtar* an endorsement shall be made thereon by the officer of the Court receiving it in the following terms—

“Presented by A.B., *Mukhtar*.”

The endorsement shall be signed by such officer and the *Mukhtar*.

15. When the person presenting a pleading, affidavit, petition or application is not a pleader or a *mukhtar*, he shall, if so required by the Court, be identified. In the case of an illiterate person his thumb impression shall be affixed in place of the signature required in this connection.

16. Every petition or pleading shall state concisely and clearly—

- (1) the facts, matters and circumstances upon which the applicant relies;
- (2) the matter of complaint, if any, and the relief sought or prayer made.

17. Every interlineation, alteration or erasure in a petition or pleading shall be authenticated by the initials of the pleader, or recognised agent of the party by whom it is presented. In the case of an affidavit such authentication shall be made by the initials of the Commissioner.

18. On every interlocutory application or petition filed in a suit valued at less than Rs. 50 the parties shall note the valuation to enable a proper check to be made of the Court-fee paid.

19. Applications in regard to distinct subject-matters shall be made in separate petitions.

Comments & Case Law

[Though two prayers in one petition are not permissible but the subject matters in such prayer were not distinct subject matters in terms of rule 19 - held permissible. *Baikunth Prasad Verma vs. Lachmi Paper House*, 1990(1) PLJR 668 : 1991 (2) PLJR 479.]

20. Petitions requiring verification shall be verified in the manner prescribed in Order VI, Rule 15, Civil Procedure Code.

21. In contested original suits no written statement, application or list of documents shall be filed unless copies thereof have been previously served on the pleader for each set of parties whose interests are not joint. Pleaders served with such copies shall give receipts on the original written statements, applications or lists.

Note.—The above Rule shall apply *mutatis mutandis* to all contested execution proceedings and miscellaneous judicial cases.

22. An order appointing an officer to receive plaints under Order IV, Rule 1 of the Code of Civil Procedure must be in writing. [*G.L. 12/26, G.L. 1/18.*]

23. All plaints and petitions required to be entered in any register must be registered on presentation irrespective of any question as to their possible rejection or of their having to be returned for amendment. [*G.L. 2/25, G.L. 6/29.*]

24. No plaint shall ordinarily remain unregistered for more than one day; but should it be found impossible for any reason to register a plaint within 24 hours of its receipt, the fact shall be reported to the Presiding Officer of the Court concerned.

25. A list of the plaints filed each day shall be posted the same day in the prescribed form in the language of the Court at some conspicuous place in the Court-house for the information of the plaintiffs and their pleaders. It shall be signed by the Presiding Officer and exhibited as early as possible and in all circumstances before he leaves the Court.

When a large number of rent suits is instituted at one time special arrangements shall be made so that the information may be supplied as quickly as possible, and

previous notice shall be given to the Bar and the public of such modifications of the ordinary procedure as may be necessary on these occasions.

The list shall be affixed one above the other in the form of a guard file. They shall remain posted for one week. The lists for a quarter shall be destroyed at the end of the succeeding quarter.

Note.—The above procedure will apply *mutatis mutandis* to memoranda of appeals, but the District Judge shall decide whether the list of memoranda of appeals shall be in the vernacular or in English.

26. All *Sarishtadars* shall be *ex-officio* Commissioners of affidavits in respect of matters and causes arising within and subject to the jurisdiction of the respective Courts in which they are employed.

27. All *Nazirs* shall be Commissioners of affidavits when such affidavits relate to service of processes and sworn to by process servers under them.

28. District Judges should be careful to satisfy themselves that persons whom, in the exercise of the power vested in them under clause (c) of Section 139 of the Code of Civil Procedure, they propose to appoint to be Commissioners to administer oaths on affidavits, are trustworthy and capable of discharging that function with efficiency.

29. Every affidavit to be used in a Court of Justice shall be entitled “In the Court of at naming such Court.

30. If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it must also be entitled in the cause.

31. If there be no cause in Court, the affidavit shall be entitled “In the matter of the petition of”.

32. Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

33. Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

34. When the deponent in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words “I affirm” (or “make oath”) “and say”.

35. When the particular fact is not within the deponent’s own knowledge, but is stated from information obtained from others, the deponent must use the expression “I am informed” (and, if such be the case, should add) “and verily believe it to be true”, or he may state the source from which he received such information. When the statement rests on facts disclosed in documents, or copies of documents procured from any Court of Justice or other source, the deponent shall state what is the source from which they were procured, and his information, or belief, as to the truth of the facts disclosed in such documents.

36. Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by some person known to him, and the Commissioner shall specify at the foot of the petition, or of the affidavit (as the case may be), the name and description of him by whom the identification is made, as well as the time and place of identification, and of the making of the affidavit. [G.L. 3/53.]

37. If any person making an affidavit shall be ignorant of the language in which it is written, or shall appear to the Commissioner to be illiterate, or not fully to understand the contents of the affidavit, the Commissioner shall cause the affidavit to be read and explained to him in a language which both he and the Commissioner understand, either doing so himself, or causing another person to do so in his presence. When any affidavit is read and explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read or explained, and that the deponent seemed perfectly to understand the same at the time of making the affidavit.

38. In administering oaths and affirmations to deponents, the Commissioner shall be guided by the provisions of the Indian Oaths Act, Act X of 1873. Christian deponents shall be sworn on the New Testament. The following forms are to be used—

OATH

I swear that this my declaration is true, that it conceals nothing, and that no part of it is false. So help me God.

AFFIRMATION

I solemnly declare that this my declaration is true, that it conceals nothing and that no part of it is false.

39. In all suits and appeals, evidence should, as a general Rule, “be taken orally in open Court in the presence, and under the personal direction and superintendence of the Judge” (Order XVIII, Rule 4). The power to order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, should be exercised only under special circumstances, or as Order XIX, Rule 1, declares, “for sufficient reason”, which should always be specified in the order. General orders cannot therefore be given for the admission of affidavits in suits or appeals; where any such orders have been given, they should be withdrawn.

Comments & Case Law

[The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the hand maid, not the mistress of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence. Processual, as much as substantive. *Sushil Kumar Sen vs. State of Bihar*, 1975(1) SCC 774.

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in

which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. *Blyth vs. Blyth, 1966 (1) All E.R. 524 (HL)*.

A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. *Shreenath vs. Rajesh, AIR 1998 SC 1827*.

Processual law is not to be a tyrant but a servant not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. *Rani Kusum vs. Kanchan Devi, 2005(3) BLJ 719 : 2005 AIR (SC) 3304 : 2005(6) SCC 705 : 2005 AIRSCW 3985*.

Claim for promotion to the post of *Seristadar*. Rules not indicating that an employee who is already in the super time scale is not entitled to be considered for promotion as *Seristadar* unless he has passed the aforesaid proficiency test. Petitioner was promoted in the super time selection grade much prior to the said Rules coming into force. Held, petitioner who was senior to respondent No. 4 has been arbitrarily deprived of his promotion to the post of *Seristadar*. Writ allowed. *Alladin Ashraf vs. State of Bihar, 1995(1) BLJ 480*.]

40. The Court should be careful to enforce Order XIX, Rule 3, and except in interlocutory applications (see Order XIX, Rule 2), to confine the use of affidavits to such facts as the deponent is able to prove of his own knowledge and to refuse statements founded on mere belief.

41. In determining how the costs of affidavits should be borne by the parties to the suit, a Court should have special regard to the circumstances under which they were admitted. When an affidavit has been allowed for the convenience of one of the parties, or of one of his witnesses, the costs so incurred should not form costs in the suit and be charged against the opposite party.

CHAPTER II

[G.L. 6/53.]

Processes and Process-Servers

I.—PROCESSES

A.—General

42. In every process and order (of whatever description) issued by a Judicial Officer, for whatever purpose it may be issued or made, the name of the district and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such a manner that they may be easily read.

43. (a) Processes should ordinarily issue in the language of the Court; but processes sent for service at any place where the language is different from that of the Court issuing them should be accompanied by a translation in the language of such place or in English certified to be correct. [G.L. 1/21, G.L. 12/55.]

(b) Processes in English should be issued to Europeans and Anglo-Indians.

44. Every person on whom a process is to be served or executed shall be described therein in such a manner as to identify him clearly, by a statement of his correct name and address and such further description as will serve to identify him. [G.L. 4/54.]

Note.—In the case of service or execution of processes to be effected in large towns, the name of the street or section and the number of the house, where possible, should be given. Where addresses for service were filed by the opposite parties in the Lower Court, notices and processes shall issue from the appellate Court to such addresses, *vide* Order 41, Rule 38, Code of Civil Procedure.

45. (1) With every plaint and every application for the issue of process, parties shall file the necessary number of printed forms of the same duly filled up in bold, clear and easily legible writing leaving the date of appearance and the date of the process blank. On application such forms will be supplied free of charge.

(2) The parties or their pleaders shall sign the forms in the left bottom corner and will be held responsible for the accuracy of the information entered therein.

(3) When orders for the issue of process are passed by the Court, the date fixed for appearance will be inserted in the form and the process will be dated by an officer of the Court before the processes are signed.

(4) The Presiding Officer may, in his discretion, direct in any particular case that the forms of processes be entirely filled up in the office of the Court.

46. If service in sufficient time before the date fixed is impracticable, the process is to be returned to the issuing Court with reasons and thereupon a fresh date may be fixed.

47. A summons issued under Order V, Rule 21, shall ordinarily be sent to the Court of the Munsif within whose jurisdiction the defendant or the witness, as the case may be, resides, with a covering letter or an endorsement signed by the Presiding Officer.

Note.—Summons and notices issued by Superior Courts for service within the jurisdiction of outlying Munsifs of the same district shall be forwarded to the Court of the Munsif concerned and not ordinarily served by a peon from *Sadr*. This procedure is to be followed also in the case of notices received from the High Court.

B.—Method and Proof of Service

48. Service should be personal wherever practicable and the Courts ought not in *ex parte* cases to act upon anything short of personal service until they are satisfied that personal service could not reasonably be effected.

49. When a summons or notice is served personally, the service and the signature or thumb-impression of the person served on the back of the summons or notice should be proved and, in the case of a defendant or judgment-debtor his identity should also be proved.

50. If the service is made under Order V, Rule 12, of the Code, on an agent, it should be proved that such agent was empowered to accept service, either by reason of his being one of the class of recognised agents described in Order III, Rule 2, Order XXVII, Rule 2, or Section 85(1), or by virtue of appointment for that purpose in writing. The party causing the service to be effected must, in both the last mentioned cases, furnish the necessary proof to this effect. [G.L. 1/50.]

51. Where service is made under Order V, Rules 14, 15, 17 or 20 the necessary particulars must be strictly proved. In the case of such service it must also be proved that a reasonable attempt was made to find out the person to be served. Where service is made under Order V, Rule 20, it should, in addition to the particulars required by law, be proved how long and until what time the defendant or respondent resided in the house and what has become of him.

52. If the service is made under Order XXIX, Rule 2, it should be proved that the summons or notice was left at the registered office of the Company, or was delivered to any Director, Secretary or other principal officer.

53. In the case of Railway Administrations or Companies in addition to service in the usual way, a copy of the summons should be sent by post under Order XXIX, Rule 2 (b); provided that if the summons is sent by registered post, service in the usual way may be dispensed with. [G.L. 6/16, G.L. 1/24.]

54. If the service is made under Order XXX, Rule 3, clause (b), it should be proved that the person on whom the summons was served has at the time of service the control or management of the partnership business. [G.L. 14/49.]

55. If the summons or notice, when tendered, is declined by the defendant or his agent, or a male member of his family, besides the proof required as to identity, etc., as stated above, it should be proved that the party was informed that the document tendered was summons or notice, and that he was made acquainted with the nature and contents thereof. [G.L. 2/31]

56. The proof required under the preceding Rules 49, 51 and 55 shall in the following cases ordinarily be—

- (1) in the case of a respondent, the affidavit of the person by whom the service was effected;
- (2) in the case of a defendant or judgment-debtor, the affidavit of the person by whom the service was effected, and in addition at least one of the following—
 - (a) The affidavit of an identifier provided by the plaintiff or decree-holder and present at the service;
 - (b) verification in the form printed upon the back of the process and made, at the scene of the service, by a local villager, *Chaukidar*, *Dafadar*, *Mukhia* or *Sarpanch* present thereat :

¹ [(c) Proof referred to in Order V, Rule 19A (2), C.P.C.:]

Provided that if deemed necessary the Court may require the examination upon oath or affirmation of such person or persons as it may think fit;

²[Provided further that in the case of service upon any adult member of the family, whether male or female, residing with the defendant or respondent or Judgment-debtor or opposite party (as the case may be), the affidavit of the person by whom service was effected shall contain a statement that the adult member of the family receiving or taking the notice was residing with the defendant or the

1. Subs. by C.S. No. 54, dated 27.12.1979.

2. Ins. by C.S. No. 75, dated 1.5.1985.

respondent or the judgment-debtor or the opposite party at the time of the service and that he was satisfied that the person upon whom service was effected was not a servant but a member of the family:]

Provided further, that in rent suits and execution cases arising therefrom and in case of pleaders appointed as guardians *ad-litem*, Government Pleaders in suit against Government and Public Officers, service of summons or notice should be accepted as sufficient upon the peon's affidavit alone, if the peon certifies that he has served the summons or notice in the presence of two witnesses (name and addresses of the witnesses are to be given).

57. As there is no legal obligation upon a plaintiff, decree-holder or appellant to supply an identifier for service of process or notice, process-servers must not return unserved any notice, process or summons tendered to them for service, by reason only of the fact that no identifier has been supplied by the party. They must make every possible endeavour to find out the person to be served and to secure the verification referred to in Rule 56 (2) (b) above, making for that purpose careful enquiries in the locality. The *Nazir* should personally deal with all cases in which the process-server reports that he could not find the person upon whom service was to be made, and when necessary he should bring the matter to the notice of the Judge-in-charge of the department.

58. When the summons which has been served is the summons of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should retransmit the summons to the Court by which it was issued together with (1) the *Nazir's* return and the affidavits, verified statements, or depositions of the serving officer and the witnesses relative to the facts of the service, (2) the record of such Court's proceedings with regard thereto (Order V, Rule 23), and (3) in case where any of these documents is in a language different from that of the district from which the process issued, an English translation of such document certified to be correct.

*C.—Additional Rules Relating to the Service of Notice of
Appeal Issued by High Court*

59. On receipt of the proceeding of the High Court transmitting notices of appeals, the Lower Court, shall cause service of the notice without the payment of any further fee and without any further action by the appellant.

Proviso 1.—Any additional fees for boat-hire or ferry-toll exigible under Rule 405 of the Rules framed under clause (i) of Section 20 of the Court-Fees Act, VII of 1870, shall be deposited by the appellant in the Court serving the notices.

Proviso 2.—The appellant or some one employed by him may accompany the serving officer for the purpose of pointing out the residence of the respondent.

60. The Lower Court shall issue all notices received for service immediately on receipt thereof.

61. In every case the Lower Court shall satisfy itself that a valid service has been made or that there has been a failure of service and shall certify such opinion to High Court with the reasons in case of failure. This certificate may be endorsed on the

process and it shall be accompanied by the return of service or of failure to serve the notice and the affidavit or solemn declaration of the serving officer. [G.L. 8/16.]

62. Where a notice is sent for service by the Lower Court to another Court whether within the same district or in a different district, such latter Court shall make its return of service or of the failure of service (as the case may be) direct to the High Court and shall be guided by Rules 59, 60 and 61 above.

*D.—Summons on Persons in Civil and Military
Employ of Government, etc.*

63. When a summons is issued on a person who is in Civil or Military employ of Government or is a servant of a Railway Administration or Company or Local Authority a reasonable time should be allowed for the making of arrangements for the relief of the person summoned.

E.—Production of Public Documents and Records

64. All Subordinate Courts should take special care to prevent the unnecessary production in Court of public documents as defined in Section 74 of the Evidence Act. When an officer objects to the production of any documents stating the grounds of such objection it will be the duty of the Court to consider and decide if it should compel the production of such documents. [G.L. 10/55.]

¹**65.** Whenever any document or documents, which are required to be produced in a case are in the custody of the House of the People/Council of States/ State Legislatures or whenever a witness whose presence is required in a case, for being examined, is an officer in the Secretariat of the House of the People/Council of States/State Legislatures or any duly informed officer of the Secretariat of the House of the People/Council of States/State Legislatures a letter of request in Form No. (M) 8-A shall be issued instead of a summons in the ordinary form.]

66. ² [* * * * *]

67. A summons for the production of any of the records of a post office or a certified extract from or copy of any of such records shall be addressed to the Postmaster.

Note.—For instructions issued by the Director-General of Post Offices, see Rules 739—742, pages 217-218, Post Office Manual, Volume II.

II.—PROCESS-SERVERS AND NAZARAT

A.—Process-Serving Establishment

68. There shall be a joint process-serving establishment for all Courts at the same station under the direct control of the *Nazir*, who will be responsible for proper service of processes made over to him for the purpose. The *Nazir* and all his staff shall also be subordinate to any such Court issuing a process, for the purpose of execution of that particular process and shall place themselves under the orders of the Presiding Officer in that regard. A register of process-serving peons shall be maintained in the following form [G.L. 1/59, G.L. 16/62.]—

1. Subs. by C.S. No. 50, dated 27.8.1974.

2. Deleted by *ibid*.

Register of process-serving peons

[G.L. 6/49.]

| Sl. No. | Name of peon | Date of birth | Place of abode | Father's name | Date of appointment | Signature of Judge-in-charge | Remarks |
|---------|--------------|---------------|----------------|---------------|---------------------|------------------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

Note.—The dates of security bonds for peons and the names of sureties should always be noted in the 'Remarks' column, and the *Nazir* should test the entries once in two years and note the result with the date in the same column of the register. If the security bond is invalid, the *Nazir* should bring the fact to the notice of the Judge-in-charge, *Nazarat*, for the execution of a fresh bond.

69. The peons employed in the service or execution of process in Civil Courts will draw pay in the scale of ¹[Rs. 70—½—80. [G.L. 4/55, G.L. 1/56.]

70. The Judge of every district shall ascertain after every five years the average number of original processes issued from his own Court and from each of the Courts subordinate thereto during the immediately preceding 5 years and fix the number of process-servers to be employed, each peon being for this purpose considered capable of executing during the year the number of original processes given in the following table [G.L. 4/29, G.L. 11/29.]—

| District or Munsifs | Summonses and notices issued by all Courts and other processes issued by Munsifs except in cases valued at over Rs. 2,000. | Process other than those mentioned in column 2. | | |
|---------------------|--|---|-----|-----|
| 1 | 2 | 3 | | |
| Patna | ... | 500 | 225 | |
| Gaya | ... | 550 | 250 | |
| Shahabad | ... | 550 | 250 | |
| Saran | } Chapra Sadar } Siwan and Gopalganj | ... | 650 | 300 |
| | | ... | 700 | 300 |
| Champaran | ... | 600 | 275 | |
| Muzaffarpur | ... | 600 | 275 | |
| Darbhanga | ... | 550 | 250 | |
| Munger | } Munger Sadar } Begusarai } Jamui | ... | 650 | 300 |
| | | ... | 700 | 300 |
| | | ... | 600 | 275 |

1. Now, see existing pay scales.

| | | | | |
|-------------------|-----|-----------|-----|-----|
| Bhagalpur | ... | ... | 500 | 225 |
| Santal Parganas | ... | ... | 400 | 225 |
| Purnea | ... | ... | 500 | 225 |
| Chota Nagpur | ... | ... | 400 | 225 |
| Hazaribagh | ... | ... | 400 | 225 |
| Manbhum Singhbhum | } | Manbhum | ... | 500 |
| | | Singhbhum | ... | 500 |

Note 1.—For the purpose of this Rule all copies of a process served in one village in one case by a process-server at one and the same visit shall be reckoned as one original process; while copies served in the same village on separate visits or in different villages shall be reckoned as so many original processes as the number of different villages or separate visits to the same village.

Note 2.—Where a summons or notice is served by a peon at Sadr within the jurisdiction of an outlying Munsifi under the special order of the Court it will be treated as belonging to the class mentioned in column 3.

Note 3.—Processes served by special peons as in the case of warrants of arrest, etc., should be reckoned as service of 3 original processes. See Rule 81 post.

Note 4.—Each day on which a peon is occupied in keeping custody of attached movable property, standing crops or of a person under arrest, in attending on Commissioners deputed to deliver possession or in taking records, letters, etc., from one station to another, should be reckoned as service of 3 original processes of the class specified in column 2.

71. The District Judge may authorize the appointment of such total number of peons for the whole district as may suffice for the execution of all the processes issued for service within it and may from time to time apportion such peons among different stations in such manner as may appear necessary.

72. On the examination of the figures in the manner as in Rule 70 the District Judge shall increase or reduce, the number of peons according as the number of processes has increased or decreased by 10 per cent, the surplus permanent hands in case of diminution being gradually absorbed against permanent vacancies by stopping fresh recruitment until the permissible limit has reached.

Comments & Case Law

[In exercise of powers laid down under these Rules High Court can issue directions from time to time where no specific provision has been made in the rules to meet an eventuality and to make the rules clear and consistent with the mandate of Articles 14 and 16 of Constitution of India. *Bihar Rajya Beyawahar Nayalaya Lipik Umidwar Sangh vs. Coordination Committee*, 1998(2) PLJR 700 : 1998(3) BLJ 13.]

B.—METHOD OF RECRUITMENT AND APPOINTMENT OF PROCESS-SERVERS.

73. The *Nazir* shall keep a register of candidates for filling up leave and permanent vacancies. These candidates will be enrolled under orders of the Judge-in-charge of *Nazarat* and their number shall not exceed 15 per cent of the total strength of permanent peons employed at any station.

Comments & Case law

[Appointment of Bihar Civil Court Class III & IV Staff. The earlier directive of the High Court on its Administrative Side . State Act that for appointment to Class IV staff in Civil Court, newspaper advertisement not necessary. But the notices should be placed on the Notice-Board of the respective Civil Court premises and in the local daily newspaper of the Distt. Such directive was binding. Non compliance. No advertisement issued in any newspaper as well as no evidence of the Distt. Judge putting up any notice even on the notice board. High Court order striking down the appointments held to be unimpeachable. *Binod Kr. Gupta vs. Ram Ashray Mahto*, 2005(2) PLJR (SC)218 : 2005 AIR (SC)2103 : (2005)4 SCC 209.]

74. No candidate shall be enrolled who cannot read and write the vernacular of the district satisfactorily.

75. No process-server shall be appointed except from these candidates.

Note.—Orderlies, office peons and night watchmen will be eligible for appointment as process-servers without being enrolled as candidates.

76. No process-server shall be permanently appointed unless he is found fit by the Judge-in-charge of the *Nazarat*.

Note.—In order to ascertain fitness the Judge-in-charge of the *Nazarat* shall hold periodical examinations and strike off unfit or undesirable candidates.

77. Vacancies occurring at any station shall ordinarily be filled up by 'appointment' of enrolled candidates attached to that station. [*G.L. 5/44.*]

Note.—The appointment of peons lies with the District Judge.

Comments & Case law

[Appointment of Bihar Civil Court Class III & IV Staff. The earlier directive of the High Court on its Administrative Side . State Act that for appointment to Class IV staff in Civil Court, newspaper advertisement not necessary. But the notices should be placed on the Notice-Board of the respective Civil Court premises and in the local daily newspaper of the Distt. Such directive was binding. Non compliance. No advertisement issued in any newspaper as well as no evidence of the Distt. Judge putting up any notice even on the notice board. High Court order striking down the appointments held to be unimpeachable. *Binod Kr. Gupta vs. Ram Ashray Mahto*, 2005(2) PLJR (SC)218 : 2005 AIR (SC)2103 : (2005)4 SCC 209.]

78. No process-serving peon should be appointed who cannot give a security bond of Rs. 50, executed by some person of known respectability and solvency, for his good and honest conduct. The form of the bond is given below—

I know A, B, to be an honest man, and I agree to forfeit Rs. if called upon to do so, should he be proved to have embezzled Government money up to or beyond that amount, or having received money on behalf of Government failed within fifteen days of demand to credit it to Government, or to account for the same for any cause whatever.

Note.—One process-serving peon cannot stand security for another peon.

Comments & Case law

[Appointment of process servers. Non-existence of separate cadre of process server. They are part of general category of class-IV staff hence it is difficult to

concede that there is any separate rule of recruitment relating to process servers. (See *Paras-33, 49 & 52 Md. Saghir vs. State of Bihar*, 1994(2) PLJR 427.]

C.—ARRANGEMENT OF WORK

79. The *Nazir* shall maintain for the jurisdiction for which he is the proper officer for service of processes (1) a list of villages within ¹[eight kilometres] radius of his office, (2) a list of villages outside such ¹[eight kilometres] radius. [G.L. 6/22, G.L. 11/26, G.L. 4/29, G.L. 4/45, G.L. 1/51, G.L. 4/52, G.L. 5/60, G.L. 4/64, G.L. 7/64.]

80. Process for service at places within ¹[eight kilometres] radius shall be sent out every working day and should ordinarily be returned either next day or on the day following.

81. The *Nazir* shall divide the area outside ¹[eight kilometres] radius into beats and shall make the best arrangement possible for the prompt service of process of each beat.

82. The *Nazir* is responsible that processes to be served in the same beat are as far as practicable made over for service to one peon provided that the number of processes so made over must not be unusually large.

83. In making over any process for service the *Nazir* will fix a returnable date within which it must be returned to office by the process-server after execution.

84. The following processes may be executed by special peons—

- (1) Warrant of arrest.
- (2) Warrant of attachment of movables.
- (3) Any process respecting which there is such a direction by the Court.

Note.—More than one peon may be deputed for the execution of any process where there is a special direction of the Court to that effect.

²**85.** Processes received in the office, must be made over to the *Nazir*, if possible, on the same day on which they are filed, and in no case later than two days after their receipt.]

86. Processes made over to the *Nazir* for service must be returned to the issuing Court as soon as possible after return and at least one day before the date fixed.

87. When not employed in serving processes process-servers should be employed in miscellaneous work of the Courts.

Note.—No process-server shall be employed in doing clerical work for the office.

88. The attendance and deputation of peons should be entered regularly by the *Nazir* in the register in Form No. (R) 13.

89. (i) Whenever a process-server is entrusted with the service of a process under which he is authorized to receive money, he shall be given by the *Nazir* a loose form of cheque with counterfoil in Form No. (A)12C. The cheque made over to the peon shall be entered by the *Nazir* in the register of cheques in Form No. (R)

1. Subs. by C.S. No. 43, dated 18.12.1973.

2. Subs. by C.S. No. 2, dated 11.8.1972.

30A and the peons's signature shall be taken in column 7 of the register in token of receipt. The peon on receiving any payment under the process shall give a receipt in the cheque form supplied to him by the *Nazir* for the amount paid to him, and shall obtain the signature or thumb impression of the payer on the counterfoil and shall in his service-report invariably mention the number and year of the receipt granted. In the case of illiterate payers the peon shall make every endeavour to obtain the signature of a literate witness on the back of the counterfoil. The *Nazir* on the return of the peon shall scrutinize the counterfoil with the service-report and countersign the counterfoil. The *Nazir* shall record the return of the counterfoil (or of the unused form, as the case may be), in the register of cheques. If the cheque has been used the *Nazir* shall send the counterfoil with the service-report to the Court concerned, to be filed with the record of the case. [G.L. 4/47.]

(ii) The cheque forms issued by the *Nazir* during each calendar year shall bear consecutive serial numbers for the year.

(iii) All blank cheques shall be kept by the *Nazir* under lock and key. The total number of the cheque forms received on indent and made over to the *Nazir* shall be entered on each occasion on the inside of the cover of Register (R)30A, under the signature of the Judge-in-charge of the *Nazarat*.

(iv) Cheque forms returned unused shall not be re-issued. Such forms shall be kept by the *Nazir* in yearly bundles and destroyed at the end of the year following. [G.L. 2/44.]

CHAPTER III

Adjournments

90. Sufficient time should be given to litigants to enable them to take the necessary steps towards getting their cases ready for hearing, but more than one adjournment for the same step ought not generally to be required and, if it is allowed, the question of compensating the other party by means of adjournment costs should be considered. Except in difficult cases, issues should be framed on the day on which the written statement is filed or on the next day. Lengthy adjournments should not be granted for interlocutory matters such as calling for records, service of interrogatories, issue of commissions, filing of lists of witnesses and payment of costs for issuing summonses. [G.L. 10/49, G.L. 11/62, G.L. 3/63.]

91. Dates for the hearing of cases ought not to be fixed at random or automatically as a matter of form. It is a matter that should be controlled by the Presiding Officer himself and not left to the discretion of subordinates. While it is desirable that a case should be disposed of as early as possible it is no less important that care should be taken to see that the parties are not put to the expense and inconvenience of having to attend on a date when it is manifest that the case cannot be taken up. The date for hearing should, therefore, be fixed with due regard to the state of the file, the nature of the case and the time it is likely to occupy. If the file is congested it is better to fix a distant date than to require the parties to appear, even without their witnesses, from month to month on dates on which there is no reasonable expectation that the case will be heard. In contested suits, the pleaders of the parties should be consulted whenever it is practicable to do so. It may well be that in some instances it is less hardship to detain the

witnesses from day to day than to discharge them, requiring them to return after a considerable interval. In every case, however, the adjournment must be to a day certain and judicial proceeding of whatever nature shall be postponed *sine die*. [G.L. 14/19, G.L. 3/22, G.L. 6/45, G.L. 1/54, G.L. 7/61, G.L. 9/64.]

92. It is of the utmost importance that frequent and unnecessary postponements and attendance of witnesses should be consistently discouraged, and a District Judge should call for and scrutinise some of the records of the cases before any of his subordinates who appear, from their explanations regarding long pending cases or otherwise, to be wanting in firmness in the matter.

93. When witnesses are in attendance for any party the fact should be noted in the order-sheet. In every case adjourned for hearing or for further hearing, there shall be recorded, as part of the order of adjournment, a specific order to the witnesses who have attended but have not been examined, to attend on the day to which the case stands adjourned. It shall also be recorded that the said order has been communicated to the witnesses in attendance. [G.L. 5/54.]

94. On the day finally fixed for the hearing of a suit after adjournment, the parties shall be directed to have their witnesses in attendance; and the trial when once commenced, shall, except for good and sufficient cause (to be noted in the order-sheet) ¹[subject to the proviso to Rule 1(2) of Order XVII of the Code of Civil Procedure], proceed throughout the day on which it has been opened, and from day to day, throughout each day following, until it is completed.

Note 1.—This Rule is not intended to prohibit, in the case stated, the taking up of other cases for the purpose of passing such necessary routine orders as will occupy a short time only, or the taking up of miscellaneous and Small Cause Court cases on days regularly set apart for them.

Note 2.—The above Rule applies also to Small Cause Court and Miscellaneous cases.

95. In the absence of specific direction by the Court to the contrary, the stamps on adjournment petitions should not form part of the taxed costs of the suit or proceeding.

96. Costs of adjournments ordered to be paid by a party under Order XVII, Rule 1(2), must not be diverted to purposes other than that for which they are intended, that is the recoupment to the other party of the cost which the adjournment may entail on him. Such payments must invariably be made direct by one party to the other unless the Court otherwise directs, and the receipt of the party or his pleader should be taken on the order-sheet against the order allowing such costs.

Note 1.—While the Courts have full liberty to exercise their discretion in each individual case, the High Court consider that, in the absence of special circumstances, and when the costs allowed do not exceed a few rupees, it is reasonable that the party desiring the adjournment should be prepared to compensate his opponent for the inconvenience to which he is put, and that the Court will be justified in making the adjournment conditional on the money being paid then and there.

Note 2.—Where adjournment costs have been paid into Court, under head

1. Ins. by C.S. No. 56, dated 27.12.1979.

(h) of Account Rule 607, Part X, the fact of such payment should be noted on the order-sheet by the *Sarishtadar*. It will thus be possible to see from the order-sheet what sum, if any, still remains unpaid. All costs of which payment has not been noted under the foregoing orders must be entered in the decree as costs of the suit.

CHAPTER IV

Hearing of suits and examination of witnesses [G.L. 7/61.]

97. Parties shall file in Court their lists of witnesses who are in attendance to give evidence on their behalf before 11.30 A.M., or in the case of morning sittings before 6.45 A.M. ¹[Where a party himself wishes to appear as a witness he shall so appear before any other witness on his behalf has been examined unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.] The omission to file a *hazri* within the time fixed shall be no bar to witnesses for any party being examined if presented for examination, but nothing shall be allowed to any witness on account of his expenses for the day's attendance if he is neither entered in the list nor actually examined.

Note.—This Rule in no way affects the obligation on the part of witnesses to attend punctually at the time for which they are summoned.

98. The following forms of oaths and affirmations are prescribed under Section 7, Act X of 1873—

FOR WITNESSES

Oath

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

So help me God.

Affirmation

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

FOR INTERPRETERS

Oath

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

So help me God.

Affirmation

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

99. Christian witnesses and interpreters shall be sworn upon the New Testament. In other cases the oaths are to be administered upon such symbol or accompanied by such act as may be usual or as such witness or interpreter may acknowledge to be binding on his conscience.

1. Ins. by C.S. No. 56, dated 27.12.1979.

¹[**100.** The evidence of each witness in appealable cases shall be read over in presence of the Judge and of the witness and the Judge shall if necessary, correct the same and shall sign it.]

101. Every Presiding Judge shall in the examination of witnesses record in his own handwriting in each deposition the name of the person examined, the name of his or her father and, if a married woman, the name of her husband ²[the nationality-religion] profession and age of the witness and the village, *thana* and district in which the witness resides ³[and if the witness belongs to Scheduled caste or Scheduled tribe, a statement to that effect.] The entry of age shall be the Presiding Judge's own estimate and in his own handwriting. [G.L. 13/19.]

102. Arguments should be heard immediately after the evidence closes.

CHAPTER V

Judgment and Decree

I.—JUDGMENT

103. Shorthand-typists may be employed to record judgments in civil cases provided that the Presiding Judge attaches a certificate to the effect that the judgment has been recorded at his dictation and attests each page thereof by his signature. [G.L. 2/20, G.L. 1/34, G.L. 2/40, G.L. 3/41, G.L. 3/42, G.L. 4/49, G.L. 2/53, G.L. 5/55, G.L. 3/60, G.L. 9/65.]

Note.—When a Presiding Judge uses a type-writing machine himself a certificate must be given that this has been done and each page of the record so made shall be attested by his signature.

104. (1) Long judgments must not be recorded on the order-sheet.

(2) Judgments in *ex-parte* cases should state what reliefs in the plaint are granted.

(3) Judgments should state specifically whether any or what interest (including interest *pendente lite*) is allowed.

⁴(4) The last para of judgment shall state in precise term the relief which has been granted by such judgment.

(5) If the judgment is not pronounced within 15 days from the date on which the hearing of the case was concluded, the Court shall record the reasons for such delay in the order-sheet. If the judgment is not delivered even within 30 days from the date on which the hearing of the case was concluded the Court shall record the reasons for such further delay in the order sheet and shall also furnish an explanation for the delay alongwith quarterly statement submitted to the High Court.]

II.—DECREE

105. Decrees of District and Subordinate Judges should ordinarily be drawn up in English. Decrees of Munsifs should also be drawn up in English wherever possible. [G.L. 13/49.]

1. Subs. by C.S. No. 57, dated 27.12.1979.

2. Subs. by C.S. No. 7.

3. Ins. by *ibid*.

4. Ins. by C.S. No. 58, dated 27.12.1979.

106. Decrees should be drawn up in such a manner that, in order to the understanding and execution of them, it may not be necessary to refer to any other document or paper whatever. [G.L. 3/29, G.L. 2/33, G.L. 1/45.]

Note 1.—Petitions of compromise, maps prepared by the direction of or accepted by the Court and other similar papers necessary to illustrate the terms of the order passed shall be embodied in the decree. [G.L. 3/55.]

Note 2.—The particulars of the claim and the date of institution of the suit shall appear in the decree. [G.L. 1/57.]

Note 3.—Where different valuations are put for purposes of jurisdiction and for payment of Court-fees, both values should be stated in the decree. The amount claimed as *mesne profits* should be separately shown. In the case of an appellate decree the valuation as given in the decree of the first Court should also be embodied. [G.L. 6/44.]

Note 4.—In drawing up decrees interest, if any, allowed by the Court should be clearly shown and also the period for which and the rate at which interest has been allowed.

¹**106-A.** The decree should be drawn up as expeditiously as possible and in any case, within 15 days from the date on which the judgment is pronounced, but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay as required by Order XX, Rule 6A.]

107. Whenever an address has been filed for service by a party under Order VII, Rules 19 and 22, or Order VIII, Rules 11 and 12 of the First Schedule to the Code of Civil Procedure, such address shall be entered in the decree or formal order instead of the address given in the plaint or petition. The following note shall be made in the decree or formal order below the names and addresses of the parties and the note shall be signed by the clerk by whom the decree or formal order is drawn up—

The addresses given above are the addresses for service filed by the parties with the exception of who did not appear or omitted to file their addresses.

108. In drawing up decrees costs are to be very carefully calculated. Where “proportionate costs” are allowed such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim. When “corresponding costs” or “costs according to success” are decreed, the assessment is to be made as if the suit had been originally brought at an amount representing the value of the successful part of the claim.

²**108-A.** Without prejudice to the generality of the provisions of the Code of Civil Procedure relating to cost, costs in respect of items specified in Order XXA, Rule 1, C.P.C. shall form part of the costs of the case unless otherwise directed by the Court.]

1. Ins. by C.S. No. 59, dated 27.12.1979.

2. Ins. by C.S. No. 60, dated 27.12.1979.

109. Decrees shall be prepared under the supervision of the *Sarishtadar* of the Court who shall initial the same. [G.L. 4/17.]

110. As soon a decree has been drawn up the Court shall cause a notice to be exhibited on the notice board stating, that such decree has been drawn up and that it may be perused by the parties or their pleaders within three days from the date of posting the notice. ¹[The notice shall remain exhibited during this period. At the end of every quarter the notices for the previous quarter will be destroyed.]

111. When such notice has been posted any party or his pleader may before the expiry of the time prescribed in the last preceding Rule peruse the decree and either sign it or if it is incorrectly prepared bring the matter to the notice of the Court.

112. If no such objection is made on or before the date specified in the notice the Judge shall sign the decree giving the date of his signature.

113. Decrees or formal orders need not be drawn up in the case of—

- (i) Interlocutory orders made during the course of a suit or execution proceeding.
- (ii) Final orders such as those under Order IX, Rules 9 and 13, Order XXI, Rules 2, 58, 91, 92, 99, 100, 101, Order XXIII, Rule 1, Order XLI, Rules 19,21,23, Order XLVII, Rule 1, and an order rejecting a plaint; provided where any such order is capable of execution or affects execution by reason of cost to be paid by one party to the other such costs may be shown in the order-sheet with a short note showing the result of the case and the name of the party by whom such costs are to be paid as well as that of the party who is to receive the same so that the latter, if desirous of executing the order may not be compelled to take a copy of the judgment.

Comments & Case Law

[Meaning of the word "decree". Maxim "*verbia legis non-recedendum est*". Rule 113 is of mandatory nature. No excuse for not preparing the decree in a case where appeal was dismissed as time-barred. As the First Appeal under Section 96 or Second Appeal under Section 100, CPC was preferred against a decree, the preparation of decree was an essential duty of the office of D.J. Held, office of D.J. was wholly unjustified in saying that no decree was prepared, that order was set aside. D.J. was directed to direct the official concerned to prepare the decree and to hand over a certified copy of it to appellants. *Ram Ashish Sah vs. Anil Kumar*, 1996(1) BLJ 139 : 1996(2) BLJR 937.]

114. In suits for money including suits upon mortgage, in suits for specific movables, in suits for accounts and in suits for arrears of rent no decrees need be drawn up, if—

- (i) neither party has to recover anything unless the Judge otherwise directs;
- (ii) the claim is satisfied after judgment but before the decree is drawn up.

115. A list of cases in which succession certificates, probates or letters of administration have been prepared shall be exhibited on the notice board in the

1. Ins. by C.S. No. 31, dated 11.8.1972.

language of the Court. The certificates, probates or letters of administration shall be delivered to the parties or the pleaders concerned in open Court on the third day after the publication of the list.

CHAPTER VI

Execution of Decrees

I.—GENERAL

116. Execution cases should receive as much attention as original suits and appeals. The Presiding Officer should see that the processes of the Court are not abused. All cases of fraud, negligence, suppression of processes and resistance to execution should be carefully scrutinized by him with a view to his taking such steps as may be necessary to prevent their recurrence. [*G.L. 1/20, G.L. 1/42.*]

117. The application for execution shall ordinarily be put up before the Presiding Officer for orders on the day following the day of its presentation, with all defects, if there are any, noted thereon and if a searching fee of twenty-five Paise [*vide* Rule 408 (2), *post*] has been paid by means of a Court-fee stamp affixed to the application, information available in the office which will enable the defects to be remedied shall also be noted on the back of the application.

118. The attention of Courts is drawn to the provisions contained in Order XXI, Rule 1, Code of Civil Procedure ¹[* * *]. It has now been made optional for the judgment-debtor to serve notice through Court or by registered post direct. No *challan* tendering the money should, therefore, be rejected by reason only of not being accompanied by forms of notice and process-fees. [*G.L. 5/21.*]

119. Judgment-debtors desirous of sending decretal dues to the Court by postal money-order must use the green money-order form specially approved by the High Court for the purpose. They must fill in all the particulars indicated in the coupon of the money-order form. If any particular be not entered, the money-order clerk or sub or branch post-master will refuse the money-order. [*G.L. 2/51.*]

Payment under such money-orders will be made by book transfer. The provisions in Rules 11–23 in Parts II and III, Chapter XVII of the Board's Miscellaneous Rules, 1939; and of the Post Office Rules in respect of payment and adjustment of accounts of Government money-orders relating to the procedure to be followed in the Post Office and in the Treasury or Sub-Treasury in regard to the payment of money-orders by book transfer should, so far as applicable, be followed in dealing with such money-orders. In the offices of the Court and the Treasury or Sub-treasury concerned, the following procedure shall be observed—

- (a) The Treasury or Sub-treasury will send the money-order coupon and acknowledgment to the Court with its daily advice list in High Court Form No. (A) 9 and advice list of money-orders in form 4—G.M.O. On receipt thereof from the Treasury or Sub-Treasury the Accountant of the Civil Court will at once enter the amount in the Deposit Register and fill up columns 1, 2, 4 and 6 and enter "by money-order" in column 3 and in column 5 only, the suit or case number, leaving other particulars to be filled in later. He will then send the money-order coupon and acknowledgment to the Chief Ministerial Officer.

1. Deleted by C.S. No. 61, dated 27.12.1979.

- (b) The Chief Ministerial Officer will scrutinise the tender in the manner laid down in Rule 613, Part X, Chapter I. If he finds the tender to be in order, he will sign the acknowledgment portion of the money-order form after obtaining orders of the Presiding Officer, the orders being written on the order-sheet and send it immediately to the post office for despatch to the remitter. The money-order coupon with his endorsement of correctness will be sent to the Accountant who will enter the remaining particulars in column 5 of the Deposit Register, prepare a money-order credit slip in the form prescribed below for his own record and return the money-order coupon with an endorsement of compliance to the Chief Ministerial Officer to be kept with the record.
- (c) If, on the other hand, the tender is found to be defective, the Chief Ministerial Officer will, under the orders of the Presiding Officer, make a note on the acknowledgment portion of the defects found stating that the amount will be transferred to the credit of the decree-holder on the date on which information to cure defects is received, by post or otherwise and will then send the acknowledgment to the post office, and retain the coupon with the record. When the information necessary to cure the defect is received, the Chief Ministerial Officer should obtain the orders of the Presiding Officer on the order-sheet specifying the person to whose credit the amount is to be entered in the Deposit Register and should then send the coupon with necessary corrections to the Accountant for action as in sub-clause (b). If the particulars supplied be found to be still incomplete, the Court will not take any action nor enter into correspondence about them.
- (d) For administrative purposes the deposits shall bear date, the date on which the deposit was made into the Treasury.

Money-Order Credit Slip

1. Name of the Court passing the decree or order.
2. Number of the suit or case and date of judicial decree or order (if any) under which the amount is tendered.
3. Name, father's name and address of person or persons on whose behalf the money is tendered.
4. Name, father's name and address of person or persons to whose credit the amount is to be placed in the Court's Books.
5. Amount tendered.
6. Deposit number and date in the Deposit Register.

Accountant

120. The temporary deputation of the Presiding Officer of a Court to some other station does not necessarily mean an abolition of his Court and the Judicial Officer placed incharge thereof during such absence becomes, subject to the question of pecuniary jurisdiction and special powers, if any, the Presiding Officer also of that Court in addition to his being the Presiding Officer of his own Court. Thus all decrees passed by the latter in the cases belonging to the file of the first

named Court may be executed by that Court presided over by the officer sent on deputation when he returns.

II.—ATTACHMENT

121. An officer deputed to attach movable property should be furnished with a certificate stating the period for which the fee required under Part V, Chapter I, Rule 397, has been paid, and he shall give notice thereof to the judgment-debtor or other person at whose instance he remains in possession at the place of attachment and if such person shall desire that the property shall remain at that place for a longer period, he shall be bound to pay into Court in advance the further fee as required by the second paragraph of Note 1 to that Rule. [*G.L. 4/30.*]

122. A register should be maintained by the *Nazir* in the prescribed Form No. (R) 13A showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R) 13B, for ordinary movables and live-stock attached in execution cases.

III.—SALE

123. Every application for an order for sale shall in addition to the particulars required by Order XXI, Rule 66, clause (3), state everything known or believed by the person verifying the same to exist which relates to the nature or affects the value of the property and shall further state that he is not possessed of any further information regarding it. [*G.L. 1/26, G.L. 3/81.*]

124. Every application for the sale of immovable property shall, in addition to other particulars required, state the area of the land involved.

125. If, after the sale proclamation under Order XXI, Rule 66, has been published, any written communication regarding the property to be sold which it considers material for purchasers to know is received by the Court, the Court shall cause the same to be read out when the property is put up for sale.

126. The selection of local newspapers in which sale proclamation may be published under Order XXI, Rule 67, rests with the District Judge. The name or names of the papers selected shall be notified to the public and to the Subordinate Courts.

127. Subject to the proviso in Order XXI, Rule 43, sales of property in execution of decrees in the several Courts of each district (not being Courts of Small Causes) shall be held and commenced at a certain day of each month to be fixed by the District Judge.

128. All property, except property of the nature specified in the proviso to Order XXI, Rule 43, of the Code or Rule 132 of this Chapter, to be sold at each place of sale, shall be entered in lists for each place, the lists of movable and immovable properties being distinct. The lists shall be so prepared as to contain in regular order each item of property to be sold in execution of the decrees of each Court severally. Such lists shall be stuck up in the Courts where the sales are to be held in the case of movables not less than seven days, and in the case of immovables not less than 15 days, before the date fixed for the commencement of each set of sales.

129. At the stated hour upon each fixed date the sales shall be commenced, and shall be carried on in the order stated in the lists, above mentioned. No sale shall continue after sunset; but the sales shall be held from day to day, except when the Court is closed and until the lists are finished :

Provided that this Rule shall not interfere with the adjournment of any particular sale according to law. (See Order XXI, Rule 69.)

130. The same days shall not ordinarily be fixed for the sale of movable and immovable property.

131. Except as regards property of the kind mentioned in the next succeeding Rule, sales in execution of decrees of any Court shall be conducted in that Court by the *Nazir* or other officer of the Court in the immediate presence of the Presiding Officer. Where this is not possible the sales may be held in another place within the Court premises to be selected by the Presiding Officer. [G.L. 5/27.]

132. All sales of live stock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets shall, unless the Court otherwise directs, be held at such market in the neighbourhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expenses in conveyance and carriage.

133. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the [Indian Arms Act, XI of 1878]¹, are sold by public auction in execution of decrees, the Court directing the sale, shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the Indian Arms Act]¹.

134. Whenever the Civil Courts have occasion to sell, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, they shall, on confirming the sale forward a copy of the sale-certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

135. As soon as sale is made absolute and the auction-purchaser has filed the necessary sale certificate stamp under Order XXI, Rule 94, of the Civil Procedure Code, a sale certificate shall be prepared in the prescribed form and the fact shall be noted in the order sheet. The sale certificate shall be made ready within 21 days of the date of the filing of the sale certificate stamp. In addition to the original certificate, two more copies thereof shall be prepared, one of which shall be kept with the record and the other despatched to the Registration office as soon as the certificate is prepared. On each copy the amount of stamp duty paid on the original certificate under Article 18 of Schedule I of the Indian Stamp Act, 1899, shall be noted. Under Article 24 (a) of the same Schedule such copies do not themselves require to be stamped. The original certificate if undelivered should be kept with others in bundles of a convenient size in the custody of the *Sarishtadar*

1. Now, see Arms Act, 1959.

and destroyed in the presence of Registrar and if there is no Registrar, in the presence of the Presiding Officer concerned after ¹[one year] from the date of confirmation of the sale. [*G.L. 7/41 read with H.C. letter no. 2891-92, dated 2nd May, 1952.*]

Note.—When a sale certificate is ready, notice thereof should be exhibited on the notice board in form no. (M) 17-A which shall remain pasted for a period of one week. At the end of every quarter the notices for the previous quarter will be destroyed.

136. The following particulars should be inserted in the sale certificates—

- (1) The “addition” (as defined in Section 2 of the Indian Registration Act, 1908), of the person who is declared to be the purchaser;
- (2) Particulars sufficient to identify the property, as required by Section 22 (2) of the same Act;
- (3) The name of each registration sub-district in which any part of the property is situate;
- (4) The date on which the sale became absolute.

137. In the case of sales under Sections 164 and 165 of the Bihar Tenancy Act, 1885, the certificate of sale should state that the tenure or holding, and not the right, title and interest of the judgment debtor therein, has been sold.

IV.—ARREST, IMPRISONMENT AND RELEASE

138. As inconvenience and danger are likely to arise from the arrest under civil process of Railway servants, unless such previous notice be given as may enable measures to be taken to provide for the proper performance of their duties, all warrants issued by any Civil Court for the arrest of Railway servants should be entrusted for execution to a selected peon, who, if he finds on proceeding to execute the warrant that the immediate arrest of the Railway servant would occasion risk or inconvenience, shall make all arrangements necessary to prevent escape, and defer removing the person arrested from his post for at least twenty-four hours, giving immediate notice of the arrest to the nearest Station-Master.

139. Attention is invited to Article 181 of the Indian Articles of War Act (V of 1869), which exempts persons belonging to the Army from arrest for debt.

140. Warrants for release should not be despatched by a Court after sunset, or, if so despatched, should be endorsed with instructions for release as early as possible next morning.

Note.—The above provisions apply to witnesses arrested under a warrant and detained in the Civil prison.

V.—EXECUTION BY ANOTHER COURT

141. The attention of Courts is drawn to the provisions of Section 41 of Civil Procedure Code. There should be no unnecessary delay in carrying out the directions contained in that section. [*H.C. Memo No. 8917-32, dated 17th April, 1962.*]

142. Civil Courts should not send decrees for execution to the French Courts; but should direct the parties concerned to apply themselves to Courts.

1. Subs. by C.S. No. 13, dated 11.8.1972.

CHAPTER VII*Commissions***I.—GENERAL**

143. Courts must issue commissions with promptitude and District Judge should at the time of their periodical inspections satisfy themselves that this is done.

144. Before issuing a commission the Court shall—

- (a) call on the party at whose instance the commission is issued to supply an abstract of the pleadings and issues for the use of the Commissioner;
- (b) after consulting the parties, make an estimate of the probable duration of the examination of each witness. When the estimate is exceeded, the Court should enquire into the cause of delay and disallow any charges of the Commissioner which it finds to be unreasonable.

145. In issuing a commission the Court shall fix a date allowing sufficient time for its return after execution. It must be clearly understood that the commission is to be returned by the date fixed.

146. If for any reason the Commissioner finds that the date fixed is likely to be exceeded, he should obtain an extension of time before proceeding with the execution of the commission or its further execution as the case may be.

II.—COMMISSIONS FOR EXAMINATION OF WITNESSES

147. If a commission is to issue to a pleader the commission shall be transmitted together with the fee, to the Court in which the Commissioner is practising as a pleader, and, when such Court is the High Court, to the Registrar. [*G.L. 2/54.*]

Note 1.—Commissions should not be addressed to the Judicial Commissioner of Oudh. They should be addressed either to the nearest local Court, if known, or to the Court of the Deputy Commissioner which is, in Oudh, the District Court, or, in Lucknow, to that of the Civil Judge.

Note 2.—Fees transmitted to the Registrar shall be remitted by money-order payable to the Accountant of the Registrar's Office.

148. The Court or officer receiving a commission issued to a pleader shall immediately deliver it to him unless he refuses to act.

149. All commissions for the examination of witnesses at Hyderabad should be addressed to the Chief Secretary, Hyderabad Government, Hyderabad (Deccan) and all remittances sent with such commissions should be made payable to the Chief Secretary, Hyderabad Government, Hyderabad, without giving the name of the gentleman holding the appointment.

150. Commissions for examination of witnesses residing at Secunderabad (Hussen Sagar) or at Bolaram (Alwal) should be addressed to the Cantonment Magistrate Secunderabad, and the Superintendent of Police, Bolaram respectively; and remittances in such cases should be made payable to the officer to whom the commission is addressed.

151. Distant dates should be fixed for the return of commissions sent to these places.

152. When a Court in India issues a commission, or a letter of request under Section 77, Code of Civil Procedure, for the examination of witnesses in England, the High Court in England will itself appoint an examiner to take the evidence, if application be made to it for the purpose. But the High Court in England cannot act in any way unless put in motion by a proper application; therefore, in every case in which it is desired to obtain the appointment of an examiner by the High Court in England the parties interested must instruct a solicitor to apply to the High Court in England to make the necessary orders. The Court in India shall for this purpose make over the commission or letter of request in Form No. 8 of Appendix H to the First Schedule of the Code of Civil Procedure, which should be addressed to 'The Supreme Court of Judicature', to the interested party, whose duty it is to take all further necessary steps under Section 1 of the Evidence by Commission Act, 1859 (22 Victoria, cap. 20) and the Rules framed under Section 6 of that Statute [(vide) Order 37, Rules 54 to 58, of the Rules of the Supreme Court, 1883—Annual Practice, 1935, pages 681–684].

153. (a) Letters of Request issued by a Court in India for the examination of witnesses in foreign countries should be forwarded to Government for transmission through the regular channel. Such Letters of Request must be issued in English, and must be accompanied by a list of interrogatories, in English, to be put to the witness, and also by a translation, in the language of the Court in which it will be executed, of the Letter of Request itself, of the interrogatories and of any other documents which accompany the letter. In cases in which the parties on both sides agree to be represented at the examination of the witness in the Foreign Court, the Court issuing the Letter of Request may, if it thinks fit, ask that the agent of the parties be permitted to put such further questions to the witness in examination and cross-examination as they may be advised.

(b) When issuing such Letter of Request, Courts in India should observe the law in force in different countries affecting the execution of commissions issuing out of the English Courts for the examination of witnesses abroad.

154. A Commissioner for examination of a witness shall ordinarily give previous notice of the time and place of such examination to the witnesses and to the parties or their pleaders and it shall be their duty to attend at such time and place. In fixing the time and place the Commissioner shall have due regard for the convenience of the witnesses particularly in the case of those whose attendance is ordinarily excused, such as, *pardanashin* ladies, persons unable to be removed from their houses owing to old age, sickness, or other bodily infirmity, or persons of rank exempted by an order under Section 133, Civil Procedure Code, from personal attendance in Court. [G.L. 7/23]

III.—COMMISSIONS FOR LOCAL INVESTIGATIONS AND TO EXAMINE ACCOUNTS

155. The responsibility of ordering an inquiry under Order XXVI, Rule 9 of the Code of Civil Procedure rests entirely with the Court before which the suit is pending. Such Court may order such inquiry when it deems a local investigation to be necessary or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any *mesne profits* or damages or annual net profits. The Court is, therefore, to consider, when it is moved to order any such inquiry, whether

the nature of the case calls for that particular mode of inquiry, whether the application has been made at a proper stage of the proceedings, whether the importance of the case warrants that expense being imposed upon the parties, and whether such inquiry may not be attended with a delay which will counterbalance the advantage to be derived from it.

156. When the commission is for a local inquiry a proceeding in Form No. (J) 27 or, where it is more suitable, in Form No. (J) 28 shall be drawn up giving the points which require elucidation or ascertainment in that particular way, leaving to be substantiated by the parties by evidence at the trial those points which conveniently can ought to be so substantiated. A copy of such proceeding shall be forwarded to the Commissioner.

157. When in any suit or proceeding a local investigation for any of the purposes specified in Order XXVI, Rules 9 and 13, Civil Procedure Code, or any other local investigation under the said Code, requiring knowledge of surveying for the purpose of effecting a delivery of possession, or for any other purpose is deemed necessary, the Court shall before issuing a commission apply to the District Judge for his instructions regarding the particular person whose services are available for that duty and shall issue a commission in accordance with his nomination.

The application shall contain a statement of the nature of the work, the value of the suit or subject-matter, the time which it is estimated the commission will take to execute and the cost including proposed fee (which should be inclusive wherever possible) and travelling allowance, if any.

158. When a commission, order or writ, issued by a Civil Court under the Code of Civil Procedure, 1908, is of such a nature as to require that the person executing it should have some knowledge of surveying, it should, so far as possible, be issued only to a person whose name is entered in a list to be maintained by each District Judge or persons qualified to execute such Commissions. The qualifications for entry in this list shall be as follows [G.L. 1/30.]:—

- (i) the holding of a certificate of a proficiency in surveying granted in accordance with the Rules framed by the Government of Bihar and promulgated with the Bihar Government notification no. B/PSE-01/56—758-J., dated the 10th February, 1956, published at page 673 in Part II of the *Bihar Gazette*, dated the 22nd February, 1956 or in accordance with the Rules promulgated with Bengal Government Resolution No. 2047-J.D., dated the 9th October, 1901 and No. 2724-J.D., dated the 24th September, 1904, which were published in the issues of the *Calcutta Gazette* of the 16th October, 1901, and 28th September, 1904, respectively and notification no. 4962-J., dated the 24th June, 1922, republished at page 918 of Part II of the *Bihar and Orissa Gazette*, dated the 6th September, 1922; as subsequently amended by Bengal Government notification no. 1382-J., dated the 7th February, 1930, republished at page 62 of Part III of the *Bihar and Orissa Gazette*, dated the 12th March, 1930; or in accordance with the Rules promulgated in the Bihar and Orissa Government notification

no. 4783-J.R., dated the 26th October, 1934, published in Part II of the *Bihar and Orissa Gazette*, dated the 7th November, 1934, or in accordance with the Rules promulgated in the Bihar Government notification no. 2088-J., dated the 27th July, 1938, published at page 1177 in Part II of the *Bihar Gazette*, dated the 3rd August 1938; or in accordance with the Rules promulgated in the Bihar Government notification no. 1775-J., dated the 19th September, 1942, published at page 762 in Part II of the *Bihar Gazette*, dated the 23rd September, 1942, and subsequently amended by the Bihar Government notification no. 902-J., dated the 20th February, 1951, published at page 473 in Part II of the *Bihar Gazette*, dated the 7th March, 1951;

- (ii) the possession of an equivalent or higher qualification. This shall include the passing of the following examinations; Bachelor of Civil Engineering; Intermediate Civil Engineering; the examination for Overseers of the Public Works Department (but not that for sub-overseers); Subordinate Engineer's Examination;
- (iii) the satisfactory execution of survey commissions for the Civil Courts in the judgeship during a period of not less than ten years before the 1st December, 1934 :

Provided that a Civil Court is not precluded from issuing a commission to salaried *Amins* in judgeships in which they still exist. [*H.C. letter no. 3481-96, dated 28th March, 1966.*]

As between persons included in the aforesaid list, preference should ordinarily be given to those who are pleaders, except in those special cases in which an expert knowledge of survey may be more important than a knowledge of law.

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

160. The District Judge should keep a careful watch upon the work of each Commissioner included in the list maintained under Rule 158 and a record of the work of each should be kept by him in a form similar to that of a service book. When issuing his nomination under Rule 157 the District Judge should invariably direct the Court concerned to submit a report indicating the fee paid and stating whether the commission in question was executed satisfactorily and punctually.

The report should be submitted by the Court immediately after the fee has been paid to the Commissioner. If, after considering such reports and making such enquiries as he may deem necessary, the District Judge is satisfied that any Commissioner is incompetent or is doing unsatisfactory work, he shall strike off the name of the Commissioner from the list. Ordinarily, payment should be made to the Commissioner after the hearing of objections to his report, or, if no objection is filed to his report, after the expiry of the period fixed for filing the objection. The District Judge should see that only reasonable remuneration is paid. [*GL, 2/17*]

161. When the work of a Commissioner is completed he shall submit, with the report, his diary showing how he was occupied during the enquiry.

CHAPTER VIII*Suits by or against Government or public officers*

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

163. The above orders, under which officers and soldiers of the active army can claim priority of hearing in civil suits, are extended to the Army Reserves.

164. In every case in which the Government Pleader appears for the Government, whether for the Government as a party on its own account, or for the Government as undertaking, under the provisions of Order XXVII, Rule 8 of the Code of Civil Procedure, the defence of a suit against an officer of the Government, he shall, in lieu of a *vakalatnama*, file a memorandum on unstamped paper signed by him, and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form:—

Title of the suit, etc.

I, A, B, Government Pleader, appear on behalf of the Union of India (or the State of Bihar or as the case may be), Respondent (or etc.), in the suit; or, on behalf of the State which, under Order XXVII, Rule 8 of the Code of Civil Procedure, has undertaken the defence of the suit, Respondent (or, etc.) in the suit.

Note.—In other cases the Government Pleader shall file a *vakalatnama* in the same manner as any other pleader.

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

CHAPTER IX*Appointment of Receivers*

166. When any Civil Court commits land paying revenue to Government to the management of a Receiver appointed under Order XL, Rule 1 of the Code of Civil Procedure, information of the fact should always be given to the Collector without delay.

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

CHAPTER IXA*Ex-parte injunctions*

The following Rules, though they do not profess to be exhaustive or fetter the Court's discretion, are recommended for use by the subordinate Courts:—

[G.L. 3/26; H.C. letter no. 8702-17, dated 13th August, 1963 the period between preliminary and final orders of injunction should not exceed two months.]

168. The powers under Order XXXIX, Rule 3 of the Code of Civil Procedure, to issue an *ex-parte* injunction should be exercised with the greatest care. The issue of an injunction on the application of one party and without previously giving to the person affected by it an opportunity of contesting the propriety of its issuing, is a deviation from the ordinary course of justice, which nothing but the existence of imminent danger to property if it be not granted, can justify. The Court should, if possible, always require notice, however short, to be given to the opposite party.

169. An application for an *ex-parte* injunction should not ordinarily be granted unless it is made promptly.

170. Every application for an injunction must be supported by affidavit. All material facts must be fully and fairly stated to the Court and there must be no concealment or misrepresentation of any material fact. ¹[If any time it appears to the Court that an *ex-parte* injunction was obtained by such misstatement or suppression of material facts as to lead the Court to grant the injunction, the injunction shall be dissolved unless for the reasons to be recorded Court considers that it is not necessary so to do in the interest of justice.]

The plaintiff cannot be heard to say that he was not aware of the importance of the facts so mis-stated or concealed or that he had forgotten them.

171. An affidavit in support of an *ex-parte* injunction should always state the precise time at which the plaintiff or the person acting for him became aware of the threatened injury. It must also show either that notice to the defendant would be mischievous or that the matter is so urgent that the injury threatened would, if notice were served on the defendant, be experienced before the injunction could be obtained. The case of irreparable mischief impending must be made out. Mere allegation of irreparable injury will not be sufficient. The facts on which the allegations are founded must be set forth clearly and specifically in the affidavit.

172. The notice to be given should be for the shortest possible time. The Presiding Judge must take particular care to arrange for prompt service of ²[a copy of the plaint, a copy of the application for injunction together with copy of affidavit filed in support of the application and copies of documents on which the applicant relies] upon the opposite party and to bring the matter to hearing as early as possible.

173. If the opposite party evades service of notice or makes unreasonable delay in showing cause, the Court may find it necessary to make an appropriate order of injunction. On the other hand an interim injunction should be dissolved if the plaintiff makes wilful default in depositing the process fee, causing the service of notice on the opposite party or otherwise prosecuting the matter with diligence.

³**174.** When an *ex-parte* injunction has been-granted the Court shall make an endeavour to finally dispose of the application within thirty days from the date, on which the *ex-parte* injunction was granted, and where it is unable so to do it shall record its reasons for such inability.]

1. Subs. by C.S. No. 62, dated 27.12.1979.

2. Subs. by C.S. No. 63, dated 27.12.1979.

3. Subs. by C.S. No. 64, dated 27.12.1979.

175. When an interlocutory injunction or an interim restrain order applied for, the Court may require the plaintiff, as a condition of interference in his favour to enter into an undertaking to abide by any order of the Court may make as to damages, or in some cases it may require the defendant to enter into terms as a condition of withholding an interlocutory injunction.

176. When an injunction is granted the greatest care should be taken to state exactly and very clearly what it permits and what it prohibits. When a series of acts of different kinds are sought to be restrained, the order granting an *ex-parte* injunction should embrace only the acts regarding which such an order is really needed.

177. Dissolution of an *ex-parte* injunction on the ground of mis-statement or concealment of material facts will not operate as a bar to a fresh application for another injunction on the merits.

CHAPTER X

Appeals

178. All memoranda of appeal should, when practicable, be in English and type-written.

179. Every memorandum of appeal shall clearly specify the relief sought and state the value of the appeal.

Note.—Valuations for purposes of jurisdiction and for payment of Court-fee, shall be separately shown.

180. Every memorandum of appeal when signed and presented by a pleader shall, at its foot or when presented by the party in person or by his recognized agent and a pleader is afterwards retained by such party, on a separate sheet of paper which shall be annexed to such memorandum of appeal, contain the following statement to be subscribed by the pleader before he is, as the case may be, allowed to present it or to appear to support the appeal [*G.L. 3/46.*]—

“I certify that I have examined the record and that in my opinion the grounds of appeal are good and I undertake to appear and support them before the Appellate Court.”

181. All memoranda of appeal must be registered on presentation irrespective of any question as to their possible rejection.

182. When two or more cases are tried together and decided by the same judgment and two or more appeals are filed against such judgment, whether by the same or different appellants, the appellate Court may in its discretion, and if satisfied that the questions for decision are analogous in each appeal, dispense with the production of more than one copy of the judgment.

183. The date for hearing an appeal shall be fixed so as to allow sufficient time to the respondent to file a cross-objection, if any, under Order XLI, Rule 22, Civil Procedure Code.

184. The provisions of Rules 178, 179 and 180 shall, as far as they may be applicable, apply to the memorandum of cross-objection.

CHAPTER XI

Rules framed by the High Court for the guidance of guardians-ad-litem of minor defendants and minor respondents

I.—ORIGINAL SUITS

185. (1) Where there are both major and minor defendants and there is no appearance, the guardian with a view to obtain instructions in the case should communicate with the natural guardian of the minor and ordinarily with the major defendants in the case by registered reply post-card in which the subject-matter of the suit should be briefly stated. [G.L. 4/31, G.L. 3/49.]

(2) Where the sole defendant is a minor, the aforesaid communication should be addressed to his natural guardian, and in any case where the interests of the minor require, may be addressed to persons other than those actually parties in the suit.

(3) If no response is received to the communication mentioned in sub-Rules (1) and (2) or if the response is not helpful and the guardian is unable to have a personal interview with the defendants or their agents, he should report the fact to the Court with a statement of the circumstances and apply for leave to go to the locality for necessary enquiry.

(4) The guardian's report on any local enquiry made with the permission of the Court should contain the following particulars—

- (a) Date and hour of departure for the locality.
- (b) Mode of journey, viz., whether by rail or steamer or boat or road,
- (c) Date and hour of reaching the locality.
- (d) The names of persons who identify the minor.
- (e) Age of the minor as stated by the minor's people and as estimated by the guardian.
- (f) The names and residences of persons in whose presence the enquiry is held.
- (g) Whether the minor has any defence.
- (h) If there is defence what is the nature of it and what benefit is expected to accrue to the minor out of the defence.
- (i) Whether the minor or his people are able and prepared to meet the costs of the defence, and if not, what is the probable amount of such costs.
- (j) If no defence is filed, the reasons thereof together with the statements of the persons on whose report the decision is arrived at.

(5) In case the Court refuses to grant leave for local enquiry, the guardian will proceed according to the instructions of the Court given in each case.

(6) Where in response to the communication mentioned in sub-Rule (2) or otherwise, the minor or his natural guardian, or any other persons on his behalf, come and see the guardian, his subsequent proceedings and report should conform as far as applicable to sub-Rule (4) (g to j).

(7) The guardian's report mentioned in sub-rules (4) and (6) may contain such other facts as he may think necessary to bring to the notice of the Court.

(8) In petty rent suits and money suits the Court shall not ordinarily grant leave to the *guardian-ad-litem* to go to the locality for enquiry.

II.—APPEALS

(9) The foregoing Rules will apply *mutatis mutandis* to the appointment of guardians of minor respondents subject to the following Rules—

(10) If no response is made to the registered post-card mentioned in sub-Rule (1), the guardian should, before applying for leave to go to the locality, similarly communicate with the pleader who conducted the case in the lower Court on behalf of the minor or his predecessor-in-interest, and ascertain from him, if possible, the probable cause of the non-appearance of the minor, reporting the result to the Court.

(11) If the step taken under the last preceding sub-Rule does not elicit any satisfactory results, the guardian should consult the record and submit a report to the Court in which he should state whether in his opinion the judgment and decree of the lower Court can be supported and if such opinion is in the affirmative, why he should not argue the case himself before the Court. A written note on the merits of the case should accompany the report.

(12) An amount estimated to cover the actual travelling and halting expenses of the guardian, not exceeding the scale laid down by Rule 186 will be required by the Court to be deposited by the party at whose instance the guardian is appointed before an order is passed for a local enquiry mentioned in sub-Rule (3). The amount so deposited or so much of it as may be found due will be paid out to the guardian when he has submitted his report mentioned in sub-Rule (4).

(13) The actual postal charges for communication mentioned in sub-Rules (1), (2) and (10) will be deposited and paid to the guardian along with the fee prescribed by the High Court.

TRAVELLING ALLOWANCE

186. The rate of travelling allowance to be allowed to the guardian, both in the case of an original suit and of an appeal, shall be that admissible to a second class officer under the *Bihar Travelling Allowance Rules* with a daily allowance of Rs. 3 for the days for which he may be away from headquarters.

PART II

Special Rules relating to Acts other than the Code of Civil Procedure and the Court-fees Act

CHAPTER I

The Bengal Wills and Intestacy Regulation, 1799 (Bengal Regulation V of 1799)

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

Note 1.—In dealing with property belonging to the persons of Dutch and other nationalities who may die intestate within the province the Consular representative

should, besides a notice of death, be given an opportunity of enquiring whether there are in fact any legal heirs or not and whether special arrangements should not be made with regard to part of the property where such property is of any intrinsic value or of such a character that it would be prized by his relatives and friends.

Note 2.—Disposal of estates of deceased Nepalese subjects,—

- (a) Officers wishing to dispose of the estate of a deceased Nepalese subject, should send to the Resident in Nepal, at one and the same time, a statement indicating the value of the estate in full, together with a list giving the name and place of residence, in detail, of the person nominated by the deceased as heir. In the event of the nominated heir being untraceable or dead, the same particulars should be furnished in regard to any other person or persons, to whom the estate may be made over.
- (b) On receipt of the above information, the Resident will arrange with the Nepal Darbar to make over the estate to the nominated heir, or, failing him, to the next legal heir. The payee's receipt will then, in due course, be forwarded by the Resident to the officer from whom the request issued, or, in the event of the heir or other authorized payee not being forthcoming, the value of the estate will be returned.

THE INDIAN SUCCESSION ACT, 1925 (XXXIX OF 1925)

THE GUARDIANS AND WARDS ACT (ACT VIII OF 1890)

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

Note—When a District Delegate, acting under Section 288 of the Indian Succession Act, 1925, returns the petition and documents filed therewith to the person by whom the application was made, he should forward to the District Judge, and not to the Record-room, such other papers in connection with the application as may have been produced before him.

THE GUARDIANS AND WARDS ACT (ACT VIII OF 1890)

189. The following Rules have been made by the High Court under Section 50 of the Guardians and Wards Act, 1890 (Act VIII of 1890):—

(1) The application made under Section 8 of the Act shall, in addition to the particulars required by Section 10, state whether the minor is entitled to any property absolutely, or subject to the rights or interests of any other person, and the incumbrances, if any, to which the property is subject; and shall specify all persons of the same degree or relationship as, or of nearer degree than, the proposed guardian, and where a female is proposed as guardian, the nearest male relation of the minor.

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

Whenever the petition made under Section 10 of the Act states that the

property of the minor consists of land or any interest in land, a copy of the petition shall be sent free of charge to the Collector of the district in which such property or any part of it is situate.

(3) The notice required by Section 11 of the Act shall be in Form (P) 59.

(4) Unless for reasons to be recorded the Court excuses him from giving security, a person appointed or declared to be a guardian shall give a bond as nearly as may be in Form (M) 14. Such bond, unless it be otherwise ordered by the Court, shall be for the amount or value of the movable property, and twice the amount of the annual rents, profits or other income of the movable and immovable property to be received or accounted for by the guardian.

(5) Where security is required the Court shall fix a time within which such security shall be furnished; and the order of appointment or declaration shall be made conditional on the furnishing of such security.

(6) At the time of the appointment or declaration of a guardian, the Court shall require an inventory of all the property of the ward and of all debts due from the estate to be furnished to the Court within six months under Section 34 (b) of the Act unless for reasons to be recorded it dispenses with the same and shall fix a date for the inventory to be brought to the Court for such further orders thereon as may be deemed necessary.

(7) Any appreciable increment to or diminution of the property of the ward shall be reported immediately by the guardian to the Court and the Court shall cause the same to be noted in the inventory produced under Rule (6).

(8) The Court shall direct the guardian to keep such accounts as may be deemed necessary having regard to extent and circumstances of the estate unless the Court, for reasons to be recorded, dispenses with accounts.

(9) The accounts to be kept by the guardian shall, unless the District Judge otherwise directs, be for the year beginning with the 1st April and ending with the 31st March.

The Court shall require the guardian to submit within one month after the expiry of the account year in each year after the date of his appointment copies of such accounts as have been required under Rule (8) to be kept by him during the preceding year; provided that the Court may in all cases call for the original accounts at any time it thinks fit to do.

(10) Accounts filed by the guardian shall be exhibited and preserved with the record of the application and shall be open to inspection with the permission of the Court by persons legitimately interested in the same on payment of a fee of one rupee to be paid by means of a Court-fee stamp to be affixed to the application for inspection.

(11) An application for leave to deal with immovable property of a ward by way of sale, mortgage, lease, or otherwise, shall state concisely the substance of the order prayed for, the value of the property proposed to be dealt with, and the necessity or advantage of the proposed disposition of the property and shall be supported by an affidavit of the guardian.

(12) An application for leave to sell or mortgage immovable property of a ward

for the discharge of debts or other liabilities of the ward, shall be accompanied by a statement in Form No. (M) 13 of the movable and immovable properties of the minor and of all debts due from the estate unless such statement has already been delivered to the Court by the guardian under Section 34 (b) of the Act. The particulars of each debt should be separately specified.

Note.—The form of application to sell or mortgage immovable property can be obtained from the *Nazir* at six paise each or six rupees per hundred.

(13) When the guardian applies for an order of the Court to do any of the acts mentioned in Sections 28 and 29 of the Act and the Court considers it necessary to call upon the Collector or a Subordinate Court for a report as to the necessity or expediency of the proposed act, the guardian shall deposit as the costs of the enquiry such sum as may be fixed by the Court. If it is found that the application was not made in good faith the guardian shall be required to refund the cost of the application and inquiry to the estate within such time as may be allowed by the Court.

(14) Moneys belonging to wards shall not, without the leave of the District Court, be invested in securities other than those mentioned in the clauses (a), (b), (bb), (c) and (d) of Section 20 of the Indian Trusts Act, 1882 (II of 1882), or deposited in any bank other than a Government Savings Bank. [G.L. 9/62.]

(15) The accounts of Wards estates of which the annual income is Rs. 4,000 or more shall ordinarily be audited by the Examiner of Local Accounts, Bihar; provided that where in the opinion of the Court, for reasons to be recorded in writing, exceptional circumstances render such course advisable, they may in the alternative, with the previous sanction of the High Court, be audited by persons who are holders of certificates granted by a State Government under Section 144 of the Indian Companies Act, 1913¹, or who are members of any institution or association the members of which have been declared under that Section to be eligible to act as auditors of companies throughout India.

(16) The accounts of Wards estates of which the annual income is below Rs. 4,000 will be audited by the *Sarishtadar* or any other officer, judicial or administrative subordinate to the District Judge, whom the latter may appoint.

When the audit is made by a ministerial officer of the Court the District Judge may, in exceptional cases of special difficulty, and provided it has been necessary to do the work outside office hours, sanction a small remuneration to the ministerial officer concerned, out of the funds of the estate.

(17) Unless otherwise directed by the Court for reasons to be recorded in writing, the accounts of Wards estates shall be audited annually or once in two years according as the annual income thereof does or does not exceed Rs. 10,000.

THE LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)

190. When an order under Section 32 of Bengal Act VII of 1876, directing the transfer of proprietary possession to be registered in the Register of the Collector of the district, is passed by any Civil Court, the Presiding Officer of such Court shall send a copy of his order to the Collector, with a view to such transfer being registered in the Collectorate Register.

1. Now, see Companies Act, 1956.

THE COURT OF WARDS ACT (BENGAL ACT IX OF 1879)

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

THE BIHAR TENANCY ACT (ACT VIII OF 1885)

192. No suit for arrears of rent shall be heard *ex parte* unless the summons has been served at least 14 clear days before the date of hearing. Where it appears that the above period has not expired on such date the Court should proceed under Order IX, Rule 6, Clause (c), Civil Procedure Code. [G.L. 4/22, G.L. 2/29, G.L. 3/38, G.L. 1/43.]

193. A record should be kept by all Civil Courts of the number of cases reported to the Collector under Section 58 (4) of the Act, which should be referred to in the annual reports on the administration of Civil Justice, and the matter should also receive notice in the reports on the inspection of Subordinate Courts.

RULES UNDER SECTION 100

194. Every Manager, appointed under Chapter IX of the Bihar Tenancy Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

195. The Manager, shall pay the Government revenue, rent and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

196. No Manager shall sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge; provided that this rule shall not render valid any lease for a shorter time than three years, if the District Judge directs by a written order that his sanction is to be obtained as regards all leases granted by the Manager.

197. The Manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

198. No Manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

RECORD-OF-RIGHTS UNDER SECTION 101.

199. Every Civil Court trying a suit under Section 106, or disposing of an appeal in such a suit, shall communicate to the Collector of the district, a note of its final decision in the case for incorporation in the final record-of-rights prepared under the Bihar Tenancy Act, 1885.

THE PROVINCIAL SMALL CAUSE COURTS ACT (ACT IX OF 1887).

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

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

(2) The cause of action shall be transcribed from the plaint into the Cause-Sheet [Form No. (J) 15] to be attached to the record immediately before the plaint.

(3) The substance of the evidence, the judgment, and the decree shall be entered in the Cause-Sheet referred to above. [G.L. 5/61.]

(4) In a case in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, the date for hearing shall be fixed within seven days, unless the Court shall for special reason fix a later date.

THE INDIAN STAMP ACT (ACT II OF 1899).

201. When a Judicial Officer sees reason to doubt the genuineness of a stamp filed before him, the stamp should be forwarded to the Collector of the district, who will examine it, and satisfy himself if possible, as to its character, reporting the result to the officer sending it. Care should be taken to retain and examine copy of any document bearing a stamp which may be forwarded to the Collector under the above orders. [G.L. 3/18.]

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

203. When submitting a reference to the High Court under Section 60 of the Stamp Act, the District Judge shall forward a copy of the same to the Superintendent and Remembrancer of Legal Affairs together with an expression of opinion as to whether that officer should engage Counsel or Pleader to argue the matter before the High Court.

THE INDIAN REGISTRATION ACT (ACT XVI OF 1908).

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

THE INDIAN LUNACY ACT (IV OF 1912)]¹.

205. When a person has been adjudged by a Civil Court to be a lunatic and the Court is satisfied that the lunatic is a proper person to be detained in a Lunatic Asylum, it shall obtain and forward with such person a certificate from the medical officer with whose assistance the person was so adjudged and a medical history sheet of the lunatic in Form no. (M) 18.

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

206. In exercise of the power conferred by Section 57 of the Administrator-General's Act, 1913 (III of 1913), and in supersession of the notification of the Government of India in the Home Department No. 270, dated the 11th February,

1. Now, see Mental Health Act, 1987.

1903, the Governor-General in Council is pleased to direct that where a subject of a State specified in the Schedule hereto annexed dies in British India, and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for Letters of Administration of the estate of the deceased, Letters of Administration shall on the application to such Court of any consular officer of such State, be granted to such consular officer on such terms and conditions as the Court may, subject to the following Rules, think fit to impose, namely [*G.I., H.D. notification no. F.-620/32 Judicial, dated the 25th July, 1932.*]:—

- (i) Where the deceased has not left in British India any known heirs or testamentary executors, by him appointed, the local authorities, if any, in possession of the property of the deceased, shall at once communicate the circumstances to the nearest consular officer of the State of which the deceased was a subject in order that the necessary information may be immediately forwarded to persons interested.
- (ii) Such consular officer shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or creditors of the deceased until they are otherwise represented.

SCHEDULE

- | | |
|-----------------------------|----------------|
| 1. United States of America | 6. Netherlands |
| 2. Argentine Republic | 7. Persia |
| 3. Belgium | 8. Peru |
| 4. Costa Rica | 9. Siam |
| 5. Denmark | 10. Sweden. |

THE INDIAN COMPANIES ACT (ACT VII OF 1913)]¹.

207. The Rules made by the High Court under Section 246 of the Indian Companies Act, 1913]¹ (as amended by Act XXII of 1936), referred to in Chapter XXII of the Patna High Court Rules, shall be deemed to apply to all District Courts subordinate to the High Court empowered by the State Government under sub-section (1) of Section 3 to exercise all or any of the jurisdictions conferred by that Act.

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

208. The following rules may be cited as “the Provincial Insolvency Rules”—

(1) Every insolvency petition shall be entered in the Register of Insolvency petitions in Form No. (R) 2-A.

(2) All insolvency proceedings may, at such times and subject to such restrictions as the District Judge may prescribe, be inspected by the Receiver, the debtor and any creditor who has proved, or any legal representative on their behalf.

²(3) (i) The insolvency notice to be given under Section 6 (2) of the Act shall be in Form No. (P) 65A.

(ii) The notice shall state—

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1. Now, see Companies Act, 1956.
 2. Ins. by C.S. No. 52, dated 7.1.1980.

- (a) the name and address of the creditor (s).
- (b) the name and address of the debtor, decree (s) or order (s) for payment of money on which the creditors or creditors claims are based with particulars thereof (viz., the number of the suit or proceeding in which the decree (s) or order (s) has/have been made the date thereof and the amount as claimed due thereunder).
- (c) the aggregate amount due to the creditor (s) (in case there are more than one decree or order); the fact that the decree (s) or order (s) has/have become final and that the execution thereof has not been stayed.
- (d) particulars of decree (s) or order (s) viz., the number of the suit or proceeding in which the decree (s) or order (s) has/have been made, the date thereof and the amount due thereunder to such creditor (s).
- (e) in case there are more than one decree or order, aggregate amount due thereunder to the creditor (s).
- (f) the date (which shall not be less than one month from the date of the service of the notice) before which compliance with the requirements of the notice is asked for.

(iii) The notice shall require the debtor to pay to the creditor (s) the amount claimed or to furnish security for the payment of the amount to the satisfaction of the creditor (s) or his/their agent(s).

(iv) Service of insolvency notice shall be personal. Notice shall be served in the manner provided in Rules 9 to 19 of Order V of the Code of Civil Procedure or by the registered post.

(v) If the notice is refused, or it is returned unserved and the Court is satisfied that the debtor is keeping out of the way for the purpose of avoiding service, it shall be published in a local daily newspaper and such publication shall be deemed to be sufficient service of notice.

(vi) Any person served with an insolvency notice may within the period allowed for compliance with that notice, apply to the Court to set aside the insolvency notice on any of the grounds specified in sub-section (5) of Section 6 of the Act.

(vii) Where an application to set aside the insolvency notice has been made and it cannot be disposed of until after the expiry of the period specified in the notice as the day on which the act of insolvency will be complete, no act of insolvency shall be deemed to have been committed under the notice until the application shall be disposed of.]

Notices

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

(4) Notice for an order fixing the date of the hearing of a petition under Section 19 (1) shall be forwarded by registered post to each creditor to the address given in the petition. Such notice, where the Court so directs, may, in addition, also be

published in the local official Gazette or in some selected newspapers, or in both. The same procedure shall be followed in respect of notices of the date for consideration of a proposal for composition or scheme of arrangement under Section 38 (i).

(5) Notice of an order of adjudication under Section 30 is required by the Act to be published in the local official Gazette. The Court may also order that it should be published in such local newspapers as it may direct. When the debtor is a Government servant, a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under Section 37 (2).

(6) The notice to be given by the Court under Section 50 shall be served on the creditor or his pleader and shall be sent through the post by registered letter.

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

(8) Notices of the date of hearing of an application for discharge under Section 41 shall be published in the local Official Gazette or in such local newspapers as the Judge may direct, and copies shall be sent by registered post to all creditors whether they have proved or not.

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

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

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

Receivers

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

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

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

(14) The Receiver shall keep a cash-book and such books and other papers as to give a correct view of his administration of the estate, and shall submit his

accounts at such times and in such forms as the Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. The costs of the audit shall be fixed by the Court, and shall be paid out of the estate.

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

(15A) The Receiver shall keep a record of his proceedings and shall state in it his reasons for all important acts and decisions. Any person affected by any such act or decision shall be entitled to a copy of the proceedings relating thereto on payment of the charges laid down in the Rules of this Court regarding the grant of copies.

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

(16A) If on the expiry of one year after the date of the order of adjudication the Receiver has not been able to realize all the property of the insolvent, he shall refer the case to the Court for decision under Section 64 of the Act whether as much has been realized as can be realised without needlessly protracting the receivership.

Proof of Debts.

(17) A creditor's proofs should be in Form No. (M) 27 with such variations as circumstances may require.

(18) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor or by some other person on behalf of all such creditors. Such proof should be in Form No. (M) 28.

Procedure where the Debtor is a Firm.

(19) Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm's name, the partner signing for the firm shall also add his own signature, e.g. "Brown and Co., by James Green, a partner in the said firm."

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

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

(22) Where a firm of debtors files an insolvency petition the same shall

contain the names in full of the individual partners, and if such petition is signed in the firm's name the petition shall be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in filing of the same.

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

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

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

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

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

Sale of Immovable Property of Insolvent.

(28) If no Receiver is appointed and the Court, in exercise of its powers under Section 58 of the Act, sells any immovable property of the insolvent, the deed of sale of the said property shall be prepared by the purchaser at his own cost, and shall be signed by the Presiding Officer of the Court.

Dividends.

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

(30) When an estate is ordered to be administered in a summary manner under Section 75 of the Act—

- (i) There shall be no advertisement of any proceedings in the local Government Gazette or in a local newspaper.
- (ii) The petition and all subsequent proceedings shall be endorsed "Summary case".
- (iii) The notice of the hearing of the petition to the creditors shall be in Form No. (P) 65.

Costs.

(31) All proceedings under the Act down to and including the making of an order of adjudication shall be at the cost of the party prosecuting them, but when an order of adjudication has been made, the costs of the petitioning creditor including the costs of the publication of all gazette notices required by the Act or Rules which, by the Act or Rules, the petitioning creditor is required to pay shall be taxed and be payable out of the estate.

(32) Before making an order in an insolvency petition presented by a debtor, the Court may require the debtor to deposit in Court a sum sufficient to cover the costs of sending the prescribed notices of the hearing of petition and the costs of the publication of all gazette notices required by the Act or Rules which, by the Act or Rules, the debtor is required to pay.

(33) The cost of the publication in the Gazette of—

- (a) An order fixing the date for the hearing of an insolvency petition under Section 19 (2) shall when the petition is by creditor, be paid by the creditor, and, when the petition is by the debtor, be paid out of the sum deposited in Court by the debtor under clause (32);
- (b) Notice of a proposal for a composition under Section 38 (1) and notice of an application for discharge under Section 41 (1) shall be paid by the debtor.

(34) The publication in the Gazette of—

- (a) Notice of adjudication under Section 30,
- (b) Notice to creditors whose claims have been notified but not proved under Section 64,
- (c) Notice of an order annulling an adjudication under Section 37 (2), shall be made free of charge.

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

(36) If the assets available are not sufficient in any case for taking proceedings necessary for the administration of the estate, the Receiver or Interim Receiver or Official Receiver, as the case may be, may call upon the creditors or any of them to advance the necessary funds, or to indemnify him against the cost of such proceedings. Any assets realized by such proceedings shall be applied, in the first place, towards the repayment of such advances with interest thereon at 6 per cent *per annum*.

RULES FOR THE DISPOSAL OF AUDIT OBJECTIONS AND AUDIT REPORTS
RELATING TO ESTATES UNDER THE FIDUCIARY CONTROL
OF THE CIVIL COURTS.

209. The following Rules have been framed by the High Court for the disposal of audit notes and audit objections relating to estates under the fiduciary control of the Civil Court:—

(1) The Auditor should give reasonable notice through the Court of the date when the audit is to begin. [*G.L. 8/22, G.L. 3/24.*]

The Receiver
Common Manager of the estate the accounts of which are under audit
Guardian

should arrange to give every facility to the Auditor in the conduct of his business. All accounts, registers and other documents which the Auditor may demand for this purpose should be laid before him with due expedition. If the Auditor is not given any necessary document demanded by him, he should bring the fact to the notice of the Court before making a representation to the Examiner of Local Accounts. [G.L. 8/22, G.L. 3/24.]

(2) The results of each audit should be communicated as follows—

- (i) The objection statements which are issued daily by the Auditor in the course of the audit, and
- (ii) The audit report which is issued formally after the close of the audit over the signature of the Examiner of Local Accounts.

(3) The daily objection statements issued by the Auditor in the course of the audit should be returned to him within three days from date of receipt with replies showing the action which is taken and which it is proposed to take to settle the

objections raised. These replies should be signed by the Receiver
Common Manager of
Guardian
the estate the accounts of which are under audit. The objection statements should all be returned without fail on or before the date on which the audit closes. No objection statement should remain unanswered on this date.

(4) When the objection statements are received back by the Auditor he will

Receiver
write out the draft audit report and will show it to Common Manager of the estate
Guardian
the accounts of which are under audit. If the latter finds any inaccuracies in the draft he should point them out. He may also take such action as he may consider necessary. He should return the draft audit report with such remarks as he may consider necessary within a week of the date of receipt by him.

(5) The audit report as finally approved will be signed by the Examiner of

Receiver
Local Accounts and copies will be sent by him to the Common Manager of the
Guardian
estate, to the Presiding Officer of the Court concerned, to the Registrar of the High Court of Judicature and to the Secretary to Government in the Judicial Department.

Receiver
(6) On receipt of the audit report the Common Manager must take steps to
Guardian

remove the objections mentioned therein and should submit his reply to the Examiner of Local Accounts through the Court within one month.

His reply to the audit report showing the action which has been taken on it must be sent in duplicate. A tabular form should be adopted providing separate columns for the record against each item or paragraph of the audit report of—

- (i) the reply and explanation of the Receiver,
Common Manager,
Guardian,
- (ii) the remarks of the Examiner, and
- (iii) the final order of the Court.

If the Examiner remains unsatisfied with the reply offered to any point raised in audit he will forward one copy with his remarks to the Court for consideration and the orders of the latter will be final, subject to appeal and the superintendence of the High Court.

(7) An audit objection is usually removed by the requisite sanction or making the necessary recovery, by correcting or completing the relevant account or voucher, by furnishing the necessary documents or information, or by otherwise securing compliance with the provisions of a specified rule.

In cases in which a protest is made against an audit objection as being incorrect, objection should be held to be in force unless formal intimation of its withdrawal is received from the Audit Department or it is disallowed by the Court under rule (6).

(8) The final disposal of the audit report by the Court shall be communicated by or through the District Judge with copies of the tabular statement, to the High

Court, the Examiner of Local Accounts and the Receiver.
Common Manager.
Guardian.

(9) Auditors have instructions to mention prominently in the audit report

unremedied objections of previous audit reports. The Receiver
Common Manager should
Guardian
pay particular attention to these items and in explaining or replying to them it should invariably be stated why the objections could not be removed.

ACCOUNT RULES AND FORMS FOR ESTATES UNDER THE FIDUCIARY
CONTROL OF THE CIVIL COURTS AND SUBJECT TO AUDIT
BY THE EXAMINER OF LOCAL ACCOUNTS, BIHAR.

210. (1) The following registers, accounts and forms are prescribed for Estates under the fiduciary control of the Civil Courts the accounts of which are subject to audit by the Examiner of Local Accounts, Bihar. All estates should also prepare budget estimates showing all anticipated heads of income and expenditure in such form as may suit the requirement of each estate. Receipts for rent, where

rent is collected in cash or in kind, should be granted in the form prescribed by Government under the Tenancy Act.

| Sl. No. | Description of the register, account or form | Form number | Remarks |
|----------|--|----------------|--|
| 1 | 2 | 3 | 4 |
| CLASS I | | | |
| 1. | Rokar or Cash Book ... | F. E. F. No. 1 | |
| 2. | Voucher ... | " " 2 | |
| 3. | Detailed Khatian ... | " " 3 | |
| 4. | Register of Civil Suits, Appeals and Execution Cases. | " " 4 | Need not be written up every year except in the case of large estates if found necessary. |
| 5. | Stock Book (for Sadr office). | " " 5 | All sorts of articles, namely, forms stationery, furniture, tools, live-stock, etc., should be entered in this register which should be divided into the necessary parts, one or more pages being allotted to each item according to necessity. There should be an index in the beginning and the register should be balanced quarterly. |
| 6. | Siaha or daily collection register. | " " 6 | |
| 7. | Jama Wasil Baki register. | " " 7 | |
| 8. | Receipt for Miscellaneous payment. | " " 8 | |
| CLASS II | | | |
| 9. | Khatian of each kind of dues and balances. | " " 9 | |
| 10. | Register of tenants' holdings purchased in execution and resettlement of the same. | " " 10 | |

| 1 | 2 | 3 | 4 |
|-----|--|--------|---|
| 11. | Register of proprietor's private lands. | " " 11 | |
| 12. | <i>Jamabandi</i> or rent-roll. | " " 12 | <p>One <i>Jamabandi</i> Register should be kept at headquarters for ready reference, a copy of the same being given to the mufassil staff for the purpose of collection. An abstract account of the total assets should be given at the end of the <i>Jamabandi</i> which must show separately the area under Nagdi, Bhaoli, Gairmazrua and Bakasht together with rent and other miscellaneous income from Jalkar and Sairat, etc. This register should be compared annually with the mufassal <i>Jamabandi</i> with a view to check any surreptitious act done by the mufassal staff. All mutations should be reported to the Manager, or guardian or Receiver and changes in red ink made in the office copy of the <i>Jamabandi</i>.</p> |
| 13. | <i>Jamabandi</i> of miscellaneous tenancies. | " " 13 | |
| 14. | Settlement Register | " " 14 | |
| 15. | Register of mutation fee ... | " " 15 | |
| 16. | General Ledger ... | " " 16 | <p>To be written up from the Cash Book or Rokar to show the progress of income and expenditure under each budget head. It should not be necessary to maintain this General Ledger in small estates.</p> |
| 17. | Danabandi Khasra | " " 17 | <p>To be written by carbon process on the spot, the pencil copy being sent to the Head Office at the close of the day.</p> |

| 1 | 2 | 3 | 4 |
|-----|---|-----------------|---|
| | | | <i>N.B.</i> —The paper should be kept <i>mauza</i> by <i>mauza</i> . Where rent is collected on the basis of an estimate of produce, signatures or thumb impressions of the party concerned, the persons making the appraisalment and of some respectable witnesses present thereat, should be taken on the appraisalment papers, wherever possible. If it is necessary to note that a particular area has been kept fallow an entry may be made in the remarks column. |
| 18. | Agor Batai Register | F. E. F. No. 18 | May be used for both system of Bhaoli rent—Batai and Danabandi. |
| 19. | Sale Paper ... | " " 19 | |
| 20. | List of defaulters ... | " " 20 | To be drawn up half-yearly with a statement showing collection, remission and balance. |
| 21. | Stock Book (for mufassal office including Bhaoli realization. | " " 21 | |
| 22. | Wasil Baki Register for Bhaoli and Batai Rents. | ... | F.E.F. No. 7 may be used, description and quantity of produce being noted in the column provided for rent. |
| 23. | Siaha for Bhaoli and Batai rents | ... | F.E.F. No. 6 may be used, description and quantity of produce being noted in the column provided for rent. |

Note 1.—The registers and forms may be kept in English or in the Vernacular as may be found convenient.

Note 2.—The registers and forms should be preserved for the periods given in “note” at page of Volume II. The periods stated therein are to be reckoned from

the date of the last entry in the Register and at the expiration of those periods the registers shall be destroyed.

(2) *“Essential” Registers, “Optional” Registers.*—The registers and accounts under class I are essential and must be maintained by all estates. The District Judge or the Court concerned may modify them only in detail, if necessary, but must not dispense with any of them entirely. The registers and forms under class II may not be necessary for all estates and the District Judge or the Court concerned may modify or dispense with the keeping of any of these upon application by the Guardian, Common Manager or Receiver. The District Judge may also accept in extreme cases a register or even a note book in which some of the items of class II are entered. In deciding whether any particular register or form of class II should be dispensed with or should be combined with others into one register, the District Judge or Court should take and consider the advice of the Examiner of Local Accounts, who should be consulted in the matter as soon as possible after the first audit subsequent to the date on which these Rules and forms come into force.

(3) The forms prescribed under clause (1) above are contained in Appendix D, Volume II.

RULES UNDER THE BANKERS' BOOKS EVIDENCE ACT (XVIII of 1891).

211. Scale of fees.—(1) A Bank ordered under the Banker's Books Evidence Act, XVIII of 1891, to supply certified copies of entries from its books shall be entitled to charge on the following scale

Searching fee—For each year or part of a year in respect of which search is made—Rs. 5.

Copies—For each Bank folio or part thereof—Rs. 5.

Certificate—For the certificate under Section 6 of the Act—Rs. 5.

A Bank folio for this purpose is a page of the Bank's books of not less than 40 and not more than 50 lines.

(2) *Application how made.*—An application for an order under the said Act shall be made *ex-parte* upon petition and the Court or a Judge may direct that notice of the application shall be served on the Bank or Banks named in the application. The petition shall set out particulars of which it is desired to obtain copies (or, if this is impossible, the year or years in which such entries will appear) and the materiality of such entries.

(3) *Application made in insufficient time and procedure to be followed in such cases.*—All applications shall be made in sufficient time to allow three clear days' notice required to be given by Section 6 (2) of the Bankers' Books Evidence Act, and all applications made in insufficient time shall state the reason thereof.

(4) *Service of order in Bank.*—The party who has obtained such order shall serve it upon the Bank or Banks affected and at the same time pay to the Bank or Banks the searching fee of which the amount shall be stated in the order.

(5) *Bank to make search and make out demand for fee for copies.*—Upon service of the order the Bank or Banks shall forthwith cause search to be made and shall thereafter forthwith inform the party who has obtained the order for the

amount to be paid to such Bank or Banks for copies of the entries to be made in terms of the order.

(6) *Party to pay for certified copies and certificate.*—Thereupon the party concerned shall pay to the Bank or Banks the amount so stated and the fee for the certificate and the Bank or Banks shall upon receipt thereof forthwith prepare and deliver to the party the copies of the relevant entries together with the certificate under Section 6 of the Act.

(7) *Saving.*—Nothing in the above rules shall be construed as derogating from the power of the Court or the Judge to make such orders as to costs in particular cases as may seem appropriate to it or him under Section 7 of the Act.

RULES UNDER SECTION 41 OF THE SPECIAL MARRIAGE ACT, 1954
(ACT XLIII OF 1954)

212. (1) *Short title and commencement.*—(i) These Rules may be called the Special Marriage Act Rules, 1955. [G.L. 1/58.]

(ii) The Rules shall come into force on the date of publication¹ in the *Bihar Gazette*.

(2) *Definitions.*—(i) “The Act” means the Special Marriage Act, 1954 (Act XLII of 1954).

(ii) “District Court” or “the Court” means the Court of the District Judge or of the Judicial Commissioner, as the case may be.

(3) *Form of the proceedings.*—The following proceedings under the Act shall be initiated by original petitions:—

- (i) under Section 22 for restitution of conjugal rights;
- (ii) under sub-section (1) of Section 23 for judicial separation;
- (iii) under sub-section (2) of Section 23 for rescinding a decree for judicial separation;
- (iv) under sub-section (1) of Section 24 for declaring a marriage null and void;
- (v) under sub-section (2) of Section 24 for declaring the registration of a marriage to be of no effect;
- (vi) under Section 25 for annulment of a marriage by a decree of nullity;
- (vii) under Section 27 for divorce;
- (viii) under Section 28 for divorce by mutual consent; and
- (ix) under Section 38 to make, revoke, suspend or vary an order or provision regarding the custody, maintenance or education of minor children.

(4) Every other proceeding, subsequent to the original petitions mentioned in rule 3, shall be initiated by an interlocutory application.

(5) Every petition, application, affidavit, decree or order under the Act shall be headed by a cause title in Form No. 1 given in the schedule to these rules with such variation as may be necessary and shall be drawn up, so far as possible in the forms prescribed in the schedule to the Indian Divorce Act, 1869 (IV of 1869).

1. The rule was published in the Bihar Gazette, dated the 23rd November, 1955 (*vide* notification no. 258-R, dated the 10th November, 1955).

(6) When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than a petition for restitution of conjugal rights may be brought on his or her behalf by the person entitled to his or her custody.

(7) *Petitions of minors.*—(i) Where the petitioner is a minor he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

(ii) The next friend shall, file an affidavit along with the petition which shall state age of the minor, that the next friend has no adverse interest to that of the minor, and that the next friend is otherwise a fit and proper person to act as such.

(iii) The Court may, on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such order of orders as it may deem fit.

(8) *Contents of petitions.*—In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure, every original petition shall state—

- (i) the place and the date of the marriage;
- (ii) the names of the parties and their occupation;
- (iii) the principal permanent address where the parties cohabited including the address where they last resided together;
- (iv) the names of the children, if any, of the marriage together with their dates of birth or ages;
- (v) if prior to the date of the petition there has been any proceeding between the parties to the petition with reference to their marriage in any Court in India, the result and the full particulars thereof.
- (vi) if the petition is for restitution of conjugal rights, the date on or from which and the circumstances under which the respondent withdrew from or terminated conjugal relationships with the petitioner;
- (vii) if the petition is for judicial separation or divorce the matrimonial offence alleged or other grounds upon which the relief is sought, together with full particulars thereof so far as such particulars are known to the petitioner, *e.g.*,—
 - (a) in the case of alleged desertion the date and the circumstances under which it began;
 - (b) in the case of presumption of death, the last place where the parties lived together and the date when and the place where the respondent was last seen or heard of as alive and the steps, if any, taken to ascertain his whereabouts;
 - (c) in the case of cruelty or adultery the specific acts of cruelty or adultery and the occasions when and the places where such acts were committed;

- (d) in the case of incurable unsoundness of mind, the time when such unsoundness began to manifest itself the nature and period of any curative steps taken together with the name and address of the person, if any, who treated for such unsoundness of mind;
 - (e) in the case of leprosy, or venereal disease in a communicable form, when such ailment began to manifest itself, the nature and the period of the curative steps if any, taken, together with the name and address of the person who treated for such ailment and whether or not such ailment was contracted from the petitioner;
 - (f) in case of an allegation of fraud a complete specification of the facts which constitute the fraud;
- (viii) if the petition is for a decree of nullity of marriage on the ground specified in clause (ii) or clause (iii) of Section 25 of the Act, the time when the facts relied on were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;
- (ix) if the petition is by a husband for divorce or judicial separation on the ground that his wife committed adultery with any person, the name, occupation and place of residence of such person, so far as they can be ascertained;
- (x) if the petition is by a wife for divorce or judicial separation on the ground that her husband committed adultery with any woman, the name, occupation and place of residence of such woman, so far as they can be ascertained;
- (xi) if the petition is by the wife for divorce on the ground that her husband has been guilty of rape, sodomy and bestiality, all particulars in proof of the same, accompanied by a certified copy of judgment, if any, in case of conviction;
- (xii) if the petition is one for a decree of dissolution of marriage, or of nullity or annulment of marriage or for judicial separation, that there is no collusion or connivance between the petitioner and the other party to the marriage or alleged marriage;
- (xiii) set out at the end the relief or reliefs sought, including any claim for—
- (a) damages against the co-respondent;
 - (b) custody, care and maintenance of children;
 - (c) permanent alimony and maintenance; and
 - (d) costs.

Where a claim is made under (c) the petition shall specify the annual or capital value of the husband's property, the amount of his annual earnings and other particulars relating to his financial resources and also the annual or capital value of the wife's property.

(9) *Verification.*—Statements contained in every petition shall be verified by the petitioner or some other competent person in the manner required by the Code of Civil Procedure for the time being in force for the verification of plaints.

(10) An application under the proviso to Section 29 of the Act for leave to present a petition for divorce before three years have passed from the date of the marriage shall be supported by an affidavit setting forth the circumstances relied on as constituting exceptional hardship to the petitioner or exceptional depravity on the part of the respondent.

(11) Every petition made under the Act, shall be accompanied by a certified copy of the certificate from the marriage certificate book, about the solemnisation or the registration of the marriage under the Act or under Section 13 of the Special Marriage Act (Act III of 1872).

(12) When a petition is admitted, the Chief Ministerial Officer of the Court shall assign a distinctive number to the petition and all subsequent proceedings on the petition shall bear that number.

(13) Along with the petition, the petitioner shall furnish a copy thereof for service on the respondent and if a co-respondent is impleaded an additional copy for service on him together with the fee prescribed under the Court-fees Act for service of notices.

(14) (i) Notice of the petition shall be in Form No. 2 given in the schedule to issues these rules of settlement of issues and shall require the respondent and the co-respondent, if one is named in the petition, to enter appearance in person or by pleader, and file a written statement not less than seven days before the day fixed in the notice.

(ii) The notice together with a copy of the petition shall be served on the respondent and the co-respondent, if named in the manner prescribed in Order V of the Code of Civil Procedure, not less than 21 days before the day appointed therein:

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

(15) Co-respondent in husband's petition.

In any petition presented by a husband for divorce or judicial separation on the ground that his wife has since the solemnisation of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer if alive, a co-respondent in the said petition, unless he is excused from so doing by an order of the Court which may be made on any or more of the following grounds which shall be supported by an affidavit in respect of the relevant facts:—

(i) that the respondent is leading the life of a prostitute, and the petitioner knows of no person with whom the adultery has been committed;

(ii) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for its discovery;

(iii) that the alleged adulterer is dead;

(iv) for any other sufficient reason that the Court may deem fit to consider.

(16) *Respondent wife's petition.*—Unless, otherwise directed where a wife's petition alleges adultery with a woman named and contains a claim for costs against her, she shall be made a respondent in the case.

(17) *Intervention.*—(i) Any person other than a party to the proceeding under Chapter V or Chapter VI, including a person charged with adultery or sodomy, not

made a respondent or co-respondent shall be entitled to appear and intervene in the proceedings. The application shall be supported by an affidavit setting forth the facts on the basis of which the intervention is sought for.

(ii) Notice for the application together with a copy of the affidavit shall be served on all parties who shall be at liberty to file counter affidavits.

(iii) If, after hearing all the parties, the Court grants leave, the intervenor may take part in the trial subject to such terms and conditions as the Court may deem fit to impose.

(iv) If the Court is satisfied that the intervention was made without sufficient cause it may order the applicant to pay the whole or part of the costs occasioned by the intervention. If, on the other hand, the Court finds that the intervention is justified, it may pass suitable orders for payment to the applicant the whole or any of the costs of intervention.

(v) A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges or allegations against such intervenor.

(18) *Written statement in answers to petition filed by respondents.*—The respondent may and, if so required by the Court shall present a written statement in answer to the petition and the provisions of Order VIII of the Code of Civil Procedure shall apply *mutatis mutandis* to such written statements. In particular, if in any proceedings for divorce the respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion.

(19) *Damages.*—Any husband may, in a petition for divorce, claim damages from the co-respondent on the ground of his having committed adultery with the wife of such petitioner—

(i) Such petition shall be served on the said co-respondent and the wife unless the Court dispenses with such service in accordance with the provisions of Rule 15.

(ii) The damages to be recovered on any such petition shall be ascertained by the Court, although the respondent or either of them may not appear. After the decision has been given, the Court may direct in what manner the damages shall be paid or applied.

(20) *Costs.*—The Court may direct that the whole or any part of the costs of the petitions for nullity of marriage or for divorce, incurred by any of the parties to such petitions may be paid by any of the other parties thereto :

Provided that the co-respondent shall not be ordered to pay the petitioner's cost—

(i) if the respondent was at the time of the adultery living apart from the husband and leading the life of a prostitute; or

(ii) if the respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

The award of costs shall be in the discretion of the Court and the Court shall make an order for the same while passing the decree.

(21) Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in suits under the Indian Divorce Act IV of 1869.

(22) *Appeal*.—Appeals to the High Court from the decrees and orders made by the Court in any proceedings under Chapter V or Chapter VI shall be governed by the Rules of the High Court, Patna, as far as they may be applicable.

SCHEDULE

FORM No. I

(Rule 3)

IN THE COURT OF THE DISTRICT JUDGE

ORIGINAL PETITION No. OF 19 ...

In the matter of the Special Marriage Act, 1954.

A B—*Petitioner*.

C D—*Respondent*.

E F—*Co-respondent*.

(Petition under Section of the Special Marriage Act, 1954 and rule of the rules under Special Marriage Act.)

FORM No. II

(Rule 8)

IN THE COURT OF THE DISTRICT JUDGE

ORIGINAL PETITION NO. OF 19 ...

In the matter of the Special Marriage Act, 1954

A B—*Petitioner*.

C D—*Respondent*.

E F—*Co-respondent*.

C D—*Respondent*.

E F—*Co-respondent*.

Petition presented on

Petition filed on

Notice issued on

Where on the day of 19 ... the abovenamed petitioner filed a petition against the respondent for (specify the relief) you are hereby required to appear in this Court on the day of 19 ... at 10.30 A.M. (6.30 A.M. in case of morning sittings) in person or by pleader duly instructed and able to answer all material question relating to the above proceeding.

Also take notice that in default of your appearance on the aforesaid day the issues will be settled and the petition heard and determined in your absence. You shall also bring with you or send by your pleader any documents which the petitioner desires to inspect and any documents on which you intend to rely in support of your defence.

You are required to file a written statement in Court on or before the day of 19

Given under my hand and the seal of the Court, this day of 19

District Judge

Note.—A copy of the petition accompanies this notice.

RULES UNDER SECTION 44 OF THE ARBITRATION ACT (X OF 1940)

213. (1) (a) These rules shall be called the Arbitration Rules, 1956. All references therein to the 'Act' shall mean the Arbitration Act, 1940 (X of 1940).

(b) These Rules shall come into force with effect from the date they are published]¹ in *Bihar Gazette*.

(2) *Title of application.*—(a) Save as hereinafter provided, all applications, affidavits and proceedings, under the Act, shall be instituted in the matter of the Act, and in the matter of the Arbitration.

(b) Applications under Chapter IV of the Act shall be instituted in the suit or matter in which order of reference is made.

(c) Applications under Section 34 of the Act shall be instituted in the suit which the applicant seeks to have stayed.

(d) Applications under Section 7 (2) of the Act shall be instituted in the matter of the insolvency in which the reference to arbitration is sought or claimed.

(e) Applications under Sections 14(2) and 20(1) of the Act shall, if the Court is satisfied that the petition is in order, be numbered and registered as regular suits. Other applications under the Act shall be numbered and registered as Miscellaneous Judicial cases.

(3) *Mode of application.*—All applications under the Act shall be made by petition and shall be presented to the proper Court in the same manner as plaints or other applications. The petition shall be verified in the manner prescribed by rule 15 of Order VI of the Code of Civil Procedure, 1908, or if the Court so directs, supported by an affidavit.

(4) *Content of petition.*—The petition shall be divided into paragraphs, numbered consecutively and shall contain the name, description and place of residence of the petitioner and the opposite party, a statement in summary form—

(a) of all material facts;

(b) of the facts showing that the Court to which the application is presented has jurisdiction to deal with it; and

(c) of the nature of the relief asked for; and shall specify the names, descriptions and places of residence of other persons liable to be affected thereby.

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

(6) The forms (J) 44, (J) 45, (J) 46, (J) 47, (J) 48 and (P) 40, which will be found in the High Court General Rules and Circular Orders (Civil), Vol. II, shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require.

(7) (i) In a reference under Section 13(b) of the Act the question of law and the facts out of which they arise shall be distinctly stated in Form No. (J) 44. A copy of

1. Published at pages 97 to 206 of Part III of the Bihar Gazette, dated the 23rd May, 1956.

the arbitration agreement, if any, shall be annexed to such reference. The Arbitrators or Umpire making the reference shall give notice of the action taken by them to the parties concerned.

(ii) When the Court has pronounced its opinion under Section 14(3), it shall be the duty of the Arbitrators or Umpire making the reference to have a certified copy of such opinion added to and made a part of the award.

(8) Every application under Section 14(2) of the Act for filing an award in Court shall be in writing.

(9) Every application made to a Court under Section 20(1) of the Act shall be accompanied by the original agreement or if the same be not in the possession or control of the applicant, then a copy, thereof.

(10) After a petition has been presented the Court may, if it is not in order or according to law, reject it. If it is not so rejected, the Court shall direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to it to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted. Such notice shall be accompanied by copies of the petition and the affidavit, if any, copies being supplied by the petitioner.

(11) The petitioner shall deposit the necessary process fees for service of notice on the other parties concerned (including persons likely to be affected by the proceedings) within seven days of the order directing the issue of notice or within such further time as the Court may, for sufficient cause shown, allow.

(12) (i) The Arbitrators or Umpire or any of the parties to the arbitration may cause an award or signed copy thereof to be filed in Court in the manner prescribed in Rule 3.

(ii) Where an award is filed by the Arbitrators or Umpire under Section 14(2) of the Act, they shall send to the Court under sealed cover the award or a signed copy thereof together with any proceedings or depositions and documents which may have been taken and proved before them and the opinion pronounced by the Court on the special case under Section 14(3) of the Act, if any, together with the full address of all the persons who are parties in the arbitration proceedings. They shall also send with the award a copy of the notice given to the parties concerned under Section 14(1) of the Act together with an affidavit of service of such notice and of attestation of their signatures on the award. If the sealed cover is sent by post, it shall be sent under registered cover, acknowledgment due. The award so filed shall form part of the record.

(iii) Where the award is filed by a party to the arbitration under clause (2), any party to the arbitration may move the Court to direct the Arbitrators or Umpire to produce before it any proceedings or depositions or documents which may have been taken and proved before them together with the record of the arbitration which may be in their possession.

(13) The Court shall forthwith issue notice of the filing of the award or a signed copy thereof—

(i) to the other parties concerned, if any of the parties to the arbitration has filed it, on the requisites being supplied by that party; or

(ii) to all the persons concerned who are parties in the arbitration proceeding free of costs when it has been filed by the Arbitrators or Umpire under Section 14(2) of the Act.

(14) *Limitation for application for judgment on award.*—An application for judgment in terms of an award shall not be made until after the expiration of 30 days from the date of service of the notice of filing the award.

(15) When an application under Section 20(1) of the Act is filed and registered the Court shall, on the application, issue a notice, returnable within not less than 10 days from the date of service thereof, calling upon the opposite party to show cause why the arbitration agreement should not be filed.

(16) (i) Processes to parties to the arbitration proceedings or to witnesses shall be issued by the Court on the written application of the Arbitrators or Umpire.

(ii) If the proceedings are under Chapter II of the Act, the application for such processes must be accompanied by a copy of the agreement under which the Arbitrators or the Umpire is acting. If, otherwise, the date of the order appointing an Arbitrator or Umpire shall be mentioned in the application.

(17) The Court-fees and process-fees chargeable for all petitions shall be in accordance with the Court-fees Act and the Rules for the levy of process-fees in force for the time being.

(18) Form No. (P) 40, so far as it can be made applicable, shall be used with necessary modifications in issuing the notice required to be given by the Court for the purposes of the Act.

(19) The orders of reference under Sections 20(4) and 23(1) of the Act shall be made in Form No. (J) 47.

(20) The order of appointment of Arbitrators or Umpire under Sections 8(2) and 12 shall be made in Form No. (J) 48.

(21) Every application under Section 21 of the Act shall be made in Form no. (J) 45 with due regard to the provisions of Rule 5 above.

(22) In making the award under the Act, the Arbitrators or Umpire, as the case may be, shall use Form No. (J) 46 for the purpose.

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

(24) The rules in Chapter X of Part I *ante* shall, as far as they are applicable, apply to appeals under Section 39 of the Act.

(25) In matters not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908, and the Patna High Court General Rules and Circular Orders (Civil) *mutatis mutandis* shall apply to all proceedings before the Court and to all appeals under the Act.

RULES UNDER SECTIONS 14 AND 21 OF THE HINDU MARRIAGE
ACT, 1955 (ACT XXV OF 1955)

214. (1) *Short title and commencement.*—(i) These rules may be called the Hindu Marriage Act (XXV of 1955) Rules, 1956. [G.L. 1/58.]

(ii) The Rules shall come into force on the date of publication¹ in the *Bihar Gazette*.

(2) *Definitions*.—(i) “The Act” means the Hindu Marriage Act, 1955 (Act XXV of 1955).

(ii) ‘Court’ means the Court mentioned in Section 3(b) of the Act.

(3) *Form of the proceeding*.—The following proceedings under the Act shall be initiated by original petition:—

- (i) Under Section 9 for restitution of conjugal rights;
- (ii) Under sub-section (1) of section 10 for judicial separation;
- (iii) Under sub-section (2) of section 10 for rescinding a decree for judicial separation;
- (iv) Under section 11 for declaring a marriage null and void;
- (v) Under section 12 for annulment of a marriage by a decree of nullity;
- (vi) Under section 13 for divorce;
- (vii) Under section 26 to make, revoke, suspend or vary an order or provision regarding the custody, maintenance or education of minor children.

(4) Every other proceeding, subsequent to the original petitions mentioned in rule 3, shall be initiated by an interlocutory application.

(5) Every petition, application, affidavit, decree or order under the Act shall be headed by a cause title in form no. 1 given in the schedule to these rules with such variation as may be necessary and shall be drawn up, so far as possible in the forms prescribed in the Schedule to the Indian Divorce Act, 1869 (IV of 1869).

(6) When a husband or a wife is a lunatic or an idiot, any petition under the Act, other than a petition for restitution of conjugal rights may be brought on his or her behalf by the person entitled to his or her custody.

(7) *Petitions of minors*.—(i) Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs. Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

(ii) The next friend shall file an affidavit along with the petition which shall state the age of the minor, the next friend has no adverse interest to that of the minor and that the next friend is otherwise a fit and proper person to act as such.

(iii) The Court may, on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such order or orders as it may deem fit.

(8) *Contents of petitions*.—In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure, every original petition shall state—

1. Published in the Bihar Gazette, dated the 7th August, 1957 (*vide* notification no. 221-R, dated the 23rd July, 1957).

- (i) the place and the date of the marriage;
- (ii) the names of the parties and their occupation;
- (iii) the principal permanent address, where the parties cohabited including the address where they last resided together;
- (iv) the names of children, if any, of the marriage together with their date of birth or ages;
- (v) if prior to the date of the petition there has been any proceeding between the parties to the petition with reference to their marriage in any Court in India, the result and the full particulars thereof;
- (vi) if the petition is for restitution of conjugal rights, the date on or from which and the circumstances under which the respondent withdrew from or terminated conjugal relationship with the petitioner;
- (vii) if the petition is for judicial separation or divorce, the matrimonial offence alleged or other grounds upon which the relief is sought together with full particulars thereof so far as such particulars are known to the petitioner *e.g.*:—
 - (a) in the case of alleged desertion, the date and the circumstances under which it began;
 - (b) in the case of presumption of death, the last place where the parties lived together and the date when and the place where the respondent was last seen or heard of as alive and the steps, if any, taken to ascertain his whereabouts;
 - (c) in the case of cruelty or adultery, the specific acts of cruelty or adultery and the occasions when and the places where such acts were committed;
 - (d) in the case of incurable unsoundness of mind, the time when such unsoundness began to manifest itself the nature and period of any curative steps taken, together with the name and address of the person, if any, who treated for such unsoundness of mind;
 - (e) in the case of leprosy, or venereal disease in a communicable form when such ailment began to manifest itself, the nature and the period of the curative steps, if any, taken, together with the name and address of the person who treated for such ailment and whether or not such ailment was contracted from the petitioner;
 - (f) in case of an allegation of fraud, a complete specification of the facts which constitute the fraud;
- (viii) if the petition is for a decree of nullity of marriage on the ground specified in clause (c) or clause (d) of Section 12 of the Act, the time when the facts relied on were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;
- (ix) if the petition is by a husband for divorce on the ground that the wife is living in adultery, or judicial separation on the ground that his wife committed adultery with any person, the name, occupation and place of residence of such person, so far as they can be ascertained;

- (x) if the petition is by a wife for divorce on the ground that the husband is living in adultery, or judicial separation on the ground that her husband committed adultery with any woman, the name, occupation and place of residence of such woman, so far as they can be ascertained;
- (xi) if the petition is by the wife for divorce on the ground that her husband has been guilty of rape, sodomy and bestiality, all particulars in proof of the same, accompanied by a certified copy of judgment, if any, in case of conviction;
- (xii) if the petition is one for a decree of dissolution of marriage or of nullity or annulment of marriage or for judicial separation, that there is no collusion or connivance between the petitioner and the other party to the marriage or alleged marriage;
- (xiii) the details of the property, if any, mentioned in Section 27;
- (xiv) set out at the end the relief or reliefs sought, including any claim for—
 - (a) damages against the co-respondent,
 - (b) custody, care and maintenance of children,
 - (c) permanent alimony and maintenance, and
 - (d) costs.

Where a claim is made under (c) the petitioner shall specify the annual or capital value of the husband's property, the amount of his annual earnings and other particulars relating to his financial resources and also the annual or capital value of the wife's property.

(9) *Verification.*—Statements contained in every petition shall be verified by the petitioner or some other competent person in the manner required by the Code of Civil Procedure for the time being in force for the verification of plaints.

(10) *Application for leave under Section 14 of the Act.*—(i) Where any party to a marriage desires to present a petition for divorce within three years of such marriage, he or she shall obtain leave of the Court under Section 14 of the Act on *ex-parte* application made to the Court in which the petition for divorce is intended to be filed.

(ii) The application shall be accompanied by the petition intended to be filed bearing the proper Court-fee under the law and in accordance with the rules. The application shall be supported by an affidavit made by the petitioner setting out the particulars of exceptional hardships to the petitioner or exceptional depravity on the part of the respondent on which leave is sought.

(iii) The evidence in such application may, unless the Court otherwise directs, be given by *affidavit*.

(iv) When the Court grants leave, the petition shall be deemed to have been duly filed on the date of the said order. Within a week of the said order or within such further time as may be fixed by the Court, the petitioner shall file sufficient number of copies of application for leave and order of the Court thereon and of the petition for divorce for service upon the respondents in the petition.

(11) *Service of copy of application for and order granting leave on the respondents and procedure after service.*—(i) When the Court grants leave under

the preceding rule, a copy of the application for leave and order granting leave shall be served on each of the respondents along with the notice of the petition for divorce.

(ii) (a) When the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or improperly obtained, he or she shall set forth in his or her written statement the grounds with particulars on which the grant of leave is sought to be contested.

(b) The Court, may, if it so deems fit, frame, try and decide the issue as to propriety of leave granted as preliminary issue.

(c) The Court may, at the instance of either party, order the attendance for examination or cross-examination of any deponent in the application for leave under the preceding rule.

(12) Every petition made under the Act shall be accompanied by a certified copy of the certificate from the Hindu Marriage Register, if any, prescribed by the State Government about the solemnisation of the marriage under the Act. A petition for divorce on any of the grounds mentioned in clauses (viii) and (ix) of sub-section (1) of section 13 of the Act shall be accompanied by a certified copy of a decree for judicial separation or for restitution of conjugal rights as the case may be.

(13) When a petition is admitted, the Chief Ministerial Officer of the Court shall assign a distinctive number to the petition and all subsequent proceedings on the petition shall bear that number.

(14) Along with the petition the petitioner shall furnish a copy thereof for service on the respondent and if a co-respondent is impleaded, an additional copy for service on him, together with the fee prescribed under the Court-fees Act for service of notices.

(15) (i) Notice of the petition shall be in Form No. 2 given in the Schedule to these rules for settlement of issues and shall require the respondent and the co-respondent, if one is named in the petition, to enter appearance in person or by pleader, and file a written statement not less than seven days before the day fixed in the notice.

(ii) The notice together with a copy of the petition shall be served on the respondent and the co-respondent, if named, in the manner prescribed in Order V of the Code of Civil Procedure, not less than 21 days before the day appointed therein:

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

(16) *Co-respondent in husband's petition.*—In any petition presented by a husband for divorce on the ground that the wife is living in adultery or judicial separation on the ground that the wife has, since the solemnisation of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer, if alive, a co-respondent in the said petition, unless he is excused from so doing by an order of the Court which may be made on any or more of the following grounds which shall be supported by an affidavit in respect of the relevant facts—

- (i) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

- (ii) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for its discovery;
- (iii) that the alleged adulterer is dead;
- (iv) for any other sufficient reason that the Court may deem fit to consider.

(17) *Respondent in wife's petition.*—Unless otherwise directed, where a wife's petition alleges adultery with a woman named and contains a claim for costs against her, she shall be made a respondent in the case.

(18) *Intervention.*—(i) Any person other than a party to the proceeding including a person charged with adultery or sodomy, not made a respondent or co-respondent, shall be entitled to appear and intervene in the proceedings. The application shall be supported by an affidavit setting forth the fact on the basis of which the intervention is sought for.

(ii) Notice for the application together with a copy of the affidavit shall be served on all parties who shall be at liberty to file counter affidavits.

(iii) If after hearing all the parties, the Court grants leave, the intervenor may take part in the trial subject to such terms and conditions as the Court may deem fit to impose.

(iv) If the Court is satisfied that the intervention was made without sufficient cause, it may order the applicant to pay the whole or part of the costs occasioned by the intervention. If on the other hand, the Court finds that the intervention is justified it may pass suitable orders for payment to the applicant the whole or any part of the costs of intervention.

(v) A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges or allegations against such intervenor.

(19) *Written statement in answers to petition filed by respondents.*—The respondent may and, if so required by the Court shall present a written statement in answer to the petition and the provisions of Order VIII of the Code of Civil Procedure shall apply *mutatis mutandis* to such written statements. In particular, if in any proceedings for divorce the respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion.

(20) *Damages.*—Any husband may, in a petition for divorce, claim damages from the co-respondent on the ground of his having committed adultery with the wife of such petitioner:—

- (i) Such petition shall be served on the said co-respondent and the wife unless the Court dispenses with such service in accordance with the provisions of Rule 15.
- (ii) The damages to be recovered on any such petition shall be ascertained by the Court, although the respondent or either of them may not appear. After the decision has been given, the Court may direct in what manner the damages shall be paid or applied.

(21) *Costs.*—The Court may direct that the whole or any part of the costs of the petitions for nullity of marriage or for divorce, incurred by any of the parties to such petitions may be paid by any of the other parties thereto:

Provided that the co-respondent shall not be ordered to pay the petitioner's cost—

- (i) if the respondent was at the time of the adultery living apart from the husband and leading the life of a prostitute; or
- (ii) if the respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

The award of costs shall be in the discretion of the Court and the Court shall make an order of the same while passing the decree.

(22) Unless otherwise directed by the Court, the costs of the petition under the Act shall be costs as taxed in suits under the Indian Divorce Act IV of 1869.

(23) Appeals under the Act shall be governed by the relevant rules in the Patna High Court General Rules and Circular Orders, Civil or by the Rules of the High Court at Patna, as the case may be, so far as they may be applicable.

SCHEDULE

FORM No. I

(Rule 5)

IN THE COURT OF THE DISTRICT JUDGE
ORIGINAL PETITION No. OF 19 ...

In the matter of Hindu Marriage Act, 1955—

A B—*Petitioner.*

C D—*Respondent.*

E F—*Co-respondent.*

(Petition under Section of the Hindu Marriage Act, 1955 and rule of the rules under Hindu Marriage Act.)

FORM No. II

(Rule 15)

IN THE COURT OF THE DISTRICT JUDGE
ORIGINAL PETITION No. OF 19 ...

In the matter of Hindu Marriage Act, 1955—

A B—*Petitioner.*

C D—*Respondent.*

E F—*Co-respondent.*

Petition presented on

Petition filed on

Notice issued on

Whereas on the day of 19 ... the abovenamed petitioner filed a petition against the respondent for (specify the relief) you are hereby required to appear in this Court on the day of 19 ... at 10.30 A.M. (6.30 A.M. in case of morning sitting) in person or by pleader duly instructed and able to answer all material questions relating to the above proceeding.

Also take notice that in default of your appearance on the aforesaid day, the issues will be settled and the petition heard and determined in your absence. You

shall also bring with or send by your pleader any documents which the petitioner desired to inspect and any documents on which you intend to rely in support of your defence.

You are required to file a written statement in Court on or before the day of 19

Given under my hand and the seal of the Court, this the day of 19

District Judge.

Note.—A copy of the petition accompanies this notice.

PART III

Records

CHAPTER I

The Classification of Records of Judicial Proceedings.

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

216. Class I includes records of—

- (a) Suits for or affecting immovable property other than suits under Order XXXIV, Civil Procedure Code, 1908.

Note.—Suits under Section 9 of the Specific Relief Act, 1877]¹, should be included, not in this class, but in class III.

- (b) Suits in respect of the succession to an office, or to establish or set aside an adoption, or otherwise determine the status of an individual.
- (c) Suits relating to public trusts, charities or endowments.
- (d) Proceedings under the Indian Divorce Act, Suits under the Hindu Marriage Act and the Special Marriage Act and Suits for dissolution of marriage by exercise of the option of puberty under the Muhammadan Law. [*G.L. 8/22, G.L. 1/58.*]
- (e) Suits for perpetual injunctions and declarations of right in matters other than those specified in clauses (a), (b) and (c) above.
- (f) Suits between landlord and tenant to determine the rate of rent, or in which a question of the right to enhance or vary the rent of a tenant, or any question relating to a title to land or to some interest in land as between parties, having conflicting claims thereto, is in issue.

Note.—The phrase “suits between landlord and tenant to determine the rate of rent” refers only to such suits as are brought expressly for the determination of the rate, e.g., under section 52 of the Bihar Tenancy Act, and should not be extended to cover all cases in which the rate at which rent is payable is brought in issue.

- (g) Cases under Section 158 of the Bihar Tenancy Act, 1885, to determine the incidents of a tenancy.

1. Now, see Specific Relief Act, 1963.

- (h) Cases under section 109 A(2) of the Bihar Tenancy Act, and Section 87 (2) of the Chota Nagpur Tenancy Act.
- (i) Cases under section 84 of the Bihar Tenancy Act.
- (j) Cases under the Mussalman Wakf Act, 1923 (XLII of 1923)¹, and applications for the sanction required by the Muhammadan Law for the transfer of Wakf property.
- (k) Applications under the Charitable and Religious Trusts Act (XIV of 1920).
- (l) Applications under sections 14 and 20 of the Arbitration Act, 1940 (Act X of 1940)².
- (m) Applications under sections 32 (3), 43 (1) and 48 of the Bihar Hindu Religious Trusts Act (Act I of 1951).
- (n) Appeals under Section 70, sub-clause 2 (b) of the Bihar Hindu Religious Trusts Act (I of 1951).
- (o) Applications under sections 11, 22, 32, 34, 36, 41, 46, 49, 53, 71, 72, 73 and 74 of the Indian Trusts Act (II of 1882).

217. Class II includes records of—

- (a) Suits under Order XXXIV of the Code of Civil Procedure, 1908.
- (b) Suit for declaration of a right to maintenance with or without a charge on immovable property or to determine the rate thereof.
- (c) Contested and uncontested suits and cases for Probate and Letters of Administration, and for the revocation of the same.

Note 1.—The custody and the preservation of a will itself is provided for by Chapter VI, and consequently a will is not a part of the record within the meaning of this rule, unless Probate or Letters of Administration have been refused.

Note 2.—Orders in an enquiry made at the instance of the Collector under clause 5 of Section 19H of the Court-fees Act, VII of 1870, should be written on the order-sheet of original cases to which they relate; and the papers of the proceedings will form part of the original case.

- (d) Cases under Guardians and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956) relating to the guardianship of minors and the administration of their property.
- (e) Cases under the Indian Lunacy Act, 1912³, relating to the guardianship of lunatics and the care of their estates.

Note.—An application by an executor or administrator or by the guardian of a minor or lunatic, to sell, mortgage or otherwise dispose of property belonging to the estate, is an application in the case, and together with all the proceedings connected with it, must form part of the record of the case.

- (f) Cases for Succession Certificate under the Indian Succession Act, 1925.
- (g) Application under Section 30 of the Industrial Finance Corporation Act, 1948 (Act XV of 1948).

1. Now, see Waqf Act, 1995.

2. Now, see Arbitration and Conciliation Act, 1996.

3. Now, see Mental Health Act, 1987.

¹[(h) Application under Section 31 (1) of the State Financial Corporations Act, 1951.]

218. (1) Class III includes records of—

- (a) All suits which do not come under Class I or Class II, excluding suits of the Small Cause Court class which are tried in the Regular Civil Courts under the procedure prescribed for Small Cause Courts and suits falling under Class III-A.
- (b) Suits for the recovery of arrears of maintenance.
- (c) Cases under Part VII of the Indian Succession Act (XXXIX of 1925).
Cases under the Land Acquisition Act, 1894, Parts III and IV.
Cases under the Land Registration Act, 1876, section 59.
Cases under the Transfer of Property Act, 1882, section 83, regarding the redemption and foreclosure of mortgages.
Cases under the Legal Practitioners, Act (Act XVIII of 1879).
Cases under the Bihar Tenancy Act, 1885, sections 91 to 93. [*G.L. 5/65.*]
Cases under the Civil Procedure Code for a declaration of insolvency, or under the Provincial Insolvency Act, 1920.
Cases under the Bengal Wills and Intestacy Regulation, 1799, section 7, regarding the property of intestates in which a claimant appears.
- (d) Applications to sue or appeal *in forma pauperis*, if rejected.
- (e) Cases under sections 98 (8) and 99 of the Bihar Tenancy Act.
- (f) Applications under section 78 of the Village Administration Act, 1922 (III of 1922), and under sections 70 and 73 of the Bihar Panchayat Raj Act (VII of 1948).
- (g) Applications under section 5 of the Religious Endowments Act, 1863 (XX of 1863).
- (h) Cases under section 17 of the Payment of Wages Act, 1936 (IV of 1936).
- (i) Applications for deposit of money under section 24 of the Bihar Money-Lenders Act, 1938 (Bihar Act III of 1938).
- ²(j) Cases arising out of Election Petitions under the Bihar District Board Election Petitions Rules, 1939.
- (k) [*Deleted*]
- (l) Cases arising out of Election Petitions under the Bihar Municipal Election Petitions Rules, 1941.
- (m) [*Deleted*]
- (n) [*Deleted*]
- (o) Application under sections 7, 8, 9, 11, 12 and 33 of the Arbitration Act, 1940 (Act X of 1940).

1. Ins. by C.S. No. 9.

2. For Election cases arising out of Representation of People Act, 1951, see H. C. memo no. 2232-44, dated 25th February, 1958 read with H.C. letter no. 7132-45, dated 1st August, 1958.

- (p) Applications under sections 28 (3) and 47 of the Bihar Hindu Religious Trusts Act (Act I of 1951).
- (q) Applications under section 22 of the Hindu Succession Act, 1956 (Act 30 of 1956).
- (r) Such other cases as the High Court may from time to time direct to be included.
- ¹[(r) Application under section 11 of the Bihar Panchayat Samiti and Zila Parishads Act, 1961.
- (s) Petition under Rule 149 of the Bihar Panchayat Samities and Zila Parishads (Elections, Co-options and Election Petitions) Rules, 1963.]
- (2) Class III-A includes records of—
 - (a) Suits for arrears of rent under the Bihar Tenancy Act where the claim does not exceed Rs. 250.
 - (b) Cases under section 153 (last paragraph) of the Bihar Tenancy Act.
 - (c) Applications under sections 11B and 12 (3) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947]².
 - (d) Applications under sections 75, 89, 113, 141, 234, 240 and 614 and cases under sections 118, 144, 163, 196, 219, 304, 307 and 375 of the Companies Act, 1956 (1 of 1956).
 - (e) *[Deleted]*
 - (f) Applications for compensation under section 110A of the Motor Vehicle Act, 1939.

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

219. (1) Class IV includes—

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

(2) Class IV-A includes—

Proceedings in execution of decrees in suits belonging to Class III-A.

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

Note 2.—Proceedings by which decrees are sent or transferred for execution are included under this general heading.

Note 3.—Orders under section 169 of the Bihar Tenancy Act should be written on the order-sheet of the case on which the proceedings arise and the papers relating thereto should form part of the record of the case.

220. Records of suits of Small Cause Court class tried under the Small Cause Court Procedure by Judicial Officers empowered under section 25, Act XII

1. Ins. by C.S. No. 29.

2. Now, see Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

of 1887, shall be disposed of in accordance with the Rules hereinafter provided for records of Courts of Small Causes (Chapter V).

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

CHAPTER II

The arrangement, preparation and inspection of records in the Trial Court.

I—ARRANGEMENT AND PREPARATION OF RECORDS

A—THE DIVISION OF THE RECORDS INTO FILES

222. Every record shall as hereinafter provided consist of one or more of the following files to be ordinarily preserved for periods noted against each

| | | |
|---------------------|---|---------------|
| ¹ File A | — | For ever. |
| File B | — | For 12 years. |
| File C | — | For 6 years. |
| File C1 | — | For 3 years. |
| File D | — | For 6 years. |
| File D1 | — | For 3 years.] |

223. Every record under Class I shall consist of three files to be styled and marked, respectively, File A, File C and File C-I.

224. File A shall contain—

- (a) Table of contents.
- (b) Order-sheet.
- (c) The plaint or application, together with any schedule annexed thereto.
- (d) The written statement of the defendant or the counter petition.
- (e) Memorandum of the Issues.
- (f) Award of arbitrators or petitions of compromise, if given effect to in the decree; also the return or report and the map and field-book (if any) of a Commissioner in matters relating to immovable property, if referred to or given effect to in the decree, but not any portion of the evidence taken by such Commissioner; also, in the case of Minors or Lunatics, any order of the Court sanctioning a compromise as beneficial to the Minor or Lunatic.
- (g) The preliminary decree (if any), with the further directions (if any) given and the judgment upon which the preliminary decree is founded.
- (h) The Judgment.
- (i) The final decree.
- (j) The copy of the judgment and decree of the Appellate Court or Courts (if any).

1. Subs. by C.S. No. 77, dated 25.6.1987.

225. File C shall contain—

- (a) Table of contents.
- (b) All the evidence, oral and documentary, upon which the subject matter of the suit is decided.
- (c) Lists of documents admitted in evidence.

226. File C-1 shall contain—

- (a) Table of contents.
- (b) All other papers.

227. Every record under Class II shall consist of two files to be styled and marked File B and File C-1.

- (a) File B shall contain the papers specified and included in Files A and C, Class I.

Note.—Security bonds filed in cases mentioned in clauses (c) and (d) and applications referred to in the note under clause (e) of rule 217 as also other papers the preservation of which has been directed by the Judge, will form part of File B.

- (b) File C-1 shall contain all other papers.

Note.—The papers of the proceedings of an inquiry made at the instance of the Collector under clause 5 of Section 19H of the Court-fees Act, VII of 1870, should be kept in this file.

228. Every record under Class III shall consist of two files to be styled and marked File C and File C-1 and every record under Class III-A shall consist of ¹[Two files to be styled and marked File D and D-1 containing all the papers relating to the case.]

File C shall contain the papers specified and included in Files A and C of Class I and File C-1 shall contain all other papers.

²[File D shall contain the claim petition, order sheet, award and decree, and File D-1 shall contain other papers relating to the case.]

229. (a) Every record under Classes IV and IV-A shall, except as provided in sub-rules (b) and (d) consist of one file which shall contain all the papers relating to the case. It shall be styled and marked File D where the decree under execution has been passed in a suit belonging to Class III-A and File C in all other cases.

(b) If the proceeding comprised in a Class IV record arose out of an application to execute a decree in a suit included in Class I, and a question is determined as to the construction of the decree, of its effect as regards all or any of the parties thereto, the record shall be divided into two files to be styled and a marked respectively File A and File C.

(c) In cases falling under sub-rule (b), File A shall contain—

- (a) Table of contents.
- (b) The Order-sheet.
- (c) The application for execution.

1. Subs. by C.S. No. 78, dated 25.6.1987.

2. Ins. by *ibid.*

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

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

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

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

(d) Where delivery of possession of immovable property has been made in execution of a decree for recovery of possession or where immovable property has been sold in execution of a decree and the sale has been confirmed, the record shall be divided into two files to be styled and marked respectively File B and C-1, the essential papers, namely, the order sheet, the application for execution, the copy of the sale certificate and the writ of delivery of possession with *Nazir's* report being placed in File B and other papers in File C-1.

230. (a) Every record of an Appellate Court shall be arranged in the same way as that of the Court of Original Jurisdiction except that there shall be no C File in respect of Class I records, the papers which would belong to that file where additional evidence is taken being attached to the C-1 File.

(b) The files must be marked A, B, C or D as in the Court of First Instance according to the nature of the case.

Note 1.—The copy of the judgment and decree which accompany a memorandum of appeal should be placed with File C-1.

Note 2.—In the case of Civil Appeals except miscellaneous appeals the certified copies of judgments and decrees filed with the memorandum of appeal should be returned to the appellants on their applying for them after the disposal of the appeals, since the original record is kept with the appellate record in the district record room. In the case of appeals from the decisions of Settlement Officers and civil miscellaneous appeals, these documents should not be returned, but should be retained with the appellate records until the “C” File with which they are placed is due for destruction.

231. The distribution of papers into the proper files must be made immediately after the first hearing and shall be continued from day to day as the case proceeds.

232. Notwithstanding anything contained in the foregoing rules, the record in the following cases shall be preserved for one year and shall consist of one file only unless such distribution has already taken place before disposal—

- (i) Where the plaint ¹[or Memorandum of appeal] has been rejected.
- (ii) Where the case has been dismissed under Order IX, Rule 2 in consequence of the plaintiff's failure to pay cost of summons to the defendant, or Rule 3 where neither party appears. [*G.L. 2/85.*]
- (iii) Where the case has been dismissed on satisfaction before decree. [*G.L. 6/47.*]
- (iv) Where the plaint or memorandum of appeal has been returned for presentation to proper Court.

Note 1.—In case (ii) the file will be split up when an application for restoration is filed.

1. Ins. by C.S. No. 18.

Note 2.—In cases where costs have been awarded by the final order the record should be classed as File C.

On the record of every such case the Court *Muharrir* shall stamp or write conspicuously the words “rejected”, “dismissed for default”, “satisfaction” or “plaint returned”, as the case may be.

B—THE TITLE PAGE

233. To each file of every record shall be prefixed a title page in the prescribed form showing the period of its preservation.

Note—No title page need be attached to records of cases referred to in Rule 232 until these are called for by some superior Court. Then the title page of the first file according to classification, shall be attached.

234. The title pages shall be of different colours—

| | | |
|-----------------------|-----|--------------|
| File A | ... | White |
| File B | ... | Red |
| File C and C-1 | ... | Yellow |
| File D | ... | Blue |
| ¹ [File D1 | ... | Colour Blue. |

C—THE TABLE OF CONTENTS

235. The table of contents shall be written in English day by day as the case proceeds, and except as otherwise provided shall show all the papers in the file in the order they are filed, A separate serial number will be assigned to the order-sheet (*e.g.*, i, ii, iii, iv, etc.) and it will not be taken into account in giving page marks to the other papers in the file.

236. The transfer of any paper from one file to another shall be noted in the table of contents of both the files.

237. Document filed in any case and the exhibits are not to be entered in the table of contents; but their lists are to be shown in their proper places in the table of contents.

D—THE ORDER SHEET

238. The order-sheet shall be written in English and shall contain all orders passed by the Court.

Note.—Orders shall not be written on petitions, reports and other similar documents. The serial number and the date of the order passed on any petition shall be noted on such petition.

Comments & Case Law

[Issuance of warrant of arrest. Order-sheet shall be written in English and shall contain all orders passed by the Court. Orders shall not be written on petitions, reports and other similar documents. Serial number and date of order passed on any petition shall be noted on such petition. Order passed by Magistrate in the margin of petition filed by I.O. is clear violation of Rule 238. *Krishna Murari Yadav vs. State of Bihar*, 2005(3) PLJR 746 : 2005(3) PCCR 24.]

1. Ins. by C.S. No. 79, dated 25.6.1987.

239. The order-sheet, being intended to show the course of a suit or case from first to last, shall also contain a note of every order made in the suit or case, and shall show the date of, and the proceedings at, every hearing. It shall show, among other matters, the dates on which the pleadings and written statements were filed, issues were recorded or amended, witnesses examined and the names of such witnesses, the date of the delivery of judgment, of the signing of the decree, and of any application for review of judgment or amendment of the decree. It shall also contain a note of proceedings, such as the reading of the deposition of a witness examined by Commission, the reading of a Commissioner's report, and of the fact of any objection being made thereto, and if witnesses are in attendance when a case is adjourned, the fact shall be noted.

Note.—Orders in proceedings under the Code of Civil Procedure for the transfer, or for the restoration of a suit or appeal, or for a review of judgment (see note to Rule 218, Chapter I of this Part), should be entered in the order-sheet of the main suit or appeal. A separate order-sheet should not be prepared. In all cases the order of an Appellate Court calling for the record of a suit or appeal, should be recorded on a separate paper and reproduced on the order-sheet of a suit or appeal when the records have been received from the Lower Court. When such proceedings are disposed of without the main record being called for by the Appellate Court, the order on the application should, in the same way, be recorded on a separate paper, and directions given to the Subordinate Court to reproduce the same on the order-sheet of the main record.

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

241. Orders directing anything to be done by the parties or their pleaders, shall be signed then and there by the parties or their pleaders.

242. The order-sheet may be written by an officer of the Court at the dictation of the Presiding Judge, who, however, shall sign and be responsible for the correctness of the entries in it. Rubber stamps may conveniently be used for recording routine orders.

E—THE RECORD

243. The pleadings, applications, proceedings and other papers in every suit or case shall be attached as the case proceeds to the files to which they belong, and shall be arranged in the order in which they are brought before the Court.

244. The depositions of witnesses for each party shall be arranged in the order in which they are given. The examination of the parties recorded by the Court under Order X, Civil Procedure Code, shall precede such depositions. The depositions of witnesses examined by the Court shall be placed after the depositions of witnesses for the parties.

F—DOCUMENTS

245. Documents admitted in evidence shall be marked with figures 1, 2, 3, etc., and capital letters A, B, C, etc., accordingly as they are admitted on behalf of the plaintiffs or defendants and separate lists of such documents in Form No. (J) 11

shall be prepared by the Bench Clerk which will be signed by the Presiding Judge. The entries in these lists shall be made day by day. [G.L. 15/19, G.L. 1/22, G.L. 4/60, G.L. 3/65.]

246. When there are two or more parties of defendants, the documents of the first party may be marked A-1, B-1, C-1, etc., and those of the second, A-2, B-2, C-2, etc.

- (a) Where an exhibit forms part of a voluminous document, such account book, *Khata* and counterfoil receipt book, etc., it should be clearly indicated by means of a slip of paper pinned to the sheet or page on which it occurs, the exhibit mark being noted on the slip.
- (b) When an entry in an account book is admitted in evidence the portion so admitted shall be clearly indicated by enclosing the same in red ink.

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

248. When a number of documents of the same nature are admitted, as for example, a series of rent receipts, the whole series should bear one number or capital letter, a small letter or small number being added beneath the number or letter, and separated from it by a line to distinguish each paper of the series.

249. Exhibits must not be defaced in any way except in so far as the law permits, that is to say, by marking them as Exhibits filed in a case. [G.L. 3/23.]

250. When a document of historical or antiquarian interest is in question the Court should make every possible endeavour to prevent it being defaced by endorsement or exhibit marks or by having the seal of the Court impressed upon it. If the parties do not agree to a photograph copy being substituted for the original, the document may be enclosed in a sealed cover or in a locked or sealed box, the necessary particulars being endorsed outside such box or cover. If every other means fails measures should be taken for the safe custody of the document pending instructions from higher authorities.

¹**[250A.** Any party to a suit or proceeding may file photostat copy of any valuable and important document and the original thereof may be produced at the time of evidence. The original document may be returned to the party concerned soon after it has been inspected or put in evidence unless its retention is considered necessary. In case retention of original document is considered necessary by the Court, all measures should be taken by the Court for its safe custody.]

251. When an original document, after being marked for the purpose of identification, is returned, and a copy thereof substituted under the provisions of Order VII, Rule 17, or Order XIII, Rule 5, Code of Civil Procedure, a note of the return of the original shall be made in the lists referred to in the preceding rules.

252. When any public document (not being the record of a suit or of a judicial proceeding) or a document in public custody has been produced in Court in compliance with a summons the Court shall after the document has been inspected or put in evidence, as the case may be, cause it to be returned with the least possible delay to the officer from whose custody it has been produced after the

1. Ins. by C.S. No. 82, dated 7.9.1987.

preparation of such copies as the Court may require under Order XIII, Rule 5, clause (2) Civil Procedure Code, unless its detention is considered to be necessary till the delivery of the judgment.

Note.—While returning any public document, the Court shall make an endorsement therein near about the exhibit mark and by a separate order in the order-sheet of the case direct that it shall not be destroyed without previous permission of the Court and the Court shall not accord such permission until the trial is concluded, or in case where appeal lies until sufficient time has elapsed for appeal, or, if an appeal is preferred, until the determination thereof. The Court shall forward to the department concerned a copy of the order and before according permission for destruction, shall satisfy itself that no appeal is pending. The term “appeal” includes a second appeal and an appeal to the Supreme Court.

253. Should any document or book produced at any time in the course of the proceeding, present a suspicious appearance or be held by the Court to be forged or fabricated, the Court shall make a note of the fact on the order-sheet of the case and direct therein that it shall be kept in safe custody and shall not be returned to the parties concerned without permission of the Court. The Court shall not accord such permission unless all proceedings connected with such document or book have been completely disposed of. A note in red ink to the above effect shall also be made in the exhibit list as well as on the list with which the document has been filed in Court. A similar note shall be made on a separate piece of paper which shall be attached to document or book concerned.

254. Where the Court does not make any direction to the contrary unexhibited documents, if not returned earlier, shall, at the conclusion of the trial, be returned to the person producing them or his pleader after he has signed the receipt for the same in the proper column on the list. A pleader, when required to do so, is bound to take back any document produced by his client and to sign the receipt referred to above. [G.L. 3/29.]

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

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

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

(4) (a) In the case of voluminous documents, such as account books or collections of *zamindari* papers, which cannot conveniently be returned by registered

post, the person producing them shall, if they are not returned to him at once, be informed in due course by registered letter that he is at liberty to take them back, and that his reasonable travelling expense will be furnished.

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

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

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

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

256. A period of three months from the date of the decree should ordinarily elapse before the documents exhibited in a case are returned to the person who produced them. The Presiding Officers of outlying Courts should see that exhibits are as far as possible returned before the periodical despatch of the records to the District Record Room.

¹**[256-A.** Rule 298 of Chapter IV shall in so far as it is not inconsistent with these rules apply to applications for the return of documents from the Courts.]

II—INSPECTION OF RECORDS

257. No record not deposited in the Record-Room shall be inspected without the permission of the Presiding Officer of the Court to whose file it appertains.

258. The Presiding Officer may either in his presence or in the presence of his *Sarishtadar* allow inspection of any such record to public officers and pleaders in the case subject to the general conditions laid down for inspection of Records in the Record-Room (*vide* Chapter IV, Rules 312, *et seq post*). [*G.L. 9/24, G.L. 1/38, G.L. 10/53.*]

Note.—The permission of the Presiding Officer may be obtained on a written application in Form No. (M) 41 which will be supplied free of cost.

CHAPTER III

The Transmission of Records to the District Record-Room

259. The records of decided, contested and uncontested suits and cases of Classes I, II, III and III-A other than those referred to in rule 232, of the preceding chapter, and the records of miscellaneous non-judicial cases and of cases belonging to Classes IV and IV-A shall be forwarded to the District Record-Room by Judicial

1. Ins. by C.S. No. 3.

Officers at headquarters in the course of the second month and by Judicial Officers at out-stations in the course of the fourth month next succeeding that in which they were decided or disposed of. [G.L. 1/35, G.L. 1/36.]

Note 1.—For the purposes of this rule suit in which preliminary decrees are made should be regarded as finally disposed of only when the final decree has been passed but where in suits for partition the final decree cannot be drawn up owing to the failure of the party concerned to pay stamp duty of the requisite value, the record shall be forwarded to the District Record-Room by the Courts at headquarters on the expiry of six months, and by the Courts at out-stations on the expiry of one year, after the date on which the final decree was passed.

Note 2.—In suits relating to mortgage, if no final decree is passed the record shall be retained in the Trial Court for three years from the date fixed for the payment of the sum declared in the preliminary decree to be due. [G.L. 5/41.]

Note 3.—Where the decree directs a partition, or under Order XX, rule 12, of the Code of Civil Procedure, an enquiry as to rent or *mesne profits*, and no final decree is passed, the record shall be retained in the Trial Court for three years from the date of the preliminary decree.

260. The District Judge shall fix the dates on which in the course of the month the records from each Court at headquarters and out-stations, respectively, shall be despatched to the District Record-Room, the dates being so arranged as to secure an even distribution of work in the Record-Room. [G.L. 3/45.]

Note 1.—The orders passed by the District Judge under this rule, fixing the date for the transmission of records, shall be copied and posted in the Record-Room and in the offices of the Courts to which they relate.

Note 2.—A list in Form No. (R) 20A should be kept posted each year in the Record-Room showing clearly for each Court the dates of which the records are due for deposit and the dates on which they are actually received.

261. (a) A separate list in Form No. (R) 20 written in English shall accompany the records of each class. These lists should be of uniform size to enable their being bound up in separate annual volumes for each class of records of the same Court so as to constitute a catalogue of records in the Record-Room to be preserved for the same period as the records to which they relate. [G.L. 5/52.]

(b) The list required by this rule shall be prepared in duplicate and shall contain an entry of every suit or case other than those referred to rule 232 of the preceding chapter, disposed of during the period. The duplicate copy shall be forwarded to the District Judge, under a separate cover and will be returned to the issuing Court duly signed by the Record-Keeper who shall acknowledge that the records have been received. The duplicate copies shall be preserved for three years unless the period is extended by the District Judge.

Note.—Zanetic, that is, pen carbon paper should be used in making duplicate copies if a typewriter is not available.

(c) If any record included in the list is kept back for any reason the fact should be noted in the remarks column, clearly distinguishing between those kept back though due for despatch and those referred to in notes 1–3 to rule 259, which

though entered in the list are not yet due for despatch. The 'kept back' records of both such classes should be entered also in a separate list to accompany the despatch list.

262. The records of cases referred to in rule 232 of the preceding chapter shall be entered in a separate list [in Form No. (R) 20] and kept in the respective Courts to which they belong and will be destroyed after one year from the date of final disposal unless there has been an order for restoration to file. When such destruction takes place the fact should be noted in such list and in the Court's Register against the entry for the particular case. The list referred to above shall be preserved for three years. [*G.L. 6/47, H.C. letter no. 2765-80, dated 26th February, 1965.*]

263. When preparing the list [in Form No. (R) 20] referred to in the preceding rule, a second hole shall be punched with a triangular punch, on each Court-fee label distinct from the first in the records mentioned in the said rule, and a note shall at the same time be made upon the title page or the first sheet of each record of the date on which the stamps on documents contained in it have been so punched.

Note.—Before signing the order of destruction of such records, the Presiding Officer shall satisfy himself that Court-fee labels have been repunched with a triangular punch.

264. All registers which have to be permanently preserved shall, after 12 years from the date of the last entry therein, be sent to District Record-Room with a list in Form No. (R) 21.

CHAPTER IV

District Record-Room

I—RECORD-ROOM ARRANGEMENT AND THE GENERAL DUTIES OF THE RECORD-KEEPER

265. "The Record-Room" is a room set apart for the storage of decided cases and the "Record Keeper" is the ministerial officer in immediate charge of such records.

266. It is desirable, and whenever possible it should be arranged, that each Record-Room shall have only one combined entrance and exit, and that the Record-Keeper's table shall be so placed that no one can enter or pass papers out of the Record-Room unseen by him.

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

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

¹**[267-A.** The Record Keeper shall be the custodian of the keys of the Record Room. Where the Civil Courts are in reasonable proximity to the Revenue

1. Ins. by C.S. No. 14.

Courts, duplicate keys of the Record-Room shall be kept in a sealed cover with the Head Constable of the Treasury Guards who should be instructed to hand over the keys only in the event of an alarm of fire between sunset and sunrise, or upon presentation of written order from the Judge-in-charge, Record-Room. In other case, the duplicate keys shall be kept by a Selection Grade Clerk of the Civil Courts to be appointed as custodian for the purpose by the District Judge. The clerk so appointed should be required to live as near as possible to the Civil Court buildings. The keys shall be sent for once a year in the month of April, examined by actual insertion in the locks and returned either to the Head Constable of the Treasury Guards or to the Clerk appointed for the purpose, as the case may be, under fresh seal. For other precautionary measure, the instructions contained in Government Resolution Nos. 2745J, and 2746J, dated the 30th October, 1909, No. 529J, dated the 11th May 1910, and other instructions issued by the Government from time to time, should be followed.]

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

269. The distribution of work among the clerks should so far as possible, be arranged on the basis of the various Courts in the district, each clerk dealing with the records of the Court or Courts of which he is in charge and all matters connected with them.

270. The Record-Keeper shall submit to the Judicial Officer placed by the District Judge in charge of the Record-Room a fortnightly progress report in Form No. (M) 30. [G.L. 7/46.]

271. A plan and index of the Record-Room shall be prepared by the Record-Keeper on the lines of the specimen plan and form of Index reproduced as Appendix C, and as Form No. (M) 31 respectively in Volume II, and should be hung up in a conspicuous place in his office. The plan should indicate the position and serial number of the several racks and almirahs in each room, and the entrance to, and number of, each room. It should also include an end section of the racks, showing the serial number of the several shelves in each. The information required for the "Index" should be set out below the plan by Courts.

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

273. The rooms, racks and shelves in the Record-Room should be numbered conspicuously. The rack number should be fixed at the end of each rack nearest to the passage way, and at a height where it can easily read; the letters A and B should be marked to denote the left and right hand shelves of the rack.

274. An Index-board, typed or printed in foolscap size in Form No. (M) 32, should be hung up in a conspicuous place at the end of each rack.

275. Every almirah in the Record-Room should be clearly marked outside with a letter or figure and the shelves therein should be numbered. A list in English showing its contents should be kept in each almirah.

276. The Record-Keeper shall keep in a guard-file all inspection notes (or copies thereof) made by the District Judge or by any other officer on inspecting the Record-Room, and shall note on the margin of such notes the action taken upon them.

277. Registers not in current use and kept in the Record-Room, should be arranged on shelves vertically and should be labelled on back of the volume.

II—RECEIPTS OF RECORDS IN THE DISTRICT RECORD-ROOM

278. On the arrival of a batch of records in the District Record-Room, the Record-Keeper shall see—

- (a) that each record is stamped with a rubber stamp bearing the words “District Judge’s Record-Room”, the name of the district and date;
- (b) that the records correspond in number and description with the entries in the despatch lists;
- (c) that a second hole is punched with a triangular punch, on each Court-fee label distinct from the first and a note is at the same time made upon the title-page of each record of the date on which the stamps on documents contained in it have been so punched;
- (d) that the classification and arrangement under Chapters I and II of this Part have been carried out; that the contents of each file correspond with the Table of Contents, that the papers bear the Court-fee stamps shown in such table; that the stamps have been duly cancelled and that the papers requiring Court-fee stamps have been properly stamped;
- (e) that all records kept back in the Trial Courts after the due date for despatch under rule 261 (c), Chapter III, Part III, are entered in Register (R) 19 so that they may be dealt with under rule 308.

Note.—The second or triangular punching of Court-fee stamps prescribed in this rule should be made on the day the records are received in the District Record-Room, and should not await the inspection or examination of records.

279. If in the course of carrying on the duties enumerated in these rules, the Record-Keeper finds that any stamp shows signs of having been tampered with or discovers any deficiency, irregularity in cancellation, or other circumstance exciting suspicion, he must at once submit a report to the Judge-in-charge of the Record-Room.

Note.—The reports should be submitted separately for each record and should not be delayed until the examination of a complete batch of records is concluded.

280. The Record-Keeper shall enter the date of the receipt of the records, the date on which they were actually due and the number of records received, in the space provided in the despatch list. Should there have been material delay in despatching the records, the fact should be brought to the notice of the Judge-in-charge.

281. Reports under rules 279 and 288, if forwarded under the orders of the District Judge for explanation to Courts concerned, should be submitted to the Judge-in-charge on return, and when finally disposed of should be filed by the Record-Keeper in chronological order, and in a separate file for each Court.

III—ARRANGEMENT OF RECORDS IN THE RECORD-ROOM

282. The records in the District Judge's Record-Room should be arranged by Courts, different racks being allotted for the records of each Court whenever the number and disposition of racks permit of this arrangement.

283. The records of each Court for each year should be made up into bundles, each such bundle containing records of only one of the classes referred to in rules 216–219, Chapter I of this Part, according to their dates of disposal as shown on the title-pages. [*G.L. 9/49.*]

284. The bundles will be arranged on the racks, class by class, and in each class year by year in sequence. As the time for destruction of records of Classes II, III, IIIA and IV (other than those comprising A files and IV-A of a particular year arrives, the bundle or bundles for that year will be removed from the rack or section of a rack which they occupy, and the rack will then become available for the records of the in-coming year.

285. If the records of a single Court for one year cannot be contained in one bundle, the bundles should be serially numbered so as to show the total number of bundles for that year. Thus, if there are three bundles, they should be numbered 1–3, 2–3 and 3–3, respectively. The bundle numbers should be shown in column 7 of the bound lists, and should be altered as the bundles are amalgamated on destruction of records.

286. The bundle shall be of foolscap size. To the back and front of each bundle a flat board or a piece of stout mill board, of the same width as the record, should be tied. Each bundle should be of sufficient depth to occupy fully the depth of the shelf.

287. Against each bundle will be exhibited a label in Form No. (M) 34 showing in bold figures the dates on which the different files therein contained are liable for destruction. These labels should be of a uniform size and should have paste board backs.

288. As the bundles decrease in size owing to the removal or destruction of records, the Record-Keeper will re-arrange the bundles so as to fill up the depth of the shelf on which they stand, and should re-write, if necessary, the index referred to in the previous rule.

289. A wooden board, or tin-sheet index 8–13, setting out in English, the Court and the class of records kept on each shelf of the record rack should be so hung on the shelf that it can be removed when the position of the records is for any reason altered.

290. Where the system of depositing records in cloth bundles exists it should be discontinued as soon as possible and the system of flat bundles laid down in these rules should be introduced provided that this can be done within the available Record-Room grant. Meanwhile the bundles should be indexed as indicated in these rules.

IV—CUSTODY, REMOVAL AND TRANSMISSION OF RECORDS AND DOCUMENTS CONTAINED THEREIN

291. No record should be retained in a District Record-Room which does not find an entry in one of the prescribed Record-Room registers.

292. No record deposited in the Record-Room shall be removed or allowed to be removed, by the Record-Keeper, except for the use of the officers of the Court or with the sanction of the Judge-in-charge of the Record-Room.

293. When a record is called for, except by superior Judicial authority or by a Civil Court acting under Order XIII, Rule 10, of the Code of Civil Procedure, the Court or officer calling for it shall state the circumstances which render its production necessary. The Judge may decline to forward it if in his opinion no sufficient grounds are shown. It is improper and inconvenient that records of the Courts of Justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers. [*G.L. 4/26, G.L. 6/54.*]

Note.—Civil Judges of every grade should exercise a careful discretion in acting under the provisions of Order XIII, Rule 10, Code of Civil Procedure.

294. No requisition made under the provisions of Order XIII, Rule 10, of the Code of Civil Procedure, by a Court subordinate to any of the High Court other than the High Court at Patna for production of the record of a case appertaining to, and in the custody of a Court subordinate to the High Court at Patna should be complied with unless such requisition is transmitted through the High Court at Patna and is accompanied by copy of the affidavit referred to in the rule above quoted together with a duly certified translation into English if such affidavit be in the vernacular.

Note.—The above procedure will apply when a Civil Court subordinate to the High Court at Patna calls for a record appertaining to and in the custody of any other High Court or Court subordinate thereto.

295. When, in the course of proceedings in a Criminal Court, it becomes necessary to refer to the contents of records deposited in another Court, the ordinary procedure is to require copies of the necessary papers to be filed. It frequently happens, however, that in the course of a criminal trial the production of an original record becomes necessary. In such cases the Court where the record is deposited shall comply with the requisition of the Criminal Court even though the reasons given for the production of the original record may be considered insufficient.

296. All requisitions for documents or records other than those received from the Copying Department shall on receipt be entered by the Record-Keeper (or by a clerk under the Record-Keeper's personal direction) in a Register in Form No. (R) 18, and then handed for compliance to the clerk in charge of the required document or record. The latter shall immediately enter the application in a Register in Form No. (R) 19, and bring the required document or record to the Record-Keeper, who shall then despatch it to the requiring Court, after noting compliance in column 4 of Register (R) 18. [*H.C. memo no. 3500-14, dated 29th March, 1966.*]

When a requisition is so defective that the Record-Room staff cannot comply with it, it shall be returned to the requiring Court or Officer, and the Record-Keeper shall note the return in column 4 of Register (R) 18.

In Record-Rooms where the records have been divided into several separate charges for administrative convenience, each clerk in charge of a separate batch of records shall maintain a copy of Register (R) 19 in respect of the records in his charge. On the return of the document or record, he shall note in this Register the date of such return.

Note 1.—A separate requisition shall be sent for every record or for any number of documents out of the same record called for by any Court.

Note 2.—A memorandum of removal with the date should also be made in the remarks column of the despatch list against entry relating to a record removed.

Note 3.—Requisitions for records should, at the time of registration under this rule, be stamped with a date stamp and numbered serially.

Note 4.—All actions necessary to comply with a requisition for a record including the preparation of the letters to accompany the record and advising the despatch in Form Nos. (M) 3 and (M) 2, and packing and despatch of the record shall be taken by the Record-Keeper or a clerk in his office deputed for the purpose.

Note 5.—All requisitions for records should be despatched without delay.

Note 6.—Such records on receipts should be forthwith placed and carefully kept with the records of the cases in connection with which they have been requisitioned.

Note 7.—After disposal of the cases in question, such records must be returned to the Record-Rooms at latest at the time of the next periodical despatch of records.

At the time of each periodical despatch of records certificate under the signature of the Court and countersigned by the *Sarishtadar* to the effect that all outstanding records called for reference in cases disposed of up-to-date have been returned and records retained or kept back under the notes to rule 259 or rule 261 (c), Chapter III, Part III, and which have subsequently become due for despatch or which are no longer required have been despatched, shall be forwarded with the records despatched.

Note 8.—Requisitions received and issued for records and replies thereto shall be treated as correspondence and shall be entered in Register (R)(R) 19A or (R) 19B as the case may be, to be kept by or under the supervision of the *Sarishtadar* of the Court.

297. In complying with a requisition for copies of papers contained in a record, the Record-Keeper should not permit the entire record to be removed to the Copying Department, but only such documents as are specified in the application, unless the documents specified in the application constitute the entire record. All such requisitions shall on receipt in the Record-Room be entered by the Record-Keeper or a clerk to be specially deputed for the purpose in Register No. (R) 17.

Note 1.—Applications for information should be noted in this register in red ink.

Note 2.—Clerks of the Record-Room establishment should bring to the notice of the Record-Keeper any delay on the part of the Copying Department in returning documents to the Record-Room and the Record-Keeper should take such steps as will secure their return.

298. (a) Applications for the return of documents from records in the District Record-Room shall be made in Form No. (M) 42 to the Judge-in-charge of the Record-Room during the time to be fixed by the District Judge. The Judge-in-charge will initial the printed order "Return if no objection" and transmit the applications to the Record-Keeper immediately on the expiry of the time so fixed. The Record-Keeper or a clerk deputed specially for the purpose shall then enter the applications in a Register in Form No. (R) 22. [G.L. 5/45, G.L. 2/49.]

(b) If the application has been made by the proper person and there is no objection to its being allowed, the Record-Keeper or any other clerk specially deputed for the purpose shall return the documents ordinarily on the next open day of the Court under the supervision of the Judge-in-charge or any other gazetted officer specially appointed by the District Judge for the purpose, during the time to be fixed by the District Judge. The dated signature of the person to whom the document is returned shall be obtained on the application and in the list of exhibits in acknowledgment of the receipt of the document as well as in column 8 of the Register. The application when complied with shall be attached to the file containing the documents. If the applicant does not appear to take back the document within three days from the date of filing the application, his application shall be rejected.

¹[(c) If the application has not been filed by the proper person, or is defective in respect of material particulars and the information furnished is not sufficient to enable the documents to be traced by any other means or there is any objection to the return of document, or if the document cannot be returned on account of its non-availability or otherwise, the application with a report of the defects noted on it shall be submitted ordinarily on the next open day of the Court to the Judge-in-charge who on the perusing the report will pass appropriate orders. Such applications as cannot be complied with for any of the reasons mentioned above shall be returned to the applicant by the Record-Keeper in the presence of the Judge-in-charge during the time to be fixed by the District Judge, to be re-filed after removing the defects if possible. In case the applicant does not turn up to take back the defective application, or is not available, within three days of the filing of the application, the application shall be rejected. If the application is re-filed it shall be proceeded with as before. The date of refiling the application shall be entered in red ink in column 2 of the Register in Form No. (R) 22 under its original serial number and entries in columns 7 and 8 thereof in respect of re-filed applications shall be made below the original entries against the fresh entry in column 2.]

Note 1.—The rejected applications shall be collected in monthly bundles in chronological order and preserved for three months.

Note 2.—The form of application for return of documents can be obtained from *Nazir* at two paise each or two rupees per hundred.

299. Whenever a record or a document from a record is removed from the Record-Room there shall be inserted in its place a removal slip in Form No. (M) 36 in which a full description of the record or document and the purpose and the date will be entered. Such slip shall be initialled by the Record-Keeper ²[or the clerk

1. Subs. by C.S. No. 4.

2. Ins. by C.S. No. 47, dated 26.12.1973.

handling the application for requisition.] Where, however, a document or record is removed in compliance with a requisition from any Court such requisition shall be used as a removal slip. When a record is removed for any purpose which would have the effect of transferring it to some other collection in the Record-Room by reason of an alteration in the date of disposal for purposes of destruction (*e.g.*, in connection with appeal, remand, petition of re-hearing, restoration, review, etc., respecting the same case) no such removal slip will be necessary.

300. If the record removed is to be sent to another Court the word "Removed" shall be stamped on its title page in bold type.

301. The records of cases called for by the High Court, on appeal from the judgments and orders passed therein should be despatched within seven days from receipt of the requisition in the event of any delay occurring in their despatch, a reply should be sent explaining the cause of delay and the probable date of their despatch. [*G.L. 5/19, G.L. 9/23, G.L. 2/30, G.L. 2/47, G.L. 2/48.*]

Note.—Whenever voluminous documents such as account books, *khata* and counterfoil receipt books, etc., are sent to the High Court in connection with an appeal or reference, care should be taken to see that the instructions contained in clause (a) of Rule 246 have been complied with.

302. Records of execution cases sent up in appeal to the High Court should invariably be accompanied by all the papers connected with them in the Lower Courts, whether original or appellate.

303. The following instructions should be observed in transmitting records from one Court to another—

- (a) If the two Courts are situated in the same station, the record should be despatched by hand properly packed with a despatch register in which a serial number and date should be entered, and the signature of the recipient should be taken. The serial number and date appearing in the despatch register should be reproduced in the remarks column of the Register of records removed. If the requisitioning Court is situated in a different station, records should ordinarily be sent by parcel post, the postage being paid by means of service stamps. But if the transmitting Court whether Civil, Criminal or Revenue, thinks fit, the record may be sent through a special messenger, in which case, on intimation thereof being given (and such intimation should be given forthwith), the cost of sending the special messenger including his pay and travelling allowance, if any, shall be realized in advance by the requisitioning Court from the party calling for the record, and shall be paid under an order of the requisitioning Court. Civil Courts should ordinarily refrain from issuing summons for production of a record through a clerk or special messenger, leaving it to the transmitting Court to decide by what method the record shall be sent. [*G.L. 2/24.*]
- (b) Records relating to different cases may, if not inconvenient be packed in the same parcel provided such records are separately tied up.
- (c) In the parcel containing a record should be enclosed a forwarding

letter, and the cover of the parcel should bear the distinguishing number and date of that letter.

- (d) A letter of advice should be forwarded simultaneously with the despatch of the parcel by post but separately and by ordinary letter post, and in it the number and date of the forwarding letter referred to in the preceding clause should be quoted.
- (e) An acknowledgment should invariably be required from the Court to which a parcel containing a record has been sent and in the event of none being received within a reasonable time, enquiry should be made to ascertain the cause.

Note 1.—All letters advising the despatch of civil records to the High Court and parcel containing such records, as also all returns of civil processes issued by the High Court, should be addressed to the Deputy Registrar of the High Court, Appellate Side.

Note 2.—The procedure in clause (a) of this rule is to be followed also where the District Judge sends for a record from his own Record-Room.

304. When a record is received back in the Record-Room the following procedure should be followed:—

- (a) The record shall be carefully examined by the Record-Keeper to see that it is complete and in order. If the Record-Keeper notices that any document is missing or that the record discloses any other defect, he should at once report the matter to the Judge-in-charge who should, if necessary, draw the attention of the District Judge.
- (b) An entry should be made in column 8 of the Register of records removed, and initialled by the *Muharrir* making it.
- (c) The entry in the despatch list should be cancelled.
- (d) The removal slip should be removed from the bundle, the entry upon it cancelled, and the record restored to its place.
- (e) If the record is not restored to its original bundle for any reason, a note should be made in the despatch list that it is kept with record No. of of the Court.
- (f) An acknowledgment in the prescribed form is to be sent.

Note.—Above procedure, as far as applicable, is to be followed when documents sent to the Copying Department are received back. The entry referred to in clause (b) is to be made in the appropriate Register [Form (R) 17].

305. When an original record which has been called for in appeal, is received back in the Record-room together, with the judgment and other papers relating to the disposal of the appeal in the Appellate Court, the original and the appellate records should be kept together. These records should be arranged according to the date of the appellate judgment. [*G.L. 9/49.*]

306. The record of an appeal transferred to another district for hearing shall after disposal of the appeal be deposited in the Record-Room of the district in which the appeal had been instituted.

Note.—The Court hearing the appeal will send the record to the district of its origin after the expiry of the period of appeal to the High Court. If there is such an appeal the record will be sent after it is received back from the High Court.

307. Original records received back from the High Court, together with the High Court's judgment on appeal, should be kept together and indexed "High Court Appeals". These records should be arranged according to the date of the High Court's final judgment. A note should also be made against the various entries relating to the records in the remarks column of the despatch list, showing where the respective records may be found, and giving the date of the final judgment of the High Court.

308. It is the duty of the Record-Keeper to see that records sent out are returned and that records kept back though mentioned in the list are despatched without undue delay. With the object he shall cause the serial number of records not returned or kept back after the due date of despatch to be brought forward and entered in red ink in the register of records removed before any entries are made relating to a new year. He should also cause to be prepared from this register a Reminder list consisting of entries of all records which have been sent out of or kept back from the Record-Room after their due date for more than three months. On the return or receipt of any such record the entry relating to it prescribed by this rule should be struck out, and in the case of a record kept back the entries in the remarks column of the despatch list and in the separate list prescribed by rule 261 (c) of Chapter III should also be cancelled. If the record is not restored to its original bundle for any reason, a note should be made in the despatch list that it is kept with record number of of the Court.

Note.—In the case of records referred to in Notes 1, 2 and 3 of rule 259 of the preceding chapter this rule shall come into operation only after the expiry of the periods mentioned therein. [G.L. 5/41.]

309. From time to time reminders should be issued by the Record-Keeper in respect of such records, and if they do not result in the return of the record, he should take the orders of the Judge-in-charge.

Note.—A note of all reminders should be made in the Reminder list and in the remarks column of the Register of records removed.

¹**310.** Reminders relating to records sent to the High Court should be issued in the first instance on the expiry of twelve months and thereafter at intervals of not less than six or more than twelve months.]

311. The above rules so far as they are applicable shall be followed in sending and in complying with requisitions for records in pending cases.

V—INSPECTION OF RECORDS

312. The Record-Rooms of Civil Courts are not open to the public but public officers of the district including *Sarishtadars*, may, with the permission of the Judge-in-charge, be allowed to enter the Record-Room and to examine the record of any specified case free of any charge provided that such entry is made in pursuance of a public purpose.

1. Subs. by C.S. No. 76, dated 1.5.1985.

313. On a written application in Form No. (M) 41 with the prescribed fee affixed to it, pleaders duly authorised by any person in that behalf, may, under similar conditions, and at a place to be provided for the purpose in the Record-Keeper's office, examine any specified record; but in doing so, shall make only brief notes (to be written in pencil on slips to be provided by the Record-Keeper). If any extract from the record is required, it shall be obtained through the Copying Department in the usual way.

Applications for inspection of records shall be kept pending for three days, during which period the relevant records shall remain available for inspection. If the pleader does not appear to inspect the record within this period, the application shall be rejected and no inspection will be allowed on such application.

Note.—A notice in the sense of this rule should be exhibited, in English, in the office in which records are inspected. No Legal Practitioner shall be allowed access to the Record-room or the offices appertaining thereto, otherwise than in accordance with this rule.

314. Pleadings duly authorised by any person in that behalf may be allowed to inspect Registers of Suits and Appeals maintained under the Rules of the High Court at a time and place to be fixed by the Presiding Officer or the Judge-in-charge, as the case may be.

315. The inspection of records by pleaders shall be allowed only on days on which the Court is open, and during such office hours as the Judge-in-charge may prescribe.

316. Defective applications for inspection of records shall be returned to the parties concerned after noting the defects thereon for compliance. If the applications are re-filed after removing the defects within three days from the date on which they are returned, they shall be accepted and dealt with in the usual course. Applications filed after three days shall be rejected.

¹**317.** All disposed of applications including rejected application for inspection of records of decided cases shall be kept separately in monthly bundles in chronological order and preserved for three months. All disposed of applications including rejected application for inspection of records of pending cases shall be kept attached with the respective records.]

318. For the inspection of documents or records a separate table should be set apart, which should be kept clear and be so placed as to be in full view of the Record-Keeper. All inspections must be carried out at this table under the supervision of the Record-Keeper or a clerk deputed by him for the purpose.

VI—THE DESTRUCTION OF RECORDS

319. The periods of preservation of different files laid down in rule 222, Chapter II of this Part, shall be calculated as regard suits, cases, or appeals of Classes I, II, III and IIIA from the date of the final decree or order:

Provided that the period of preservation of the record of a suit or case where the decree or the order directs payment by instalments, shall commence from the date of last instalment allowed by the Court, except in the case of Files C-1 of such records which may be destroyed in accordance with above rule.

1. Subs. by C.S. No. 22.

Note.—Where in a suit for partition the necessary steps for obtaining a new final decree are not taken within twelve years from the date of the preliminary decree. Files C and C-1 of the record of the suit shall be destroyed on the expiry of that period.

320. In cases of Classes IV and IV-A, such period shall be reckoned from the date on which the application for execution was finally disposed of by the Court executing the decree or by a Court of Appeal, whichever is the later date. For the purposes of this rule, each execution record shall be dealt with separately, irrespective of any other application to execute the same decree or order.

321. Cases under Section 7 of the Bengal Wills and Intestacy Regulation, 1799, regarding the property of intestates, in which no claimant appears, and cases arising out of applications for the refund of lapsed deposits shall be treated as miscellaneous non-judicial cases and the records thereof shall be classed as C files and preserved for 12 years. The records of all other miscellaneous non-judicial cases shall be destroyed at the end of three years from the date of disposal.

322. Exhibits which can be conveniently preserved with the records of the trials in which they have been used shall not be destroyed, but shall be kept in their proper files and shall be preserved with such files until the period for the destruction of the B, C and D files, viz., 25, 12 ¹[and 12 years respectively] shall have arrived, when they shall be destroyed along with their files.

323. Cumbersome and bulky exhibits, e.g., account books, *khatas*, *zamindari* papers and the like, which cannot be conveniently put up with the records of the trials in which they have been used, but which have to be preserved separately, e.g., in almirahs, boxes and bundles, may be destroyed earlier, under the orders of the District Judge, after the expiry of the period of one year from the date of the decree in each case becoming final, and of one month from the date of service of a final notice in Form No. (P) 41.

Note.—This notice should be served upon the parties or their pleaders concerned at their last known address. The original notice is to be attached to the file and when destruction takes place the fact should be noted on the list of Exhibits.

324. Destruction of records should be carried out quarterly and the Record-Keeper shall, in the first month of each quarter, cause the B, C and D files which are due for destruction to be removed from their shelves for the purpose. As each record is destroyed, the necessary entries should be made in column 8 of the Bound Lists and on the Index Board.

325. Requisitions, Acknowledgments Reminder Lists, Removal Slips and Defect Reports for which there is no further use shall be destroyed at such intervals as the Judge-in-charge may direct.

326. The destruction of all papers shall be carried into effect by burning in the presence of the Record-Keeper or one of his assistants. [G.L. 10/19.]

CHAPTER V

Records of the Court of Small Causes

327. In Small Cause Court cases no Order-Sheet is necessary, the orders being recorded on the back of the plaint. When, however, a case becomes contested

1. Subs. by C.S. No. 35, dated 19.11.1973.

and the hearing extends for more than one day, an Order-Sheet will be attached and orders continued on it.

328. The Record shall be prefixed by Table of Contents and shall consist of only one file including proceedings in execution taken in a Small Cause Court. Papers connected with any proceedings will be shown in the Table of Contents under a separate heading giving the number of the case:

Provided that where a Small Cause Court decree has been transferred to the Court of Ordinary Civil Jurisdiction for execution, the record should be treated and dealt with as an ordinary execution record of Class IV.

329. The Records of suits decided by Judges of Small Cause Courts shall remain in the Trial Courts until the period for their destruction shall arrive.

330. The Records of suits decided by officers vested with the powers of a Small Cause Court Judge shall, in the course of the next succeeding month be deposited in the District Record-Room at headquarter stations and the *Munsif's* Record-Room at outlying *Munsifs* and preserved there until such time as they are destroyed under these rules.

331. The Records shall be divided into two groups and sent in separate bundles to the Record-Room with separate lists in Form No. (R) 20, each record being prominently marked A or B in accordance with the following classification :—

Group A— Records of cases in which any one has to recover anything.

Group B— Records of cases in which no one entitled to recover anything, e.g., cases dismissed for default or on satisfaction, in which the decretal amount has been paid up before the arrival of record, etc.

Note.—The Record-Keeper shall note in the lists the date of removal and return whenever a record is taken back by the Trial Court in connection with Execution and other proceedings or is called for under Order XIII, Rule 10 of the Code of Civil Procedure. The lists shall be preserved for the same period as the records to which they relate.

332. (a) The Record-Keeper shall arrange the records of each Court by groups and place them on the shelves in monthly bundles.

(b) The records will be kept in the bundles in order of their dates of disposal.

(c) The names of the groups will be prominently shown on the shelves and the space allotted to Group A should be sufficient for the accommodation of records¹ [for twelve years] and that to Group B for one year.

(d) Besides Groups A and B there will be the following two subsidiary groups formed out of records transferred from Group A by reason of steps taken in execution or of subsequent satisfaction :—

Group A-1— Records of cases in which execution has been applied for² [x x x] either to enforce the decree or any unpaid instalment.

Group B-1— Records of cases in which the decree has been fully satisfied.

1. Subs. by C.S. No. 36, dated 19.11.1973.

2. Words "within three years" deleted by C.S. No. 37, dated 19.11.1973.

The records of these two groups will be made up into separate monthly bundles. A-1 bundles will be kept on the shelves with A bundles and B-1 bundles with B bundles of the corresponding month.

(e) The transfer of a record from A to A-1 or B-1 Group or from one bundle in A-1 Group to another bundle will be effected as occasion arises, regard being had to the provisions in clause (d) of this rule. When an execution is applied for there will be no difficulty in finding out the proper record from Group A or Group A-1 as the case may be.

(f) A conspicuous note should be made of the date of disposal and of the results of the suit and of every subsequent proceeding ¹[x x x] on the outer sheet of each record.

333. Records of Groups A and A-1 left over after transfer in pursuance of the above Rules by reason of execution or other proceeding shall be destroyed ²[at the end of twelve years], and those belonging to Groups B and B-1 at the end of one year from their dates of disposal. After twelve years from the date of decree or from the date of payment fixed by the Court all records shall be destroyed whether there has been a satisfaction or not.

³[**Note.**—The period of 12 years for the purpose of this rule is to be calculated in accordance with the provisions in column 2 of Article 136 of the Limitation Act (Act 36 of 1963).]

334. Destruction shall be carried out monthly. The Record-Keeper shall during the first week of every month remove the bundles due for destruction and note the number of the cases in a bound book to be kept for the purpose. He shall take the orders thereon of the Judge-in-charge and then destroy the records making a note in the lists where necessary.

Note.—Lists destroyed should also be entered in this book which is to be preserved ⁴[for twelve years].

CHAPTER VI

Wills

Rules issued by the Government of Bengal and Assam for the custody, preservation and inspection of Wills under section 294 of the Indian Succession Act, XXXIX of 1925.

I—RELATING TO THE CUSTODY AND PRESERVATION OF WILLS

335. All original Wills presented to the District Judge or District Delegate, in accordance with the provisions of section 244 of Act X of 1865, and section 62 of Act V of 1881, shall, immediately upon the passing of the order for granting Probate or Letters of Administration under sections 254 and 255 of Act X of 1865, and sections 76 and 77 of Act V of 1881, be committed to the care of the Head Clerk, or Chief Ministerial Officer of the Judge's or District Delegate's Court, who shall be responsible for their safe custody. Sections 244, 254 and 255 of Act X of 1865 and

1. Deleted by C.S. No. 38, dated 19.11.1973.

2. Subs. by C.S. No. 39, dated 19.11.1973.

3. Subs. by C.S. No. 40, dated 19.11.1973.

4. Subs. by C.S. No. 41, dated 19.11.1973.

sections 62, 76 and 77 of Act V of 1881 correspond respectively to sections 276, 289 and 290 of Act XXXIX of 1925.

Note.—All Wills, as soon as they are filed in a Court for the purpose of being proved, should be made over for safe custody in the presence of the District Judge or Delegate either to the Head Clerk or to the *Sarishtadar* of the Court, who should give a receipt for them, and should personally produce them before the Court, on the date of hearing, and, if the Will has to be retained in Court, should take a written receipt for it from the Bench Clerk. The latter officer will be responsible for the custody of the Will so long as it remains in the Court. The rule as to return of unexhibited documents shall apply to unexhibited Wills.

336. The said officer shall, on the receipt of each original Will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and page of the register in which a copy of the Will is entered, shall be recorded in the annexed form :—

| Name of Testator | Residence, etc. | Number and Year of Register | Page |
|------------------|-----------------|-----------------------------|------|
| 1 | 2 | 3 | 4 |

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

“Pages to blank.”

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

Note 3.—In preparing the alphabetical index referred to in this rule—

- (a) In the case of European names the surnames shall be taken as the index word, and
- (b) Indian names shall be indexed according to their first letters as they stand in the Will, except that appellations such as *Saiyid*, *Sheikh*, etc., if appearing at the beginning of the name, shall be shown in the index at the end of the name and shall be transliterated in the same form as that in which they are written in the Will.

Note 4.—This rule does not apply where an application for Probate or Letters of Administration has been refused. In such cases the Will is to be attached to the

record provided that this is not done before the expiry of the period for an appeal or if there has been an appeal before its disposal. This procedure is also to be followed when the order granting Probate or Letters of Administration is revoked in a subsequent proceeding or in appeal. In such cases appropriate notes should be made in the index and in the Register of Copies.

These instructions will have a retrospective effect and Wills in connection with unsuccessful applications the records of which have without them been transmitted to the Record-Room may now be sent to the Record-Keeper to be attached to the records to which they appertain or to be destroyed as the case may be in accordance with the rules for periodical destruction of records.

337. The original Wills shall be deposited in a fire-proof safe, which shall be kept in the office-room of the Head Clerk or other officer aforesaid to whom the safe custody of the Wills may have been entrusted. Where the Court has no iron safe, the Wills may be placed in a small block-tin box, the key of which shall remain with the Judge or District Delegate; and the District Registrar or Sub-Registrar of the place shall, if the Judge or District Delegate require him, lock up this box in his fire-proof safe, giving it up to the Judge or District Delegate on his written demand from time to time.

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

Note 2.—When an original Will is removed from the custody of the officer responsible for it, a note of the date of despatch and return should be made against the entry in the index prescribed in Rule 336, and for such entries sufficient space should be left in the form.

Note 3.—All copies of Wills shall be prepared, in the presence of the officer responsible for the custody of the original, which shall not be removed by the copyist. The same officer shall check the copy and certify its accuracy.

Note 4.—In all cases when an original Will is removed from the custody of the officer in charge, he should note upon the envelope (which should be retained in its proper place) the date and place of removal, scoring out the entry, with a note of the date, on return. Careful examination should be made of all Wills so returned, to ensure that no alterations have been made.

338. At the expiration of every calendar year each District Delegate shall transmit to the Court of the District Judge all the original Wills in respect of which a grant has actually been made of Probate or Letters of Administration during the year, together with the register containing the copies thereof and the index and these shall then be preserved along with the Wills deposited in the District Court subject to the same rules as to custody, inspection, etc.

II—RELATING TO INSPECTION OF WILLS

339. Every inspection of original Wills or the register thereof, as well as applications for copies of Wills, shall be made within the hours fixed by the Judge or District Delegate, and published by a notification posted in a conspicuous place in the Court, and shall be subject to the following conditions :—

340. The inspection of an original Will shall be allowed only on the written order of the Judge or of the District Delegate previously obtained, and shall take place in the presence of the Head Clerk, or other officer who may have charge of the same, and that officer shall be responsible for the Will not being taken out of his sight during such inspection, and also that no erasures or alterations are made in it.

Note.—The same procedure should be followed in respect of inspection of a copy of a Will in the Register.

341. Application for a copy of an original Will shall be submitted to the Judge or District Delegate and such copy shall only be granted subject to the conditions which attach to the inspection of original Wills.

342. The following fees shall be levied in Court-fee stamps or the inspection of Wills, etc. :—

- (i) For the inspection of an original Will, Court-fee stamp of the value of one rupee.
- (ii) For the inspection of a copy of a Will in the Register, Court-fee stamp of the value of fifty paise.
- (iii) For copies, the same fee as for inspection, in addition to the copying charges, which shall be at the usual rate obtaining in the Civil Courts, and shall be levied in the same way as such charges are levied in the Civil Courts.

343. All applications for copies or inspection of Wills and Registers of Wills shall be entered in the Register of applications for copies prescribed by the High Court.

Note.—Applications for inspection may be entered instead in the Inspection Register Form No. (R) 23.

344. In cases where the fees collected exceed Rs. 5 *per mensem*, District Judges or District Delegates may assign a moiety to the officer entrusted with the custody of the Wills, the balance being credited to Government. In cases where the collections do not average more than Rs. 5 *per mensem*, District Judges or District Delegates may sanction the payment to such officer of the full amount realized.

Note.—District Judges should not pass bills for remuneration under this rule unless they are satisfied that the work has been carried out methodically and completely up to date.

345. (a) The following certificate should be appended to each bill in which the charges referred to in the preceding rule are drawn :—

“Certified that the charges included in this bill have been drawn in accordance with the scale laid down by Government in the notification, dated the 23rd May, 1892, and that each Court-fee stamp for which commission is drawn is defaced with the words “Commission allowed”. Certified also that the fees drawn on previous bills (with the exception of those deducted above) have been disbursed to the proper person and his receipt taken in the acquittance roll filed in my office.”

(b) As there is a separate Budget Allotment for the expenditure, the charges should be drawn on separate bills showing the allotment and expenditure up to date of each drawal.

Note.—The rules in this chapter apply also to Subordinate Judges and *Munsifs* taking cognizance of proceedings under the Indian Succession Act, 1925 (Act XXXIX of 1925), under the authority conferred by section 28(2)(d) of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887).

PART IV

Rules Relating to Information, Copies and Copying Department.

CHAPTER I

Information and copies.

I—GENERAL RULES

346. All applications for information or copies shall be made in the prescribed form during the first two hours of the Court's sitting, to the Judge-in-charge of the Copying Department or to some other officer designated by him for the purpose.

Note.—The form of application for information or copy can be obtained from the *Nazir* at two paise each or two rupees per hundred.

347. Applications shall be consecutively numbered and registered as they are received and the date of receipt shall be noted or stamped thereon; the receipt portions after being initialled shall be forthwith made over to the applicants.

Note.—Urgent applications will be entered in the register in red ink. An application for information will be entered under a sub-number to the last preceding application for copy.

348. Each clerk through whose hands the application passes shall put his initials and the date and hour of receipt and passing on by him on the back of the applications. These entries should be made one below the other and must be legibly written, the dates and hours being shown against the entries beyond a vertical line on the left to be drawn about three inches from the left hand side of the reverse of the application. Each clerk receiving an application shall at once comply with the requisition on its back or pass on to another who can do so.

Note.—There should be no unnecessary delay in complying with the requisitions of the Copying Department.

349. Applications in respect of which the information or copy asked for cannot for any reason be given, shall be rejected. Such applications and receipts are to be destroyed at the end of the next quarter.

If the application is merely defective in that search is necessary in order to trace the record, a searching fee shall be demanded and affixed to the application for copy and the information shall be supplied on the application form without any separate application, in accordance with rule 408(2) (2). The application shall thereupon be complied with in accordance with the rules.

This concession is to be liberally interpreted in favour of the applicant for copy.

Note.—When an application for copy is rejected on the ground that the original has been destroyed, the fact should be noted on the back of the application and the endorsement should be signed by the Judge-in-charge.

II—INFORMATION

350. Any person may apply for information from the records and registers of any Court.

351. Information may be asked for in one application in respect of one matter from a single record or register and shall ordinarily be limited to a single question.

Note.—Questions regarding particulars of any document or record necessary to be inserted in an application for copy for its proper identification (e.g., date of document, date of disposal, number of the case, names of parties, etc.) will be treated as a single question.

352. Information requiring anything but short answers shall not be given. If any extract from the record is desired the proper course is to apply for a copy.

353. Information will be given in writing in the remarks column of the application ordinarily on the next open day after its presentation. Urgent applications for information will, if possible, be complied with on the same day. [G.L. 1/64.]

354. After an application for information has been registered it shall be sent to the Ministerial Officer in immediate charge of the record and it shall be the duty of the latter to note the necessary information and to return the application to the Head Comparing Clerk with the least possible delay. On the applicant's appearance and on his giving up the receipt referred to in rule 347 above, the application shall be made over to him.

Rule 380 *infra* of this chapter shall apply *mutatis mutandis* to all applications for information.

III—COPIES

[G.L. 2/36, G.L. 5/64.]

355. A plaintiff or a defendant who has appeared in the suit is entitled at any stage, before or after decree, to obtain copies of the record of the suit including exhibits which have been put in and finally accepted by the Court as evidence. ¹[A party interested shall be entitled to apply for a copy of the last paragraph of the judgment only without being required to apply for a copy of the whole of the judgment as provided in Order XX, rule 6A.]

Note. 1.—A party who has been ordered to file a written statement is not entitled to inspect or take a copy of a written statement filed by another party until he has filed his own.

Note. 2.—This rule does not prohibit the grant to parties at any stage of copies of documents produced along with the plaint or under Order XIII, Civil Procedure Code, in cases where they do not wish to take copies themselves under the provisions of Order XI, Rule 15.

Note 3.—Suit in this rule and in rules 356, 357 and 358 includes execution and miscellaneous cases.

²[**355-A.** A copy of the type-written judgment shall where it is practicable so to do be made available to the party on payment of prescribed charges if application for the same is made before the hearing of the case is concluded.]

1. Ins. by C.S. No. 64, dated 27.12.1979.

2. Ins. by C.S. no. 65, dated 27.12.1979.

356. A stranger to the suit may *after decree* obtain, as of course, copies of complaints, written statements, affidavits and petitions filed in the suit and may, for sufficient reason to be shown to the satisfaction of the Court, obtain copies of any such document *before decree*.

357. A stranger to the suit may also obtain, as of course, copies of judgments, decrees or order at any time after they have been passed or made.

358. A stranger to the suit has no right to obtain copies of private documents except with the consent of the person by whom they were produced or his successor-in interest. He may obtain copies of other documents in which he has a interest including depositions for *bona fide* use in the Courts, and case maps, at any time after they have been proved or completed.

¹**358-A.** Copies of papers required to be furnished to the Officer for public purposes free of cost as provided in rule 410 at page 118 of Part V, Chapter I may be prepared in the Copying Department, after obtaining permission of the Judge-in-charge of the Department, who shall consider the merit of each case before passing any order in the matter. The charges incurred in preparing the copies shall be met from the head 'Civil and Session Courts'.]

359. Copies of printed and lithographed maps and plan will not ordinarily be supplied by the Copying Department. Application should be made to the office where the original maps are deposited.

360. Every application for copy shall state whether or not the person applying is a party to the case from the record of which copy is wanted. If such person is not a party or his pleader the application shall state the object for which a copy is required.

361. Only one application is necessary when a copy is applied for any number of documents on the same record.

Note.—For the purposes of this rule records called for in connection with an original case or appeal will be treated as a part of the record of such case or appeal.

362. An application for copy of a paper or record transmitted to another Court in compliance with a requisition shall be forwarded to the requisitioning Court for compliance if there is no objection to the copy being granted.

363. After an application for copy has been registered the Head Comparing Clerk shall forward the application to the proper officer who shall at once enter it in a register to be kept in Form No. (R) 17, bring out the document to be copied and keep it in readiness for the estimating of the folios and court-fee stamps required for the copy. The Head Comparing Clerk shall depute a comparing clerk to make the estimate by reference to the original document. The comparing clerk shall enter the amount of court-fee stamps and the number of folios required in the space provided for the purpose in the application, sign and date the entries, make the necessary entry in column 5 of register no. (R) 17 and return the completed application to the Head Comparing Clerk. The number of folios required should be carefully calculated so that it may not be necessary to obtain additional folios from the applicant, a contingency which under a proper system ought never to arise.

1. Ins. by C.S. No. 16, dated 11.8.1972.

Note 1.—The expression “Head Comparing Clerk” in the rules in this Chapter includes a comparing clerk to whom the functions of the Head Comparing Clerk have been delegated by the District Judge for the purposes of these rules.

Note 2.—If the record from which copies are required is in the Record-Room the comparing clerk should be shewn the record in the Record-Keeper’s office.

Note 3.—In outlying stations where there is only one comparing clerk the estimating of the folios and court-fee stamps may, if the Judge-in-charge so directs, be made by the officer to whom the application is forwarded.

364. The Head Comparing Clerk shall notify the number of folios required for the copy and defect, if any, in the case of each application on the same day, or at the latest, on the day following, unless they have already been filed, by means of an entry in the prescribed register [Form No. (R) 15]. This register shall be kept at a convenient place prescribed by the District Judge for public inspection during such hours as the Judge-in-charge may direct. When the folios are deficient, the deficit shall be notified in the same manner. Rejected applications shall also be shown in this register and reasons for rejection stated in the remarks column. [*G.L. 8/62, H.C. memo no. 6818–32, dated 18th July, 1966.*]

365. The requisite folios shall be filed before the Head Comparing Clerk and defects removed within three days ¹[excluding holidays and Sundays] of the giving of the notice prescribed in rule 364 (excluding the date of notification) ²[failing either of which the application may be rejected]. The applicant should file along with the folios list showing the number and date of application, the name of the applicant and the number of folios filed. Court-fee stamps for either copying fees or for value of forms or tracing cloth should be affixed to sheets of plain paper, on which the value of each Court-fee stamp together with the number and date of the application and the name of the applicant should be noted. Before they are made over to the copyists these lists and papers are to be stitched to the respective original applications and should be compared with the reports of the comparing clerk in the space provided for the purpose in the form of application and should be initialled by the Head Comparing Clerk as a token that the correct number of folios, plain paper and court-fees of required value has been filed. If this is not done the application may be rejected. If the application has been rejected a note to that effect shall be made against the entry of the application in the register no. (R) 15. The comparing clerk while going round the offices to make estimates shall take with him the rejected applications and show them to the proper officers who shall sign the applications on the reverse and after restoring the documents to the proper places make the appropriate entries in columns 7, 8 and 9 of register no. (R) 17.

366. The District Judge should make special arrangements for the proper custody of the documents removed from the shelves for compliance with applications for copies until the document is sent to the copying department to be copied or until intimation is received of the rejection of the application.

367. When the folios are filed, the date shall be entered in the place provided in the form for the purpose. The applicant shall, at the same time, present the

1. Ins. by C.S. No. 17, dated 11.8.1972.

2. Ins. by C.S. No. 5, dated 11.8.1972.

counterfoil of his application, which has been returned to him and a memorandum shall be made thereon stating the date and hour when the copy will be ready. A corresponding note shall be made on the body or main portion of the form. The Head Comparing Clerk will at the same time take the applicant's signature with date on the middle portion of the application below the entries as to the date of filing the folios and the date when the copy will be ready for delivery. The applicant shall retain the counterfoil, and it shall be his duty to attend on the date fixed for the purpose of receiving the copy.

368. The comparing clerk deputed for the purpose by the Head Comparing Clerk shall take the application on the same day to the proper officer with an endorsement requiring him to send the necessary document. Such officer shall immediately hand over the document with the application to the comparing clerk and note on the application the fact of compliance with the requisition. The comparing clerk shall make the necessary entry in column 6 of register no. (R) 17. The comparing clerk deputed to make estimates of folios and Court-fee stamps shall take with him original documents of which copies are ready and return them to the proper officer who will make the necessary entries in column 7 of register no. (R) 17. The comparing clerk will at the same time receive from such officer the documents for copies of which the requisite folios and stamps have been filed by the applicant.

369. Every application for copies of depositions in a case which is being heard shall be laid before the Trial Judge for such orders as he in his discretion may make. If such Judge so directs so much of the deposition shall each day be given to the Head Comparing Clerk as there is a reasonable hope of being copied in the course of the day. The Head Comparing Clerk shall return the portion to the Judge at the close of the day. [*H.C. letter no. 4726-41, dated 22nd April, 1965.*]

Subject always to (a) the precedence which must invariably be accorded to applications on which an expedition fee has been paid and (b) no delay occurring as a consequence in respect of ordinary applications, of an earlier date, such copies will ordinarily be issued on the same day or the following day.

Note.—If sufficient folios to cover the full charge for copy are not filed with the application, the procedure laid down in Note 2 to rule 379 will be followed.

370. The Head Comparing Clerk will be responsible for all documents received in the Copying Department until they are returned. At the end of the day all undistributed work and all incomplete copies with the originals, shall be locked up in an almirah or chest of which the key will be kept by the Head Comparing Clerk. Separate compartments in the almirah or separate boxes, as the case may be, shall be allotted to each copyist in which to place his papers.

371. Copies of English documents shall as far as possible be type-written.

372. As the copies required under each application are completed they shall be made over together with all unused folios and the original documents to the Head Comparing Clerk. He should examine the copy with reference to the original and pay careful attention to the points mentioned in rule 396 of Chapter II.

Note.—Every date on which extra folios are called for shall be shown after the copy is prepared in the proper space at the back of the folio.

373. All copies must be examined before issue by a salaried officer.

Note.—The duty of examining copies should as a rule be entrusted to the Comparing or Examining Clerks or if there are none in the office, to the Head Clerk or *Sarishtadar*. The copyists and typists must not be allowed to examine for each other.

374. The officer entrusted with the duty of examining a copy shall be held responsible for its being a correct copy. In the event of any copy being found to be unfit for issue by reason that it [G.L. 1/17, G.L. 2/22.]—

- (i) has not been clearly, legibly or neatly written or typed and with proper ink;
- (ii) is not in the prescribed form;
- (iii) is so incorrect that revision has rendered it unfit for issue;
- (iv) does not conform to the rules and orders of the High Court;
- (v) is otherwise incomplete, defective or open to objection;

the examining or certifying officer shall report the matter to the Judge-in-charge of the Copying Department, who will cancel the copy and require the copyist or typist to make a fresh copy at his own cost.

375. A copy must be “certified to be a true copy”, must bear the seal of the Court and must be signed, if not by the Judge-in-charge, then by the officer hereinafter named :—

At the headquarters of a district—By such officer as may be appointed by the Judge-in-charge with the approval of the District Judge. [G.L. 5/49.]

At out-stations—By the *Sarishtadar* of the Judge-in-charge.

In Courts of Small Causes constituted under Act IX of 1887—By the Head Clerk.

In every case the certifying officer will append to his signature the words “Authorised under Section 76, Act I of 1872”. The words—

“Certified to be a true copy.

Authorized under section 76, Act I of 1872,” may be impressed by means of a stamp.

Note.—The above certificate shall not be given on a blank sheet. If the last sheet has been fully taken up by the copy, the certificate may be given on its reverse.

376. In the case of copies filed, exhibited or recorded in any Court the Court-fee chargeable under Court-fees Act should be levied by affixing the necessary stamps to the first folio of the copy.

377. (a) The following particulars must invariably be recorded on the last sheet of the copy—

| | |
|---|-----|
| Date of application for copy | ... |
| Date fixed for notifying the requisite number of folios | ... |
| Date of delivery of the requisite folios | ... |
| Date on which the copy was ready for delivery | ... |
| Date of making over the copy to the applicant | ... |

In the case of a copy of a judgment, decree or order the dates, excepting the date of making over the copy to the applicant, shall also be expressed in words.

Note.—Each date on which extra folios are to be notified and each date on which they are delivered shall also be recorded.

(b) On the back of the last sheet of the copy shall be recorded the cost paid by the parties applying for copies in the form given below—

| | | Rs. P. |
|-----------------------|-------|--------|
| Application for copy | ... | |
| Searching fee | ... | |
| Extra fee for urgency | ... | |
| Folios | ... | |
| Other items, if any | ... | |
| Total | _____ | _____ |

The entries shall be made by the examiner of the copy. A rubber stamp may be used for the form of these particulars.

378. In ordinary circumstances a copy shall be furnished not later than 4 P.M. or 10 A.M., as the case may be, on the 5th open day ¹[excluding holidays and Sundays] after the application; [G.L. 11/35.]

²[Provided that in case of notification regarding filing of deficit stamps and folios, copies shall ordinarily be furnished on the next open day following the date of filing deficit stamps and folios, if the time prescribed in the above rule has expired.]

379. Urgent copies should be furnished on the day of the application and where this is not possible on the day following.

Note 1.—No application is complete until the necessary folios have been filed. When these are not filed with the application the periods referred to in this rule and in rule 378 will be reckoned from the date of their being filed.

Note 2.—If sufficient folios to cover the full charge for an urgent copy are not filed with the application the estimate of the deficit in respect thereof shall at once be personally communicated to the applicant and the fact will be noted on the application and signed with date by the applicant. Where the applicant cannot be found the procedure laid down in rules 364, 365 and 367 will be followed.

380. All copies ready for delivery shall be entered day by day between 2 and 3 P.M. or in the case of morning sittings between 9 and 10 A.M. in a register which shall be placed outside for public inspection. The register will be in form No. (R) 16. The copies shall be made over in open Court in the presence of the Judge-in-charge or any other gazetted officer specially appointed for the purpose by the District Judge, the appropriate entries in the register being at the same time struck out, ³[initialled and dated by the Officer in whose presence the copies have been delivered.]

1. Ins. by C.S. No. 17, dated 11.8.1972.

2. Ins. by C.S. No. 25, dated 11.8.1972.

3. Ins. by C.S. No. 6, dated 11.8.1972.

Note.—Loose forms of the above register may also be used for the purpose and posted upon the notice-board.

381. When the copy is delivered to the applicant his receipt therefor with the date will be taken on the reverse of the application, the counterfoil being at the same time given up. Unused folios returned with the copy should be noted by the applicant in the receipt taken as above from him. The counterfoil will be kept attached to the application.

382. (a) Should the applicant in any case fail to appear to claim either the copy or the unused folios both must of necessity be retained temporarily but on the last day of each month all unclaimed copies ready for delivery before the preceding month together with all unused folios attached thereto shall be destroyed in the presence of the Judge-in-charge of the Copying Department.

(b) In any case in which copy cannot be granted, the folios supplied by the applicant for the copy should be returned to him when he is so informed. This should be done also where the application is withdrawn or rejected and the folios have not been used. If such folios are not taken back by the applicant, they shall be destroyed according to rule 382(a). The stamps affixed to the application as searching-fee and expedition-fee shall not be returned.

383. Applications for copies which have been disposed of shall be recorded in the Copying Department and filed in a separate bundle for each month. At the close of each quarter they will be examined by the *Sharishtadar* who will bring to notice any irregularity or unpunctuality that may be apparent in the department. The Judge-in-charge after satisfying himself as to the working of the office by an inspection of the forms recorded will then direct their destruction and they will be destroyed at the end of the next quarter. [G.L. 3/39.]

CHAPTER II

Copying Department and Copyists

384. At stations where there are more Courts than one there shall be one amalgamated Copying Department. Of this Department such officer as the District Judge may nominate will be incharge and the clerk appointed to be the Chief Examiner (otherwise known as Head Comparing Clerk) will be the Chief Ministerial Officer.

385. The Copying Department shall have as many copyists as may be required for the purpose of supplying all applicants with copies without inconvenient delay. One of them at least should be conversant with map-copying.

386. No one but a copyist appointed by the District Judge shall be employed in the preparation of copies : [G.L. 7/63, G.L. 4/65, G.L. 8/65.]

Provided that where it appears that the granting of ordinary copies is likely to be much delayed by reason of having to furnish urgent copies, an extra copyist may be temporarily appointed by the Judge-in-charge for the number of days actually necessary.

387. The number of copyists appointed must not be greater than will admit, under ordinary circumstances, of each Vernacular Copyist earning at least Rs. 50

and of each English Copyist earning at least Rs. 100 per month. If the average earnings fall regularly below this rate steps should be taken to reduce the establishment. [*H.C. letter no. 2315–30, dated 11th March, 1964.*]

Note.—No new appointment is to be made in an office until the above standard has been worked up to.

388. No one except a Typist shall be employed by the District Judge as an English Copyist.

389. No person shall be appointed as Vernacular Copyist who is unable to copy both English and Vernacular documents, efficiently, legibly and with reasonable despatch and preference shall invariably be given to typists.

390. English copies shall be typed by English Copyists provided that where there is not enough work for both an English and a Vernacular Copyist a Vernacular Copyist may be employed in making copies of English documents.

391. The services of copyists whose work is inaccurate or in other respects unsatisfactory should be dispensed with.

392. The Head Comparing Clerk will make a proper distribution of work among the Copyists subject to such directions as may be given by the Judge-in-charge.

393. When an application is made for the copy of any documents in a language or character with which no Copyist on the Court's establishment is acquainted, the Judge-in-charge shall arrange, if possible, for a copy to be made thereof and compared with the original by such persons acquainted with the aforesaid language or character as are forthcoming and may in his opinion be relied upon for the purpose.

394. Seventeen and a half paise out of the charge levied of 35 paise per folio (see Chapter I, Part V, Rule 408) represents the payment to Government on account of the salary of examiners and cost of paper, and the remaining seventeen and a half paise will represent the earnings of the Copyists or Typists, whose accounts will be made up monthly (Fractions of paise, if any, in the total of monthly earnings should be ignored). The amount due to each shall be paid out of the contingencies. These payments must be checked at the time with the upper part of each stamp, which when the copy is ready, must be torn off each sheet along the perforated line and endorsed with the copyist's or typist's name and kept till the end of the month. In the case of maps and plans half the copying charges levied will be paid to the copyist and half will go to Government on account of examination fees and cost of materials. The upper halves of adhesive stamps used in maps, plans and copies on forms shall be treated in the same way as upper portions of impressed stamped sheets. Care must be taken to see that nothing in excess of two-thirds or half, as the case may be, of the amount realised in stamps is paid to copyists or typists.

Note 1.—The copyist or typist is paid by the folios copied, whether the copies are subsequently taken out or not.

Note 2.—Expedition fees (Part V, Chapter I, Rule 408) are for credit to Government and no part of them is payable to the copyists or typists.

¹**Note 3.**—In case the necessary materials for preparation of maps and plans are not supplied from the Government stock the parties should be asked to file the tracing cloth and the copyists to provide other materials. In such cases, the Judge-in-charge, Copying Department, shall determine, what part of the copying charges should be paid to the copyists and what part should go to the Government and in doing that he should bear in the mind the price of the materials provided by the copyists.]

395. To prevent the risk of stamp slips and upper halves of adhesive stamps being used more than once, the officer passing a copyist's or typist's account will, after checking it as directed, tear up the slips and upper halves of adhesive stamps and cause them to be burnt in his presence. A certificate that this has been done must be attached to the bill on which the copyist's or typist's fees are drawn.

396. To protect the interest of Government care must be taken to see that all copies issued from the Court are prepared on the prescribed stamp paper, they must be written or typed on one side of the sheet only, and must not contain more than the authorized number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyists or typists spreading their writing or typing over a larger number of sheets than is necessary. By insisting on the number of the lines in each sheet or space being uniform control may easily be exercised in this matter, the number of words in a few of the lines in each folio being checked.

PART V

Fees and Costs including Rules and Orders under the Court-Fees Act

[G.L. 7/17, G.L. 12/17, G.L. 9/19.]

CHAPTER I

Fees and costs

I—PROCESS FEES

Rules framed by the High Court under clause (1) of section 20 of the Court-Fees Act, 1870, declaring the fees chargeable for the service and execution of process issued by the Civil and Revenue Courts.

397. The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged :—

1. Ins. by C.S. No. 23, dated 11.8.1972.

| Nature of process | Table of fees | | |
|--|---|---------------|---------------|
| | 1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000. In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value. | 3 | 4 |
| 1 | 2 | 3 | 4 |
| | Rs. P. | Rs. P. | Rs. P. |
| <i>Article 1.</i> —In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee. | 3.00 | 1.50 | 0.75 |
| When such persons are more than four in number, then the fee above mentioned and an additional fee as mentioned in the table for every such person in excess of four. | 0.75 | 0.40 | 0.40 |
| <i>Article 2.</i> —In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four—one fee. | 3.00 | 1.50 | ... |
| When there are more than four such persons, then the fees above mentioned for the first four, and an additional fee as mentioned in the table for every one in excess of that number. | 0.75 | 0.40 | ... |
| In every case falling within column 4 in respect of a similar process for each person. | ... | ... | 0.40 |
| <i>Article 3.</i> —Where process of attachment of property by actual seizure is issued— (a) for the seizure under the order of attachment; | 3.00 | 1.50 | 0.75 |

| 1 | 2 | 3 | 4 |
|---|--------|--------|--------|
| | Rs. P. | Rs. P. | Rs. P. |
| (b) for each man necessary to ensure safe custody of property so attached when such man is actually in possession, <i>per diem</i> . | 0.56 | 0.40 | 0.40 |
| <i>Article 4.</i> —For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications. | 3.00 | 1.50 | 1.50 |
| <i>Article 5.</i> —For the publication by posting up of a copy or copies of the notification of any proceeding or process not specially mentioned in any article irrespective of the number of such publications. | 3.00 | 1.50 | 1.50 |
| <i>Article 6.</i> —For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment. | 15.00 | 6.00 | 1.50 |
| <i>Article 7.</i> —Where an order for the sale of property is issued— | | | |
| (a) for proclaiming the order of sale under Order XXI, Rule 66 of the Code of Civil Procedure, a fee of— | 3.00 | 1.50 | 1.50 |
| (b) for settling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of— | 2.00 | 2.00 | 2.00 |
| together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of— | 1.00 | 1.00 | 1.00 |
| <i>Article 8.</i> —For service of any process not specified in any preceding articles. | 3.00 | 1.50 | 1.50 |

Note 1.—(1) When process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the men actually employed.

(2) The daily fee (b) is to be deposited with the Cashier as peremptory receipt at the time of obtaining the process for so many days, as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but where the officer is not to be left in possession, then the daily fee is to be deposited only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value the Court shall fix the daily fee with reference to the provisions of Order XXI, Rule 43 of the Code of Civil Procedure:

Provided that, if it appears that for any reasons the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be deposited in advance. If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

The *Nazir* will purchase a Court-fee Stamp of the amount actually incurred in deputing a peon and affix it to the process under the signature of the Presiding Officer in payment of the fees. The balance of the deposit, if any, will be available for refund to the party.

Note 2.—(1) When a sale of immovable property mentioned in Article 7 is set aside, under section 47, or under Order XXI, Rule 58, or under Order XXI, Rule 92 of the Code of Civil Procedure, or under section 174 of the Bihar Tenancy Act (Act VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

(2) The fee under clause (a) must be paid when the process is obtained. The percentage or poundage under clause (b) must be paid (1) in a case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 400 and (2) in a case where the decree-holder has been permitted to purchase, at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 401.

(3) The percentage leviable under this article shall be calculated on multiples of Rs. 25 (*i.e.*, a poundage fee of 50 paise should be levied for every Rs. 25 or part of Rs. 25 realized by the sale upto Rs. 1,000 and in the cases of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 25 paise for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds should be levied, 2 per cent, being charged on the gross sale-proceeds up to Rs. 1,000 and one per cent, on such proceeds exceeding Rs. 1,000.

1[398. Notwithstanding the provisions of Rule 397 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, if it considers such a step necessary to serve the ends of justice.]

399. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall except where otherwise provided be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

400. The proceeds of a sale effected in execution of any decree will only be paid out of Court on an application made for that purpose in writing, and the

1. Subs. by C.S. No. 15, dated 11.8.1972.

poundage fee for selling the property provided in clause (b) of Article 7 must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

401. When a decree-holder happens to be the auction purchaser his application for an order to set off the purchase money shall in addition to the stamp necessary for its own validity be stamped with stamps of the value of the poundage-fee due for selling the property under clause (b) Article 7.

402. The *Sarishtadar* or the clerk concerned should note on the application for payment of sale-proceeds or on the application for an order to set off the purchase money, as the case may be, that poundage fees have been paid.

403. Upon the hearing of such petition, the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree and of such costs, the decree-holder who has so purchased the property shall pay into Court 25 per cent, of the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with Order XXI, Rule 85 of the Code of Civil Procedure.

404. When in order to the service of any process, a peon has to cross a ferry, the amount, if any, legally exigible as toll shall be paid by the Court executing such process from its special permanent advance sanctioned by the State Government for the purpose.

Note.—This Rule will not apply to the district of Purnea and the Madhipura *Munsifs* in the district of Bhagalpur for the period of the year during which additional fees under the next succeeding rule are leviable.

405. Throughout, or in any part of the district of Purnea and the Madhipura *Munsifi* in the district of Bhagalpur and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge impracticable, the fees chargeable for the service of processes shall be increased by 25 per cent, in order to provide for payment of the boat-hire or ferry-toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ per cent, over the fees ordinarily leviable, at the discretion of the District Judge, in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

Note 1.—The process-servers' boat-hire passed under this rule should alone be included under the head of "Process-serving Charges" under "Special contingencies" (Vide Resolution of the Finance Department of the Government of Bengal, dated the 4th August, 1890).

406. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under rule 397 read with rule 404 shall be levied, in the manner above directed on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A Court which receives from another Court, whether in the same State

or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

Note 1.—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

Note 2.—Civil process for service or execution within Hyderabad will be issued and served in accordance with the above rule.

Process issued by Civil Courts in Hyderabad will be served or executed in Bihar free of charge.

Note 3.—Processes issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be added 75 cents per mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

Note 4.—By arrangement between the Government of Bihar and the State of Johore, a State in the Unfederated Malay States, all summons and processes for service within the territories of the said State will be issued and served in accordance with the above rule. All summons and processes issued by Civil Courts within the territories of the said State will be served in Bihar free of charge.

II—REDUCTION AND REMISSION OF COURT-FEES

407. For notifications, under reducing and remitting the Court-fee, issued by the Government under Section 35 of the Court-Fees Act, see Appendix A-III, pages 76 to 84 of the Bihar Stamp Manual, 1940 Edition. [G.L. 3/49.]

III—OTHER FEES

408. The following are the charges (1) for affidavits and (2) in connection with inspection, information and copies [G.L. 17/62.]—

| Nature of the fee or charge | Cases in which to be paid | Amount (Rs. P.) | How to be paid |
|--|--|-----------------|---|
| 1 | 2 | 3 | 4 |
| 1. Affidavits under the Code of Civil Procedure. | (a) Where the oath is to be administered to the deponent by a Special Commissioner deputed for the purpose by the District Judge under the powers vested in him by State Government. | 5.00 | By means of a Court-fee stamp to be affixed to the affidavit. Note. —This fee of Rs. 5 does not include the travelling expenses of the Commissioner which must be paid in cash. |
| [G.L. 6/64.]— | (b) In any other case EXCEPTIONS No charge shall be made in respect of— | 2.80 | Ditto. |

| 1 | 2 | 3 | 4 |
|---------------------|---|---|--|
| 2. Se-arch-ing fee. | <p>(i) Affidavits made by process servers deposing as to the manner of service of a process.</p> <p>(ii) Affidavits in proof of service or as to avoidance of service made by persons who accompany such process servers.</p> <p>(iii) Affidavits made by public officers in virtue of their office.</p> <p>1. On all applications—</p> <p>(1) For information whether the record is deposited in the Record Room or not.</p> <p>Note.—This is the only fee to be paid on such application.</p> <p>(2) For inspection of the record of decided case.</p> <p>Note 1.—No searching fee is to be charged to pleaders for looking at records of pending cases.</p> <p>Note 2.—For fees for inspection of Wills, see Chapter VI, Part III.</p> <p>Note 3.—(1) For fees for inspection of accounts filed by guardians, see Rule 189 (10), Chapter I, Part II.</p> <p>(2a) For inspection of each volume of Registers of suits and appeals.</p> <p>(3) For copy (in addition to the prescribed fee of two annas under the Court-fees Act) where the record relates to a decided case.</p> <p>Note 1.—One searching fee shall be charged for any number of copies taken from the same record and included in the same application.</p> <p>Note 2.—Records called for in connection with original case or appeal will be</p> | <p>0.25</p> <p>0.25</p> <p>1.00</p> <p>0.25</p> | <p>By a Court-fee stamp to be affixed to the applica- tion.</p> <p>By a Court-fee stamp to be affixed to the applica- tion.</p> <p>By a Court-fee stamp to be affixed to the applica- tion.</p> <p>Ditto.</p> <p>[R e - searching fee on application for calling records from the C i v i l R e c o r d Room for attestation. see H.C. letter no. 2519-38, dated 7th March, 1962.</p> |

| 1 | 2 | 3 | 4 |
|--------------------------------|---|---|--|
| <i>Searching fee. conclud.</i> | treated as a part of the record of such case or appeal. | | |
| | (4) For sending for documents involving a search in the Collector's office. | 0.25 | By means of a Court-fee stamp to be affixed to a separate sheet of paper which will be forwarded to the Collector. |
| | 2. For information in order to remedy defects that may be found in an application where the supply of such information without a separate application for it has been authorised by the High Court. | 0.25 | By a Court-fee stamp affixed to the application. |
| 3. Copying charges. | (a) Manuscript copies ... | 0.35 per folio consisting of 150 words English, ¹ [or Hindi in Devanagri script] or 300 words vernacular ¹ [other than Hindi in Devanagri script] four figures counting as one word. | By means of an impressed stamp of 35 paise on each sheet of paper corresponding with the folio to be provided by the applicant for a copy. Note. —There are 25 lines in each sheet. No line shall contain more than six words English ¹ [or Hindi in Devanagri script] or twelve words vernacular. ¹ [other than Hindi in Devanagri script.] |
| | (b) Typed copies containing— | | By means of an impressed stamped paper of 35 paise. |
| | (i) Not exceeding 150 words. | 0.35 | Note. —Special stamped sheet divided into two equal part by a blue line, each being intended for 150 words, should ordinarily be used for typewritten copies. |
| | (ii) Exceeding 150 but not exceeding 300 words. | 0.70 | By means of the same impressed stamped |

1. Ins. by C.S. No. 19, dated 11.8.1972.

| 1 | 2 | 3 | 4 |
|--------------------------------------|--|---|--|
| <p><i>Copying Charge. Contd.</i></p> | <p>(iii) Concluding portion of documents beyond 300 words.</p> <p>(c) Copies of registers and sale proclamation supplied on forms—</p> <p>(i) Cost of forms ...</p> <p>(ii) For the number of words actually copied.</p> | <p>...</p> <p>0.10</p> <p>Ordinary charges.</p> | <p>paper of 35 paise with an adhesive stamp of 35 paise affixed thereto across the top so that the figure head may be above the perforated line and that the portion below may clearly show the value.</p> <p>By means of an additional impressed stamped paper or papers of 35 paise with an adhesive stamp of 35 paise affixed thereto, if necessary, according to the number of words remaining to be typed.</p> <p>Note 1.—The adhesive stamp will be supplied loose by the parties and affixed in the Copying Department according to necessity.</p> <p>Note 2.—Impressed stamp sheets should never be received and cancelled in lieu of adhesive stamps.</p> <p>By means of a Court-fee stamp to be affixed to the application.</p> <p>By means of an adhesive stamp of the required value to be affixed across the top of the copy so that the part thereof containing the figure head may be torn off to serve as the copyist's voucher.</p> |

| 1 | 2 | 3 | 4 |
|---------------------------------|--|---|---|
| <i>Copying Charge. Concl'd.</i> | (d) Expedition fee for urgent applications— | | |
| | (i) For inspection and information. | 1.00 | By means of Court-fee stamp to be affixed to the application. |
| | (ii) For copies— | | |
| | (1) Not exceeding 600 words English, ¹ [or Hindi in Devanagri script] or 1,200 words vernacular, ¹ [other than Hindi in Devanagri script.] | 1.00 | Ditto. |
| | (2) Exceeding 600 words English, ¹ [or Hindi Devanagri script] or 1,200 words vernacular ¹ [other than Hindi in Devanagri script.] | 0.25 for every 150 words English, ¹ [or Hindi in Devanagri script] or 800 words vernacular ¹ [other than Hindi in Devanagri script.] or part thereof. | Ditto. |
| | | | Note. —This calculation is to be made on the aggregate number of folios covered by the same application. |
| | (iii) For return of documents. | 1.00 | By means of Court-fee stamp to be affixed to the application. |
| | ² [(e) For copy of type written judgment as provided in Rule 355-A. | At half of the folio rate. | By means of Court-fee stamp to be affixed on the application.] |

[No. 5326 (Rules)/Adm. Misc. LVI-15-92, dated 7-10-1997. From, Manohar Lal Visa Registrar General, High Court of Judicature at Patna. To, all the District and Sessions Judges including the Judicial Commissioner, Ranchi.]

Subject—Fixation of the rates per page towards photocopy charges for issuing certified copies of documents by the Civil Courts and the procedure to be adopted in the matter of realising such charges and maintaining its accounts concerning expenses incurred therefrom.

I am directed to invite your kind attention on the above noted subject and to say that the Court have been pleased to issue the following guidelines for the use of

1. Ins. by. C.S. No. 19, dated 11.8.1972.

2. Ins. by C.S. No. 81, dated 25.9.1987.

photocopier machines which will be primarily used in Copying Department for preparation of copies : —

(1) For issuing certified photo copies of the documents by the Civil Courts, Photo copying charges has been fixed at Re. 1 (Rupee one) per page which will be realised by the Copying Department of each Civil Courts in addition to the usual charges for the certified copies under the Rules.

(2) Photocopying charges shall be realised against separate receipt and the amounts so realised shall be recorded in a Register to be maintained separately under specific head, with date of realisation, case number and name of the Court and number of pages photocopied.

(3) Entries of the total day's receipt shall be regularly maintained every day and the total shall be carried forward to the following day till the end of the month.

(4) A Bank account in the joint names of the District and Sessions Judge and the Registrar of the Civil Courts concerned shall be opened in which the amount of the Photo copying charges shall be deposited.

(5) A separate Register for expenses incurred towards purchase of consumables required for the photo copier machine, shall be separately maintained and a balance-sheet of the final accounts thereof, shall be prepared at the end of the each financial year.

(6) The surplus amounts, if any, which may be left in the Accounts shall be deposited with the Government at the end of the every financial year under intimation to the High Court, of such deposit, made if any.

409. (1) In the case of documents, such as *Jamabandis*, measurement papers, order-sheets, accounts and others which are not written continuously like a deposition, or which are not written right across the page, every endeavour should be made to write as many as ¹[150 words English or Hindi in Devanagri script] or 300 words vernacular (except Hindi in Devanagri script) on each folio.

(2) If it is found impossible to do this on each folio without distorting the form of the original document, as many additional sheets of plain cartridge paper as may be necessary (to be provided by the applicant for the copy) should be pasted on below, or at the side of the first sheet.

(3) In consideration of the additional time and trouble involved in copying documents of the nature described above, an additional charge may be levied from the applicants according to the following scale—

In all cases requiring more than three folios, one additional folio may be taken for every four folios, that is to say, one additional folio may be taken in cases requiring four to seven folios, two additional folios in cases requiring eight to eleven folios, three additional folios in cases requiring twelve to fifteen folios, and so on. No additional charge should be levied in cases which require from one to three folios.

410. No fees are to be required or paid for searching or for copying papers wanted by public officers for public purposes.

411. In the case of maps and plans, no general rule can be laid down. In each case the charge will have to be fixed with reference to the difficulty or intricacy

1. Subs. by C.S. No. 19, dated 11.8.1972.

of the work to be done. The charge will be levied by means of adhesive stamps to be affixed to the map or plan, the upper half being kept by the copyist as his voucher. In the case of urgent copies the expedition fee will also be fixed by the Judge-in-charge to be paid by means of a Court-fee stamp affixed to the application for copy.

412. Finger prints are only sent for examination to the Finger Print Bureau at the instance of a private party on receipt of the consultation fee and the fee for three photographic enlargements of each of the finger prints to be examined as prescribed under rule 417 (c) (v) post. If more than three photographic enlargements of any finger print are required, an additional charge of Re. 1 for each such additional enlargement shall be realised from the party concerned in the manner laid down in note 4 to rule 607 (h).

Note.—For procedure as to deposit and credit, see rule 607 (h), note 4.

IV—POSTAGE

413. The Governor-General in Council has been pleased to direct that the postage charges on all processes, notices and such other documents are issued from any Judicial or Revenue Court, and are required to be transmitted by post, shall be paid by means of service postage stamps, without any additional charge being levied from the parties at whose instance the processes are issued.

Note.—It is to be understood that processes, thus issued, should not be registered. If registered, the postage must be prepaid by stamp by the party concerned.

414. Postage need not be paid by the parties (1) for the transmission and retransmission of requisitions upon the District Court at the sadar station for the payment of money in deposit to decree holders or other persons, or to when transmitting copies of decree and certificates under sections 39 and 41 (Order XXI, Rules 4 to 6) of the Code of Civil Procedure, from one district to another, for execution. Such documents should be forwarded with service labels, no additional charge for postage being levied from the persons at whose instance they are sent.

V—WITNESSES' EXPENSES

415. The Civil Courts shall not receive postage stamps in payment of the travelling and other expenses of witnesses. A party applying for a summons on a witness shall deposit for the latter's expenses a sum in cash sufficient to cover (when necessary) the transmission of the amount to another Court by money order.

416. (a) Money orders for the payment of witnesses' expenses shall be made payable to the Cashier of the Court to which the money is remitted. The Cashier will receive the money as provided in rule 617 and will deal with it as directed in rule 623 of the Account Rules (Part X).

(b) In the case of money orders the number of the suit and other necessary particulars shall be entered in the coupon which is now attached to all money orders.

417. (a) The expenses which a party applying for a summons shall be required to deposit in Court shall ordinarily be (a) diet allowance and (b) in the case of a witness residing at a distance from the Court, if the journey cannot be

performed on foot or the age and habits of life of the witness render it impossible for him to walk, also his travelling allowance, according to the following scale :—

| ¹ [Class of Witness | Travelling Allowance | Diet Allowance |
|---|---|------------------------------|
| CLASS I Gazetted Officers, Professionals like Doctors, Advocates, Architects, Chartered Accountants, etc. Income Tax payees, Members of Parliament, Members of State Legislatures. | By Mail 1st Class or 2nd Class A.C. Sleeper Chair Car Fare. By Road Taxi fare at the rate prescribed by the Directorate of Transport of the State Government and if no such rate has been fixed as reasonable. By Rail. | Rs. 30/- <i>per diem.</i> |
| CLASS II All other except those mentioned in Class I. | Sleeper Class or 2nd Class Fare. By Road Actual Bus Fare. | Rs. 20/- <i>per diem.</i> |

यह संशोधित आदेश निर्गत होने की तिथि से प्रभावी होगी ।]

Explanation.—(a) The above rates are maxima. The Court may direct a reduced allowance to be deposited or paid according to circumstances.

(b) In addition to the above, the authorized charges for tolls at ferries shall be deposited by the party applying for the summons to the extent to which such charges will be incurred.

(c) Notwithstanding anything in clauses (a) and (b) of this rules—

- (i) In the case of officers serving under Government the word “expenses” in this rule means the travelling and halting allowances admissible under the Bihar Travelling Allowance Rules.
- (ii) When a Government servant is summoned to give evidence of facts which have come to his knowledge, or of matters with which he has had to deal, in his public capacity, he shall, if (1) the case is one to which Government is party and (2) his salary exceeds Rs. 10 per mensem, be granted a certificate of attendance in Form No. (M) 19 and the sum deposited on account of his expenses shall be credited to Government.
- (iii) In all other cases the expenses of the witness shall be paid to him by the Court and a certificate in the form above prescribed shall be granted to him. [G.L. 2/42.]
- (iv) When a Government servant is summoned to give evidence at a Court situated not more than ²[eight kilometers] from his headquarters and is not entitled to travelling allowance under the ordinary rules the Court may direct payment to him of the travelling expenses actually incurred.

Note.—No expense shall be deposited when a Government servant is summoned on behalf of Government. Where the salary of such Government servant does not exceed Rs. 10 a month or where he is summoned to give evidence at a Court which is situated not more than ²[eight kilometers] from his

1. Subs. by Notification No. 6031-711, dated 22.4.1997.

2. Subs. by C.S. No. 45, dated 18.12.1973.

headquarters, the expenses admissible under the rules shall be advanced by Court and recouped by drawing a regular contingent bill upon the treasury.

(ivA) When Government servants are summoned by private parties to give evidence in a Civil Court, their salaries for the period they are absent from their duties, in addition to the expenses in accordance with the above rule, must be paid by the parties summoning them. The amount paid into Court as salary should be credited to Government.

Note 1.—For procedure as to recovery and credit, see Note 4 to rule 607 (h).

Note 2.—The term “Government Servants” in this rule includes employees of the Central Government in the Commercial Department as well as State Railway employees.

Note 3.—“Salaries” in this rule has the same meaning as “Subsistence allowance or compensation” in rule 129 of the Bihar Travelling Allowance Rules.

Note 4.—The word “Government” in this rule means the Central Government, the State Government or a State Railway according as the Government servant is an employee of the Central Government, the State Government or a State Railway.

(v) Whenever it is considered necessary to obtain the opinion of a Finger Print Expert, the documents bearing the finger prints shall first be sent to the Criminal Investigation Department for examination, in a sealed cover properly attested, together with the specimen finger prints with which a comparison is desired, the specimen being prepared by an officer accustomed to the work. In private cases a consultation fee of Rs. 30 per case and a fee at the rate of Rs. 5 for each finger print sent for examination to cover the cost of three photographic enlargements of each such finger print shall be realized from the party concerned and paid into the treasury by the Court. A copy of the *chalan* supporting the deposit ¹[in Court] shall accompany the request for examination. If subsequently a finger print expert of the Criminal Investigation Department is summoned to give evidence, a fee of Rs. 30 a day in each case shall be realised from the party concerned in addition to the expert's salary and travelling expenses. The fee and salary (calculated at Rs. 420 per month) so realised shall be credited into treasury by the Court and a copy of the *chalan* ²[showing the deposit thereof in Court] shall be sent to the Criminal Investigation Department with the letter summoning the expert. The travelling expenses should be made over to the expert on arrival in Court. [G.L. 7/45, G.L. 7/62.]

Note.—For procedure as to recovery of the expert's fees, etc., see Note 4 to Rule 607 (h).

(vi) For witnesses following any profession, such as Medicine or Law, special allowance shall be given according to circumstances.

VI—EXPENSES OF COMMISSION (ORDER XXVI, RULE 15,
CODE OF CIVIL PROCEDURE)

418. The following table shows the scale of remuneration, besides incidental expenses of commission which the High Court consider reasonable though it is not

1. Ins. by C.S. No. 21.

2. Ins. by C.S. No. 21, dated 11.8.1972.

intended to fetter the Court's discretion in any way particularly in cases where superior expert knowledge is required and is available. The scale is intended for cases where the work is likely to take only a day or two. When a consolidated fee is to be paid for work taking some time, a considerable reduction in the rates specified below will ordinarily be desirable. These rates are maxima only rarely to be exceeded and they should not be applied indiscriminately in all classes of cases. [G.L. 1/30, G.L. 1/68.]

| Nature of the Commission | Classes of Commissioners | Maximum rate if allowed by Court of a— | | | Remarks |
|--------------------------------------|--|--|-------------------------|----------------------------------|--|
| | | District and Sub-ordinate Judge | Small Cause Court Judge | Munsif | |
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1. For the examination of witnesses. | Pleaders or any other persons appointed as Commissioner. | Rs. P. 32.00 | Rs. P. 16.00 | Rs. P. (a) 16.00 (b) 24.00 | For each day of six hours that a particular witness or witnesses may be under examination. |
| 2. For examination of accounts. | Ditto ... | 32.00 | 16.00 | (a) 16.00 (b) 24.00 | Daily. |
| 3. For local investigations. | (i) Pleaders ... | 32.00 | 16 00 | (a) 16.00 (b) 24.00 | Daily. |
| | (ii) Other persons (including salaried Amins.) | 3.00 | ... | 3.00 | Do |
| | (iii) Professional Surveyors— | | | | |
| | (a) With qualifications of Executive or Assistant Engineers. | 30.0 | ... | 30.0 | Do |
| | (b) With qualifications of Sub-Engineers. | 10.00 to 15.00 | ... | 10.00 to 15.00 | Do |
| (c) With qualifications of Over- | 5 00 | ... | 5.00 | Do | |

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|--|--------------------|-----|--------------------|----|
| | seers (Graduates). | | | | |
| | (d) With qualifications of Overseers (Apprentice). | 2 00 to 4 00 | ... | 2 00 to 4 00 | Do |

N.B.— (a) In respect of cases valued up to Rs. 2,000.

(b) In respect of cases valued above Rs. 2,000.

Note 1.—(a) Before the issue of a commission a consolidated inclusive fee which must not be exceeded save in special circumstances should be fixed wherever practicable with due regard to all the circumstances of the case, the probable duration of the commissioner's work including desk work and the time likely to be spent on journey and the current fees of pleaders of the standing and practice of the commissioner concerned. Prompt and efficient execution of the commission is implied.

(b) In case any work is finished or is likely to be finished in less than six hours, it may be treated as full one day's work.

Note 2.—The following statement of daily outturn of work required by the Survey Department from professional agency will afford some guidance to the Courts in determining the work involved in a particular commission :—

- (1) Boundary survey ... Half a square mile.
- (2) Plain table survey of field ... 15 acres.
- (3) Extraction of areas ... 250 plots.
- (4) Tracing and numbering ... 750 plots.
- (5) Traverse line ... 100 chains.

A diary showing clearly the work done each day must be kept by the commissioner and submitted to the Court with his report.

Note 3.—The foregoing rates of remuneration are intended, in the case of the persons included in class (iii), only as a general guide. When possible, the remuneration of professional Surveyors should be regulated by the rules framed by Government regarding the employment of such officers in Government service.

Note 4.—Fees payable to Civil Court *Amins* should be realized in cash and deposited under the head miscellaneous receipts [clause (b) of Rule 607 Part X] to the credit of Government.

Note 5.—The cost of sending and returning the papers relating to a commission by registered post should also be realised in cash from the parties.

419. No general rule can be laid down for commission to make partition, except in the case of Civil Court *Amins* who should be paid at the rate given in the next preceding rule. In other cases the Court should fix a sum commensurate with the difficulty and importance of the work to be done.

420. As a general rule, the amount to be allowed as incidental expenses should be regulated by the scale of travelling and halting allowance prescribed for officers of Government of the class to which the Commissioner belongs; but in exceptional circumstances and if the Commissioner is not a Judicial Officer, should the Court be of opinion that his actual expenses cannot be covered by allowances calculated on this scale, it may order such further sum to be paid as it thinks reasonable.

421. Commissioners who are Judicial Officers are not entitled to fees, nor to any further remuneration than is permissible under the Government Travelling Allowance Rules. Nothing should therefore be demanded of the parties for the expenses of a commission issued to such an officer in excess of the sum so permissible. The sum paid will be credited to Government and the Commissioner will recoup himself by drawing travelling allowance under the Bihar Travelling Allowance Rules.

Note.—The above Rule also applies where a Judicial Officer proceeds to make a local investigation or to examine a witness in a case pending before him.

422. Judicial Officers should bear in mind that a Commissioner would be justified in refusing to execute a commission if the party has not deposited cash sufficient to pay his fee as well as all his necessary incidental expenses. A Commissioner's remuneration should be paid in cash, unless he is a Judicial Officer or a Civil Court *Amin*.

423. If a commission for the examination of witnesses be issued to a Court, the expenses to be charged should include only the necessary process fees for summoning the witnesses, to be paid in Court-fee stamps, and the usual allowance to witnesses for their attendance to be paid in cash. In the event of non-attendance of a witness or witnesses, any surplus payment should be refunded.

424. Where a commission for examination of witnesses has been executed by a pleader of another Court the fee in respect of the witnesses actually examined shall, on his returning the commission, be paid over to him; and the surplus should be sent back together with the commission to the Court which issued it and shall be refunded to the party who paid it.

425. In any case in which the sum fixed for the expenses of the commission and paid into Court shall have been calculated with regard to the time likely to be occupied in the execution of such commission, the Commissioner shall, in the event of his finding that the time is insufficient, give timely notice to the party at whose instance the commission was issued, and report the fact to the Court. The sum necessary to cover the expenses for such further period as may be required to complete the execution of the commission should then be deposited in Court by the party, and the Commissioner, unless certified of such deposit, should suspend the investigation at the close of the period originally fixed, pending the further instructions of the Court. If the additional deposit required be not made within a reasonable time, the trial should proceed.

VII—FEES OF ADVOCATES AND PLEADERS

426. (i) The advocates' and pleaders' fees shall be in the discretion of the Court.

The following scale of advocates' and pleaders' fees shall ordinarily be allowed to the successful party—

| <i>Amount or value of the claim decreed or dismissed</i> | <i>fee</i> |
|--|--|
| Not exceeding Rs. 5,000 ... | 5 per cent to 10 per cent. |
| Exceeding Rs. 5,000 but not exceeding Rs. 20,000 ... | 5 percent to 10 per cent on Rs. 5,000 and 2 per cent to 3 per cent on the balance. |
| Exceeding Rs. 20,000 but not exceeding Rs. 50,000 ... | As above on Rs. 20,000 and 1 per cent to 2 percent on the balance. |
| Exceeding Rs. 50,000 ... | As above on Rs. 50,000 and ½ per cent, to 1 per cent on the balance. |

Provided that the minimum fee to be allowed shall be Rs. 10 in contested cases and Rs. 5 in uncontested cases. For the purpose of this proviso, suits tried together may be regarded as one suit, unless the Court otherwise directs.

Note 1.—In cases under Part III of the Land Acquisition Act (I of 1894) such fees will be calculated on the amount decreed in excess of the sum tendered by the Collector.

Note 2.—In uncontested cases the fee shall not exceed half the fee calculated as above unless the Court otherwise directs.

Note 3.—When several defendants having a joint or common interest succeed upon a joint defence or upon separate defences substantially the same not more than one advocate's or pleader's fee shall be allowed unless the Court otherwise directs for a reason which shall be recorded. If several defendants having separate interest set up separate and distinct defences and succeed thereon a fee for one advocate or pleader for each of the defendants who shall appear by a separate advocate or pleader may be allowed in respect of his separate interest.

Note 4.—A probate case which the Court certifies to have been seriously contested shall be treated as an original suit for assessment of advocate's or pleaders' fee.

(ii) *In Execution and Miscellaneous proceedings and appeals—*

In the Court of a District or Subordinate Judge Not exceeding Rs. 150.

In the Court of a Munsif Not exceeding Rs. 50.

Note.—A specific sum shall be awarded as payable on account of the adversary's advocate's or pleader's fee and award of such sum shall be distinctly recorded at the foot of the order unless each party is directed to bear his own costs.

(iii) *In Review and Remand cases :—*

Half the fee otherwise admissible under these rules.

¹**427.** The scale of remuneration besides incidental expenses of *guardian-ad-litem* which the High Court consider reasonable, should be between Rs. 16 and Rs 32 resting on the discretion of the Court trying the suit, who may fix the amount considering the valuation, nature and status of the parties:

1. Subs. by C.S. No. 80, dated 7.2.1988.

Provided that a pleader appointed by a Court to be a *guardian-ad-litem* shall not incur any expenses on account of travelling without the leave of the Court.]

VIII—MUKHTAR'S FEES

428. Where a *Mukhtar* is employed, 15 per cent of the sum allowed as Pleader's fee shall be allowed as such *Mukhtar's* fee and the remaining 85 per cent only shall be allowed as the Pleader's fee.

429. In addition to the fee hereinbefore prescribed the successful party shall ordinarily be allowed to recover the following charges :—

- (i) The party or his agent according to the circumstances of each individual case may be allowed subsistence allowance according to the scale prescribed for witnesses' expenses in rule 417 *ante* for such days of attendance in Court as the Court may direct.
- (ii) The entire costs of obtaining copies of documents (including searching fees) which are admitted in evidence shall be entered in the table of costs. Such costs shall be allowed in respect of such copies of documents only as are obtained for the purpose of the suit or application.
- (iii) Copying or typing charges of a plaint, memorandum of appeal, application or written statement which is filed in the Court and served upon the opposite party shall in addition to the price of paper, be ordinarily allowed at the following rates—

Copying—6 paise each page of copy size.

Typing—19 paise each page of copy size.

430. In all decrees and orders a sum calculated at the rate of 5 *per centum* of the pleader's fee taxed, and subject to a minimum of Re. 1 shall be taxed as costs on account of the fee of the pleader's clerk or clerks.

CHAPTER II

Rules and Instructions relating to Court-fee stamps

I—USE OF ADHESIVE AND IMPRESSED STAMPS

431. The following rules to regulate use of adhesive and impressed stamps have been framed by Government :—

When, in any case, the fee chargeable under the Act is less than Rs. 25 and the amount can be denoted by a single adhesive stamp, it shall be denoted by a single adhesive stamp of the required value. If a single adhesive stamp of the required value is not available or if the amount cannot be denoted by a single adhesive stamp, a stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values which may be required to make up the exact amount of the fee. [*R. 16, P. 61, Stamp Manual, 1924.*]

When, in any case, the fee chargeable under the Act amounts to or exceeds Rs. 25 and the amount can be denoted by a single impressed stamp, it shall be denoted by a single impressed stamp of the required value. If a single impressed stamp of the required value is not available, or if the amount cannot be denoted by a single impressed stamp, an impressed stamp, of the next lower value available

shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available, which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fractions of less than Rs. 25. Any adhesive stamp so used shall be affixed to the impressed stamp of the highest value employed in denoting the fee, or to the first sheet of the document to be inscribed in such manner as not to conceal the value of the stamp thereon. [R. 17, P. 61, Stamp Manual, 1924.]

When the application for the required stamp is made to a licensed vendor of Court-fee stamps, and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect in the form below, which must be affixed to the document and filed with it [R. 18, pp. 61-62, Stamp Manual, 1924.]—

Form of certificate

Certified that a single stamp of the value of Rs. required for this document is not available, but that, in lieu thereof, I have furnished a stamp of the next lower value available, and made up the deficiency by the use of one or more

adhesive
impressed stamps of the next lower values available required to make up the exact amount of the fee.

Certificates are not required in similar circumstances from official vendors, but they shall as far as practicable, follow the above instructions.

A document stamped otherwise than in accordance with the preceding rules is not properly stamped within the meaning of section 28 of the Court-fees Act, 1870. [R. 19, p. 62, Stamp Manual 1924.]

When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court-fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or seriously inconvenient, the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court and filed with the record, a certificate being recorded by the Court on the face of the first sheet of the document to the effect that the full Court-fee has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the document. [R. 20, p. 62, Stamp Manual, 1924.]

When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document. [R. 21, p. 62, Stamp Manual, 1924.]

II—CANCELLATION OF COURT-FEE STAMPS

432. Each Judicial Officer should under section 30 of the Court-fees Act, 1870 formally appoint an officer for the purpose of cancelling stamps, and should see that the officer and no other is allowed to do the work. [G.L. 12/26, G.L. 8/45, G.L. 13/55.]

433. The Record-Keeper of every Court or office shall, when a case is decided and the record consigned to his custody, punch a second hole with a triangular punch in each label distinct from the first and at the same time note upon the fly-leaf the date of his doing so. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.

These directions apply only to adhesive labels used under the Court-fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-fees Act.

¹**[433A.** Each Presiding Officer shall cause an inspection of the disposed of records before they are consigned to the Record Room so as to check the sufficiency or otherwise of the Court-fee stamps affixed on documents. This check applies to all papers which are chargeable with stamp duty.]

434. The Court or office receiving copies, certificates, or other similar documents liable to stamp duty shall, on receipt, cancel the labels affixed to them by punching out the figure-head with a round punch. As an additional precaution, the clerk in charge of the Register of Petitions and Court-fees shall, when entering the value of the Court-fee stamps in the said Register, put his signature with date across the label and upon the paper on either side of it, as is frequently done by persons signing stamped receipts.

Note.—Stamps affixed to affidavits presented to a Commissioner for the purpose of administering an oath or affirmation to the deponent, shall be cancelled by punching out with a square punch portion of the stamp in such a manner as to remove neither the figure-head nor the part of the stamp upon which its value is expressed.

435. The Court or office issuing Succession Certificates, Probates, Letters of Administration or other similar documents liable to stamp duty shall, before issue, cancel the impressed stamps, on which the documents are engrossed, and the labels affixed to them by punching out with a round punch, a portion in such a manner as to remove neither the figure-head nor that part of the impressed stamps or labels upon which the value is expressed.

436. Each Judicial Officer should cause an occasional inspection to be made of documents that have been filed in order to ascertain that the stamps have been properly punched and defaced, and have not been subsequently removed from the documents on which they have been used. The inspection should be made at least once a quarter. The check herein prescribed applies equally to all papers which require adhesive labels, and they should be subjected to similar scrutiny. [*G.L. 12/26, G.L. 8/45, G.L. 13/55.*]

III—INSPECTION OF RECORDS BY REGISTRATION OFFICERS

437. Government having directed the Inspector-General and Inspectors of Registration to examine Record-Rooms of the various Courts in the *mufassal* in order to see how far the rules and instructions on the subject of the punching, custody, and sale of stamps are carried out, every assistance should be afforded by Judicial Officers to such officers in the discharge of their duty.

1. Ins. by C.S. No. 24.

438. Government having ordered that on the discovery of any irregularity in respect of punching or otherwise defacing Court-fees stamps, the inspecting Registration Officer shall at once bring the matter to the notice of the Presiding Officer of the Court, such latter officer should inquire into the matter at once, and thus trace the person who is responsible for the omission pointed out by the inspecting officer.

PART VI

Rules relating to Registers, Periodical Returns, Statements and Annual Reports

CHAPTER I

I—REGISTERS

A. GENERAL

439. The Registers prescribed to be maintained in the subordinate Courts will be found in Volume II and comprise four classes :—

- (a) Accounts Registers.
- (b) Primary Registers.
- (c) Subsidiary Registers.
- (d) Statistical Registers.

The Primary Registers are those which have to do directly with cases filed in Court and which form a quasi-record of the progress and disposal of such cases. The Subsidiary Registers are for administrative purposes, and the Statistical Registers for the purpose of preparing statistical returns.

440. The periods for which different Registers have to be preserved are shown in the list given of them in Volume II. The periods stated therein are to be reckoned from the date of the last entry in the Register and at the expiration of those periods the Registers shall be destroyed.

Note.—It is not necessary to open new registers in every instance each year.

441. While the Court do not positively forbid the maintenance of other Subsidiary or Statistical Registers in the various Courts subordinate to it, the list referred to specifies all the Registers, which, it is believed, are absolutely necessary for judicial, administrative or statistical purposes.

¹**442.** All registers shall be kept in Hindi except the Accounts registers which shall be kept in English.]

443. No one except the clerk in charge of writing a particular register shall, unless otherwise provided make any entry therein without orders of the Presiding Officer.

444. The forms in most cases sufficiently explain themselves. The following additional instructions are, however, issued for general guidance.

B.—PRIMARY REGISTERS

445. *Register No. (R) 1—General Register of Suits*—Separate Registers should be maintained for the following classes of suits :—

1. Subs. by C.S. No. 20.

- (i) Suits for Money and Movables.
- (ii) Suits for Rent.
- (iii) Title and other Suits.
 - (a) In the Register of Suits for Money and Movables, column 2 shall contain the consecutive number of suits in the Register and column 3 a subordinate serial number for all suits dealt with under Small Cause Court powers which are to be entered in red ink.
 - (b) All suits under the Bihar Tenancy Act are to be classified as rent suits and should be entered in the General Register of suits for rent. [*G.L. 5/65.*]
 - (c) In columns 4 and 7 “and another” or “and others”, as the case may be, should be added after the first name where there are more plaintiffs or defendants than one. [*H.C. memo no. 2697–2709, dated 20th February, 1963.*]
 - (d) It will be sufficient if the nature of the claim is briefly indicated in column 10.
 - (e) In column 17 shall be entered not only the particulars of the order on First Appeal but also the particulars of the order on Second Appeal or in Revision, if any. [*H.C. memo no. 9103–17, dated 24th August, 1963.*]

Note.—The High Court desire to impress upon the attention of all subordinate Courts the necessity of duly and regularly filling in the particulars regarding proceedings in execution of decrees (columns 20 to 26). The proceedings upon each application for execution shall find a place in this Register which is intended to show a complete history of the suit from institution to final satisfaction of decree.

- (f) When money payable under a decree is paid into the Court or a petition of adjustment or satisfaction is filed without there being any execution proceeding pending, such payment or satisfaction shall be noted in columns 18 and 19 under the countersignature of the *Sarishtadar*. The fact that this has been done shall at the same time be noted on the petition and on the order-sheet of the suit.

Note.—(1) If the record of the suit has been deposited in the District Record-room, the petition together with the connected papers shall be sent to the Record-keeper, who shall enter in red ink a note of payment or satisfaction (as the case may be) in the order-sheet of the record of the suit and the entry shall be signed by the Judge-in-charge of the Record room.

(2) If the record of the suit is before the Court of appeal, the petition together with the connected papers shall be sent to that Court, where a note of the payment or satisfaction (as the case may be) shall be made in red ink in the order-sheet of the suit record and signed by the Presiding Officer of the Court of appeal.

(3) In cases of payment into Court, the provisions of rule 118 should be carefully observed.

- (g) This Register shall be maintained only in the permanent courts. A supplementary register of suits in Form (R) 1A shall be maintained in

additional courts. Complete notes from start to finish including the execution proceedings regarding suits transferred to the additional Court for disposal should be entered in register (R) 1 of the Court where the suits were instituted. [*H.C. memo no. 5334–48, dated 6th May, 1965; G.L. 1/23; H.C. memo no. 4249–63, dated 24th April, 1966.*]

446. Register No. (R) 2—Register of Miscellaneous Judicial Cases.—In this Register all Miscellaneous Judicial cases including References under the Land Acquisition Act, Probate, Letters of Administration or Succession Certificate, Applications in respect of Minors and Lunatics, Applications to sue in *forma-pauperis*, Claims and Objections should be entered. Applications to appeal in *forma-pauperis* shall also be entered in this Register. [*H.C. letter no. 413–28, dated 15th January, 1966.*]

Note 1.—In this Register should be entered all Miscellaneous Judicial Cases mentioned in rule 459 except insolvency petitions which shall be entered in a separate register in Form No. (R) 2–A ¹[and the petitions under section 78 of the Village Administration Act, 1922 and under sections 70 and 73 of the Bihar Panchayat Raj Act (VII of 1948)² which shall be entered in the register in Form No. (R) 39].

Note 2.—Where there are numerous applicants or opposite parties or objectors, the names of the principal applicant and principal opposite party only need be entered in column 4 and of the principal objector, if any, in column 6, and the fact of omission of the names of the other parties may be indicated by adding the word “and ors.” after the names of the principal applicant, opposite party and objector. In cases which relate to suits or other cases and where the descriptions and addresses can be traced out with reference to other registers containing the descriptions and addresses of the parties in those suits and cases the descriptions and place of residence need not be noted in columns no. 4 and 6.

Note 3.—The following information should also be noted in the column for remarks :—

- (i) In the case of applications for Probate and Letters of Administration—
 - (a) The action taken by the Court in cases in which an estate has been found to have been undervalued in the first instance.
 - (b) The date of filing of the inventory mentioned in sections 256 and 317 of the Indian Succession Act, 1925 (XXXIX of 1925).
 - (c) The date or dates of submission of the accounts referred to in the same section.
 - (d) Value of estates and value of Courts-fee paid thereon.
- (ii) In the case of applications in respect of minors and lunatics—
 - (a) The date of filing of the inventory mentioned in section 34 of Act VIII of 1890 and in section 76 of Act IV of 1912.
 - (b) The date or dates of submission of accounts referred to in the same section.

1. Ins. by C.S. No. 33, dated 11.8.1972.

2. Now, see Panchayat Raj Act, 2006.

- (c) In regard to Act VIII of 1890, if no inventory or accounts have been required by the Court, the fact should be stated.
- (d) The order requiring proof to be furnished within a certain time of the manner of the disposal of the sale-proceeds of a minor's or lunatic's property should be quoted and a note made when it has been complied with.
- (e) Value of the estate.
- (iii) In the case of application to sue or appeal, as a pauper—
 - (a) The corresponding number of the suit or appeal as the case may be.
 - (b) Date of sending the decree to the Collector.
- (iv) In case of Garnishee applications under rules 63-A to 63-H, Order XXI, Civil Procedure Code, the amount realised, the amount deducted as Court-fees, the number of *chalan* with date showing the deposit of court-fees in the Treasury.
- (v) In other Miscellaneous Judicial Cases relating to suits and other cases, the number of the suit or the case out of which the Miscellaneous Judicial case has arisen.

447. *Register No. (R) 3*—In this register shall be entered all applications under the Bihar Tenancy Act other than those specified as Miscellaneous Judicial cases under rule 459.

448. *Register No. (R) 5*—Register of Appeals—

- (a) The particulars of any order passed on Second Appeal or Revision shall be entered in the column headed "Remarks".
- (b) This Register shall be maintained only in the Courts of District Judges, Additional Judges, Subordinate Judges shall maintain a Supplementary Register in Form No. (R) 6 for Appeals transferred to their Courts for disposal. When appeals so transferred have been disposed of by those Courts the records shall be sent to the Court of the District Judge for columns 13 to 15 of the latter's register being filled in his office. After this is done the records shall be returned to the Court disposing of the appeal for transmission to the Record-room in due course.

Note.—When appeals are transferred to Courts situated at an outlying station in the district, the records of disposed of appeals need not be transmitted to the Court of the District Judge for columns 13 to 15 of the latter's register being filled in. It will be sufficient to send an extract from the judgment and a copy of the decree, signed and attested by the Presiding Officer of the Court which decided the appeal, to the Court of the District Judge. Columns 13 to 15 of the register No. (R) 5 should be filled up in the office of the District Judge from the copy of the decree and extra copy of the judgment so received.

- (c) When an appeal has been transferred to another district columns 13 to 15 shall be written up when the record is returned, after disposal, to the original Court of Appeal.

- (d) The date of sending copies of judgment and decree to the lower court shall be entered in the remarks column of this register and of the supplementary register, Form No. (R) 6.

C. SUBSIDIARY REGISTERS

449. *Registers of Ministerial Officers, etc.*—Registers of attendance and of Casual Leave, Acquittance Rolls, Registers or Registers permanently preserved, Register of issue of Forms, Registers of issue of Stationery, Registers of Letters Received, Registers of Letters Despatched, Registers of account of service postage stamps, Peon-books—the forms prescribed by the State Government or the Board of Revenue may be used.

D. STATISTICAL REGISTERS

450. *Registers Nos. (R) 31 to (R) 38*—These registers are intended to be written up from day to day, except in respect of Rent suit columns 1 to 6 in Register No. (R) 32 which should contain monthly totals only, so that, with the above exception, the entries in different columns should consist of consecutive series of numbers the last of which should, at the end of the month, quarter or year, at once supply the information required for inclusion in the Monthly, Quarterly or Annual Statement concerned.

451. The value of suits and amount realised in execution cases should be expressed in rupees only. Fractions of a rupees less than 50 paise will be disregarded and 50 paise and above will be reckoned as one rupee.

452. *Registers Nos. (R) 37 to (R) 38*—These registers have been prescribed in order to enable the High Court to furnish the State Government with fuller details regarding the working of the Bihar Tenancy Act.

II—PERIODICAL RETURNS AND STATEMENTS

A.—FORMS

453. The forms of the periodical statements entered in the list at the beginning of Volume II are prescribed for adoption and submission by the Civil Courts shown against each.

B.—CLASSIFICATION OF CASES

(i) *Suits and Appeals from Decrees*

454. (a) For the purposes of the periodical statements, suits and appeals from decrees are divided into three classes—

- I. Suits for Money and Movables and Appeals in the same [*G.L. 3/58*];
- II. Suits and Appeals under the Rent Law; and
- III. Title and other Suits and Appeals in the same.

(b) The details of this classification, which must be strictly adhered to throughout the returns, will be found in Annual Statement no. 2 [Form No. (S) 10]

(c) As all plaints are to be registered on presentation in the General Register of suits (Rule 23, Chapter I, Part I) orders rejecting plaints must be treated for the purposes of the rules in this Chapter as suits, and shown in Annual Statements nos. 2, 3 and 4, Part I.

455. Suits for money, etc., are again subdivided according as they are dealt with under the Small Cause Court procedure or under the ordinary procedure. Where an officer has the powers of a Small Cause Court Judge, the work done by him in the exercise of these powers should be shown bracketed with that done under his ordinary powers.

456. Where an officer has been appointed by the State Government under section 109-A of the Bihar Tenancy Act (VIII of 1885) to be Special Judge for the purpose of hearing appeals from the decisions of Revenue Officers under Chapter X of that Act, the work done by him in the exercise of those special powers should be shown in Quarterly Statement A [Appeal part, Form No. (S) 4] and in Annual Statement 5, Part I, bracketed with that done under his ordinary powers.

457. Cases under Act XX of 1863, section 14 of Act X of 1940 and under sections 88 and 92, Order XXXVI, Rule 3 of the Code of Civil Procedure, are to be registered as suits, and must be entered as such in the returns.

458. An application for Probate or for Letters of Administration should, for the purposes of the returns, be treated as a Miscellaneous (Judicial) case until the date upon which it is contested and as a suit from that date. In order to explain the discrepancies which will result in the total number of Miscellaneous (Judicial) cases for disposal, disposed of, and pending, it should be stated on the face of each return of Miscellaneous (Judicial) cases how many applications for Probate and for Letters of Administration were transferred, during the period to which the returns relate, to the head of suits, and treated as suits from the dates upon which the applications were contested. [*H.C. memo no. 10245-59, dated 8th October, 1964; Re-applications under section 75 (2) of the Employees State Insurance Act, 1948.*]

Note.—Applications for the Revocation of Probate and Letters of Administration should be treated in the same manner as applications for Probate or Letters of Administration.

(ii) Miscellaneous Judicial cases

459. Separate statements being provided to show applications for the execution of decrees, these will not be included under the head “miscellaneous (Judicial)” cases, and it is intended that such other cases only as required a judicial enquiry or order should be included. The following list shows the case which are to be entered under this head, and without the special orders of the High Court, no addition may be made thereto [*G.L. 15/62*]—

(a) Cases under the Code of Civil Procedure

- (i) Applications under sections 22 and 24 to an Appellate Court to transfer suits, appeals or other proceedings pending in a Subordinate Court.
- (ii) Applications under Order IX, Rules 4, 9 and 13 and Order XLI, Rules 19 and 21, for the restoration to the file of suit or appeal dismissed on default or decreed *ex-parte*.
- (iii) Miscellaneous Civil Proceedings under Order XVI, Rules 12 and 17.
- (iv) Cases under Section 47.

- (iv) (a) Applications under Section 95.

Note.—Applications for the ascertainment of *mesne profits* should not be registered as Miscellaneous Judicial cases, but should be regarded as applications made in the course of the trial of the suit, vide Order XX, Rule 12.

- (v) Inquiries under Order XXI, Rule 2, on the application of judgment-debtors as to payments or adjustment alleged to have been made.
- (vi) Claims to, and objections to the attachment of, attached property under Order XXI, Rule 58, and Order XXXVIII, Rule 8.
- (vii) Applications under Order XXI, Rules 90 and 91 to set aside a sale in execution of a decree.
- (viii) Complaints by decree-holders or purchasers under section 74 and Order XXI, Rules 97 and 98 of resistance to possession being given.
- (ix) Applications under Order XXI, ¹[Rule 99 (1)].
- (x) Commissions under section 76(2) for the examination of witnesses, received from other Courts and executed by the Court.
- (xi) Applications under Order XXXIII, Rule 1 and Order XLIV, Rule 1 for permission to sue or appeal as a pauper.
- (xii) Proceedings under ²[Order XXXIX Rule 2(a)], clauses (3) and (4).
- (xiii) Applications under Order XLVII, Rule 1 for Review of Judgment.
- (xiv) Applications for a Reference to the High Court under Order XLVI, Rule 7.
- (xv) Applications under section 144 of the Code of Civil Procedure.
- (xv) (a) Applications under sections 151 and 153 of the Code of Civil Procedure.
- (xv) (b) Applications for Garnishee proceedings under ³[Rules 46-A to 46-I], Order XXI, Civil Procedure Code.

(b) *Cases under other Acts*

[G.L. 9/53, G.L. 3/54.]

- (xvi) Cases regarding the property of intestates under section 7 of the Bengal Wills and Intestacy Regulation, 1799, in which a claimant appears.
- (xvii) Applications for the issue of an injunction under section 6, Bengal Patni Talkus Regulation, 1819.
- (xviii) Applications under Part VII of the Indian Succession Act (XXXIX of 1925).
- (xix) Applications regarding the care of lunatics' estates, and the guardianship of their persons, under the Indian Lunacy Act, 1912.

1. Subs. by C.S. No. 66, dated 27.12.1979.

2. Subs. by C.S. No. 67, dated 27.12.1979.

3. Subs. by C.S. No. 68, dated 27.12.1979.

- (xx) Applications under section 47 or section 75 of the Indian Lunacy Act, 1912¹, for sanction to the sale, etc., of the property of lunatics.
- (xxi) Applications for Probates and Letters of Administration under the Indian Succession Act, 1925, except contested cases which must be transferred to the head of suits. *See* rule 458 *ante*.
- (xxii) Inquiries made at the instance of the Collector under clause 5 of section 19H of the Court-fees Act, 1870, as to true value of the property of deceased persons.
- (xxiii) Cases under section 59 of the Land Registration Act, 1876.
- (xxiv) Cases under section 14 of the Legal Practitioners Act, 1879.
- (xxv) Cases regarding redemption and foreclosure of mortgages under section 83 of the Transfer of Property Act, 1882.
- (xxvi) Cases under sections 84, 91, 93, 98(8), 99, 153 (last paragraph), 158, 169 and proceedings under sub-sections (5) and (6) of section 163 of the Bihar Tenancy Act, 1885.
- (xxvi) (a) Proceedings under clauses (a), (b) and (c) of section 15 of the Bihar Restoration of *Bakash* Lands and Reduction of Arrears of Rent Act, 1938.
- (xxvii) Applications for Succession Certificate under the Indian Succession Act, 1925.
- (xxvii) (a) Applications under Sections 7, 8, 9, 11, 12 and 33 of the Arbitration Act, 1940 (Act LX of 1940)².
- (xxviii) Applications under the Guardians and Wards Act, 1890 or certificates of guardianship of minors, or of administration of their property, or, where no previous appointment of a guardian has been made by the Court or applied for, for their return to the custody of their guardians.

Note.—Subsequent proceedings in connection with a guardianship case are to be treated as part of the original case and should not be registered as separate Miscellaneous cases.

- (xxviii) (a) Applications under Section 8 of the Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956).
- (xxix) Cases under Parts III and IV of the Land Acquisition Act, 1894.
- (xxx) Miscellaneous Criminal Cases under Sections 195(1) (a), 476, 478 and 480 of the Criminal Procedure Code, 1898³. [*G.L.* 5/16, *G.L.* 2/23.]
- (xxx) (a) References under Section 146 (1) of the Code of Criminal Procedure, 1898³, as amended by Act XXVI of 1955, to decide the question of possession.
- (xxxi) Insolvency petitions under the Provincial Insolvency Act, 1920.

Note.—Subsequent proceedings in connection with the same insolvency petition are to be treated as part of the original proceeding, and should not be registered as separate Miscellaneous Cases.

1. *Now, see*, Mental Health Act, 1987.
 2. *Now, see*, Arbitration and Conciliation Act, 1996.
 3. *Now, see*, Code of Criminal Procedure, 1973.

- (xxxii) Application under the Charitable and Religious Trusts Act (Act XIV of 1920).
- (xxxiii) Application under section 78 of the Village Administration Act, 1922 (III of 1922), and under sections 70 and 73 of the Bihar Panchayat Raj Act (VII of 1948). [G.L. 1/53.]

Note.—A separate account of these applications should be kept in the register in Form No. (R) 39.

- (xxxiv) Cases under the Mussalman Wakf Act, 1923 (XLII of 1923) [Now, Waqf Act, 1995], and applications for the sanction required by the Muhammadan Law for the transfer of Wakf property.
- (xxxv) Applications under Section 5 of the Religious Endowment Act, 1863 (XX of 1863).
- (xxxvi) [Omitted].
- (xxxvii) Applications under section 13 of the Bihar Money-lenders (Regulation of Transactions) Act, 1939 (Bihar Act VII of 1939)**.
- (xxxviii) Applications for deposit of money under Sections 15 and 24 of the Bihar Money-Lenders Act, 1938 (Bihar Act III of 1938)**.
- (xxxix) Cases arising out of Election Petitions under the Bihar District Election Petitions Rules, 1939.
 - (xl) [Omitted].
 - (xli) Cases arising out of Election Petitions under the Bihar Municipal Election Petitions Rules, 1941.
 - (xlii) [Omitted].
 - (xliii) Case under Section 82A of the Indian Railways Act, 1890 [G.L. 5/52, G.L. 8/55.]
 - (xliv) Applications under sections 28(3), ¹[29(3)], 32(3), 43(1), 47 and 48 of the Bihar Hindu Religious Trusts Act (Act I of 1951).
 - (xlv) Application under section 30 of the Industrial Finance Corporation Act, 1948 (Act XV of 1948).
 - (xlvi) Applications under section 11B of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947***. [G.L. 3/58.]
 - (xlvii) Applications under sections 11, 22, 32, 34, 36, 41, 46, 49, 53, 71, 72, 73 and 74 of the Indian Trust Act (II of 1882). [H.C. memo no. 2669–83, dated the 24th November, 1962.]
 - (xlviii) Applications under sections 75, 89, 113, 141, 234, 240 and 614 and cases under sections 118, 144, 163, 196, 219, 304, 307 and 375 of the Companies Act, 1956 (I of 1956)
 - (xlix) Applications under section 22 of the Hindu Succession Act, 1956 (Act 30 of 1956).
 - (l) ²[x x x x].

1. Ins. by C.S. No. 46, dated 18.12.1973.

2. Deleted by C.S. No. 74, dated 1.5.1985.

* Now, see, Panchayat Raj Act, 2006.

** Now, see, Bihar Money Lenders Act, 1974

*** Now, see, Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

- ¹[(li) Applications under sections 31 and 31 (1) of the State Financial Corporations Act, 1951.]
- ²[(lii) Applications under section 11 of the Bihar Panchayat Samitis and Zila Parishads Act, 1961.
- (liii) Petition under rule 149 of the Bihar Panchayat Samitis and Zila Parishads (Elections, Co-options and Election Petitions) Rules, 1963.]
- ³[(liv) Applications under sections 46 and 47 of the Bihar Waqf Act, 1947 (Now, Waqf Act, 1995.)
- ⁴[(lv) Applications under section 8 (2) of the Bihar and Orissa Aerial Ropeways Act, 1924.]
- ⁵[(lvi) Applications under sections 152 and 242 of the Patna Municipal Corporation Act.]

Comments & Case Law

[Rule 459 very specifically provides such applications which shall be registered as Miscellaneous (Judicial) Cases which includes application filed under Section 22 of the said Act. Held- a person who seeks to enforce his preferential right as envisaged under Section 22 of Hindu Succession Act may make an application in a court having jurisdiction and such application shall be registered as Miscellaneous (Judicial) cases. Order of trial Court held to be erroneous. (See *Paras 11& 12*). *Gopal Prasad vs. Banshidhar Singh*, 2000(1) PLJR 233.]

(iii) Miscellaneous Non-judicial cases

460. Under the head “Miscellaneous (non-judicial)” cases information is required in the returns regarding only a few specified heads, viz.—

- (i) Applications for the service of notices of execution by non-occupancy *raiyyats* of agreements to pay enhanced rent under section 46 of the Bihar Tenancy Act, 1885.
- (ii) Applications by tenants to deposit rent under Sections 61 and 62 of the same Act,
- (iii) Applications for service of notices of transfer of occupancy holdings under section 73 of the same Act.
- (iv) Applications for the service of notice of surrender of holdings under section 86 of the same Act.
- (v) Applications under Section 15 of the Bengal Patni Taluks Regulation, 1819 (Regulation VIII of 1819).
- (vi) Applications for service of notice under section 155 of the Bihar Tenancy Act.

1. Ins. by C.S. No. 8, dated 11.8.1972.

2. Ins. by C.S. No. 28, dated 11.8.1972.

3. Ins. by C.S. No. 30 and Subs. by C.S. No. 42, dated 28.11.1973.

4. Ins. by C.S. No. 51, dated 27.9.1974.

5. Ins. by C.S. No. 53, dated 24.9.1979.

(iv) Miscellaneous Appeals

461. The following are classed as Miscellaneous Appeals—

- (i) Appeals from orders under section 104 (1) and Order XLIII Rule 1, of the Code of Civil Procedure.
- (ii) Appeals in Miscellaneous Judicial Cases.
- (iii) Appeals under Section 17 of the Payment of Wages Act, 1936 (IV of 1936).
- (iv) Appeals under Section 70, sub-clause 2(b) of the Bihar Hindu Religious Trust Act (I of 1951).
- ¹[(v) Appeals under Section 9 against orders under Sections 5 and 7 of the Public Premises (Eviction or Unauthorised Occupants) Act, 1958.]
- ²[(vi) Appeals under Section 11 (1) (i) of the Bihar Land Encroachment Act (Act XV of 1956).]

C. COMPILATION OF STATEMENTS AND RETURNS

462. For the purpose of Periodical Statements, suits in which preliminary decrees are made under the provisions of Order XX of the Civil Procedure Code and suits for the foreclosure of a mortgage or the sale or redemption of mortgaged property in which a preliminary decree is made under the provisions of Order XXXIV will be considered as, disposed of when such preliminary decree is passed. Subsequent proceedings are to be treated as a continuation of the suit. A separate statement of suits in which final decrees have been passed on contest, or remain to be passed (but not including those the records whereof have been sent to the Record-room under notes 2 and 3 to rule 259, Part III, Chapter III), should be furnished every quarter in Form No. (S) 7-B.

463. A case in which a defendant having appeared at the first hearing, fails to appear at an adjourned hearing, and a decree is passed against such defendant, should according to the decision reported in Indian Law Reports 23, Calcutta, 738, be exhibited in the periodical returns as “decreed *ex-parte*”.

464. The following cases should be treated and shown as “uncontested”, namely, all cases in which the only question or questions ultimately decided on, or with show of contest, are [G.L. 3/35.] :—

- (1) a question regarding the amount or apportionment of costs;
- (2) a question regarding payment by instalments;
- (3) an unsubstantial question as to the rate of interest; or
- (4) in rent suits, a question regarding the award or amount of damages.

Note.—Such cases should be shown as disposed of on confession or compromise as the cases may be.

465. A case is not said to be received or disposed of by transfer except when it is passed from one Court to another by an order. Cases which have been left by the Presiding Officer to his successor in the same Court are not to be treated as transferred. Where, through mistake or otherwise, a case has to be transferred from one file to another in the same Court, the column “Pending” must be corrected, and explanation given in the next return.

1. Ins. by C.S. No. 1, dated 11.8.1972.

2. Ins. by C.S. No. 48, dated 26.12.1973.

466. Applications under section 39 of the Code of Civil Procedure for the transfer of decrees to other Courts for execution, are not applications for execution and, whether granted or refused, should not appear in the returns at all. If a decree be transferred for execution by a superior Court to a subordinate Court of its own motion after an application for execution under Order XXI, Rule 10, has been filed and execution ordered under Order XXI, Rule 17, that application should be shown as disposed of and received by transfer. In any other case the receiving Court is not to make any entry in its returns until it receives from the creditor an application for execution under that section. If, after proceedings have been commenced in any Court on an application for execution, the creditor makes an application for transfer to a Court not subordinate, and the Court complies with it under clauses (a) to (d) of section 39 (1) the case pending in the transferring Court shall be returned as disposed of by transfer, where satisfaction of the decree has not been obtained at all on the application for execution; and as disposed of on its merits, when part satisfaction has been obtained; but, as directed above, it is not to be noticed in the receiving Court's returns as received by transfer.

467. In order to obtain the average duration of cases, the aggregate number of days for which all cases were pending before the Court must be divided by the total number of such cases.

468. As regards suits, cases or appeals the date of the presentation of the plaint, application or memorandum of appeal shall be considered as the date of institution, unless some defect or omission requires to be amended before the plaint, application or memorandum of appeal can be admitted, in which case the date of admission after amendment, shall be regarded as the date of institution. With regard to plaint, application or memorandum of appeal, which is rejected for non-compliance of defects and applications to execute decrees, the date of their presentation should alone be considered.

Note.—When a plaint is admitted after the date on which it is presented, the date of admission should be shown below the date of presentation in column 1 of the register of civil suits.

469. When an order has been made under Order XLI, Rule 25 or 27 of the Code of Civil Procedure, the case is to be considered as pending before the Appellate Court, and the time occupied in making the return called for, or in taking the evidence, must be counted as time occupied in the appeal.

470. When an order of remand is made under ¹[Order XLI, Rules 23 and 23A] of the Code of Civil Procedure, the case must be treated as decided by the Appellate Court, and must be brought on the file of the Lower Court.

471. The calculation of the duration of cases shall be made as follows—(1) Except for calculation of average duration, cases restored or revived under the provisions of the Code of Civil Procedure and cases received on remand, shall be treated as pending from the date of institution (see rule 468 above) and not from the date of restoration, revival or of receipt after remand.

(2) In calculating average duration, the time that the suit has actually been

1. Subs. by C.S. No. 69, dated 27.12.1979.

pending in the Court of first instance should alone be calculated. The interval should be omitted during which an application for review which has been granted or an appeal in which an order for remand has been passed, has been pending in the superior Court. Revived suits are to be treated as newly instituted on revival.

(3) In respect of cases transferred from one Court to another the duration should be invariably calculated from the date of institution. Advantage should be taken of the column in the returns for "Remarks" to show the extent to which the particular Court immediately concerned is responsible for any delay, which under the rules, requires explanation.

Note.—The date of the transfer of a case by one Court is ordinarily to be taken as the date of its receipt on transfer by another; any instances of unusual delay should be noticed in the explanations.

472. Gazetted holidays, Sundays and vacations should be included in the calculations but where a long series of holidays or a vacation is a serious factor in delay this should be noted in the remarks column.

473. Separate accounts must be kept of the time cases, whether suits or appeals, were pending (1) from the date of institution to original or first decision; (2) from date of application for review or revival to date of final disposal of the application, and if the applications has been granted, from the date of granting to the date of final disposal of the case; (3) from the date of order of remand to the date of the new decision under such order.

D. SUBMISSION OF PERIODICAL RETURNS

474. Monthly and Quarterly Statements should be despatched by Subordinate Courts to the District Judge on or before the 5th of the month next succeeding the period to which they relate and Annual Statements on or before the 20th day of the new year. [G.L. 8/19.]

475. Quarterly Statements should be submitted by the District Judges to the High Court on or before the 15th of the month next succeeding the period to which they relate; and the Annual Statements along with the Annual Reports on the administration of Civil Justice on or before the 15th February of each year.

476. Punctuality in the submission of statements must be insisted upon and the District Judges should be careful to take necessary steps to ensure the accurate compilation and prompt despatch of the same.

477. Except where specially provided, the returns are meant to show separately the work of each Court and not the work of each Officer who may have presided during the year in the same Court. Officers' names need not therefore be given. Where a Small Cause Court Judge presides over more than one Court the returns must show distinctly the work of each Court unless the figures required are mere totals for the "class of Court".

478. Where the figures given in any return differ from those given in any returns previously submitted, explanations should always be given in order to avoid the necessity for a reference in the matter.

479. Officers having work in more departments than one should always note in their returns how their time was apportioned between the various departments.

This is necessary to enable the Court to judge whether the work done, is sufficient, and to admit of the officer's salary being correctly apportioned in the Annual Returns between the various departments.

480. In the Periodical Returns submitted to the Court by District Judges the returns of all Subordinate Courts including Small Cause Courts, as well as those of Additional Judges, should be incorporated.

481. Where, in the general statement compiled for any district, the total of the column "Received by transfer" differs from that of the column "Disposed of by transfer" the reason should be explained, and any cases transferred from or to other State should be noted particularly, as the information is required in the preparation of the Court's general returns.

482. When a statement is blank it should not be submitted a note to that effect being sufficient.

483. District Judges are expected carefully to examine the statements submitted by the Subordinate Courts and to satisfy themselves that the business in those Courts is transacted with due despatch and that case receive personal attention in execution as well as before decree. They should also examine at least half-yearly a certain proportion of the records sent into the Record-Room for that purpose. Where a District Judge is unable to do so himself he should cause the records to be examined by the senior Subordinate Judge under him.

484. In all Quarterly Statements the number of days during which any District or Subordinate Judges or any *Munsif* has been absent from Court owing to temporary indisposition or other cause should be noted in the column for remarks.

485. (a) Explanation of the delay in the disposal of suits, etc., shall be submitted half-yearly to the District Judge by the Subordinate Courts. These explanations are required (1) in cases dealt with under the Small Cause Court Procedure, (2) in Miscellaneous Judicial cases and (3) in Miscellaneous Appeals, when a suit, case or appeal has been pending for more than six months or (4) when a decree has been for more than six months under execution. In the case of all other classes of suits and appeals from decrees, explanations are required only when such cases have been pending for more than one year. In the case of Rent suits, District Judges need make enquiry only if the number entered in the Quarterly Statements as pending for more than three months is unusually great.

(b) The above explanations shall be submitted to the District Judges in Form No. (S) 8.

(c) District Judges are at liberty, if they think it necessary, to call for a full explanation from any Subordinate Court in regard to any case on its file. Any case which calls for special notice should be brought to the notice of the High Court.

486. District Judges will submit, with their Quarterly Returns, a concise statement in Form No. (S) 7, regarding the outturn of work shown by each of their subordinates, and an expression of their opinion on any deficiency apparent in this respect. These statements will be taken into consideration by the Court in connection with transfers and promotions in the State Judicial Service.

Note.—The number of witnesses examined by Assistant Sessions Judges is not to be included in column 11 of the Statement.

487. Most of the Annual Statements can be readily compiled from the Statistical Registers. In the case of others, it is essential that the requisite information should be collected from time to time, so as to be available without delay at the close of the year. In the latter case District Judges should be careful to require the proper officers of their Courts, and of the Courts subordinate to them, to collect the information at convenient intervals.

III—ANNUAL REPORTS

488. District Judges shall submit to the High Court, alongwith the Annual Returns and Statements, a Report for the year to which these refer upon the administration of Civil Justice and tabular statements in Forms Nos. (S) 22–28, which should contain apposite remarks as to any increase or decrease of business, or the like, shown in each. These tables shall include the figures for all the Courts of Small Causes and the regular Civil Courts in each district, separate totals being given for each of these classes of Courts. District Judges should be careful to avoid treating their Annual Reports as matters of routine, and are expected to see that the entries in the tables included in them, and those of the corresponding Annual Statements, agree, as they must do, exactly. The failure to explain discrepancies between figures given in two successive Reports, which, in the absence of special reason, ought to be identical, is also a matter which leads to much unnecessary correspondence, and should be avoided.

489. (a) The High Court does not consider it necessary to prescribe the use of any particular form of Report, leaving it to the District Judges to put on record the main features in the administration of the year in the manner which may appear to them most suitable.

(b) The following matters must, however, receive notice :—

- (i) The condition of Judicial Buildings.
- (ii) The state of the Judges Record-room, which must be ascertained by careful personal enquiry, and not from the mere report of the Record-keeper.
- (iii) The extent to which effect has been given to the rules regarding the arrangement of the records in the course of the trial, and to the rules regarding the destruction of useless records.
- (iv) The condition of the Judge's Library.
- (v) The mode in which effect is given to the rules relating to the employment of Civil Court *Amins* and other Commissioners.

Note.—A paragraph should be inserted showing separately the number of persons of each of the three classes included in the list maintained under rule 158, Part I, Chapter VII, *ante*; the number of such persons, class by class to whom commissions requiring a knowledge of surveying were issued during the year; the number of such commissions issued to them; and the total amount paid to them. Separate figures should also be given with regard to commissions, if any, issued to persons not entered in the list. Remarks on the manner in which survey commissions have been executed by the various classes of Commissioners should be added.

- (vi) The working of the Rules under the Court-fee Act.

Note.—District Judges are required to state under this head the number of original processes issued to process-serving peons during the year according to the classification laid down in Rule 70, Chapter II, Part I.

- (vii) The result of the examination of the records of cases decided by Subordinate Judicial Officers (Rule 483 *ante*).
- (viii) The number of cases reported during the year to the Collector under Section 58 (4) of the Bihar Tenancy Act and the Judge's observations thereon.
- (ix) The working of the rules regarding Pleaders' and *Mukhtars'* clerks.
- (x) *[Omitted]*.
- (x) (a) The extent to which the subordinate Courts have applied the provisions of the Usurious Loans Act, 1918.
- (xi) The effect of recent legislation on the working of the Courts.
- (xii) The date on which each Subordinate Court in the district was last inspected by the District Judge.

490. The character, qualifications, and official merits of the several subordinate Judicial Officers should be made the subject of a separate report, in which the work done by, and the result of appeals from, each officer ought to be analysed and commented upon, only as aids to forming a judgment as to their respective deserts and fitness for promotion. This is not, however, to debar District Judges from recording in their Administration Reports any instance of special and distinguished merit on the part of any subordinate officer, which they consider deserving of special mention and entitling the person indicated to the favourable notice of the Court or of Government. *[G.L. 3/61, G.L. 1/62.]*

Note 1.—Such reports should set out clearly and tersely sufficient particulars to enable the Court to form a correct and definite judgment on the merits of the officer reported on; and to ensure this, it is necessary that they should indicate any special merits or defects which may exist in his case. In case of a very bad report it is desirable, if possible, that the unfavourable trait should be very briefly illustrated. District Judges should form a clear and reasoned estimate of the merits and demerits of the officers under them and express their views clearly and fully. Where a District Judge has seen little or nothing of the work of any officer under him, he should say so in reporting to the High Court and should take steps to ensure full reports being submitted in the following year. Where the District Judge has been newly posted to the district he should submit to the Court the report or opinion recorded by his predecessor and when the subordinate officer has been transferred from another district, the District Judge should obtain from the Judge of the district and submit the report required by this rule. Where a District Judge has seen something of an officer's work, he should record something more than such vague general expressions as "satisfactory", "good", "unsatisfactory", "bad" or the like. ¹[If at the time of submitting the confidential report it is found that an officer has taken steps to remedy any defect previously reported, mention should be made of this fact also in the report and then with the Court's concurrence that officer concerned should be informed that his efforts at improvement have been noticed. If the

1. Subs. by C.S. No. 12, dated 11.8.1972.

confidential report on the work and character of subordinate Judicial Officers contain remediable defects or any adverse remarks regarding an officer which in the opinion of the High Court should be communicated to him for his guidance and correction, a transcript of the remarks will be sent by the Registrar directly to the officer concerned.]

Note 2.—Reports on the merits of an officer should invariably state whether the officer exercises effective control of his office and of any departments which may be in his charge.

PART VII

Legal Practitioners

CHAPTER I

The Qualifications Admission and Certificates of Pleaders and Mukhtars in Courts subordinate to the High Court.

I—GENERAL

491. The following Rules have been framed by the High Court under sections 6 and 7, Act XVIII of 1879.

492. The word “Committee” in this Chapter means the Committee of Legal Education appointed by the Lieutenant-Governor of Bihar and Orissa under the provisions of Section 37 of Act XVIII of 1879. (Bihar and Orissa Government Notification No. 421-J.T., dated the 29th June, 1920, published at pages 330 and 331 in Part I of the *Bihar and Orissa Gazette*, dated the 30th June, 1920.)

II—QUALIFICATIONS OF PLEADERS

493. ¹[The following persons may be admitted as pleaders in Courts subordinate to the High Court, that is to say—

- (a) Any person who shall have obtained the degree or the provisional certificate for the degree of Bachelor of law from any University established by law in the territory of India.]
- (b) Any person who shall produce a certificate from the Committee that he has passed the Pleadership Examination held in accordance with the rules that were in force till the year 1938.

III—QUALIFICATIONS OF MUKHTARS

494. Any person who shall produce a certificate from the Committee that he has passed an examination held in accordance with rules that were in force till the year 1947, may be admitted as a *Mukhtar* to practise in Courts subordinate to the High Court. [G.L. 1/47.]

495. Notwithstanding anything contained in the foregoing rule, a person who has not passed the examination mentioned therein may be admitted as a *Mukhtar* to practise in the Courts of the merged States of Seraikella and Kharsawan provided he was practising as a *Mukhtar* in either of the said States before their merger with the State of Bihar.

1. Subs. by C.S. No. 10, dated 11.8.1972.

IV—ADMISSION TO PRACTICE

496. Any person who shall have qualified under these rules and who shall desire to be admitted to practise shall pay into the Government Treasury of the district in which he shall intend ordinarily to practise, the fee prescribed by rule 508 and shall, on presentation of the certificate of the Committee or of his diploma or provisional certificate, of the receipt for the said fee, and of a stamp paper of the necessary value of his first certificate of practice, be entitled to apply to the High Court for admission, stating in what classes of Courts he desires to practise, with reference to Schedule 1 and Schedule 2 of Act XVIII of 1879.

Note.—An application under the Legal Practitioners Act (XVIII of 1879) for admission as a Pleader or *Mukhtar* of the Subordinate Courts, or for renewal of a certificate, or for enrolment, being made to a Court in its administrative capacity, does not fall within the provisions of the Court-fees Act (VII of 1870) and is not liable to any stamp duty. All such applications will be received by District Judges on plain paper, and where necessary, forwarded to the High Court in accordance with these rules.

497. The application together with the diploma or the certificate, the receipt and the stamp paper required by rule 496 shall be presented to the Judge of the district in which the applicants intend ordinarily to practise; and shall be forwarded by the Judge to the Registrar of the High Court with such remarks as he may think fit to make thereon. In the case of applications from law graduates of the Nagpur University, the Judge should report after an enquiry by the District Authorities, whether the applicant is or is not a native of and permanent resident in the State of Bihar.

498. The name of the applicant and his place of abode, together with his father's name and place of abode, shall be affixed in some conspicuous place in the Court-house of the Judge by whom the application is sent, and also in the High Court at least six weeks before the applicant is admitted to practise.

Note.—Pleaders and *Mukhtars* otherwise eligible for admission under these rules, if previously enrolled in any other High Court may, subject to the provisions of rule 507, be admitted to practise in Courts subordinate to the High Court of Judicature at Patna. Such cases will be treated as cases of first admission.

499. The High Court may call for evidence of the respectability of the applicant in any case in which it may be deemed necessary.

500. Notwithstanding anything contained in the rules of this Chapter, the High Court reserve to themselves the right without assigning any reason to refuse the enrolment of any Pleader or *Mukhtar*.

501. As a temporary measure the High Court may exempt any person who was practising as a Pleader or *Mukhtar* in Pakistan, or any person who having obtained a degree of Bachelor of Law in any of the Universities in Pakistan seeks enrolment as a Pleader for the first time, from all or any of the requirements of the Rules framed under sections 6 and 7 of Act XVIII of 1879 and on such exemption being granted such a persons shall be deemed to have complied with the rules.

V—CERTIFICATES

502. Upon the applicant being admitted by the High Court, the Registrar of the High Court shall cause his name to be entered in the proper Register, and shall grant him a certificate as required by section 7 of Act XVIII of 1879, authorizing him to practise up to the end of the current year in the Courts, and in the case of a Pleader, also the Revenue Offices specified therein.

Note.—Pleaders holding certificates under clause (e) of Schedule II of the Legal Practitioners Act (XVIII of 1879) are entitled to practise before *Munsifs* when exercising Small Cause Court powers, and lower grade pleaders who formerly practised in the Provincial Small Cause Court, constituted under Act XI of 1865 or Act IX of 1887, may be allowed to practise before Subordinate Judges when exercising Small Cause Court powers, but for this purpose they must hold a certificate under clause (d) of the Schedule.

503. The certificate shall bear the number assigned to it in the Register, and shall be signed by the Registrar and forwarded to the District Judge, to be delivered to the applicant.

504. Any Pleader or *Mukhtar* who may apply for the renewal of his certificate under section 7, Act XVIII of 1879, unless he has been ordinarily practising in the Court of the District Judge, or other officer authorised to renew certificates, shall, with his application, file a certificate of character from the Judge presiding in the Court in which the applicant ordinarily practises. The *Munsif* or Subordinate Judge may forward the application for a renewed certificate to the District Judge.

505. If the District Judge or other officer authorized to renew certificates considers that the character or conduct of any Pleader or *Mukhtar* who has been ordinarily practising in the Court of the said Judge or officer, as the case may be, and who may apply for the renewal of his certificate under section 7 of Act XVIII of 1879 is such that his certificate should not be renewed, he shall forward the said application with a statement of and the grounds for his opinion to the High Court for orders, and the High Court shall pass thereon such orders as it thinks fit.

506. The renewed certificate shall state only the particulars contained in the former certificate and the fact and date of its renewal. [*G.L. 9/45, G.L. 12/49.*]

507. When a Pleader or *Mukhtar* seeks enrolment in any district other than that in which he first commenced practice, proper enquiries should be made to satisfy the Judge as to his identity and previous good conduct.

VI.—FEES

508. The fees payable on application for enrolment shall be as follows :—

| | Pleader | Mukhtar |
|-------------------------|---------|---------|
| | Rs. | Rs. |
| Before admission | 25 | 10 |

VII.—PENALTIES

509. If any person, who has obtained the degree or passed the examination entitling him to be admitted and enrolled as Pleader or as a *Mukhtar*, shall fail to apply for such admission and enrolment for a period of one year from the time of his being so entitled, he shall not be admitted and enrolled unless, by special order of the High Court, the time for such application shall be extended.

510. If any person having been admitted and enrolled as a Pleader or *Mukhtar* shall neglect to take out a certificate, or, having obtained a certificate, shall fail to renew it for a period of three years, he shall be suspended and shall not be entitled to receive a certificate, or to have his certificate renewed, without further orders of the High Court.

511. Any person who shall hold any appointment whether under Government or not, or shall carry on any trade or other business, at the time of his application for admission as a Pleader or *Mukhtar*, shall state the fact in his application for admission, and the High Court may refuse to admit such person, or may pass such orders thereon as they think proper.

512. Any person who, having been admitted, as a Pleader or *Mukhtar*, shall accept any appointment whether under Government or not, or shall enter into any trade or other business, shall give notice thereof to the High Court, who may thereupon suspend such Pleader or *Mukhtar* from practice, or pass such orders as the said Court may think fit.

Note.—A Pleader or *Mukhtar* may without such permission be shareholder or a director other than the managing director of a joint-stock company registered under the Indian Companies Act.

513. Any person who having been suspended from practise at his own request, or under rule 510 or 512, desires, on relinquishing his appointment or other occupation or for any other reason, to be re-admitted to practice, shall apply through the District Judge to the High Court for permission, and the High Court may before and as a condition precedent to the grant of such permission require him to furnish evidence of good conduct and character during the period of his suspension, and may impose such other or further condition as may be thought proper.

514. Any wilful violation of any of the above rules shall subject a Pleader or *Mukhtar* to suspension or dismissal.

CHAPTER II

Annual renewal of Legal Practitioners' Certificates and returns of the same, etc.

515. All Pleaders' and *Mukhtars*' certificates, whether taken out for the first time or renewed, shall be issued by District Judges as from the 1st January of the year in which they are taken out. District Judges shall submit, during the first week of February in the following year, a return of the certificates renewed by them for the current calendar year, as well as the names of those Pleaders and *Mukhtars* who had not renewed their certificates up to the date of report, and who are not therefore entitled to practise. A list containing the names of these last mentioned persons shall be posted in the Court-house, with an intimation that they are liable to penalties if found practising without having renewed their certificates. If any Pleader or *Mukhtar* whose name appears in the list, shall subsequently take out a certificate during the year, his name shall be reported to the High Court.

Note 1.—The District Judge may without reference to the High Court renew a certificate on a stamp paper of higher or lower denomination than that used in the previous certificate.

Note 2.—The annual return to be submitted in loose forms of the Register of Pleaders and *Mukhtars* [Form no. (R) 24].

Note 3.—A copy of the list of the names of those Pleaders and *Mukhtars* who had not renewed their certificates up to the date of the District Judge's report to the High Court shall be sent to each court within the district for information. If and when such legal practitioners subsequently renew their certificates the courts in the district shall be similarly informed of the fact.

516. Separate returns should be submitted of (1) Pleaders of the higher grade, (2) Pleaders of the lower grade, and (3) *Mukhtars*, and the first part of each return should show, in order of seniority, the names, etc., of those who have renewed their certificates; and the latter part, the names, etc., of those who have not done so.

517. District Judges will inform the District Magistrates of the names of any Pleaders and *Mukhtars* who may enrol themselves in their Courts or may renew their certificates.

CHAPTER III

Rules as to the Functions etc., of Mukhtars practising in Subordinate Courts, framed under Section 11 of Act XVIII of 1879

518. The following are the functions, powers and duties of *Mukhtars* practising in the Subordinate Courts [G.L. 6/30.] :—

- (1) To take instructions from their clients and to communicate with them.
- (2) To instruct Advocates, *Vakils* and Pleaders.
- (3) To present plaints and to receive them back if rejected or returned and to tender written statements.
- (4) To present petitions and file objections when such petitions and objections bear the signature of the Pleader, if any, in charge of the case.
- (5) To receive service of processes.
- (6) To apply for summons to persons whose attendance is required either to give evidence or to produce documents.
- (7) To give notice requiring admission of genuineness of documents.
- (8) To pay into or deposit money in Court and receive and give receipt for payment of money out of Court.
- (9) To apply for withdrawal of money deposited in Court and to receive payment.
- (10) To apply for and receive copies.
- (11) To bid for or purchase for his principal any property which his principal may himself legally bid for or purchase.
- (12) Receive back documents produced in evidence.
- (13) To apply to the Court to send for a record.
- (14) To file affidavits.
- (15) To apply to withdraw or adjust a suit (on producing a special power so to do).
- (16) To file a memorandum of appeal or cross-objection duly signed and certified by a Pleader and receive it back if it be rejected or returned.

(17) To identify persons before a Court-officer.

(18) To communicate with such Court-officers for information regarding any case as are permitted to give the same.

519. A *Mukhtar* shall not be allowed to address any Civil Court except for the purpose of stating the nature and effect of his application or to offer any legal argument or to examine any witness without the leave of the Court specially given.

520. Every *Mukhtar* who has acted for a suitor in any appeal or matter shall be bound to furnish to his client within 15 days after the decree or order of the Court has been signed, an account in the form hereto annexed and in a language which the client understands, showing all receipts and disbursements which have passed through his hands in the cause; and to such account shall be annexed a receipt signed by the Advocate, *Vakil* or Pleader for all fees paid to him.

A. B., in account with C. D., *Mukhtar* of the Subordinate Court of

| Cr. | | Dr. | |
|-------------------|--------|--|--------|
| 1 | 2 | 3 | 4 |
| 19 | Rs. P. | 19 | Rs. P. |
| ... | ... | January | ... |
| 1st January | ... | To paid for (here state particulars) | |
| To money advanced | ... | To my fee for (here state the particular acts he has done in the matter). To fee paid to E.F. Advocate, <i>Vakil</i> , or Pleaders for, etc., etc. | |

CHAPTER IV

Rules regarding Vakalatnamas and Mukhtarnamas

521. When a *Vakalatnama* or a *Mukhtarnama* is given by a party, who can sign his or her name, it must be signed by the party. When the party cannot sign his or her name, the *Vakalatnama* or *Mukhtarnama* must be endorsed as follows—

I, A. B., do hereby appoint C. D., Pleader
Vakil, to act for me in the above named case, in token whereof I have affixed my left thumb impression in the presence of E. F.

X (Left thumb impression)

and I, E. F., do hereby attest the above thumb impression as having been affixed in my presence by A. B., who is known to me.

X (signature)

522. *Vakalatnamas* and *Mukhtarnamas*, whether executed by principals or their attorneys and agents, shall not be required to be verified on oath. The responsibility in regard to all such documents being properly and correctly executed shall rest entirely with the legal practitioners concerned. This rule does not apply to cases in which only agents or *Mukhtars* not duly certificated under any law, for the

time being in force, are employed. In all such cases the *Mukhtarnamas* shall be verified on oath.

523. The appointment of a *Mukhtar* in addition to a Pleader cannot be authorized on the *Vakalatnama* appointing the latter but only on a separate document drawn as a *Mukhtarnama* and *vice versa*.

524. (a) No *Vakil* or Pleader without accepting in writing a *Vakalatnama* and no *Mukhtar* without accepting in writing a *Mukhtarnama* shall act in any case.

(b) No *Vakil* or Pleader shall plead in any case unless he has (a) been engaged for that purpose by another *Vakil* or Pleader duly appointed to act for the party or (b) filed a memorandum of appearance under Order III, Rule 4 of the Civil Procedure Code.

525. (a) Pleaders of all grades, *Vakils* and *Mukhtars* must understand their responsibility to the Courts in which they practise in the matter of accepting *Vakalatnamas* or *Mukhtarnamas*, as the case may be, from the parties themselves or from persons professing to be authorized by special or general powers-of-attorney to act on behalf of other persons.

(b) The Courts accept *Vakalatnamas* and *Mukhtarnamas* on the responsibility of the legal practitioners filing them. A Pleader or *Mukhtar* accepting a *Vakalatnama* or *Mukhtarnama* purporting to be executed by his client in person is bound to satisfy himself that it was so executed. When it purports to be executed by a third party on behalf of his client he is bound to ascertain that such person has been duly empowered by the client to appoint a Pleader, *Vakil* or *Mukhtar*, as the case may be, and has himself executed the document.

(c) No *Vakil* or Pleader shall receive a *Vakalatnama* and no *Mukhtar* shall receive a *Mukhtarnama* from any person other than the party himself or his recognized agent or person duly authorized by a power-of-attorney to act in this behalf or his servant or relation.

Note.—A *Vakalatnama* may be accepted from a Pleader or a *Vakil* specially authorised in writing in that behalf.

(d) No *Vakil* or Pleader shall receive a *Vakalatnama* and no *Mukhtar* shall receive a *Mukhtarnama* from a person who is unable to sign his or her name, unless it bears an endorsement in the form prescribed by rule 521 (above).

(e) Where there are more parties than one and they want to file separate *Vakalatnamas* or *Mukhtarnamas*, the *Vakalatnama* or *Mukhtarnama* of one may be received from any other similarly authorised but if they desire to put in one and the same *Vakalatnama* or *Mukhtarnama* it may be received from any one of them or from a person duly authorized by any one of them without special authority from the others.

(f) When a *Vakalatnama* or *Mukhtarnama* is filed by a *Vakil*, or Pleader or *Mukhtar*, as the case may be, he shall endorse on the back of it the date of acceptance, the name of the person from whom it is received and if such person is neither the client himself nor a *Vakil* nor a Pleader shall state the precise nature of the authority, with date, of that person. He shall also certify that he has satisfied himself that he does not appear nor hold brief for the opposite party.

(g) A *Vakalatnama* or *Mukhtarnama*, which has been filed in Court may, subsequently, with the permission of the Presiding Officer, be accepted by a person whose name appeared in it at the time when it was filed. In the case of such subsequent acceptance an endorsement shall be made as in the case of the first acceptance.

(h) A *Vakalatnama* filed in Court may, with the permission of the Presiding Officer, be transferred by one Pleader to another named in such *Vakalatnama*, provided that the transferee signs the endorsement made by the original holder under sub-clause (f) of this rule. But a Pleader cannot transfer his *Vakalatnama* to another Pleader whose name does not appear in the *Vakalatnama* without an express power in the *Vakalatnama*.

Note.—A Pleader's registered clerk cannot transfer a *Vakalatnama* to any Pleader.

526. *Vakils*, Pleaders and *Mukhtars* cannot without a special power in their *Vakalatnamas* or *Mukhtarnamas*, or unless distinctly authorised by a separate instrument, receive sums in deposit in Court. If the record containing the *Vakalatnama*, *Mukhtarnama* or separate instrument has been sent to the District Record-Room, and such authority cannot be proved without reference thereto, the *Vakil* or Pleader or *Mukhtar* concerned should be required to endorse on the application for payment order or on the petition for the satisfaction of the decree, as the case may be, a certificate to the effect that he has the requisite authority to file the same.

CHAPTER V

Miscellaneous

527. No Judicial Officer shall be allowed to practise as a Pleader, *Vakil* or an Advocate during the term of any leave that he may obtain from the Court.

528. An Advocate, *Vakil* or Attorney of a High Court other than that at Patna is not entitled to practise as such in the State of Bihar unless he ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto.

529. ¹[x x x x]

530. ¹[x x x x]

²**531.** Advocates appearing in the Supreme Court, Subordinate Courts, Tribunals or authorities shall wear the following dresses :—

1. Advocates other than Lady Advocates—

- (a) a black buttoned up Coat, Chapkan, Achkan, Black Sherwani and White bands with Advocate's Gowns, or
- (b) a black open breast Coat, white shirt, white collar, stiff or soft, and white bands with Advocate's Gowns.

In either case long trousers (white, black or black stripped or grey) or Dhoti.

2. Lady Advocates—

- (a) Black and full or half sleeve jacket or blouse, white collar, stiff or soft with white bands with Advocate's Gowns.

1. Deleted by C.S. No. 71, dated 4.10.1980.

2. Subs. by C.S. Nos. 72 dated 4.10.1980.

(b) Sarees or long Skirts (white or black) or flare:

Provided that wearing of Advocate's Gown shall be optional except when appearing in the Supreme Court or in a High Court:

Provided further that in Courts other than the Supreme Court, High Court, District Court, Sessions Court or City Civil Court a black tie may be worn instead of a band.]

Note : ¹[Deleted].

Rules regarding Pleaders' and Mukhtars' registered clerks.

532. The expression "Registered Clerk" means a clerk who is employed by a Pleader or a *Mukhtar* in connection with his legal business and who is registered under these Rules.

533. A registered clerk shall for the purpose of performing the ministerial part of the work of his employer's office have access to any Court in which the latter is authorized to practise and to such of its ministerial officers as may in that behalf be designated by the Presiding Officer of such Court. [G.L. 3/53.]

Note 1.—This does not authorize a registered clerk to go inside the office of any Court.

Note 2.—No person employed by a Pleader or *Mukhtar* other than a registered clerk shall be allowed access to any of the Courts of the district or to have any dealing with the ministerial officers attached thereto. [G.L. 8/26.]

534. Not more than two clerks at a time shall ordinarily be registered.

²**535.** At *Sadar* stations the registering authority for all registered clerks shall be the District Judge. At all other stations, such authority shall be the senior Judge (unless the District Judge otherwise directs) where there is Civil Court, and the Subdivisional Officer where there is no Civil Court.]

536. (a) Every application for the registration of a clerk shall be made to the Registering Authority by the Pleader or *Mukhtar* desiring to employ him. It shall also be signed by the clerk proposed to be employed.

(b) Such application shall be on plain paper and shall contain—

- (i) a certificate from the Pleader or *Mukhtar* that the person proposed is to the best of his belief fit to be so employed and will be employed *bona fide* in his own service and for the purpose of his legal business and that he will make it a condition of his accepting a brief that remuneration shall be paid to his authorised clerk or clerks of an amount not less than five per cent of the fee paid to him subject to a minimum of Rs. 2;
- (ii) the name or names of other registered clerks, if any, under him;
- (iii) a statement declaring that he has no unregistered clerk and undertaking not to employ any such clerk during the year.

(c) The registering authority on receiving the application may—

- (i) dispose of it at once when the person proposed is known to him; or
- (ii) refer it to the Bar Association or the *Mukhtars'* Association as the case may be for their opinion; or

1. Deleted by C.S. 73 dated 4.10.1980.

2. Subs. by C.S. No. 27, dated 11.8.1972.

(iii) make such other inquiry as he thinks necessary.

(d) When the registering authority is of opinion that the person proposed is a fit and proper person to be employed as a registered clerk he shall enter his name in the Register of Clerks [Form No. (R) 25] and issue to him a card in Form No. (M) 21]. These cards shall be strictly non-transferable and shall be returned at the close of each year when clerks must be re-registered. [G.L. 11/49.]

(e) Each registering authority shall at the beginning of the year send a copy of his register and of all subsequent additions and alterations therein immediately after they are made to the other registering authority; if any, at the same station for information and for incorporation in his register.

537. The procedure in Rule 536 shall apply to annual re-registration. As soon as a card (new or renewed) is ready for delivery a notice thereof shall be posted in the Court-house with an intimation that it will be liable for cancellation if not taken delivery of within 15 days from the date of the notice. No card which has been lost or cancelled can be renewed without payment of fee of Rs. 1 to be credited to Government. The same fee shall also be levied where a Pleader or *Mukhtar* applies for registration of a clerk in place of another unless he gives up the card of such other clerk.

Note.—A list containing the name of the clerks who have not renewed their cards should be posted in the Court house with an intimation that they are liable to penalties if found working without having renewed their cards.

538. Any registering authority in the case of a clerk registered by him may for reasons to be recorded in writing and after hearing the clerk in his defence order his suspension or removal from the register and the cancellation of his card. Every order of the removal shall be communicated to the other registering authorities of the district.

Note.—Proceedings taken against clerks under this sub-rule are administrative and not judicial proceedings.

539. No person whose name has been struck off the register shall be recommended for registration by any Pleader or *Mukhtar* at the same or any other station.

540. No clerk registered as the clerk of one Pleader or *Mukhtar* shall work or do business on behalf of any other Pleader or *Mukhtar* or in any case in which his employer is not engaged.

541. No clerk registered as the clerk of a particular Pleader or *Mukhtar* shall, except in the absence of his employer, pass or hand over to another Pleader or *Mukhtar* any paper written by him to be filed in a case unless such paper also bears his employer's signature.

542. The Rules regarding registration of Pleaders' clerks shall also apply to the clerks of *Vakils* and Advocates ordinarily practising in Subordinate Courts.

Note.—In exercising the powers mentioned in Rules 535 and 538 the Subordinate Civil and Criminal Courts shall be subject to the general control of the District Judge and the District Magistrate respectively.

PART VIII
Libraries, Forms and Stationery
CHAPTER I
Libraries

543. The Head Clerk of the Administrative Office or the Accountant at out-stations is to be appointed Librarian of the Office Library. He will be primarily responsible for the custody and preservation of the books therein; but this will not relieve the Judge or other presiding authority from the general responsibility devolving on him as Head of the Office. [G.L. 12/53, G.L. 6/60.]

544. (a) *Form No. (R) 42—Stock Register of books in the Library.*—A register of all books, reports, returns, etc., received in the Library shall be maintained. As soon as anything is received in the Library, it must at once be entered in this register and immediately thereafter in the catalogue. Once a quarter the clerk in charge of the Library will submit the register for inspection to the officer-in-charge.

(b) *Catalogue.*—Correct catalogue must be kept up of the books in the Library. No particular form is required but the catalogue should be of stout paper, and strongly bound to be preserved forever. Under each class where all entries relating to existing books have been made, a certain number of blank pages should be left for future entries. At the end of the volume a few blank pages should be reserved for the purpose of entering therein books of any class for which the space allotted has proved insufficient. The necessary cross reference to such pages should be made.

Note.—The proceedings of the State Legislature and other publications referred to in rule 253 of the Bihar Records Manual, 1951, should be treated as books for the purpose of this rule. [G.L. 1/40.]

545. Each book must have a number labelled upon it corresponding to a number in the catalogue, and, as fresh additions are made to the Library, they should be labelled and numbered in like manner. Each book should also be marked on several leaves with the office stamp.

546. (1) When any officer requires a book from the library, he shall send a receipt for it on a slip of paper, which shall be returned when the book is returned to the library.

(2) The Librarian shall enter in a register to be kept in the following form for the purpose : —

- (a) the serial number;
- (b) the name and number of each book removed from the library on that day and not returned before the close of the day;
- (c) the date when it was removed;
- (d) the name of the person to whom issued;
- (e) the borrower's initial with date;
- (f) the date of return and the Librarian's initial;
- (g) the date of each reminder; and
- (h) remarks.

(3) When the signature of the receiving officer cannot be conveniently obtained the requisition slip—receipt which is also necessary in the case of the Judge to whose office the library is attached, should be filed in chronological order, serially numbered and the serial number entered in column 5 of the above register.

547. The preceding rules shall be applied, as far as possible, to the Courts of the Subordinate Judges and *Munsifs*. Catalogues must be kept by every such officer of such Regulations, Acts, Gazettes, etc., as may be furnished by Government for the use of his office; and on receiving charge of any judicial post, the relieving officer should satisfy himself that the Library of the Court to which he is appointed is complete and in good order, and the catalogue correct. Should any books be found wanting or their condition materially damaged, he should report the fact without delay to the Judge to whom he is subordinate, or else he will be held answerable for the deficiency.

548. The copy of the Government Gazette supplied to the District Judge should be bound in yearly volumes and kept for 25 years, important parts of the Gazettes supplied to other officers, such as containing Bills, Acts, Notifications of the Government, etc., should be preserved for 12 years and other unimportant parts should be preserved for 3 years only. Parts which are to be preserved for 3 years only need not be bound. At the expiry of the said period, they should be sold.

549. District Judge should from time to time inspect the books and weed out duplicate copies of superseded editions and books which are of no further use. They may be sold to the best advantage.

1[550. At every district headquarters a separate clerk shall be deputed to have charge of the combined stock of forms and stationery required for all the Courts thereat. He will be known as the Forms and Stationery Clerk and shall work under the supervision of the Accountant. At every other station where Civil Courts are situate, the Accountant shall hold charge of the combined stock of forms and stationery. Issue of forms is to be made on written requisitions containing the following particulars—

(i) Description of forms, (ii) Purpose for which required, (iii) Number required, (iv) Name of person, (v) Remarks.

The requisitions shall be put up before the Judge-in-charge of the form who will pass necessary orders and the forms will be issued accordingly. Supplies, if ordered, should be issued by the clerk-in-charge, Forms and Stationery, once a week to the Chief Ministerial Officer of each Court, and to parties daily, at an hour to be fixed by the Judge-in-charge of Forms and Stationery. The requisition slips should be retained for two years.]

551. The Forms and Stationery clerk shall maintain correct accounts of receipts and issues.

552. Each entry of the receipt and of the issue of blank books of peremptory cash receipts [Form No. (A) 21] in the register of forms received, issued and in stock [Form No. (R) 30] shall be checked and initialled by the Judge-in-charge as soon as possible after it has been made.

1. Subs. by C.S. No. 11, dated 11.8.1972.

553. The forms shall be arranged on the racks by groups in accordance with the classification given in Volume II and the name of each form with Schedule and serial number shall be shown against it on the shelf. A board indicating the name of each group of forms will be exhibited against such groups.

554. The Cashier will keep the supply of the saleable forms. These forms can only be issued to the public by the Cashier.

Note 1.—For rules as to the indent and supply, etc., of forms, see the rules prescribed by the Government for the supply and custody of printed forms.

Note 2.—For rules as to indent and supply of stationery, see Stationery Manual.

PART IX

Miscellaneous Instructions

[G.L. 4/42, G.L. 1/46 (Re-closing of Courts on the death of persons of repute), G.L. 1/48, Re-name plates in Hindi), G.L. 1/48, G.L. 2/60 (Re-prompt acknowledgment of High Court judgment), G.L. 5/63 (Re-courtesy to the Hon'ble Judge on inspection).] [H.C. Memo no. 8168-84, dated 12th August, 1966—Re-courtesies to Ministers etc., G.L. 2/65 (Re-personal file for staff), G.L. 7/65 (Re-maintenance of gradation list of staff).

CHAPTER

I—OFFICE

555. No one not being a member of the office establishment will be permitted to enter any office room without the special permission of the Presiding Officer.

556. At the entrance of each office room occupied by clerks or copyists, a wicket gate shall be placed which no outsider shall be allowed to pass. Outside the entrance a board should be hung in a conspicuous place having printed upon it both in English and vernacular "No admittance for the public". All transactions between the public and the office shall be over this wicket gate as far as practicable and no one will have access to any member of the establishment except to such officers as the District Judge may in his discretion direct.

557. Judicial Officers will see that as far as practicable these officers sit near doors or windows to be accessible to the public. Where this is not practicable, outsiders may be allowed to come up to their tables for the transaction of any business.

558. Each clerk will keep a duty card in the following form. It will be signed by him and by the *Sarishtadar*—

| Name of Clerk | | Department | |
|-----------------------|-------------------------|-----------------------|---------|
| Nature of work | | | |
| Authorised registers. | Unauthorised registers. | Miscellaneous duties. | Remarks |
| 1 | 2 | 3 | 4 |
| | | | |

Note 1.—The card is to be signed by the *Sarishtadar* and the clerk concerned and a duplicate of the same similarly signed is to be kept in the shape of a bound book by the ministerial head of the department to which the clerk belongs. Such ministerial head of the department will be responsible for having all changes in the nature of work of each officer under him duly entered on the cards affected. These cards shall be preserved for a period of twelve years from the date of their revision and then destroyed.

¹**Note 2.**—A separate Duty Card shall also be maintained by the *Sharishtadar*, which will be signed by him and by the Registrar at *Sadar* Station of the Judgeship and at such stations where there is no Registrar, his Duty Card shall be signed by the District Judge.]

559. (i) The *Sarishtadar* of every Court will be held responsible for the due and prompt performance of all duties connected with the management and supervision of the office. He is responsible for the condition of the office, the records kept there and the work done by the staff employed.

(ii) It is his duty to insist on the regular and efficient discharge of all kinds of business for which any and every member of the establishment is responsible, to exercise proper personal control and supervision, to make himself thoroughly acquainted with each man's work and check it frequently, to give proper instructions regarding the maintenance of registers, etc., and the performance of other duties, and to see that the Rules and Orders of the High Court are strictly carried out.

(iii) He shall inspect once every quarter the work of each member of the staff and submit his inspection report, to the Presiding Judge. At the first sign of arrears in the work of any officer, or of such pressure of work as is likely to cause arrears, the matter must be reported at once to the Presiding Judge and all cases of unreasonable delay in the disposal of business, misconduct and neglect or improper discharge of duty should be promptly brought to his notice. Whenever a ministerial officer of the establishment is about to go on leave or transfer, the *Sarishtadar* should report to the Presiding Judge arrears in his work, if any.

(iv) The last Saturday of each month should be set aside as a "clearance day" on which day cases will not be heard except part heard sessions cases and other urgent criminal work. On the "clearance day", which will not be treated as a holiday, clerks will make up their arrears, *Sarishtadars* will do inspection, and the Presiding Officer will finish pending judgments, consider the *Sarishtadar's* reports and do some inspection himself when necessary. The District Judge will make a thorough inspection of the diaries of all the subordinate Courts once a month on the clearance day or on any Saturday or even a holiday. Plaints, urgent petitions and appeals may be filed on a "clearance day". Wherever the last Saturday of the month is a holiday (except when it falls during the annual vacation), the working day next preceding that holiday will be observed as "clearance day".

560. (1) Judicial Officers should see that the rules in the Board's Miscellaneous Rules, relating to securities of officers are followed *mutatis mutandis* in the case of ministerial officers of civil courts who are required to furnish security.

1. Note 2 added by C.S. No. 70 dated 9.6.1980.

Note.—Rule 208 of the Board's Miscellaneous Rules applies generally to officers who handle money and provides a scale of security varying with the amount of money handled, whereas rule 220 applies to certain named officers who do not ordinarily handle money but have to handle valuable documents. The accountant and other record clerks in civil courts come under the latter category and are required to furnish the security prescribed in rule 220.

(2) Whenever it is found that the amount in the hands of an officer handling money is frequently in excess of the amount of his security, steps should be taken to ensure that his security is promptly raised to the proper figure.

Note.—The power to reduce the security in exceptional cases is vested in the State Government alone and the District Judge has not been empowered to exercise the function.

561. The attention of judicial officers is drawn to the following rule (rule no. 227) of the Board's Miscellaneous Rules :—

"Promissory notes and/or stock certificates of the Central Government or of the State Government and savings bank deposits lodged as security shall not be returned until after six months from the date of vacation of the office, but security bonds should be retained permanently, or until it is certain that there is no necessity for keeping them any longer".

II—CORRESPONDENCE

562. Save as provided in the succeeding rule, the rules at present in force, framed by the Board of Revenue for the maintenance, preservation and destruction of correspondence, shall be followed in Civil Courts. [G.L. 8/64.]

Note 1.—Correspondence includes returns and requisitions for records required for reference in other cases.

Note 2.—The instructions given in the Court's General Letter no. 2, dated the 3rd December, 1928, regarding the preservation and destruction of English correspondence and the division thereof into classes A, B and C should be carefully observed. [G.L. 9/45, G.L. 7/46.]

Note 3.—The correspondence register should be put up to the Presiding Officer for check once a week. The preparation of separate pending lists is unnecessary.

563. Registers of letters received and issued shall be destroyed after the expiry of twenty years from the respective dates of the last entries made therein. A separate permanent register of A class correspondence shall, however, be maintained in such form as may be prescribed by the District Judge. This register should be entered up each year at the time of destroying the B papers. As the B papers are sorted out for destruction the fly leaves should be brought up to date by drawing a line through all entries except those of A papers, and at the same time the remaining A papers should be entered in the permanent register, the description in the fly leaf being verified from the original. [G.L. 7/47.]

Note.—The *Sarishtadar* or where so directed by the District Judge the Head clerk, will be responsible for seeing that the instructions given in this rule and the previous rule are properly and punctually carried out.

564. In the Courts subordinate to the District Court it will be sufficient to keep the letters received in one file and drafts of letters issued in another, instead of opening a separate file for each subject.

Note.—General Letters and Circulars Orders of the High Court shall be kept in a guard file, arranged in chronological order, with proper index. One similar guard file shall be maintained for circulars of the Government of India and of the State Government. [G.L. 10/64.]

565. Correspondence relating to any case shall be filed with the record of that case.

565A. All communications intended for the High Court should be addressed to the Registrar, unless they relate to case work in its Appellate or Civil Revisional Jurisdiction in which case they should be addressed to the Deputy Registrar. For telegrams sent to the Registrar the State Code Address “High Court” will be sufficient. [G.L. 6/23, G.L. 2/55, G.L. 13/62.]

566. The pages and paragraphs of Annual and Inspection Reports and similar lengthy communications submitted to the High Court should invariably be numbered.

567. When a Civil Court has occasion to correspond with a Court in French Territory, such correspondence should be addressed through the State Government.

III—DISTRICT JUDGES AND SUBORDINATE JUDICIAL OFFICERS

568. (a) When presiding on the Bench District Judges, Additional District Judges and Subordinate Judges shall wear, over a dark-coloured coat, a Judge’s or King’s Counsel’s gown made of back alpaca, with Barrister’s bands.

(b) *Munsifs*, who are not Barristers-at-Law, should likewise, wear black alpaca gowns and of the same shape as the gown prescribed for a District Judge by clause (a) of this rule. The gown should be worn over a dark-coloured coat or “*chapkan*” with Barrister’s bands and with or without a head dress.

Note.—Existing blue gowns may be used till they are worn out.

(c) Such members of the State Judicial Service as have been called to the Bar, may, if they prefer to do so, wear a Barrister’s gown and bands.

569. Judicial Officers are sufficiently described by their official designation, but where there are more than one officer of the same class posted at the same station, they should be designated as Additional District Judge, 1st Subordinate Judge, 1st *Munsif*, 2nd *Munsif*, Additional *Munsif* as the case may be according to the names or numbers their Courts bear; without any reference to seniority. [G.L. 11/65.]

570. It is not ordinarily within the province of District Judges to issue general orders in the form of circulars to the Judicial Officers subordinate to them. If there be any matter connected with the judicial administration of their districts, which in their opinion requires the issue of a general order for the information and guidance of the Courts over which they exercise control, they should submit such order for the confirmation and approval of the High Court, without which it should in no case be issued.

571. Before leaving a district of which he has held charge, a District Judge should place on record, for the use of his successor, his opinion of the character and qualifications of every subordinate Judicial Officer employed in the district.

572. (a) District Judges are required to report to the High Court any formal transfer of charge in any Civil Court subordinate to them including the assumption by the *Sarishtadar* of charge of the current duties of a *Munsif's* Court during the temporary absence of the *Munsif* or pending the arrival of his successor, and the handing over charge of the current duties of his office by a District Judge proceeding on circuit.

(b) When a District Judge assumes or relinquishes charge of his office he should report the fact to the Accountant-General, the High Court and the Chief Secretary to the State Government.

573. No officer of the Judicial Service shall be permitted to reside elsewhere than at the headquarters of the station to which he is for the time being posted, except with the special sanction of Government, granted in exceptional cases and upon consideration of circumstances, brought to notice by the District Judge under whom the officer whose exemption from the rule is recommended is serving at the time.

574. The attention of Judicial Officers of all grades is invited to "the Government Servant's Conduct Rules" regulating the conduct of public servants in respect to borrowing money, receipt of complimentary addresses and the like. [*G.L. 2A/16, G.L. 4/63.*]

575. As a general rule, *Munsifs* ought not to be Municipal Commissioners, as the acts of Municipalities are frequently called in question, and might come before the *Munsifs* judicially. An exception, however, might be made in those cases where there are two or more *Munsifs* at one station, in which case one of them might be a Municipal Commissioner.

576. The appointment of a *Munsif* to be a Member of a District or a Local Board should only be made when it is certain that the *Munsif* will have leisure to undertake the duties involved.

IV—CONSTRUCTION AND REPAIR OF BUILDINGS FOR JUDICIAL OFFICERS

577. (a) District Judges are empowered to give administrative approval to projects for construction of non-residential buildings under the head "50—Civil Works" under their control, the cost of which does not exceed Rs. 5,000. Projects estimated to cost a sum exceeding Rs. 5,000 and not exceeding Rs. 10,000 must be submitted, with plans and estimates, to the High Court for administrative approval. Projects estimated to cost more than Rs. 10,000 must be submitted with plans and estimates for administrative approval to the State Government through the High Court.

(b) District Judges are further empowered to accord administrative approval to the additions, improvements and alterations, in existing water-supply and sanitary installations under the head "39-P. H.D." and in existing electrical installations under the head "50—Civil Works" of a non-residential buildings, the cost of which does not exceed Rs. 2,500 and Rs. 500, respectively.

(c) Projects relating to residential buildings under the head "50—Civil Works" the cost of which does not exceed Rs. 7,500 and additions, improvements and alterations in existing water-supply and sanitary installations under the head "39-P. H.D." and in existing electrical installations under the head "50—Civil Works" the cost of which does not exceed Rs. 2,500 and Rs. 500, respectively, with plans and estimates, rent statement and average pay of the incumbent of the post must be submitted to the High Court for administrative approval. All projects costing more than the amount specified above should be submitted to the State Government for administrative approval through the High Court.

(d) Outlay on the first installation of water-supply, sanitary and electrical works in a non-residential or residential building requires the sanction of the State Government and all such projects must be submitted to the State Government with plans and estimates (and also with rent statement and average pay of the incumbent of the post in case of residential buildings) through the High Court.

(e) In framing such applications care should be taken to satisfy the requirements of the Resolution on the subject, quoted on the margin, and in particular, to explain clearly the degree of urgency which attaches to each proposal. The funds at the disposal of Government for the construction of buildings are not ordinarily sufficient to meet all demands and it is, therefore, necessary to distinguish those which are of immediate urgency in order that due priority may be given to them. [*Resolution of the Government of Bihar and Orissa, Public Works Department, no. 7625—94—A—IIP—7—25, dated the 24th June, 1925.*]

V—APPLICATIONS FOR TEMPORARY ADDITIONS TO THE STAFF OF JUDICIAL OFFICERS

578. No application for temporary additions to the staff of Judicial Officers of a district will be considered, unless the causes which have brought about the necessity for assistance, are clearly and fully explained. It is desirable that the High Court should know how far that necessity arises from causes beyond the control of the officers concerned, and how far it is due to the incompetence or inaptitude of individual officers. Without such information, the Judges are unable to fix with any certainty, the number of officers required, for different districts from time to time. [*G.L. 4/16, G.L. 1/19.*]

579. If a District Judge, when making such application, is of opinion that the existing staff of officers has been and is working to its full power a certificate to this effect should be given.

Note 1.—Further instructions are contained in General Letters Nos. 3 of 20th February, 8 of 28th April, 1902 and 7 of 12th July, 1913, and 4 of 12th August, 1916, to which reference should be made.

Note 2.—For form of statement which should accompany such application, see Form No. (M) 20. The statement should be submitted in duplicate.

580. Additional officers appointed temporarily are, as a rule, comparatively junior and inexperienced. The simpler suits should therefore be transferred to them for trial, while cases of a more complicated character should be dealt with by the permanent staff. District Judges are expected to see that the services of additional officers are utilized to the best advantage. [*G.L. 7/30.*]

VI—LEAVE AND EXTENSIONS OF SERVICE

A—¹ [Leave of District Judges and Additional District Judges]

581. Applications for casual leave, quarantine leave and leave of absence during gazetted holidays, under the conditions laid down in the rules promulgated with Government letter no. 2101-66-A, dated the 12th March, 1928, as amended by Order no. 2966-A.R., dated the 24th July, 1934, should be made by District Judges and Additional District Judges to the High Court.

²**581-A.** District Judges and Additional District Judges should submit their applications for regular leave in duplicate, one copy being sent to the High Court direct and the other through the Accountant-General, Bihar.

Note.—When the services of any District Judge or Additional District Judge, on deputation or otherwise, are placed at the disposal of the State Government or when any such officer is or has been permitted to be employed under any department of the State Government or some other authority, he should submit his application for leave to the State Government or the authority concerned, as the case may be, with advance copy to this Court and leave shall be granted by the State Government or the said authority concerned with due intimation to the High Court (subject, however, to the provisions under item 16 at Appendix I of the Bihar Service Code).]

B—Leave of Subordinate Judges and Munsifs

582. Applications for casual leave and quarantine leave presented by officers of the State Judicial Service should be disposed of by District Judges without reference to the High Court in accordance with the orders laid down in the Circular of the Government quoted above. District Judges should maintain a register of casual leave in the form prescribed in paragraph 8 of the Circular.

583. District Judges should exercise the powers above conferred upon them with due regard to the exigencies of the Public Service and they will only grant casual leave, when satisfied that the application is fully justified, and that the amount of leave asked for is not in excess of the minimum necessary.

584. Casual leave must not be combined with the vacation.

585. District Judges may exercise their discretion in the matter of granting or refusing leave of absence to Judicial Officers during authorized holidays (other than the Civil Court Vacation).

586. All applications for vacation Leave from officers in any one district should be submitted by the District Judge to the High Court (which alone can sanction such leave) in one communication, and not by means of a separate letter in each case.

587. In submitting such an application from a Subordinate Judicial Officer the Judge should distinctly, certify that it can be granted without injury to the public service or additional expense to the State; and where an officer has failed to rejoin his appointment in time to sit on the day the Courts re-open after the Dussera vacation, he should be reported to the Accountant-General as absent without leave and his absence brought to the notice of the High Court.

1. Subs. by C.S. No. 26, dated 11.8.1972.

2. Ins. by *Ibid.*

588. Applications for leave from Subordinate Judges and *Munsifs* should invariably be forwarded by District Judges to the High Court through the Accountant-General, but a copy of the application should at the same time be forwarded to the High Court direct, with the District Judge's recommendation. [G.L. 3/17.]

589. All applications for leave or for extension of leave should be submitted in time to allow the completion of any arrangements that may be necessitated by their being granted, and District Judges should not treat an application for leave as urgent unless they are satisfied that such is actually the case. [G.L. 5/17.]

590. District Judges should not, without first consulting the High Court, permit *Munsifs* and Subordinate Judges to leave their stations in anticipation of the grant of leave by the High Court, except in cases of extreme urgency and when prior order of the High Court cannot be obtained in due time even by telegraph or telephone."

591. Permission to return to duty before the expiration of leave should not be given by District Judges to any Judicial Officer without the orders of the High Court, previously obtained.

592. Subordinate Judicial Officers, when applying for leave on average pay or half average pay, should state in their applications whether or not they were prevented from availing themselves of any, and if so, of what portions of the three previous vacations, by reason of having to remain at their post on duty.

Note.—See rules 171, 176, 177, 178 and 184 of the Bihar Service Code, 1952 and rule 35.

593. Subordinate Judicial Officers should give timely notice of their intention to apply for leave on average pay or half average pay. Unless very urgent reasons to the contrary exist, leave on average salary will not be granted to officers who fail to comply with this condition, and officers who anticipate the sanction of the Court will expose themselves to the risk of being treated as absent without leave.

594. Officers should forecast their requests for leave on average pay or half average pay with some approach to accuracy, and must understand that applications for extensions of leave, save for urgent reasons will not be granted unless an officer can show that he was unable to foresee the necessity for longer absence at the time he originally applied for the grant of the leave.

595. When forwarding applications for leave on average pay or half average pay, the District Judge should invariably certify thereon whether or not such officer applied for and obtained leave during previous vacations; and if he did not apply, whether, if he had applied for such leave, then, having regard to the duties he had to perform, the leave would have been granted to him and other practicable arrangements made for the work, or would have been refused.

596. Officers of the State Judicial Service who desire to obtain leave on medical certificate or extension of such leave must follow the procedure prescribed in rules 178 to 183 of the Supplementary Rules made by the State Government in extension of the Fundamental Rules.

C.—Extension of Service

597. An Officer of the State Judicial Service desiring an extension or further extension of service should submit an application for the same through the District

Judge either in January or in July before the date on which he is due to retire. In the absence of such application it will be assumed that he is not desirous of continuing in the service, and the State Government will be informed accordingly.

VII—INSPECTIONS BY DISTRICT JUDGES

598. The District Judge of each district is required to inspect annually if possible, but if not, at least once in every 18 months, each of the Subordinate Civil Courts and the Courts of Small Causes in his district, and to submit a report of his inspection of each Court without delay to the High Court. It is not intended that a District Judge should make a long tour for the purpose of inspection, and he should use the most expeditious means available of travelling to and from the place where the inspection is made. [G.L. 13/17, G.L. 2/19, G.L. 4/19, G.L. 6/19, G.L. 11/26, G.L. 7/55, G.L. 2/56.]

599. The object of an inspection is to satisfy, in the first instance, the District Judge, and afterwards, through him, the High Court, that the work judicial and ministerial, in each of the Subordinate Courts is conducted strictly according to law and according to the rules prescribed by the High Court; that it is disposed of with regularity, punctuality and efficiency; and to detect and correct errors and irregularities. The Judge should, however, remember that while his duty is, on the one hand, to observe and correct errors, he is also to encourage, assist and advise; he should clearly and courteously explain all difficulties occasioned by inexperience or change of system, and should invite free communication on all topics of mutual concern.

600. The District Judge shall forward a copy of his report of inspection to the presiding officer of the Court concerned for his information and guidance, unless for any special reason the Judge considers it should be withheld in which case he will take the orders of the High Court in the matter.

The copy of the inspection report shall be preserved by the Subordinate Court in a guard-file to be kept for the purpose, and it shall be the duty of the presiding officer of the Court to see that the defects and irregularities pointed out therein are remedied as soon as possible and a note made against each defect or irregularity that this has been done. [G.L. 10/64.]

The guard file is to be placed before the District Judge at every inspection.

601. In making an inspection and writing his report, the District Judge should deal with the work of the Subordinate Court under the following main heads :—

- (i) *The working of the establishment.*—This will include the Administrative Office, Library, the Accounts, Forms and Stationery, Copying, and Nazarat Departments, and the state of the Registers, Records and the Record-Room. [G.L. 1/65.]
- (ii) The manner in which the Presiding Judge performs his judicial work as regards ability, temper, discretion and punctuality. The District Judge should sit in Court with the Presiding Officer, and should note particularly whether due attention is paid to the provisions of the Code of Civil Procedure regarding the drawing of the plaint and the written statement of the parties before the Court, the settlement of the issues

and the examinations of witnesses, as also the reasons given for postponements or adjournments. He should remark particularly on the degree of ability exhibited by the Presiding Officer in examining parties before him, in checking the putting of irrelevant questions by the Pleaders, and generally in the conduct of a case before him.

- (iii) The outturn of judicial work and state of the pending files.
- (iv) Records of cases of the grant of *ex parte* injunction should be scrutinised to see whether the instruction in Chapter IXA, Part I, are carefully acted upon. Defect, if any, in the application of the principles which govern the exercise of the powers given by Order XXXIX, Schedule I of the Code of Civil Procedure should be explained to the officer whose work is inspected.
- (v) The register of information regarding the application of the Usurious Loans Act, 1918, and records of cases should be examined to see whether the provisions of the Act are being properly applied.

602. (a) It is desirable that the District Judge's Record Room and Offices be thoroughly inspected at least once each year by the District Judge, or should he be unable to do so for any reason, which should be explained, by such Gazetted Officer subordinate to him as he may depute for the purpose. An inspection by the District Judge himself must, however, be made at least once in two years. A copy of the report of inspection shall be submitted to the High Court.

(b) An officer inspecting the Record-Room should call for the inspection guard-file to see what action has been or is being taken on previous inspections, and to note any undue delay or omission in this respect.

PART X

Account Rules (Judicial)

CHAPTER I

I—GENERAL

603. The following rules prescribe the procedure for the receipt and payment of money, and for keeping accounts to be observed by officers exercising judicial powers and dealing with money in that capacity. They apply to all Judges, Additional Judges, Subordinate Judges, *Munsifs* and Small Cause Court Judges.

604. (i) "Out-station" means a Court not situated at or near a Treasury or a Sub-treasury and includes a Court at or near a Sub-treasury during such time as it may be temporarily closed owing to the absence of the Sub-divisional Officer from his headquarters.

(ii) "District Judge" means the officer whose accounts are rendered to the Accountant-General, either for his own Court only or for his own and Subordinate Courts and includes any officer who may be vested with the powers of a District Judge for the purpose of these rules and in any district in which a District Judge is not for the time being resident, the principal Civil Judicial Officer at headquarters.

Note.—In districts where there is no District Judge the principal Civil Judicial Officers at the headquarters are the officers vested with the powers of a District Judge.

(iii) "Judge-in-charge" means the officer who, when two or more Courts at one station are combined for the purposes of these rules, supervises the single set of accounts maintained for all the Courts so combined. When Courts are not so combined each Judge is the "Judge-in-charge" of his own accounts.

(iv) "Day" shall be taken to close at 2 P.M. and the "next day" to extend from that hour to 2 P.M. of the following calendar day.

(v) "Month" shall be taken to close in Courts at district headquarters at the end of the last account day of the month; in Courts at Sub-treasuries at 2 P.M. on the day on which the accounts of the Sub-divisional treasury are finally closed for the month; and at out-stations, at 2 P.M. of the last day on which the accounts can reach the Treasury in time for incorporation with the Treasury accounts for the last day of the month.

(vi) "Year" shall be taken to begin on the 1st April and to close on the 31st March.

605. A District Judge cannot delegate his powers as regards accounts to any of his subordinates. What he can do, when absolutely necessary, is to place any of the officers subordinate to him in charge of accounts-without in any way relieving himself of the responsibility for the due accounting of all receipts and payments. When this is done, the Judge's establishment will do all the work in connection with the accounts, and the subordinate officer will sign the papers as if he were placed in charge of the current duties of the Judge's Court, and to the Chief Ministerial Officer of the District Judge's Court (but of no other Courts at headquarters station) may be delegated the duty of passing *chalans*.

606. Between 2 and 3 P.M., the accounts shall be made up and no transactions shall take place in Court. If, under exceptional circumstances any transactions have to be allowed after 3 P.M., they must be entered *on the same calendar day*, in the Court's accounts but bearing date the next open day, and the receipt should on the same day be verified by the Judge-in-charge.

Note.—On the last working day of each month or when the Treasury closes at 1 P.M., it is necessary that the accounts be closed at noon, and in this case the next day shall extend from noon till 2 P.M. of the following calendar day.

607. The following are the heads of account in the public accounts under which the money received and paid by Judicial Officers, or under their orders is classified [*G.L. 3/64.*]—

(a) Civil including rent deposits and also compensation for land taken up for public purposes.

Note.—Any sum deposited in Court under Section 379 (1) of the Indian Succession Act (XXXIX of 1925), with an application for a certificate or for the extension of a certificate, must be classed under Civil deposits. See Note 3 to rule 612.

(b) Fines (judicial); refunds of the same.

Note.—For refunds of fines, see rule 637.

(c) Stamp duty and penalties realized in Court. Refunds of the value of Court-fee stamps.

- (d) Value of the unclaimed property of intestates and others credited to Government.

Note.—The value of such property cannot be credited to Government until the time limited by law has expired (*vide* rule 692 post). For refund under heads (d) to (f), see rule 637.

- (e) Other general fees, fines and forfeitures, i.e., general forfeitures and forfeitures of earnest money of defaulting bidders.
- (f) Miscellaneous receipts, that is, sale-proceeds of forms in Civil Courts, and other items.

Note 1.—Details of accounts credited as “other items” should invariably be furnished to the Treasury Officer.

Note 2.—Service-books are sold direct from the treasury to parties requiring them. There can therefore be no cash receipts on this account.

Note 3.—Other items will include deposit of the minor’s money under the Guardians and Wards Act, whenever necessary.

- (g) Sale-proceeds of old stores and materials.

Note 1.—Receipts under this head are credited to the head “XXV—Miscellaneous” in the Treasury Accounts.

Note 2.—The Treasury Officer should invariably be informed of the nature of the items, *i.e.*, whether furniture or stores, etc.

- (h) Peremptory receipts, *i.e.*, witnesses’ expenses, prisoners’ diet-money, boat-hire, costs of adjournment, *Amins’* travelling allowance, fees and expenses payable to Commissioners, daily fees payable under the rules for deputation of peons and other peremptory receipts.

Note 1.—Money-orders for the payment of witnesses’ expenses or of any other of the peremptory items falling under clause (h) shall be made payable to the Cashier of the Court to which the money is remitted. The Cashier will receive the money as provided in rule 617 and will deal with it as directed in rule 623. The number of the suit and other necessary particulars shall be entered in the coupon which is attached to all money-orders.

Note 2.—The Civil Courts shall not receive postage stamps in payment of travelling and other expenses of witnesses.

Note 3.—When a Government servant whose salary exceeds Rs. 10 *per mensem* is summoned to give evidence in his public capacity in a civil case to which Government is a party, all sums recovered under Order XVI, Civil Procedure Code, on account of his travelling and other expenses shall be credited to Government. In all other cases such expenses should be paid to him in full. Any sum ordered by the Court to be paid to a Government servant as actual travelling expenses incurred in attending Court not more than 5 miles from his headquarters shall in any case be paid to him.

Note 4.—The fee and salary of the finger print expert for his services on behalf of a private party and also the fee for enlargement of finger prints shall be recovered in cash in advance and dealt with as peremptory receipts. All sums so received shall be paid by the cashier into the treasury as receipts of the Police

Department. A *chalan* in quadruplicate shall be separately prepared, of which one copy shall be kept in the Court, another forwarded with the cash to the treasury, the third sent to the office of the Deputy Inspector-General of Police, Criminal Investigation Department and the fourth retained by the Accountant. A copy of the *chalan* on account of the consultation fee and fee for photographic enlargements will accompany the documents sent for examination and a copy of the *chalan* showing deposit of the cost for additional photographic enlargements (referred to in rule 412) if required and the fees and salary of the expert together with a certificate to show that the expert's travelling allowance has been deposited in Court will accompany the requisition requiring the expert's services.

Note 5.—Landlord's registration fees and cost of transmission levied under sections 13 (1) and 26A (2) of the Bihar Tenancy Act, VIII of 1885, as amended from time to time, shall be received in cash and dealt with as peremptory receipts. Every sum so received shall, on receipt by the Cashier, be forthwith paid in separately by him, into the Treasury as a Revenue deposit to the credit of the Collector. One copy of the *chalan* shall be made over by the Cashier to the Court into which the amount was paid to be filed with the record of the case to which it relates and a duplicate copy of the *chalan* shall be sent to the Collector with the notices to be served by him.

The process-fees for the service of notices required under the said sections shall also be levied in cash, and shall be paid into the treasury to the credit of Government with *chalan* separate from those used for the landlord's registration fees, duplicate copies of the *chalan* being sent to the Collector with the notices, and third copies being filed with the record.

Note 6.—The *Nazir* will purchase a Court-fee stamp of the amount actually incurred, in deputing a peon and affix it on the process under the signature of the Presiding Officer in payment of the fees. The balance of the deposit, if any, will be available for refund to the party.

Note 7.—Applications for the refund of unspent peremptory receipts may be made on plain paper [Section 19 (XX) Court-fees Act]. Such applications must be presented within three years of the date when the right to refund accrues.

Note 8.—For payments of sums received under head (h), see rule 610.

608. The receipts and payments under head (a) must appear in the Courts' account in detail but in the Treasury Account in which a personal ledger account only is maintained for this head, the daily totals of receipts and payments made at the Court and the individual items of receipt and payments at the treasury will appear. All receipts and payments under heads (b), (c) and (g) above must appear in the Court's account and in the Treasury account in detail. An account in detail of all receipts under heads (d) to (f) must be kept in Court, but only the daily totals of each kind of receipts will appear in the Treasury books. All receipts and payments under head (h) will be made on the responsibility of the Cashier whose security must be sufficient to cover any amount in his hands, and the balance in the hands of the Cashier must be noted daily in the Cash Book, as well as the balances of any other moneys with which he may be entrusted (e.g., permanent advance, or pay of establishment). They will not appear in detail in the Treasury accounts, but a

statement in Form No. (A) 9-A showing the gross amount of receipts and disbursements during the month must be sent to the Treasury on the last working day of each month for incorporation in the Treasury accounts for the same month.

Note.—Fractions of a Paise are not to be entered in the Court's account and they should neither be received nor paid.

Proviso—Provided that where money has to be paid by one person to another and both are present in Court, the money should be passed direct from the one to the other under the sanction of the Court, the fact being noted in the record of the case. No officer of the Court shall, however, receive or become in any way responsible for the money. These transactions will not appear in the Court's accounts at all.

Note.—Advantage of this proviso may be taken in cases where the judgment debtors are prepared to satisfy the claims of judgment-creditors, where costs of the day are allowed by the Court, or when sums in excess of those paid into Court are to be paid to witnesses.

609. Judges will as far as possible in their transactions with the public avoid direct receipt and payment of money under head (a) of rule 607.

Proviso 1.—Provided that the cash must be received in the following cases—

- (a) When the Court is bound by law to accept payment either absolutely or up to a given time (*vide* section 55 and Order XXI, Rules 84 and 85 of the Code of Civil Procedure), and in every such case the money shall be received even although tendered after the hour prescribed by rule 604, clause (iv).
- (b) When the proceeds of movable property sold in execution (Order XXI, Rule 77 of the Code of Civil Procedure) are realized after the hour prescribed in rule 604, clause (iv).
- (c) At out-stations in the case of rent deposits under sections 61 and 62 of the Bihar Tenancy Act (VIII of 1885).
- (d) When any sum is tendered for deposit under section 379 (1) of the Indian Succession Act (XXXIX of 1925) even though tendered after the hour prescribed by rule 604, clause (iv).

Proviso 2.—Provided that cash may be received at out-stations when the receipts falls under head (a) of rule 607 in the cases where, having regard to the balance in hand (which should not ordinarily exceeds Rs. 500), this can conveniently be done.

Note.—Payments of small sums should ordinarily be made out of cash in hand, but large payments should be made in cash, only if this can be done conveniently, and if it is better thus to disburse the balance of cash in hand than to remit it to the Treasury.

Proviso 3.—Provided that all Judges in Civil Courts may receive and pay in cash small sums coming under head (a) of rule 607. This sum so received or paid shall not in any case exceed Rs. 100 in amount.

610. (a) Money under heads (b) to (h) of rule 607 may ordinarily be received in cash in all Courts.

(b) Repayments under heads (b) to (f) should ordinarily be made through the Treasury.

(c) Under head (h), payments will ordinarily be made in cash by the Cashier on his own responsibility.

(d) No refund should be made on account of head (g).

II—RECEIPT OF MONEY

611. Payment of sums falling under heads (a) to (e), other items of (f) and of head (g) of rule 607 cannot be accepted either in Court or at the Treasury unless the money be tendered with a *chalan* in quadruplicate signed by the Chief Ministerial Officer of the Court, under whose decree or order the money is tendered, and also by the Accountant of the Court or group of Courts.

Note.—When Courts are combined for the purposes of account [see rule 604, clause (iii)] there shall be only one Accountant and one Cashier for all the Courts so combined.

612. Any person desirous of paying money into Court, or, in the case of collections made by any officer of the Court, the officer who has realized the money, shall be furnished, free of cost, with four forms of *chalan* [Form no. (A) 1] in each of which he must enter in English the particulars required from him. One of the *chalans*, herein called the original *chalan*, shall bear the Court-fee stamp (if any) required by law.

Note 1.—In the case of Deposit *Chalans* care must be taken to enter fully the nature of the deposit, the number of the suit or execution case (if any), the name of the person on whose behalf the money is paid in and of the person to whom it is to be paid over, etc.

Note 2.—No stamp is required for a tender of money which a party is bound to pay into Court in the progress of a suit, or to complete a purchase, as the Court cannot refuse the tender.

In cases where the payment is voluntary, such as deposits made on account of rent, or by a mortgagor and the like, a stamp should be required; but if the application or petition be duly stamped a second fee should not be exacted for the *chalan*.

Note 3.—In the case of sums deposited under section 379 (1) of the Indian Succession Act (XXXIX of 1925), the deposit *chalans* must show that the amount is deposited to the credit of the Judge.

613. The person desirous of paying in the money having filled up four forms of *chalan*, shall present them to the Chief Ministerial Officer of the Court mentioned in rule 611. The latter shall then ascertain that the amount tendered is correct and is due from the person on whose account it is tendered to the person to whom it is stated to be payable and after correcting the forms of *chalan*, if necessary, shall sign it and pass the forms on to the Accountant of the Court or set of Courts who having made the necessary entries in Part II shall give a serial number to them. The *chalans* shall then be laid before the Judge-in-charge, and he shall, if in order, sign them. One *chalan* shall be retained by the Accountant and the other three shall be returned to the party tendering the money, and shall be his authority to pay the

same into the Court, or into the Treasury. The copy left with the Accountant will be kept in a guard-file and will be preserved for one year.

Note 1.—Where the *Nazir* happens to be the payer three copies only of the *chalan* need be presented to the Chief Ministerial Officer. He will get back two copies from the Accountant which he will send with his Pass-book to the Treasury.

Note 2.—(a) All payments into Court for deposit under the Land Acquisition Act, I of 1894, shall be made by means of cheques, drawn by the Land Acquisition Officer in favour of the Presiding Officer of the Court to credit of Civil Court deposits. The transactions will be passed through the Court's accounts in the same way as a deposit in cash.

(b) The cheques of the Land Acquisition Officer shall be accompanied by receipts in triplicate in Accountant-General's form no. 325, Schedule XXV, duly filled up. These receipts should be regarded as *chalans* and dealt with in the matter of numbering in the same manner as *chalans* tendered with other Civil Deposits. The Accountant will use a form of *chalan* [Form No. (A) 1] and note the number and details for his office record. The three receipts will be duly signed and returned to the Collector. One of these when received back will be attached to the record of the case.

(c) When a Court awards any compensation in excess of the Land Acquisition Officer's award, the further payment due shall also be made into the Court by means of a cheque and the procedure described in the preceding paragraph shall be followed.

(d) Investments under sections 32 and 33 of the Act, of money deposited in Court, shall be arranged for, in the case of Government securities, in communication between the Court and the Reserve Bank of India, and purchases of land should be effected under the Court's order through the Collector or other Revenue authority of the district.

Note 3.—At subdivisions and out-stations the Judge-in-charge may, with the previous sanction of the District Judge, delegate to the Chief Ministerial Officer of his Court the duty of passing *chalans*.

614. No person is required to take out a *chalan* till he is actually ready to pay in the money for which he takes it, nor, after a person has taken a *chalan* can he be permitted to defer using it. The order to the Treasury Officer must therefore be limited in its operation to the day upon which the *chalan* is made over to the applicant, or, if the transaction occurs after the accounts are closed (rule 606) to the next open day. This is distinctly provided for in the form of order. In case of failure to tender the money at the Treasury within the time limited, the tenderer must obtain, by written application, an order from the Court extending the time.

Note.—When a *chalan* is issued on the Treasury it may be acted upon till 3 P.M. of the day following that on which it is issued, if so ordered by the Court. But when the *chalan* is for the receipt of money at the Court, it should be restricted in its operation to the day of issue (*vide* Accountant-General's no. 452, dated the 9th August, 1882).

615. In the case of out-stations, the order to the Treasury Officer shall grant for the payment in of the money such time only as is indispensable to enable it to be taken to the Treasury.

616. No *chalan* will be necessary for purchase of forms from the Cashier of the Court. The total sale-proceeds of each day shall be deposited in the Treasury by the Cashier in the usual way.

Note.—For account of saleable forms, see rule 696.

617. Peremptory receipts under head (h) of rule 607 shall be tendered to the Cashier direct without the intervention of the Accountant. A *chalan* is not required in respect of such payments.

Receipt of money by Cashier

618. The Cashier on receiving a *chalan* in triplicate addressed to him under rule 614 or a tender of money under rule 616 or under rule 617 shall accept the money and enter the amount as a receipt in the appropriate Cash Book (Rules 623 and 624).

619. (a) When *chalan* have been so passed, he shall keep two copies and return the third copy with his receipt enfaced upon it. This receipt shall be produced in Court by the person paying the money, when it is necessary for him to have satisfaction entered upon the record of the case to which he is a party; or when it is necessary to have a sale confirmed or notices issued upon the landlord in cases of rent deposits, or upon the creditor in cases of debt due to a mortgage creditor and the like. The amount and the remaining two copies of the *chalan* retained by the Cashier shall be sent with the Pass-Book to the Treasury which shall forward one copy to the Judge-in-charge to be filed with the record of the case to which the person paying the money is a party.

(b) In the same way, on presentation of the *chalan* (in triplicate) at the Treasury, as prescribed above in rule 614 and on payment of the money, the payer shall receive, as an acknowledgment, one of the three *chalans* signed—by the Treasury Officer, if the amount be Rs. 500 or more—by the Accountant and Treasurer, if less than that sum. Of the two copies of the *chalan* retained by the Treasury Officer, one copy shall be forwarded to the Judge, together with the Advice Lists referred to in rule 652, for the purpose of being filed with the record of the case in connection with which the deposit was made.

620. When, under clauses (a) and (b) of rule 609 above, a tender is made of money which must, by law, be received, the payment shall be made direct into Court in cash, but only under the express order of the Presiding Officer to be recorded on the top of the original *chalan*.

621. When money is tendered under rule 617 the Cashier shall enter the amount in the foil and counterfoil of a bound book (Form No. (A)—21] of receipts numbered in serial order. He shall then tear off the counterfoil, sign it and give it to the payer as voucher.

Investment of Civil Deposits

622. No authority shall be given for the withdrawal of a Civil deposit from the Treasury for the purpose of investment unless the sanction of the State Government

has been obtained under Rule 9 (1), Chapter I of the Treasury Code (Bihar).

Peremptory Cash Book

623. To exhibit the peremptory receipts and payments [head (h) of rule 607] for which the Cashier is responsible and of which the Accountant keeps no record, the former officer shall maintain a Register in Form no. (A)-22. A balance shall be struck at the close of each day in words as well as in figures.

Note.—The *Sarishtadar* of the Judge-in-charge of the accounts should check the receipts and repayments. He should affix his initial in column 13 against each repayment.

General Cash Book

624. The Cashier shall maintain a General Cash Book in Form no. (A)-23 and shall enter in it in detail all receipts and repayments under heads (a) to (g) of rule 607. At the close of the day's transactions the Cashier shall enter the totals of receipts and payments under these heads, and below these totals he shall enter also the totals of receipts and payments for the day under heads (h) as entered in the Peremptory Cash-Book as well as the totals of receipts and payments on account of establishment pay and contingencies and on any other accounts (which should be described). He should enter here all sums received or held by him in his official capacity upon any other account whatever, for, though such sums may form no substantive part of the judicial accounts, it is essential that the Judge should have in a single view a statement of all the money in the Cashier's possession. In particular he must include under the head 'other amounts' any sums received by encashment of any payment orders upon the treasury drawn in his favour, whether as Cashier, *Nazir*, or Receiver in insolvency proceedings, or otherwise. [*G.L. 9/62, G.L. 3/64.*]

Note.—If any refunds are made on account of value of court-fee stamps out of the cash in the court (and this is allowable if the sum does not exceed Rs. 5, see rule 638) they should be included in the Cash-Book like other payments in cash.

625. The Cashier shall then strike a general balance and exhibit the balance under the different heads as follows :—

| | Rs. | P. |
|--|-----|------|
| Balance of General Cash Book | ... | 0 00 |
| Peremptory balance | ... | 0 00 |
| Establishment pay and allowances | ... | 0 00 |
| Balance of permanent advance as per contingent register | ... | 0 00 |
| Other amounts (which should be described) | ... | 0 00 |
| Total money in Cashier's possession (in words as well as figures). | ... | 0 00 |

III—PAYMENT OF MONEY

Application for payment

626. (a) Persons desiring to draw money deposited in Court, and payable to them, shall submit to the Chief Ministerial Officer of the Court under whose decree or order the money was tendered, an application in Form no. (A)-3 accompanied with a petition, duly stamped where necessary. One copy of such form shall be

supplied free of charge. In this form the applicant shall enter all particulars necessary for the identification of the credit. If it is intended to withdraw more than a single item of deposit made in the same case by one application, the number and date and amount of each deposit must be distinctly stated. Separate applications are necessary where cases are different.

Note 1.—If the party entitled to the money does not appear in person, the applicant must satisfy the Court that he is duly authorized, by an instrument in writing, to draw the money for the person so entitled :

Provided that where the application is for payment of a sum not exceeding Rs. 50, the application may be signed by a pleader duly authorised in that behalf.

Note 2.—The applicant must comply strictly with the terms of the order under which the money is claimed. Thus, one of a number of joint decree-holders, cannot be allowed to take out what he calls his share in the decretal amount; they must all join in the application unless there has been an order for distribution.

This note is not intended to prohibit the payment of the entire amount of deposit to one of a number of joint decree-holders or to one of joint land-holders on the certificate of the Court under whose orders the money was received, that the amount is payable to him for himself and for all the others, whose names should be mentioned. What is intended to be barred is the payment of the amount in dribblets to the several decree-holders separately unless there has been an order for distribution.

(b) In cases in which Court-fee stamps are purchased by the *Nazir* from deposits, the final order for the payment of such deposits must contain a direction to the Treasury Officer to pay the amount in stamps to the *Nazir* of the Judge, to whose credit it was deposited and to transfer the amount of the deposit to stamp Revenue.

Note.—This rule should not be held to apply to outlying Munsifs, at places where there is no Treasury. In such cases the Munsifs should purchase stamps from local stamp-vendors, for cash out of the deposit money in their hands.

Audit of Application

627. The Chief Ministerial Officer shall compare the application with the record of the case or with the registers concerned in the absence of the record, and carefully test the validity of the claim. If he finds that the name of the payee has been correctly given, and that there is no objection to the payment of the money on the ground of attachment or otherwise, he shall make enquiry as to the identity of the applicant and, if satisfied of such identity, shall sign the certificate, at the foot of Part I of the application, and after obtaining the signature of the Presiding Officer to it pass on the application so signed to the Accountant of the Court or group of Courts. Such Accountant shall compare the contents of the application with the Register of Deposit Receipts, and shall satisfy himself that the amount as shown has been received and is still unpaid, and that the name of the claimant corresponds with the name of the payee entered in the Register, and that no order for the attachment of the money is in force. If the deposit has been transferred to the Clearance Register (rules 677 and 678), such Clearance Register shall be deemed

to be the Register of Deposit Receipts within the meaning of this rule and rules 632 to 635. [G.L. 4/24.]

Note.—The Chief Ministerial Officer will note in the order-sheet of the record of the case if available and also in the registers concerned that the application for payment order has been passed so that a second claim for the amount may be checked. This note should be signed by that officer and also by the Presiding Judge.

628. When there are defects in the application which it appears possible for the applicant to remove, the applicant should, unless it is evident that the application cannot at all be allowed even after amendment, be permitted then and there to remove them, all alterations being attested and dated in the presence of a responsible officer. Or, if so desired, the application may be returned to the applicant or his pleader, under the orders of the Presiding Officer, with the defects noted on the back of the petition accompanying it and he should be given a reasonable time for their removal. The application should not be returned merely for correction of clerical errors, unless the errors are such as to introduce uncertainty or ambiguity. In other cases such clerical errors may, if so ordered by the Presiding Officer, be ignored. The application should be definitely rejected by the Presiding Officer only if it is clear that it is not fit to be allowed, apart from removable defects, or if the defects are not removed within a reasonable time. Information required to cure defects in the application may be supplied without a separate application in accordance with rule 408 (2), Part V, Chapter I, if a searching fee is paid on the application. [G.L. 7/24, G.L. 2/63]

629. If the record of the case has been despatched to the Record-Room of the District Judge, under the orders of the High Court relating to the periodical despatch of records by Subordinate Judicial Officers, the Presiding Officer of the Court to which the application is made shall, after the Chief Ministerial Officer has checked the application with the Court's registers, forward it to the District Judge, whose Record-Keeper, if the record be available, will certify under the countersignature of the Judge-in-charge of the Record-Room, whether a specified sum of money is due to the applicant and, if so required, that the legal practitioner applying for the payment order has authority for the purpose. If the records have been destroyed the Record-Keeper will give a certificate to that effect. On receipt of the Record-Keeper's report, the Chief Ministerial Officer will proceed in accordance with rule 627. [G.L. 4/24.]

Note.—The Record-Keeper will enter in the Order-sheet of the record of the case if available a note that an application for payment order has been countersigned, so that a second claim for the amount may not be passed. This note shall be signed by that officer and also by the Judge-in-charge of the Record-Room.

630. Whenever, after despatch of the record of a case to the District Record-Room, any Subordinate Court passes an order for the attachment of money in deposit in the case, intimation thereof shall be forthwith sent to the District Judge. The District Judge shall thereupon cause such information to be noted in the Order-sheet of the case under the signature of the Record-Keeper and under the countersignature of the Judge-in-charge of the Record-Room.

631. If the application for payment is found to be incorrect or defective the Accountant shall note the error or defect on the back of the petition accompanying it and return it under orders of the Judge-in-charge to the Court concerned to be dealt with according to the procedure prescribed in rule 628.

Payment Order and Registry

632. If the application is found to be correct, and the deposit has not lapsed, the Accountant shall fill up the second part of the application form, post the transaction in the Register of Payment Orders [Form No. (A)-13] number with its proper index number, and make the requisite entry in the Register of Deposit Receipts. Finally, the application, with the Register of Payment Orders and the Register of Deposit Receipts, shall be laid before the Judge-in-charge.

Note.—In the case of decree money remitted by special money-order, the Accountant shall enter in columns 3 and 4 of the second part of the application form 'by money-order' with date.

Approval by Judge-in-Charge

633. Before passing the application for payment, the Judge-in-charge is required to satisfy himself, in the first instance, that the requirements of rule 627 and, where necessary, of rule 629 have been complied with. He shall further satisfy himself by personal inspection of his Register of Deposits, that the balance at credit of the particular deposit is sufficient to meet the repayment, and that no order for the attachment of money has been noted. If the result of his scrutiny is satisfactory, he may sign the order for payment of the amount either from the local Treasury or from his Court as prescribed above in rules 609 and 10 and shall attest with his initials the note of the order of repayment made in the Register of Deposit Receipts. He shall also initial the entries in the Register of Payment Orders [Form no. (A)-13]. The Payment Order shall then be made over to the applicant for presentation to the Cashier if the money is to be paid in Court, or to the Treasury Officer if it is to be paid by such officer. [G.L. 4/24.]

Note 1.—A list of all payment orders made ready during the day should be sent to the Bar Association before 3 P.M. in case of day sittings and 10 A.M. in case of morning sittings.

Note 2.—Deposits in favour of an estate under the management of the Court of Wards should be paid not in cash from the Court, but at the Treasury by transfer to the credit of the personal ledger account maintained there for the estate concerned. The payment order should therefore be addressed to the Treasury Officer and should authorise him to 'pay as above by transfer credit to the personal ledger account of Wards Estate ' or (if the personal ledger account of the estate is maintained at a Treasury other than that from which the repayment of the deposit is made, in which case a money order form, duly filled in favour of the Treasury Officer who keeps the account for the amount less money-order commission, should accompany the application) to "pay as above by transfer credit to post office in order that amount may be remitted, less money-order commission, to the Treasury Officer," for credit to the personal ledger account of Wards Estate.

The applicant should file a duly filled in Revenue *Chalan* (Form No. 186,

Schedule LIII) along with the application for Payment Order so that Payment Order and *Chalan* may be passed simultaneously.

634. When the money sought to be drawn out of Court is in deposit, not in the Court to which the application is made, but in another Court, as for example, where two or more Courts at one station are combined for the purposes of accounts, in every such case the duty of the Court to which the application is made shall be merely to receive such application and forward it to the Court of the Judge-in-charge, with a certificate made after examination of the record as provided in rule 627 that the applicant is the proper party to receive payment of the amount claimed. In any case in which the amount has been transferred from the credit of the original payee to that of the claimant, this fact should be stated. This certificate shall be compared with the Deposit Register in the office of the Judge-in-charge. Such Register, if the sum is shown therein to be in deposit, will inform the Judge whether there is any bar to payment. If there is no such bar, the Payment Order may be issued by the Judge-in-charge, and the fact of its issue shall be noted on the back of the accompanying petition which shall be sent to the Court upon whose certificate the application was passed, in order to enable it to enter satisfaction for the amount on the record of the case. [G.L. 4/41.]

Note 1.—The certificate should be given on the Payment Order, that is to say in the tripartite Form no. (A)-3 at foot of Part I, in the place intended for it; and in recording the payments in the Register of Repayments, particulars may be entered as to the Court under whose orders the payments have been made.

Note 2.—When money realized under the decree of one Court is attached at the instance of another Court, the application for payment should be made to the Court attaching the money. Such Court, after receiving the application, should forward it to the Court under whose decree the money is realised, and if there be no objection to the payment of the money to the applicant, the latter Court should deal with in under this rule, or, if the record of the case has been despatched to the District Record Room, under rule 629. The Court so dealing with the application should also report to the attaching Court, or, if the application has been dealt with under rule 629 also to the District Court that the amount claimed has been transferred from the credit of the original payee to that of the claimant.

Lapse of Order

635. (a) An order for payment from the local Treasury is valid for ten days only, and may not be cashed after the expiry of ten clear days subsequent to the date thereof. An order which has not been paid within ten days, as aforesaid, may be presented to the Court which issued it, and such Court may re-enface thereupon a new Payment Order, which shall remain valid for ten clear days immediately after the date thereof. When the last day of any such period of ten days is a day on which the Treasury is closed, the order may be cashed on the day on which such Treasury re-opens.

Note.—This rule applies also in the case of an order for payment at the Court.

(b) When such order, as aforesaid, is for a sum exceeding Rs. 100 it should be included in a "Daily Advice List" in Form no. (A)-8 to be issued by the Court making the order to the local Treasury where the cheque is to be paid.

(c) When the Treasury accounts are closed on the 31st day of March in each year, every order for payment issued on or before that date shall lapse absolutely; and Treasury Officers are forbidden to cash after the 31st March orders issued on or before that date. An order which has lapsed under this clause cannot be renewed, but a new order may be obtained upon delivering up the old order and making a fresh application under rule 626.

Note.—Judges should warn persons who apply for orders at the end of March of the effect of this rule, and tell them to wait till April 1st, unless they mean to cash immediately any order that they may obtain. No orders shall be cashed at Court which in the ordinary course cannot be shown in the Pass Book sent to the Treasury on the last day of the financial year.

(d) Immediately after the 31st day of March in each year, the Judge-in-charge shall ascertain what payment orders issued on or before that date are still uncashed, and shall mark them off under his initial in the Registers (1) of Payment Orders and (2) of Deposits Receipts, as “Cancelled under rule 635 (c)”.

Lapse Deposits

636. When an application is made to draw money at credit under a deposit which has lapsed under rule 684 but the payment of which is otherwise unobjectionable, the Accountant shall prepare a special form of application [Form no. (A)-4], which, when passed by the Judge-in-charge after the examination prescribed by rule 633, shall be dealt with under rule 687.

Refunds under heads (b) to (g) of Rule 607

637. When an application is made for the refund of a fine or a miscellaneous receipt [heads (b) and (d) to (f) of rule 607] the Payment Order shall be prepared by the Accountant in Form no. (A)-5, after checking the application by a reference to the prescribed Register [Form no. (A)-20] and the Judge-in charge at the time of passing the refund order, shall note the repayment against the entry of the receipt in such Register. The Payment Order shall also be noted in the Register of Payment Orders and initialled by the Judge-in-charge.

Note.—Entries in the Register of Payment Orders in the case of refund of fines or miscellaneous receipts must be made in red ink.

638. Application for the refund of the value of Court-fee stamps is to be made to the Chief Ministerial Officer of the Court in which the stamps are filed. The Chief Ministerial Officer shall compare the application with the record, and if he finds that a refund is due and if the Presiding Officer is also the Judge-in-charge, shall draft and sign an order on the back of the paper to which the Court-fee stamps are affixed. The paper must then be passed on to the Accountant, who shall prepare a Payment Order in Form no. (A)-6 or (A)-7, as the case may require, and shall enter the particulars in the Register of Payment Orders [Form no. (A)-13]. The application with the other papers and the Register shall then be laid before the Judge-in-charge who, if satisfied that the proceedings are in order, may sign the order of refund on the back of the stamped paper and the Payment Order, and initial the entry in the Register. The Payment Order shall then be made over to the applicant for presentation at the Treasury or, if the amount does not exceed Rs. 5, to the Cashier of the Court.

If the Presiding Officer of the Court is not the Judge-in-charge, the Chief Ministerial Officer shall put up the application with the draft refund order on the back of the stamped paper first before the Presiding Officer, who may, if satisfied that the refund is due, sign the refund order and then send the papers to the Accountant. On receipt of the papers the Accountant shall proceed in the manner stated above and submit the papers and Register to the Judge-in-charge who, if satisfied that the proceedings are in order, will sign the Payment Order and initial the entry in the Register. The rest of the procedure will be the same as in the case where the Presiding Officer is also the Judge-in-charge.

Note 1.—Petty refunds of the value of Court-fee stamps may be paid out of cash in the Court on vouchers in Form no. (A)-7, and charged in the Cash Book—see note to rule 624.

Note 2.—Court-fees realized in stamps may, under certain circumstances, be refunded by order of the Court.

Note 3.—No general rule can be laid down respecting the refund of the value of Court-fee stamps in cases where the fees have been paid into Court for the issue of processes and such processes have not issued. Each case must be left to the discretion of the Court, and decided on its merits. Where the amount is large it may well be refunded.

Note 4.—In an exceptional case in which the paper to which the Court-fee stamps are affixed has been destroyed under the rules for the destruction of records, the Court authorizing the payment should satisfy itself that the amount claimed is due, and record the order for refund on the application, which may be filed. In cases of this nature, it is objectionable to record a copy of the refund order in Form no. (A)-7 for it is an order upon the Treasury, and there is risk of its being presented for payment.

Note 5.—Entries in the Register of Payment Orders in the case of refunds of Court-fee stamps must be made in red ink.

639. In so far as concerns the accounts system, it is invariably necessary to trace each item of payment under the Court's orders back to its corresponding item of receipt, in other words, to connect each item of a Court's debit in the Treasury with the corresponding item of credit, however far in time the two may be separated from each other. Accordingly the Court must take care to furnish itself and the Treasury with the necessary particulars for this purpose.

Payments by Cashier

640. In the case of Payment Orders directed to the Cashier, the payment must be entered by the Cashier in the General Cash Book, the payment order being retained by the Cashier as his voucher.

Note.—The Cashier should cancel the vouchers, as soon as he pays them, by writing on the face "Paid" with his initials.

A "Paid" stamp should not be used, as that indicates the subsequent discharge at the Treasury.

IV—ACCOUNT-KEEPING AND REMITTANCE TO TREASURY

Courts near Treasuries

641. In Courts situated within daily reach of a Treasury, the Accountant shall, after the close of business each day make the proper entries in the Treasury Pass-Book [Form no. (A)-14] showing in detail the sums received from and paid to the public in cash. The receipts shall be entered on the right hand side, and are to consist of the amounts received in Court. The payments shall be entered on the left-hand side, and are to consist of the sums shown in column 5 of the Register of Payment Orders, as amounts to be paid in Court.

Note.—The number of the *chalan* on the back of which the amount to be remitted to the Treasury is noted may be shown against the entry made below the total of payments or receipts.

642. Every *chalan* and Payment Order for money received or paid at Court under heads (a) to (g) shall be shown in detail in the Pass-Book, and the head of account shall be noted against each, so as to enable the Treasury Officer to bring the transactions in detail upon his books, and classify them correctly.

Note.—It is necessary to show in the Pass-Book the totals only of each *chalan* and Payment Order. Each *chalan* may contain any number of items provided they belong to the same head of account.

Examination by Judge-in-Charge

643. The Judge-in-charge shall examine the accounts by comparing (1) the guard-file of *chalans*, Register of Payment Orders (amounts received and paid in Court) and the Daily Account of Forms sold, with the Cashier's General Cash-Book; (2) the Treasury Pass-Book, with above and (3) the balances shown in the peremptory Cash-book, with those shown in the General Cash-Book. [G.L. 10/62.]

Daily Remittance

644. The balances of the Cashier's account in respect of diet money and other peremptory receipts should be observed every day in passing the General Cash-Book. To prevent excessive accumulations under this head, the Judge-in-charge shall fix the amount which the balance in the hands of the Cashier shall not be permitted to exceed. He shall for this purpose regularly transfer to deposits in lump such amount as would keep down the balance within the limit prescribed. Amounts so transferred shall be treated in the same manner as money received in Court, and shall be entered in the Cashier's General Cash-Book, both on the credit and debit sides. Should the money be subsequently required, it shall be withdrawn from deposits in the manner described before and credited in the Peremptory Cash-Book. If such sums remain in deposit for three years they must be carried to the credit of Government under rule 684 relating to lapsed deposits. [G.L. 14/62.]

Note.—*Chalans* for such deposits should be kept in the guard-files. A list of the deposits giving their dates, numbers and amount should be maintained on the front page of the Peremptory Cash-Book. When a particular item lapses or is withdrawn it should be scored through, a note being made on the corresponding *chalan*. Withdrawal shall as far as possible be made against earliest deposits which have not lapsed. The *chalans* in a guard-file shall be destroyed on the expiry of four years from the date of the last deposit shown therein.

645. (a) Having initialled the accounts of the day and signed the Cash-Book, the Judge-in-charge shall send the Pass-Book to the Treasury together with the net amount in cash and all the *chalans* and payment orders. This remittance must be entered in the Cash-Book as a payment of the day upon which it is made.

(b) It is important that this be done before the business of the new day commences, and the Cashier should have in hand, after each such remittance, only the balance of the peremptory cash transactions and the other balances referred to in rule 625.

Note.—The total of *chalans* of the day for money received in cash by the Court, minus the total of Payment Orders cashed at the Court, will represent the balance of cash to be remitted to the Treasury. The amount so remitted will be noted on the back of the last *chalan* entered in the Pass-Book in order to avoid the separate *chalan* which otherwise would be required by the Treasury Officer.

Courts not near Treasuries

646. At out-stations, the Cash-Book shall be balanced as prescribed above, and the balances, both that of the receipts and payments, under heads (a) to (g) and that of peremptory transactions, shall be carried forward to the next day's account. The accounts shall be balanced, compared, and signed every day in the manner prescribed in rule 643, save that, instead of comparing the Treasury Pass-Book with the accounts, the Judge-in-charge shall see that the Court balances are brought forward, and shall, at least once a week, ascertain that the money is actually in possession of the Cashier and record a signed and dated certificate to that effect in the Cash-Book.

Periodical Remittances

647. On the last day of the month and from time to time as occasion arises the Treasury Pass-Book shall be made up, showing all receipts and payments at the Court since the last remittances to the treasury*. Its accuracy having been tested, it shall be forwarded to the Treasury with all *chalans* and Payment Orders. Where the receipts have exceeded the payments, the cash excess shall be sent to the Treasury unless such excess does not amount to Rs. 25 in which case it may be remitted in the following month; a special report of the circumstances being sent to the Collector. The Cashier will have, after the completion of the transaction, in addition to the balance of peremptory cash transactions, only the Permanent Advance allowed to the Court for carrying on its payments at a distance from the Treasury. [*Or to a branch Bank, vide note to rule 649.]

Note.—Under no circumstances shall the balance of cash in hand be allowed to exceed Rs. 1,000.

Adjustment with Treasury

648. The last day for remittance in each month must be so fixed that the final payment or receipt of money at the Treasury may just come within the month's accounts at the Treasury or Sub-Treasury (see rule 661), as otherwise the monthly accounts of the Judge-in-charge and those of the Treasury will not agree. Any transactions at the Court, after this remittance is made, although shown under their proper dates, should be treated as if they belonged to the ensuing month's accounts, registers and returns.

Rules regarding Remittances

649. It is the duty of the Judge-in-charge to see that money remitted from his Court actually reaches the Treasury, and is acknowledged by the Treasury Officer in the Pass-Book.

Note.—Where the Court remits to a branch Bank direct, the Agent of the branch Bank should acknowledge the receipt of the remittance in the Pass-Book.

650. In making such remittances, the Police rules as to sending an escort with the money must be duly observed.

Note.—In the case of *Munsifs* which are at the headquarters of districts or subdivisions, the Civil Court peons should be employed to take charge of remittances to the local Treasury. In the case of *Munsifs* situated in the interior of districts and subdivisions, remittances should be made under Police custody. During the absence of the Subdivisional Officer, remittances to the District Treasury (*vide* rule 651) should also be made under Police custody.

651. During the absence on tour of Subdivisional Officers, and the consequent closing of their Treasuries, *Munsifs* must be guided by the preceding rules applicable to officers at stations where there are no Treasuries, and must make remittances of surplus cash, if necessary, to the District Treasury. They will take advantage of the periodical return of Subdivisional Officers to headquarters to reduce the cash balances in their hands as much as possible, due regard being had to their probable requirements.

Treasury Advice List

652. At the close of the business each day, the Treasury Officer, whether *Sadar* or Subdivisional, shall prepare Advice Lists, in Form no. (A)-9, of all such *chalans* and Payment Orders of each Judge-in-charge as have been brought upon the Treasury accounts in the course of the day, and shall forward them to such Judges-in-charge respectively, together with the *chalans* referred to in clause (b) of rule 619. In these lists shall be entered in detail such *chalans* and Payment Orders as have been received or paid at the Treasury or Sub-Treasury in cash, while those brought into the Treasury account from the Pass-Book shall be included in a single total on each side with the description “as per your Pass-Book dated”.

653. The list prepared at the *Sadar* Treasury for the District Judge shall include besides the moneys received and paid on account of the Judge’s own Court, those transactions also which belong to his subordinate Courts. These amounts, however, need not be entered in detail, but may be included in a single total of receipts and of payments for each Court, including Pass-Book transactions brought into account.

Comparison by Judge

654. On receipt of this Advice List, the Judge-in-charge shall cause the particulars of the *chalans* and Payment Orders shown in it to be compared with the office copies of the *chalans* and with the details recorded in his Register of Payment Orders and shall further cause the date of actual credit and payment, as certified by the Treasury Officer, to be entered in the office copy of the *chalan* and the Register of Payment Orders.

Note.—The Judge-in-charge must satisfy himself that sums withdrawn from deposit have been credited in the Peremptory Cash-Book (as required by rule 644) or in the General Cash-Book, as the case may be, before he puts his initials against the particular entries in column 9 of the Register of Payment Orders.

655. These entries must be initialled by the Judge-in-charge when he checks the posting in the Deposit Registers, as prescribed in rule 657.

V—DEPOSIT AND REPAYMENT REGISTERS

Separation of Petty Deposits

656. Two Registers of Deposit Receipts shall be kept in Form no. (A)-15 and two of Deposit Repayments in Form no. (A)-16. One of these shall be termed the Register of A-Deposits, and there shall be entered therein all deposits originally exceeding Rs. 5. The other shall be termed the Register of B-Deposits, and there shall be entered therein all deposits not originally exceeding Rs. 5. Both Registers shall be kept in the same form and shall be posted in the same manner, but with separate series of numbers (see next rule), distinguished by the initial letters A and B, respectively.

Posting

657. As soon as the Treasury Advice List is received (rule 652), the Deposit Register will be posted in the following manner for the date to which it refers. In the first place, all cash transactions in Court on that day shall be posted, the receipts from the office copies of the *chalans* and the payments from the Register of Payment Orders. Transactions at the Treasury shall then be written up from the Advice List, *chalans* and the Register of Payment Orders.

Note.—The date of granting the payment order should be entered in the repayment columns in the Register of Deposit Receipts, and the date of actual payment in column 4 of the Registers of Deposits Repaid.

Registers of Receipts

658. All items of deposit in these registers must, as directed above, be numbered in an annual consecutive series of numbers commencing on 1st April, and ending with the last day of March in each official year. Only the first eight columns shall be filled in at first, the other columns being intended for the record of subsequent repayment.

Notes of claims

659. In order to enable the Accountant to deal promptly with applications for payment of deposits, all attachment processes, transfer orders relating to decrees, orders for the substitution of parties and all other orders which affect the payment of decretal and other monies in deposit, shall be noted by him in the Deposit Register with all changes in the names and addresses of the payees. The *Sarishtadar* of each Court shall be responsible for communicating these orders to the Accountant who shall sign on the order sheet of the case in acknowledgment.

Note.—At stations away from headquarters the *Sarishtadar* shall also be responsible for seeing that the entries are made in the Deposit Register.

Registers of Repayments

660. The Registers of Deposit Repayments shall be posted from the Treasury Advice List and the Payment Order Registers, as directed above.

Closing for the month

661. (a) The Registers of Deposit Receipts and Deposit Repayments in Courts at a Sadar Station shall be totalled and closed on the last day of each month upon which the Sadar Treasury remains open, and in Subdivisional Stations on the day on which the accounts of the Subdivisional Treasury are finally closed for the month, in such a way that the period and the transactions included in the Court's books and returns may correspond exactly with those included in the Treasury books and returns.

(b) Care must be taken to make the final remittance to the Treasury in such time that it may be entered in the accounts of the Treasury for the month to which it belongs.

(c) In each of the Registers of Deposit receipts prescribed by rule 656 a *plus* and *minus* memorandum must be drawn up at the end of the month's entries in the following form—

| | | Rs. | P. |
|--|-----|-----|----|
| Balance of deposits from last month | ... | 0 | 00 |
| Received during the month, as per register | ... | 0 | 00 |
| Total | ... | 0 | 00 |
| Repayment, as per Register | ... | 0 | 00 |
| Balance of deposits at end of month | ... | 0 | 00 |

VI—CONTROL OVER SUBORDINATE COURTS

Responsibility

662. Every Judge is responsible for all payments of deposits made on his certificates or under his orders. In the case of receipts and payments of petty or B-Deposits, no detailed check is exercised over his proceedings, the accounts which he is required to render of these showing totals only. In the case of A-Deposits, however, all sums received, and not paid out during the month in which they have been received, and the balance of such of these deposits as have been partly paid out, must be reported to the District Judge, and must be included in that officer's accounts, and in his return to the Accountant-General.

Note.—All returns will be signed by the District Judge.

Daily Return of Subordinate Courts

663. Every day, after the Treasury Advice has been received, and the Deposit and other Registers have been written up and checked with it, two statements showing transactions of the date to which it refers shall be prepared by the Judge-in-charge and forwarded to the District Judge. The first of these statements [Form no. (A)-10] shall show the total amount of the entries in the Deposit Registers and the total of all other transactions brought on the Registers. The second shall be an extract from Part I of the Register of Deposits Repaid [Form no. (A)-16] giving the particulars of repayments on account of deposits received during previous

months. At the foot of the first statement the Judge-in-charge shall certify that his Registers of B-Deposits are written up to date and are in order.

Note 1.—It will be observed that these returns are intended to exhibit actual receipts, and payments and that they are therefore to be compiled from the Deposit Register, and not from the Register of Payment Orders.

Note 2.—The Subordinate Courts referred to in rule 662 and in rule 663 are those which keep their own accounts and the accounts of other Courts as well—*vide* rule 634.

664. At out-stations some delay in submitting the daily returns is unavoidable, but this delay should not exceed the time necessary for the Treasury Advice List to reach the Court. The date on which the returns are actually signed should be noted on them by the Judge-in-charge.

Verification by Judge-in-charge

665. At the time of signing the returns, the Judge-in-charge should have before him the Registers of Receipts and Payments of Deposits and the Treasury Advice List.

Examination by District Judge

666. The statements furnished by the Subordinate Courts shall, when received in the District Judge's office, compared with the corresponding Advice List supplied to him by the Treasury Officers, under rule 653. In the case of out-stations, the totals for the whole month supplied by the Judge-in-charge must agree with the totals for the whole month supplied by the Treasury Officer, if only attention has been paid to the rules regarding periodical remittances. In the course of the month the former totals will ordinarily exceed the latter, and the difference must be taken to represent cash transactions advised by the Court, but not yet brought on the Treasury Books. In the case of Courts near Treasuries, no such discrepancies should occur if the rules are properly observed. When any such are noticed, immediate steps must be taken, under the District Judge's orders, to reconcile them.

Judge's Register of Totals

667. After examination the totals of Deposits received and paid shall be posted into a Register to be kept by the District Judge in Form no. (A)-19. This register contains two sets of columns, one set relating to A-Deposits and the other to B-Deposits. Separate portions of the Register for the month must be allotted to each Subordinate Court, that is, for each Subordinate Court a number of pages, according to the probable work, must be assigned in the leaves devoted to that particular month. The entries in respect of each Subordinate Court will thus come continuously and in order of date, and they must be totalled at the end of the month.

668. In the portion of the Register which relates to B-Deposits, a column has been provided for a daily balance which must be struck by adding together the preceding day's balance and receipts, and deducting the payments. The object of the daily balance is to afford the District Judge a ready means of controlling Subordinate Courts in the receipt and payment of small deposits as any excess of payments over receipts will be at once detected.

Posting Repayments of A-Deposits

669. (a) Taking up next the detailed Daily Register of Deposits Repaid [Form no. (A)-16] the repayments must be posted against the corresponding entries in the Judge's Daily Register of Deposits Received [Form no. (A)-15] and must be initialled by the District Judge in the same manner as repayments authorised by himself. They must also, at the same time, be copied into his Register of Deposit Repayments [Form no. (A)-16].

(b) As each payment is noted in the District Judge's Register the district number (rule 673) against which the payment is charged must be noted in the Subordinate Court's return.

Note.—In noting the repayments, care should be taken to see that the amounts thus reported as repaid are actually repayable, and that amounts which should be credited to Government are not repaid to individual.

Monthly Return

670. (a) At the end of the month there shall be furnished by the Subordinate Courts to the District Judge a statement of all A-Deposits received, but not wholly repaid during the month. This statement will be an extract from the Register of Deposit Receipts [Form no. (A)-15] omitting the items which have been wholly repaid during the same month. Of deposits received and partially repaid in the same month, the unpaid balance only is to be shown in this statement. The dates of despatch from the Subordinate Court and of receipt by District Court shall be noted on this statement.

Explanation.—An A-Deposit, the balance of which has been reduced below Rs. 5 by a payment made in the same month, is to be included among the A and not among the B Deposits.

(b) On the 31st March of each year the Subordinate Courts shall, in addition submit to the District Court a certificate that all uncashed orders to be cancelled under rule 635 (c) have been marked off in their Registers.

671. There shall be appended to the monthly statement of Deposit Receipt a *plus* and *minus* memorandum in Form no. (A)-11.

Examination by District-Judge

672. On receipt of the monthly statement and the *plus* and *minus* memorandum, the Register [Form no. (A)-19] shall be compared therewith. First, as regards A-Deposits, the total of the column headed "Repaid on account of current month" should agree with the amount shown in the *plus* and *minus* memorandum; and when this amount is deducted from the total of the column heads "Total amount Received" the balance ought to agree exactly with the total of the statement of outstanding A-Deposits received from the Court to which the figures relate. Second, as regards B-Deposits, the balance itself can be tested in detail only once a year, when the yearly statement under rule 681 is received; but every month the difference between the opening and the closing balance should be equal to the difference between the receipts and payments reported in the *plus* and *minus* memorandum.

Posting Receipts of A-Deposits

673. The Subordinate Court's monthly detailed statement of A-Deposits received shall be attached by the District Judge to his own Register of Deposits received, after he has closed the accounts of the Civil Courts at the sadar station. The District Judge will also number the deposits in the Subordinate Courts' return in continuation of his own series.

Note.—The District Judge should examine the receipts so as to see that no item has been improperly held in deposit; and if he finds amounts so held which should be credited to Government, he should direct the Subordinate Court accordingly.

VII—DISTRICT MONTHLY RETURNS

Returns of Deposits Received

674. On the 12th of each month an Extract Register of Deposit Receipts exceeding Rs. 5 shall be prepared by the District Judge in Form no. (A)-17, and forwarded to the Treasury Officer for transmission, after a comparison with his cash accounts, to the Accountant-General. This Extract Register will be prepared from the entries made during the month in his Register [Form no. (A)-15] and will contain all such items of more than Rs. 5 each as were deposited in his own Court, and in Courts subordinate to him, omitting all those which were wholly repaid during the month, and showing, in the case of those partially repaid during the month, the unpaid balance only. The Sadar Court entries should appear first, then, after a line or break—the entries of each Subordinate Court separately headed by the name of the Subordinate Court. At the foot of this Register, deposits received and repaid during the month, and deposits received for sums of Rs. 5 each and less, are to be shown in separate totals for each Court without details. This Extract Register should be despatched punctually on the 12th of the month, unless in the case of the larger districts a later date is fixed. The whole of the entries for each Court should be consecutive and separated from those of the other Courts by a space and heading.

Returns of Deposits Repaid

675. A monthly extract from his Register of Deposit Payments [Form no. (A)-16] of sums above Rs. 5 shall be forwarded in the same form by the Judge to the Treasury Officer for transmission, after comparison with his lists of payments, to the Accountant-General. The District Judge shall include in this extract (1) the details of repayments on account of deposits of previous months whether made in his own Court or entered by him from the statements of Subordinate Courts; (2) a single total for each Court of the repayments of the current month's deposits, whether made at the district or Subordinate Courts, which must agree with the total of receipts on the same account; (3) the totals for each Court of the repayments on account of deposits Rs. 5 and less received during the year of account and the year next preceding.

Like the Extract Register of Receipts, this return will keep each Court's entries in separate series. The extract will be prepared on the same printed form as the Register and should be posted as shown on the next page, columns 7 and 8 not being used.

| Details of Deposit | | | Dates as to present repayment | | Number of payment voucher | To whom repaid | Whether paid in cash or by transfer | Received in all previous years | Received last year | Received during the current year | | Initials of Accountant | Initials of Judge-in-charge | Remarks |
|----------------------|------------------------------------|------------------------------|---|--|---------------------------|--|-------------------------------------|--------------------------------|--------------------|----------------------------------|---------------|------------------------|-----------------------------|---------|
| Date of receipt | Number as per Register of Receipts | Amount or balance of deposit | Date of cashing Payment Order whether at Court or at Treasury | Date of granting Payment Order as per Court's Register | | | | | | Previous month | Current month | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 7th Sep-tember, 1898 | ... | Court A Rs. P. 15.50 | 3rd Sep-tember, 1901 | 2nd Sep-tember, 1901 | 176 | ... | ... | Rs. P. 15.50 | Rs. P. ... | Rs. P. ... | Rs. P. ... | ... | ... | ... |
| 3rd Jan-uary, 1901 | ... | 6.78 | Ditto... | Ditto... | 177 | ... | ... | ... | 6.78 | ... | ... | ... | ... | ... |
| 7th June, 1901 | ... | 108.62 | Ditto... | 3rd Sep-tember, 1901 | 178 | ... | ... | ... | ... | 108.62 | ... | ... | ... | ... |
| | | | | | | Add—Repayment or deposit of current month. Add—B Deposits repaid. Total Court A | | 1.00 | ... | ... | 29.73 | ... | ... | ... |
| | | | | | | | | 9.37 | 3.50 | 9.19 | 6.19 | ... | ... | ... |
| | | | | | | | | 24.87 | 10.28 | 117.81 | 35.92 | ... | ... | ... |

676. (a) A *plus* and *minus* memorandum in the form prescribed by rule 671, but including the figures of the Subordinate Courts, as well as those of the District Judge's own Court, shall be appended to the Statement of Deposit Receipts.

(b) This *plus* and *minus* memorandum is to show as repayments the actual repayments at the Treasury, and is further to show the Treasury balance outstanding.

Note.—It will be found convenient to keep in a separate register a copy of this *plus* and *minus* memorandum, with further memoranda of the details from which the figures have been arrived at. It is important that there should be no difficulty at any time in reconciling the figures of the Court with those of the Treasury.

VIII—ANNUAL CLEARANCE REGISTER OF DEPOSITS

Clearance Register

677. (a) At the end of each year the registers of A-Deposits received in the next preceding year shall be closed by transcribing into the last column headed "Transferred to Clearance Register", every balance which exceeds Rs. 5. An Annual Clearance Register shall be drawn up in Form no. (A)-18 showing all these balances against their original numbers, showing in other words, all the unpaid balances of A-Deposits of the preceding account year next but one. For example, the Clearance Register of April, 1903 will show all unpaid balances of A-Deposits received in 1901-02.

Note.—The words "Clearance Register" wherever they occur in these rules, were substituted for the original words "Accountant Particulars".

(b) Of balances which do not exceed Rs. 5 a separate list shall be made out under rule 80.

678. The items in this account having been carefully compared with the corresponding balances in the original Register of Deposits Received Form No. (A)-15, the last named document shall be laid aside, and future repayments recorded only in the Clearance Register.

Note.—If against any of the items transferred to the Clearance Register a repayment order has been issued and cancelled under rule 635 (c) a note to that effect must be made in the Clearance Register, so that if application for repayment is again made, an order may not be issued without recalling the original cancelled one.

Return by Subordinate Courts

679. A copy of the Clearance Register shall be sent by the Subordinate Courts to the District Judge, and by him carefully compared with the entries in his Register of Receipts. Any discrepancy found must be investigated and corrected.

Return by District Judge

680. The Clearance Register of the District Judge necessarily includes the items in the several Clearance Registers of the Subordinate Courts, and a copy of it shall be sent to the Accountant-General. The due date for its despatch shall be the 30th April, by which time the Judge should have received and compared the Clearance Registers of his Subordinate Courts.

Verification of Petty Deposit Balance

681. In order to verify the balance of B-Deposits, each Court shall make a list of the unpaid balances of receipts of the past twelve months, and, by actual

summation of these balances, find the total amount outstanding on account of the past year's deposits. Each Court is required to submit, along with the Clearance Register of A-Deposits, a certificate that the balance of B-Deposits of the past year has been found by actual summation to be Rs.

682. The balance found under the last rule together with the total of the list prepared under rule 684 (2) must equal the total balance of petty deposits on March 31st, and must be so verified—

- (1) by each Court with the forward balance in the *plus* and *minus* memorandum;
- (2) by the District Judge with the balances of the Subordinate Courts brought forward in the Register no. (A)-19.

683. The District Judge, having verified the balance certificates of the Subordinate Courts, shall endorse each with the certificate "Examined and found correct", and shall certify the fact of having done so upon the Statements of Lapsed Deposits sent to the Accountant-General under rule 685.

IX—LAPSE OF DEPOSITS

Lapse of Deposits

684. On the 31st March of each year, the following unpaid balances of deposits lapse to Government, and are to be written off in the Clearance Register and Registers of Receipts respectively :—

(1) Of A-Deposits, *first*, all balances which do not exceed Rs. 5 in respect of deposits made during the last three years including the year then closing; *secondly*, all balances of deposits outstanding over three complete years, that is, all balances in the Clearance Register prepared two years before.

These balances should be marked "lapsed" in the last column of the Register of Receipts or the Clearance Register, as the case may be.

(2) Of B-Deposits, *first*, all deposits outstanding over one complete year; *secondly*, all balances of deposits which are remaining after part-payment during the year.

These balances are to be marked "lapsed" in the last column of the Registers of Receipts.

Example.—The balances which lapse on the 31st March, 1931, are—

- (a) all balances of A-Deposits received in 1927-28;
- (b) all balances of A-Deposits received in 1928-29, 1929-30 and 1930-31, which do not exceed Rs. 5 after repayments made during 1930-31;
- (c) all outstanding B-Deposits received in 1929-30;
- (d) all balances of B-Deposits received in 1930-31, which have been partly repaid in 1930-31.

Statement of Lapsed Deposits

685. (a) Four statements of the balances to be written off shall be prepared in Form no. (A)-12, one for each of the four classes (a), (b), (c) and (d), specified in the Example under rule 684. These statements shall be submitted along with the Clearance Registers. Those of the Subordinate Courts must be compared by the

District Judge with his own Registers, and discrepancies, if found, must be reconciled. Those of the District Judge must include, under the District Judge's numbers, the lapsed balances of A-Deposits of the Subordinate Courts.

(b) As regards B-Deposits, the statements received from the Subordinate Courts must be copied into the District Judge's statement with a separate total for each Court, the originals being filed for future reference.

Note.—The note under rule 678 applies to these Statements of Lapsed Deposits also.

Correction of Balance

686. These statements must all be submitted during April, and the totals thereof must be deducted by a separate entry from the *plus* and *minus* memorandum, drawn up at the end of April, so that the *plus* and *minus* memorandum may show only the balance actually outstanding upon the Registers of the Court concerned.

Refund of Lapsed Deposits

687. When payment of a deposit lapsed under rule 684 is required by a person entitled thereto, an application in Form no. (A)-3 shall be made through the Presiding Officer, who shall examine the claim, and, if he finds it correct, shall forward the application to the District Judge who, if satisfied that the inquiry has been adequate, shall forward an application in Form no. (A)-4 to the Accountant-General. The Presiding Officer should, in cases of doubt, ordinarily insist on the personal attendance of the applicant and should require him to affix to the Order-sheet in his presence his signature or thumb impression. He should also require the attendance of the pleader through whom the application has been made. The Presiding Officer may, in his discretion, require the applicant to swear an affidavit, to adduce oral or documentary evidence of his identity, and, as a guarantee of his good faith, to furnish security. If as a result of his inquiry the Presiding Officer, other than the District Judge, is not satisfied of the identity of the applicant, he should forward the application with the record of his inquiry and a report to the District Judge. If the District Judge is satisfied of the identity of the applicant he should pass the application. If he is not satisfied and considers that the identity cannot be established without a local inquiry he may refer the matter to the Collector or to the Subdivisional Officer in the case of outlying *Munsifs*. The Collector or the Subdivisional Officer as the case may be, shall cause a local inquiry to be made and submit a report to the District Judge. Several deposit numbers may be included in a single application, if they are payable to the same person. The Accountant-General's letter of authority, when received, shall be noted against the item in the Clearance Register (or Original Register in case of deposits not transferred to the Clearance Register), so as to prevent a second application. This letter shall then be passed for payment at the Treasury, as prescribed in the form. No other record of these refunds is necessary; and such payments are not to be shown in the *plus* and *minus* memorandum. [*Individual items of peremptory deposits do not come within the provisions of audit. See H.C. letter no. 6958-70, dated the 24th June, 1957.*]

Note 1.—As soon as the application in Form no. (A)-4 is forwarded to the Accountant-General the application in Form no. (A)-3 relating to it shall be cancelled by an endorsement "application made to the Accountant-General for refund" across

Part II of the form (for which a rubber stamp may be used) and the endorsement shall be signed by the Judge-in-charge.

Note 2.—A record of the steps taken by the Presiding Officer to satisfy himself of the correctness of the claim should be kept on an order sheet. Every application should be treated as a miscellaneous case and the order sheet and the connected papers should be preserved for a period of 12 years. Whenever the Presiding Officer considers it necessary to call on the applicant to give his signature or thumb impression it should be taken on the order-sheet.

688. If the letter of authority received from the Accountant-General is not claimed by the payee within twelve months from the date thereof, it shall be returned to that officer.

X—SUPPLEMENTARY RULES AS TO RECEIPTS UNDER HEADS (b) TO (g)
OF RULE 607.

Fines

689. When a fine is paid into a Civil Court the receipt shall be dealt with under the next following rule.

Registers

690. Every Judge-in-charge shall maintain a Register of Miscellaneous Receipts including Judicial Fines and Stamp Duty and penalties in Form no. (A)-20. In this Register all receipts are to be posted which do not come under head (a) (Deposits) or head (h) (Peremptory Receipts) of rule 607. The entries shall be made and checked in the same way as the entries in the Register of Deposit Receipts of the Subordinate Courts. The amount of petty receipts under (f) and (g) are to be shown only in a single total for each day.

Credits to Government

691. It is the duty of every Judge to see that sums which are in deposit, but which under any rule or law are forfeited, or become the property of Government (e.g., earnest money forfeited, or intestate property unclaimed), are duly credited to Government. In every such case there shall be prepared simultaneously (1) a Payment Order addressed to the Cashier and directing payment of the deposit "by transfer as per *chalan* no. of this date", and (2) a *chalan* crediting it to the proper head. Such Payment Order and *chalan* shall be registered and dealt with in every way as if cash were paid out of and received into Court.

692. With regard to unclaimed property of intestates or others, it will be seen from the form that Register no. (A)-20 deals only with receipts under this head which have remained in deposit for the prescribed period. A Register showing the property in detail must be kept in Civil Courts in Form no. (A)—24.

Note 1.—Any cash belonging to an intestate estate which may be received in Court, from whatever source derived, must be paid into the Treasury at once and no such cash must be allowed to remain in the hands of the Nazir.

Note 2.—On the receipt of the unclaimed property of persons dying intestate the Nazir must make the requisite entries in the Register in Form no. (A)-24, and these entries must be compared with the Police *Chalan* by the *Sarishtadar* and the Accountant. If cash forms part of the property or if part of the property, being

perishable, is sold before the expiry of the year prescribed by law, such cash or sale-proceeds must, after entry in the Register just mentioned, be put in deposit till the time arrives for paying them over to claimants or crediting them to Government.

Note 3.—The Judge should pay the expenses of conveying intestate property to the Sadar station from his Permanent Advance and charge the same in the Contingent Bill, subject to reimbursement from the eventual proceeds of the sale of the property, or, in case where a claim to heirship is established either by payment by the heir before the property is delivered to him, or by the sale of such portion of the property as may cover the expenses.

693. Under head (e) (other general fees, fines and forfeitures) of rule 607 shall be comprised all receipts not falling within any of the other principal heads of receipts, *e.g.*, forfeiture of earnest money, etc.

694. Receipts under the head of account mentioned in rule 693 are at once credited at the Treasury to Government. They are not to be retained intermediately in deposit either at the Court or at the Treasury.

Monthly Returns

695. At the close of the month, every Judge-in-charge shall prepare Lists in Form no. (A)-20 of all the miscellaneous receipts, etc., paid by him into the Treasury. Subordinate Courts shall forward their Lists in duplicate to the District Judge, and the District Judge shall add the totals of these Lists at the foot of his own List, and, appending one of the copies received by him from each Subordinate Court, shall forward the whole to the Accountant-General for check against the Treasury accounts.

Verification of the stock of saleable forms

696. The stock of saleable forms in all Civil Courts subordinate to the High Court will remain with the Cashier. The Cashier will sell such forms and keep an account in the form given below. The stock shall be verified half-yearly, issues shown in the Register being checked from the entries in column 13 of the Register of Miscellaneous Receipts [Form no. (A)-20]. A certificate in the form given below duly signed by the Judge-in-charge shall be submitted by Subordinate Courts to the District Judge at the close of each half-year; and those returns, when received, should be forwarded by the District Judge, together with the return of his own Court, to the ¹[Superintendent, Press and Forms, Gaya].

Certificate

Certified that the stock of saleable forms shown in the above return to be in hand on the has been duly verified and found correct.

Cashier

The 19

Judge-in-charge

1. Subs. by C.S. No. 49, dated 7.8.1974.

ACCOUNTS OF SALEABLE FORMS

(With Sample Entries)

| Date | Application for copy | Application for information | — | — | Price | Number and date of Challan by which paid into Treasury | Initials of the Judge-in-charge | Remarks |
|---------------------------|----------------------|-----------------------------|-----|-----|------------------------|--|---------------------------------|-----------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Stock | 500 | 300 | ... | ... | Rs. P. (in red ink) | ... | ... | |
| Sold on 6th May, 1918 | 400 | 250 | ... | ... | 6.78 | 256, dated 7-5-1918 | ... | |
| Sold on 9th May, 1918 | ... | 8 | ... | ... | 0.12 | 302, dated 10-5-1918 | ... | (Sd.) A.B. Cashier |
| Balance on 30th May, 1918 | 100 | 42 | ... | ... | ... | ... | ... | |
| Received | 400 | 200 | ... | ... | ... | ... | ... | |
| | 500 | 242 | ... | ... | ... | ... | ... | |

NOTE—The balance should be struck at the close of the month.

(Sd.) A.B.,
Cashier

XI—MISCELLANEOUS*Accountant and Cashier*

697. In carrying out these rules care must be taken by all Judicial Officers that, in respect of cash transactions in Court, distinct officers are employed as Accountant and Cashier. In other words, the same officer shall not keep the office copies of *Chalans* and Register of Payment Orders, Deposit Registers, etc., and also receive and pay the money. The Deposit Register and Clearance Register and connected papers shall be kept by the Accountant under lock and key, he being solely responsible for them. [G.L. 7/54.]

Note.—In place of the *Nazir* a *Naib Nazir* or a clerk may be appointed as Cashier provided (i) that he is expressly so designated, (ii) that his duties and responsibilities are made clear, and (iii) that he gives the necessary security. Such appointments should be made in cases where the *Nazir* owing to the pressure of other work, is unable to discharge the duties of Cashier in strict accordance with the instructions contained in the Court's General Letter no. I of 29th January, 1902, but this will not relieve the *Nazir* of his responsibility for the correctness of the Cashier's books.

Language of Accounts and Supervision by Sarishtadar

698. Every Judicial Officer shall keep his accounts in English; and it must be distinctly recorded by him whether the *Sarishtadar* is, or is not responsible for a general control and supervision over the Accountant.

Note.—The *Sarishtadar* of the Court of each Judge-in-charge of accounts (at headquarters stations the *Sarishtadar* of the District Judge's office) should be required periodically to inspect carefully the *Nazir's* account books. The discovery of any defects or a breach of the High Court's account rules, or of the instructions given in rule 95 and in the notes to Form nos. (A)-21 and (A)-22 should be promptly brought to the notice of the Judge-in-charge. In the case of Courts in the interior of the district the fact should, without delay, be brought to the notice of the District Judge.

Forms

699. Manuscript forms are prohibited. All Account Books should be paged before they are brought into use.

Daily Examination of Accounts

700. The Accounts and Registers, of which a list is given in Appendices I and II annexed to these rules must be compared daily by the Judge-in-charge; and this rule is on no account to be neglected, as its observance is essential to the integrity of the transactions and the correctness of the books. The notes at foot of the forms indicate how the verification is to be made though they must not be taken as exhaustive, and the Judge-in-charge is expected to use his discretion with regard to the amount of cross checking which may be rendered necessary by the fact that owing to delay in encashment of payment orders or other causes corresponding entries in the registers may appear under different dates.

APPENDIX I

LIST OF REGISTERS TO BE COMPARED DAILY BY JUDGE-IN-CHARGE

| | | | |
|---------------------------|------------------------|--|-----------------|
| For all Judicial Officers | Kept by the Accountant | 1. Register of Payment Orders. | Form No. (A)—13 |
| | | 2. Treasury Pass Book | " " (A)—14 |
| | | 3. Register of Deposits (Part I) received. (Part II) | " " (A)—15 |
| | | 4. Register of Deposits (Part I) repaid. (Part II) | " " (A)—16 |
| | | 5. Clearance Register of A-Deposit | " " (A)—18 |
| | | 6. Register of Miscellaneous Receipts and Repayments | " " (A)—20 |
| For District Judges | Kept by the Cashier | 1. Counterfoils of Receipts granted by Cashier for Peremptory cash receipts | " " (A)—21 |
| | | 2. Peremptory Cash Book | " " (A)—22 |
| | | 3. General Cash Book | " " (A)—23 |
| | | 4. Account of saleable forms <i>Accountant</i> —Register showing Deposits Received and repaid by Subordinate Courts | " " (A)—19 |
| | | <i>Cashier</i> —Register of Intestate Property | " " (A)—24 |

APPENDIX II

JUDGE'S DAILY EXAMINATION OF ACCOUNTS

(1) *Transactions at Court*

Comparison of Cashier's General Cash Book with *chalans* and payment orders and with Registers of Payment Orders.

Comparison of Treasury Pass Book with the Cash Book.

(2) *Transactions at Treasury*

Comparison of Treasury Advice with *chalans*, and Registers of Payment Orders, of Deposit Receipts and of Miscellaneous Receipts.

Comparison of Treasury Advice with Treasury Pass Book.

(3) *Transactions at Subordinate Courts*

By Subordinate Court—Comparison of the Daily Statement with the Registers.

By District Judge—Comparison of Treasury Advice with Subordinate Court's Statement.

Comparison of Statement with posting therefrom in the Register Form No. (A)—19 and Registers of Receipts and Payments of Deposits.

Judge's Monthly Examination of Accounts

1. The proper closing and totalling of all Registers.
2. Comparison of outgoing Statements with Office Registers.
3. Comparison of *plus* and *minus* memorandum with totals of Registers.
4. Ascertainment and verification of outstanding Payment Orders.

By District Judges—Comparison of Subordinate Court's Return with Register, Form No. (A)-19.

APPENDIX III

LIST OF RETURNS

From the Subordinate Courts to the District Judge

| | |
|--|-----------|
| Statement of total Receipts and Payments on account of deposits and other transactions. | Daily. |
| Extract Register of Repayments of A-Deposits received in previous months. | " |
| Statement of A-Deposits received, but not repaid during the month, with <i>plus</i> and <i>minus</i> memorandum enfaced. | Monthly. |
| Statement of Receipts under heads (b) to (g) of rule 607. | " |
| Clearance Register of A-Deposits | Annually. |
| Certificate of the Examination of B-Deposits | " |
| Statements of Lapsed Deposits | " |
| From the District Judge through the Treasury Officer | |
| Extract Register of Deposit Receipts with <i>plus</i> and <i>minus</i> memorandum enfaced. | Monthly. |
| Extract from Register of Deposit Repayments. | " |
| Statements of Receipts of his Court, and of the Courts subordinate to him under heads (b) to (g) of rule 607. | " |
| From the District Judge to the Accountant-General direct. | |
| Clearance Register of A-Deposits | Annually. |
| Statements of Lapsed Deposits of his Court, and of the Court subordinate to him, with certificates of the examination of B-Deposits enfaced. | " |



Bihar Civil Court Staff (Class III and Class IV) Rules)1992¹

In exercise of the powers conferred upon it under Article 235 of the Constitution of India, the High Court has been pleased to frame the following rules, namely, the Bihar Civil Court Staff (Class III and Class IV) Rules.

1. Short title.—These Rules may be called, “the Bihar Civil Court Staff (Class III and Class IV) Rules, 1992”.

2. These Rules shall come into force on and from the date to be notified by the High Court.

3. Definition.—(a) ‘*Appointment Committee*’ means the Committee constituted under Rule 26 of these Rules;

(b) ‘*Co-ordination Committee*’ means a Committee constituted under Rule 11 of these Rules;

(c) ‘*District Judge*’ means the District Judge in charge of the Judgeship whether comprising of one or more districts including the Judicial Commissioner, Ranchi;

(d) ‘*Employee*’ means an employee of Class III or Class IV as specified in Rule 6 hereinafter;

(e) ‘*High Court*’ means the High Court of Judicature at Patna;

(f) ‘*Selection Committee*’ means the Committee constituted under Rule 10 of these Rules;

(g) ‘*Services*’ means Class III and Class IV employees of the Subordinate Courts;

(h) ‘*Standing Committee*’ means the Standing Committee of the High Court constituted under Chapter I of the Patna High Court Rules.

4. These Rules shall be supplemental and in addition to the existing Rules and/or orders, governing the conditions of service of Class III and Class IV employees employed in the Civil Courts in the State of Bihar.

5. These Rules shall apply to all persons holding any post in the Service, whether temporary or permanent.

6. The Services shall consist of the following classes and categories of employees in the Civil Courts in the State of Bihar.

Class III Employees

Category 1

Shirestadar of the District Judge.

Category 2

(a) Head Clerk of the District Judge

(b) Accountant

(c) Head Comparing Clerk

1. Notification No. 292 Misc. dated 30-10-1992 framed by the High Court of Judicature at Patna Published in Bihar Gazette (Ext. Ord.) dated 17-10-1992.

- (d) Record Keeper
- (e) Nazir
- (f) Shirestadar of the permanent Subordinate Judge.
- (g) Shirestadar of Chief Judicial Magistrate/Additional Chief Judicial Magistrate (as the case may be).
- (h) Shirestadar of the other Subordinate and other Judges posted in the District/Subdivision including additional Subordinate Judges.
- (i) Shirestadar of permanent Munsif.

Category 3

- (a) Bench Clerk
- (b) Office Clerk
- (c) Naib Nazir
- (d) Cashier
- (e) Comparing Clerk
- (f) Bill Clerk
- (g) Assistant Accountant
- (h) Sessions Clerk

Category 4

- (a) Typist Grade I
- (b) Typist Grade II
- (c) Typist Grade III
- (d) Basic Grade

Category 5

- (a) Stenographer Grade I
- (b) Stenographer Grade II
- (c) Stenographer Grade III
- (d) Basic Grade

Class IV Employees

- (a) Orderly Peons/Office Peons
- (b) Malis
- (c) Waterman
- (d) Sweeper
- (e) Night-guard
- (f) Driver of the staff car
- (g) Daftary.

Mode of Recruitment of Class IV Employees

7. (a) The District Judge shall notify the vacancies of Class IV employees in the local Employment Exchange and shall notify the same also in the general Notice Boards of the District Head quarters as also Subdivisional Head quarters, if any.

(b) Such vacancies shall also be advertised in two daily newspapers having

wide circulation in the concerned district, one of which must be in Hindi.

Comments and Case law

[Appointment of Class IV employees in subordinate civil courts. Appointments made in utter violation of principles of natural justice. Applications invited in a dubious manner and no interview was held. Even members of the selection committee were not informed about the interview to be held. Appointment not made in a bonafide manner cannot be sustained, *Ram Ashray Mahto vs. State of Bihar*, 2001(3) BLJ 556.]

Mode of Recruitment of Class III Staff

8. All Class III posts shall generally be filled up in the following manner:—

9. In order to conduct centralised written examination and oral interview for the selection of the candidates for appointment to Class III posts the State shall be divided into five zones, namely, (a) Patna, (b) Muzaffarpur, (c) Bhagalpur, (d) Ranchi and (e) Saharsa, Each of the aforesaid zones shall consist of the following districts—

- | | | |
|----------------------|-----|---|
| (1) Patna Zone | ... | Patna, Bhojpur, Gaya, Rohtas, Aurangabad, Nalanda, Nawadah. |
| (2) Muzaffarpur Zone | ... | Muzaffarpur, Vaishali, Chapra, Siwan, Gopalganj, Sitamarhi, Motihari, Bettiah (West Champaran). |
| (3) Bhagalpur Zone | ... | Bhagalpur, Munger, Begusarai, Khagaria, Dumka, Godda, Deoghar. |
| (4) Ranchi Zone* | ... | Ranchi, Palamau, Gumla, Chaibasa, Jamshedpur, Dhanbad, Giridih, Hazaribagh. |
| (5) Saharsa Zone | ... | Saharsa, Madhepura, Purnea, Katihar, Darbhanga, Madhubani, Samastipur. |

Explanation.—Any judgeship carved out of any of the existing Judgeship shall continue to remain in the same Zone.

10. In each of the aforesaid five Zones, a Selection Committee shall be constituted consisting of all the District and Sessions Judges of all the Judgeships of that particular Zone. The seniormost District Judges of each Zone shall be the Chairman of the respective Zonal Selection Committee.

11. At the level of the State a Co-ordination Committee shall be constituted which shall consist of the Chairman of each of the Zonal Selection Committees; the senior-most District Judge among the members of the Co-ordination Committee shall be its Convenor.

Comments and Case law

[Constitution of India. Article 235. Appointment has to be confined only to the vacancies notified in advertisement which should be issued after taking into consideration existing as well as anticipated vacancies. Petition for direction for publication of merit list/panel of successful candidates prepared for appointment to the post of Class III employees in different Judgeships of State of Bihar and for a further direction to fill-up existing as well as future vacancies from said panel/list.

* Now, part of Jharkhand State.

Question : whether appointment was to be made against vacancies notified in advertisement or existing vacancies and future vacancies within two years after preparation of panel should be filled from the said panel/list. No direction can be issued to publish panel of all the successful candidates after interview and written test and to make appointment of the said panel to Class III post, which was in excess of vacancies notified. Posts which were vacant due to non-joining of candidates or even became vacant after resignation of candidates who had joined, have to be filled up from the candidates of waiting list. *Bihar Rajya Beyawahar Nayalaya Lipik Umidwar Sangh vs. Co-ordination Committee*, 1999(1) BLJ 308. 1999(1) BLJ 308 : 1998(2) PLJR 700.]

12. The members of the Co-ordination Committee, may regard being had to the number of vacancies available and likely to be available in near future, and such other relevant consideration, may fix criteria for appointment and the syllabus for holding written examinations.

13. All the vacant posts shall be advertised by the Co-ordination Committee at least in two daily news papers having wide circulation in the State of Bihar. One of such news papers must be in Hindi.

14. In the advertisement it shall be mentioned that a candidate should give three options relating to the place of his posting in the event of his selection. However, any candidate may be posted at any place other than the place(s) opted for by him.

15. The Co-ordination Committee, if necessary, may screen candidates on the basis of marks obtained by them in the Board/University examination and after such screening only a limited number of candidates may be called to take the written examination.

16. For the purpose of selection of candidates a written examination shall be conducted on the basis of the objective questions framed by any reputed professional management group who normally undertake the conduct of such examinations for selection/appointment of candidates in public or private sector/organisations.

17. The selection examination shall be conducted at the headquarters of each of the aforesaid five zones on the same date and at the same time.

18. The Co-ordination Committee shall determine the manner in which the question papers are to be distributed and examination at each zone conducted, and shall also take decisions on all matters incidental to the conduct of examination.

19. As soon as the examination is over, the answer books of the candidates shall be sealed and sent for evaluation to the professional management group to whom the conduct of the examination has been entrusted.

20. The written test/tests in typing and shorthand shall consist of 90 marks. 10 marks shall be allotted for personality test and interview. Interview shall be held by the Selection Committee in each Zone on the date to be specified for that purpose by the Co-ordination Committee. The ratio in which the candidates would be called for interview would be not less than three times the number of vacancies available and likely to be available in near future.

21. A panel of successful candidates shall be prepared on the basis of total marks obtained in written examination as also in the interview. After the selection

tests (both written and oral) are over, a common panel shall be prepared by the Co-ordination Committee in order of merit for all the judgeships in the State of Bihar.

22. The aforesaid panel shall remain valid for a period of two years.

Comments and Case law

[Rules 22 and 23 have to be read in the light of the provisions contained under rule 13. As such, the panel cannot be allowed to remain in force to fill up future vacancies for two years depriving other candidates who became eligible subsequently. *Bihar Rajya Beyawahar Nayalaya Lipik Umidwar Sangh vs. Co-ordination Committee*, 1998(2) PLJR 700 : 1998(3) BLJ 13.]

23. The existing vacancies as also any future vacancies occurring within the aforementioned period shall be filled up from amongst the candidates in the said panel in order of merit.

24. The Co-ordination Committee may form different panels for different types of posts, namely, (1) Assistant, (2) Stenographer and (3) Typist etc.

25. Notwithstanding anything to the contrary, the High Court may on its own motion or on the recommendation of the Standing Committee by a Special or General order direct that Class III posts in any of the judgeship may be filled up in the following manner.

26. In each district, there shall be an Appointment Committee comprising of the District Judge and two senior most Additional Judges in that Judgeship. In case, however, it comes to the knowledge that any one of the candidates is a relation of any one of the members of such Committee and/or for any other reason if any one of the Members of the Committee is unable to participate, in that event the next senior most Judicial Officer available in the Judgeship shall be included in the Appointment Committee.

It is however, made clear that irregularity in the constitution of such Committee shall not invalidate any appointment or any other action taken by such Committee on that ground alone.

Comments and Case law

[Constitution of India. Article 235. Appointment has to be confined only to the vacancies notified in advertisement which should be issued after taking into consideration existing as well as anticipated vacancies. Petition for direction for publication of merit list/panel of successful candidates prepared for appointment to the post of Class III employees in different Judgeships of State of Bihar and for a further direction to fill-up existing as well as future vacancies from said panel/list. Question whether appointment was to be made against vacancies notified in advertisement or existing vacancies and future vacancies within two years after preparation of panel should be filled from the said panel/list. No direction can be issued to publish panel of all the successful candidates after interview and written test and to make appointment of the said panel to Class III post, which was in excess of vacancies notified. Posts which were vacant due to non-joining of candidates or even became vacant after resignation of candidates who had joined, have to be filled up from the candidates of waiting list. *Bihar Rajya Beyawahar Nayalaya Lipik Umidwar Sangh vs. Co-ordination Committee*, 1999(1) BLJ 308. 1998(2) PLJR 700.]

27. The entire process of recruitment from the stage of advertisement upto preparation of the panel shall be completed under the supervision and control of the Appointment Committee.

28. The Appointment Committee may lay down the criteria regarding physical fitness of the candidates.

29. The selection of the candidates shall be made on the basis of an interview to be held by the Appointment Committee.

30. The Appointment Committee shall advertise all vacancies in relation to Class III staff in the Judgeship in two daily newspapers having wide circulation in the State of Bihar, one of which must be in Hindi and also in a local daily newspapers published from the concerned District Headquarters, if any.

In the advertisement the number of vacant posts in each category as for example, Clerks, Typists, Stenographers, etc. shall clearly be specified.

31. All appointments shall be made from the merit list prepared on the basis of the written examination and the oral interview. Only those candidates shall be called for interview who secure the qualifying marks in the written examination as prescribed by the Appointment Committee.

32. All candidates must pass the written examination as also the interview held for the purpose of selection.

33. The Appointment Committee shall get the written examination conducted including evaluation of answer papers done by any reputed professional management group or agency, who normally hold recruitment tests for public or private sector organisation.

Appointment by promotion

34. The appointment to Class III posts by promotion from Class IV posts shall also be made by the Appointment Committee on merit-cum-seniority basis.

35. Twenty per cent of Class III posts shall be reserved for promotion from Class IV employees who possess the minimum educational qualification and have three years' experience in the post held by them.

36. For promotion in terms of the preceding rule the Appointment Committee shall hold a separate examination of the eligible candidates and call for interview only such candidates who obtain the qualifying marks in the written examination.

General Rules for Appointment

37. All candidates shall fill up the application for appointment for the posts for which they are eligible in their own hand and shall furnish particulars as may be specified in the advertisement.

38. Each candidate shall enclose along with his application a postal order for a sum of Rs. 25 payable to the Registrar of the High Court at Patna.

39. The candidates shall affix their latest photographs in passport size along with their applications which must be attested by a Gazetted Officer.

40. Recruitment of candidates shall be subject to the general rules for a appointment as contained in these rules.

41. All appointments would be subject to such directions as may be issued by the High Court from time to time.

Educational Qualification

42. For appointment to the posts of Clerk Grade III, Stenographer Grade III and Typist Grade III, the minimum qualification shall be B.A., B.Sc., B.Com or equivalent degree of a recognised University.

In addition, for Clerk Grade III, knowledge in Shorthand/type writing shall be an additional qualification. For the post of Stenographer Grade III, a certificate in stenography from an institution recognised by the State of Bihar shall be an additional qualification.

Qualification for recruitment of Class IV staff

43. The candidates must be literate and must have working knowledge of both Hindi and English languages, including reading and writing in the said languages.

The candidates must also be physically fit so as to undertake strenuous work and must know to ride a bicycle.

Security

44. All officers having any dealing with public money or holding posts of particular trust shall on appointment furnish such security as the High Court may from time to time prescribe.

Age-Qualification

45. No person shall be eligible for appointment by direct recruitment to any of the posts in the services unless he has completed minimum 18 years of age and has not completed 30 years of age, on the date of the advertisement, or any other age as may be prescribed by the State Government for similar posts.

In case of departmental candidates, however, the maximum age bar shall be relaxed by the number of years he had been in actual service as an employee of the State Government.

However, in a suitable case the High Court shall have the power to relax the upper age limit. In case of candidates belonging to Scheduled Castes and Scheduled Tribes, the upper age limit, as on the date of advertisement, shall be 35 years.

Probation

46. All persons appointed to any category shall from the date on which he joins duty shall be on probation for the period as follows :—

(a) If recruited directly for a total period of two years duty within a continuous period of three years.

(b) If appointed from other service for a total period of one year on duty within a continuous period of two years :

Provided that the period of probation shall be deemed to have been extended unless his services are expressly confirmed :

Provided further that the decision regarding the said confirmation shall ordinarily be taken within a period of three years from the date of his initial joining of the post.

47. The services of candidates may be terminated on the expiry of such period or even during the pendency of probation period without assigning any reason, if in the opinion of the District Judge his performance is not satisfactory.

Test

48. A person appointed in any of the categories 1 and 2 above, for promotion to Junior Selection Grade and Super time scale, shall have to pass such departmental examination as may be specified by the High Court from time to time.

49. The District Judge shall hold such tests as may be directed by the High Court from time to time.

50. Posting of Class III Staff—

- (i) No Assistant should be appointed as a Bench Clerk unless he has completed five years of service.
- (ii) No Assistant should be posted to one post for more than three years, except to the Selection Grade post and the post of Stenographer of the District Judge, if necessary.
- (iii) If an Assistant, who had held the post of Bench Clerk earlier is required to be given that post again, there must be an interval of at least two years between the earlier assignment and the new assignment. Provided, however, the District Judge in special circumstances may relax the above condition.
- (iv) Ordinarily, no one should be employed in the Copying Departments as Comparing Clerk for more than three years.

51. A candidate shall not be allowed to cross the efficiency bar or promoted to the Junior Selection Grade or to a Supertime Scale in service unless he qualifies in the examination as may be prescribed by the High Court.

Reservation

52. Such number of vacancies shall be reserved for the members of the Scheduled Castes and Scheduled Tribes and Backward Class and other Backward Classes as per the policy decision of the State of Bihar but such policy of reservation shall not be followed in the case of appointment by promotion or by transfer.

Transfer

53. Transfer of the employees (inter district or intra district) shall be made in the following manner :—

- (a) In administrative exigencies and/or in public interest, on the recommendation of the District Judge concerned or otherwise, the Standing Committee may transfer any employee from one District to another.
- (b) Employees at his own request may be transferred to another judgeship, provided however, that in such a case, his position shall be last in the concerned gradation list of categories of such employee in the transferred judgeship.
- (c) The Standing Committee of the High Court may in consultation with the District Judge concerned fill up any post by transfer of a person holding a post in another judgeship corresponding to a post in the cadre concerned.
- (d) The District Judge may effect transfer within his own jurisdiction including the transfer of officer bearers of any Association or Union.

Disciplinary Action

54. The District Judge shall be the disciplinary authority of Class III and IV employees. The District Judge may suspend, initiate any disciplinary proceeding, issue a charge-sheet, enquire into the charges against the delinquent employees himself or cause the same to be done by any other Judicial Officer and impose any of the penalties specified in Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935.

Appeal

55. (1) Any employee aggrieved by imposition of any minor/major punishments upon him by the disciplinary authority may prefer an appeal to the High Court within a period of 30 days from the date of receipt of a copy of the said order and/or from the date of communication of the said order upon the concerned employee.

(2) Such memorandum of appeal shall be forwarded by the District judge concerned, to the Registrar of the High Court together with his comments thereon, if any, within two weeks from the date of receipt of such memorandum of appeal.

(3) The Standing Committee of the High Court shall dispose of such appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of the memorandum of appeal, if the same has been preferred against an order imposing a major penalty and by the Judge Administrative Department No. I in case of a minor penalty.

56. All procedures for holding departmental proceeding, imposition of penalty, disposal of appeal, etc., shall be governed by such statutory rules as are applicable to the employee concerned.

Extension of Service

57. If the District Judge is of the opinion that services of an employee upon his superannuation is essentially required for administrative exigencies, he shall send the records of such employee to the Registrar of the High Court with his recommendations which shall be considered by the Standing Committee of the High Court on its own merits. Ordinarily, extension of service for a period of more than two years shall not be granted except in very exceptional cases and in public interests. In case of such extension for a period of one year or more, the same shall be effective only on his vacating the official quarters.

58. The District Judge may subject to prior concurrence of the Standing Committee of the High Court re-employ any person who has superannuated if the same is necessary for administrative exigencies. The request of the District Judge may be disposed of expeditiously.

Promotion

59. Appointment to the higher grade of the ministerial establishment should ordinarily be made by seniority from lower grade provided they possess the prescribed education and other qualifications as laid down in these Rules and are otherwise fit to perform the duties attached thereto and pass the tests, if any, prescribed under these Rules.

60. A typist before his promotion to the junior Selection Grade must pass another test of typing, the minimum speed of typing would be 50 words per minute

in English or 35 words per minute in Hindi. Mistakes at the rate of 1½ words per hundred words shall only be allowed. Before a typist can be promoted to a Supertime scale, he will have to pass an examination in practice and procedure and on such other papers as may be prescribed by the High Court from time to time.

61. Before a Stenographer is promoted to the Junior Selection Grade he will have to pass the test of Stenography at the rate of 100 words per minute in English and 80 words per minute in Hindi and only 5% mistakes shall be allowed.

Before a Stenographer is promoted to the Supertime scale he will have to pass the examination of practice and procedure and such other papers which may be specified by the High Court from time to time.

62. Before a Clerk is promoted to the Junior Selection Grade he will have to pass an examination in—

- (a) Civil Court and Criminal Court rules framed by the High Court;
- (b) Accountancy;
- (c) Knowledge of drafting of correspondence and ordersheets; and
- (d) Practice and procedure.

63. A clerk before his promotion to Supertime scale shall have to pass an examination on procedure (Civil and Criminal), Stamp Act, Court-fees Act, Suit, Valuation Act, correspondence and noting and drafting. Junior Selection Grade Typist/Stenographers may be transferred to the posts of Clerks if they pass the necessary examinations as mentioned hereinbefore.

64. If suitable persons are not available for promotion to the Super time scale of clerk it would be open to the appointing authority to fill up the said posts by direct recruitment, subject to the prior concurrence of the High Court. The qualification for direct recruitment in the posts of Supertime Scale shall be B.A., B.Sc. and B.Com. or an equivalent degree from the recognised University and also degree in Bachelor of Law.

Special Qualification

65. No person shall be eligible for promotion to the posts specified hereto below unless he possesses the qualifications prescribed hereinbelow—

- (i) Sheristadar of the District Judge must pass a Sheristadar's test as prescribed by the High Court;
- (ii) Head Clerk of the District Judge must pass a Sheristadar's test as prescribed by the High Court;
- (iii) Sheristedar of any other Court and Accountant must pass the tests prescribed therefor by the High Court.

66. A candidate for the direct recruitment in the post of Supertime scale of clerk as Sheristadar and Head clerk of the District Court shall have to pass such examination (s) as may be prescribed by the High Court and such appointment shall be subject to the other rules as provided for hereinbefore.

Revision of orders of promotion

67. An order of promotion made by the District Judge may be revised by the High Court. Such revision may be made either *suo motu* and/or on a petition

submitted by the aggrieved member within six weeks from the date of passing of the said order :

Provided that the said period of six weeks may be extended by the High Court if sufficient cause is shown for the delay in submission of the petition.

68. Any person appointed to the categories of Clerk, Typist and Stenographers, shall have to pass an examination of Civil and Criminal Court Rules and Hindi noting and drafting during the period of probation if he has not already passed the said tests.

69. The appointing authority may, on the application of a holder of post of Junior Selection Grade *i.e.* Junior Selection Grade Clerk, Typist and Stenographer, transfer him to another unit.

General orders regarding discipline

70. Whenever any employee is personally interested in a case to be heard by the Court to which he is attached, he must bring the fact to the notice of the Presiding Officer.

Relaxation

71. The Standing Committee of the High Court may by order dispense with or relax the requirements of any rule to such extent and subject to such conditions as it may consider necessary in any particular case.

Residuary clause

72. Nothing in these Rules shall be deemed to affect power of the High Court to make such order from time to time, as it may deem in regard to all matters incidental or ancillary to these Rules not specifically provided for herein or in regard to matters as have not been sufficiently provided for.

Comments and Case law

[Constitution of India. Article 235. Appointment has to be confined only to the vacancies notified in advertisement which should be issued after taking into consideration existing as well as anticipated vacancies. Petition for direction for publication of merit list/panel of successful candidates prepared for appointment to the post of Class III employees in different Judgeships of State of Bihar and for a further direction to fill-up existing as well as future vacancies from said panel/list. Question whether appointment was to be made against vacancies notified in advertisement or existing vacancies and future vacancies within two years after preparation of panel should be filled from the said panel/list. No direction can be issued to publish panel of all the successful candidates after interview and written test and to make appointment of the said panel to Class III post, which was in excess of vacancies notified. Posts which were vacant due to non-joining of candidates or even became vacant after resignation of candidates who had joined, have to be filled up from the candidates of waiting list. *Bihar Rajya Beyawahar Nayalaya Lipik Umidwar Sangh vs. Co-ordination Committee*, 1999(1) BLJ 308. 1998(2) PLJR 700.]



[General letter No. 1 of 1997, dated 31-7-1997 (Civil) From : Manohar Lal Visa, Registrar General of the High Court of Judicature at Patna. To, all the District & Sessions Judges in Bihar and the Judicial Commissioner of Chotanagpur, Ranchi.]

Subject.—Regarding payment of compensation amounts to the Parties concerned in Land Acquisition Cases.

I am directed to say that it has come to the notice of the Court that serious lapses are committed in the matter of payment of money deposited in favour of land holders in Land Acquisition cases.

The Court, after careful consideration of the matter, have been pleased to direct the Presiding Officers concerned dealing particularly with Land Acquisition cases in all the Judgeships to follow the rules as contained in PART X Chapter 1 Accounts Rules (Judicial) of the Civil Court Rules Volume 1 (4th Edition) in respect of receipt and payment of compensation amounts to the parties concerned.

It is further directed that henceforth, such payments shall be made only to the parties concerned after proper verification and identification and should not be made to their lawyers under any circumstances.

The above instruction should be strictly followed in future by all concerned.



Bihar Civil Court Staff (Class III and Class IV) Rules, 1998

3rd November, 1998

S.O. 184, dated 6th November, 1998.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Bihar is pleased to make the following Rules regulating the methods of recruitment and conditions of service of Class III and Class IV employees appointed to Civil Courts of Bihar, namely :—

1. Short title, extent and commencement.—(1) These Rules may be called the Bihar Civil Courts Staff (Class III and Class IV) Rules, 1998;

(2) It shall extend to the whole State of Bihar;

(3) It shall come into force at once.

2. Definitions.—(a) “*Appointment Committee*” means the Committee constituted under Rule 6(16)(i) of these Rules;

(b) “*Co-ordination Committee*” means a Committee constituted under Rule 6 (3) of these Rules;

(c) “*District Judge*” means the District Judge in charge of the Judgeship whether comprising of one or more districts including the Judicial Commissioner, Ranchi;

(d) “*Employee*” means an employee of Class III or Class IV as specified in Rule 4 hereinafter;

(e) “*High Court*” means the High Court of Judicature at Patna;

(f) “*Selection Committee*” means the Committee constituted under Rule 6 (2) of these Rules;

(g) “*Services*” means Class III and Class IV employees of the Sub-ordinate Courts;

(h) “*Standing Committee*” means the Standing Committee of the High Court constituted under Chapter I of the Patna High Court Rules.

3. Application of Rules.—These Rules shall apply to all persons holding any post in the Services, whether temporary or permanent.

4. Class and Categories of employees.—The Services shall consist of the following Classes and Categories of employees in the Civil Courts in the State of Bihar.

Class III Employees

Category 1

- (a) *Shirestadar* of the District Judge.

Category 2

- (a) Head Clerk of the District Judge
 (b) Accountant
 (c) Head Comparing Clerk
 (d) Record Keeper
 (e) Nazir
 (f) *Shirestadar* of the Permanent Subordinate Judge.
 (g) *Shirestadar* of the Chief Judicial Magistrate, Additional Chief Judicial Magistrate (as the case may be).
 (h) *Shirestadar* of the other Subordinate and other Judges posted in the District/Sub-division including Additional Subordinate Judges.
 (i) *Shirestadar* of Permanent *Munsif*.

Category 3

- (a) Bench Clerk
 (b) Office Clerk
 (c) Naib Nazir
 (d) Cashier
 (e) Comparing Clerk
 (f) Bill Clerk
 (g) Assistant Accountant
 (h) Sessions Clerk

Category 4

- (a) Typist Grade I
 (b) Typist Grade II
 (c) Typist Grade III
 (d) Basic Grade

Category 5

- (a) Stenographer Grade I

- (b) Stenographer Grade II
- (c) Stenographer Grade III
- (d) Basic Grade

Category 6

- (a) Driver of Staff Cars

Class IV Employees

- (a) Orderly Peons/Office Peons
- (b) Malis
- (c) Waterman
- (d) Sweeper
- (e) Night-Guard
- (f) Daftary

5. Mode of recruitment of Class IV employees.—(1) The District Judge shall notify the vacancies of Class IV employees in the local Employment Exchange and shall notify the same also in the General Notice Boards of the District Headquarters as also Sub-divisional Headquarters, if any.

(2) Such vacancies shall also be advertised in two daily newspapers having wide circulation in the concerned district, one of which must be in Hindi.

Comments and Case law

[Direction by the High Court that final selection of the candidates were to be made only after consultation of the Hon'ble Inspecting Judge. Not followed . Selection held to be illegal. *Lalit Prasad vs. State of Bihar*, 2005(4) PLJR 619.]

6. Mode of Recruitment of Class III Employees.—(1) In order to conduct centralised written examination and oral interview for the selection of the candidates for appointment to Class III posts, the State shall be divided into five zones, namely (a) Patna, (b) Muzaffarpur, (c) Bhagalpur, (d) Ranchi and (e) Saharsa, each of the aforesaid zones shall consist of the following Districts :—

- | | |
|----------------------|---|
| (1) Patna Zone | ... Patna, Bhojpur, Gaya, Rohtas, Aurangabad, Nalanda, Nawadah. |
| (2) Muzaffarpur Zone | ... Muzaffarpur, Vaishali, Chapra, Siwan, Gopalganj, Sitamarhi, Motihari, Bettiah (West Champaran). |
| (3) Bhagalpur Zone | ... Bhagalpur, Munger, Begusarai, Khagaria, Dumka, Godda, Deoghar. |
| (4) Ranchi Zone* | ... Ranchi, Palamau, Gumla, Chaibasa, Jamshedpur, Dhanbad, Giridih, Hazaribagh. |
| (5) Saharsa Zone | ... Saharsa, Madhepura, Purnea, Katihar, Darbhanga, Madhubani, Samastipur. |

Explanation.—Any Judgeship carved out of any of the existing Judgeship shall continue to remain in the same zone.

* Now, part of Jharkhand State.

(2) In each of the aforesaid five zones, a Selection Committee shall be constituted consisting of all the District and Sessions Judges of all the Judgeships of that particular zone. The Senior-most District Judge of each zone shall be the Chairman of the respective Zonal Selection Committee.

(3) At the level of the State, a Co-ordination Committee shall be constituted which shall consist of the Chairman of each of the Zonal Selection Committees, the District Judge, Patna shall be its Convenor.

(4) The members of the Co-ordination Committee, regard being had to the number of vacancies available and likely to be available in near future, and such other relevant consideration, may fix criteria for appointment and the Syllabus for holding written examination.

(5) All the vacant posts shall be advertised by the Co-ordination Committee at least in two daily newspapers having wide circulation in the State of Bihar, one of such newspapers must be in Hindi.

(6) In the advertisement it shall be mentioned that a candidate should give three options relating to the place of his posting in the event of his selection. However, any candidate may be posted at any place other than the places opted for by him.

(7) For the purpose of selection of candidates, a written examination shall be conducted on the basis of the objective questions, framed by any reputed professional management group who normally undertakes the conduct of such examinations for selection/appointment of candidates in public or private sector/organisations.

(8) The selection examination shall be conducted at the headquarters of each of the aforesaid five zones on the same date and at the same time.

(9) The Co-ordination committee shall determine the manner in which the question papers are to be distributed and examination at each zone conducted, and shall also take decisions on all matters incidental to the conduct of the examination.

(10) As soon as the examination is over, the answer books of the candidates shall be sealed and sent for evaluation to the professional management group to whom the conduct of the examination had been entrusted.

(11) The written test/tests in typing and short-hand shall consist of 90 marks. 10 marks shall be allotted for personality test and interview. Interview shall be held by the Selection Committee in each Zone on the date to be specified for that purpose by the Co-ordination Committee. The ratio in which the candidates would be called for interview would be not less than three times the number of vacancies available and likely to be available in near future.

(12) A panel of successful candidates shall be prepared on the basis of total marks obtained in written examination as also in the interview. After the selection tests (both written and oral) are over, a common panel shall be prepared by the Co-ordination Committee in order of merit for all the Judgeships in the State of Bihar.

(13) The aforesaid panel shall remain valid for a period of two years.

(14) The existing vacancies as also any future vacancies occurring within the

aforementioned period shall be filled up from amongst the candidates in the said panel, in order of merit.

(15) The Co-ordination Committee may form different panels for different types of posts, namely (i) Clerk, (ii) Stenographer and (iii) Typist etc.

(16) Notwithstanding anything to the contrary, the High Court may on its own motion or on the recommendation of the Standing Committee, by a special or general order, direct that Class III posts in any of the Judgeship may be filled up in the following manner :—

- (i) In each districts, there shall be an Appointment Committee comprising of the District Judge and two Senior-most Additional District Judges in the Judgeship. In case however it comes to the knowledge that any one of the candidates is a relation of any one of the members of such Committee and or for any other reason, if any, of the Members of the Committee is unable to participate, in that event the next senior-most Judicial Officer available in the Judgeship shall be included in the Appointment Committee.
- (ii) It is, however, made clear that irregularity in the constitution of such Committee shall not invalidate any appointment or any other action taken by such Committee on that ground alone.
- (iii) The entire process of recruitment from the stage of advertisement upto preparation of the panel shall be completed under the supervision and control of the Appointment Committee.
- (iv) The Appointment Committee may lay down the criteria regarding physical fitness of the candidates.
- (v) The selection of the candidates shall be made by the Appointment Committee on the basis of total marks obtained in written examination and in interview also.
- (vi) The Appointment Committee shall advertise all vacancies in relation to Class III staff in the Judgeship in two daily newspapers having wide circulation in the State of Bihar, one of which must be in Hindi and also in a local daily newspaper published from the concerned District Headquarter if any.

In the advertisement, the number of vacant posts in each category as for example Clerks, Typists, Stenographers etc. shall clearly be specified.
- (vii) All appointments shall be made from the merit list prepared on the basis of the written examination and the oral interviews. Only those candidates shall be called for interview who secures the qualifying marks in the written examination as prescribed by the Appointment Committee.
- (viii) The Appointment Committee shall get the written examination conducted, including evaluation of answer papers done by any reputed professional management group or agency, who hold normally recruitment tests for public or private sector organisation.

7. Appointment by promotion.—(1) The appointments to Class III posts by promotion from Class IV posts shall also be made by the Appointment Committee on merit-cum-seniority basis.

(2) Twenty per cent of vacant Class III posts shall be reserved for promotion from Class IV employees who possess the minimum educational qualification and have three years experience in the post held by them.

(3) For promotion in terms of the preceding rule, the Appointment Committee shall hold a separate examination of the eligible candidates and call for interview only such candidates who obtain the qualifying marks in the written examination.

8. General Rules for Appointment.—(1) All candidates shall fill up the applications for appointment for the posts for which they are eligible in their own hand and shall furnish such particulars as may be specified in the advertisement.

(2) Each candidate for Class III posts excepting candidates belonging to Scheduled Castes and Scheduled Tribes shall enclose alongwith his application a postal order for a sum of Rs. 25 payable to the Registrar of the High Court at Patna.

(3) The candidates shall affix their latest photographs in passport size alongwith their applications which must be attested by a Gazetted Officer.

(4) Recruitment of candidates shall be subject to the general rules for appointment contained in these Rules.

(5) All appointments would be subject to such directions as may be issued by the High Court from time to time.

9. Educational Qualification.—For appointment to the posts of Clerk Grade III, Stenographer Grade III and Typist Grade III, the minimum qualification shall be B.A., B.Sc., B.Com or equivalent degree of recognised University.

In addition for Clerk Grade III, knowledge in Shorthand/Type writing shall be an additional qualification. For the post of Stenographer Grade III, a certificate in Stenography from an institution recognised by the State of Bihar shall be an additional qualification.

10. Qualification for recruitment of Class IV Staff.—The candidates must be literate and must have working knowledge of both Hindi and English languages including reading and writing in the said languages.

The candidates must also be physically fit so as to undertake strenuous work and must know to ride a bicycle.

11. Security.—All Officers having any dealing with public money or holding posts of particular trust shall on appointment furnish such security as the High Court may from time to time prescribe.

12. Age limit.—Lower and upper age limits for appointment by direct recruitment to any of the posts in the services shall be the same as prescribed by the State Government for similar posts.

In case of departmental candidates, however, the maximum age bar shall be relaxed by the number of years he had been in actual service as an employee of the State Government.

However, in a suitable case the High Court shall have the power to relax the upper age limit.

13. Probation.—(1) All persons appointed to any category shall from the date on which he joins duty shall be on probation for the period as follows :—

- (i) If recruited directly for a total period of two years duty within a continuous period of three years.
- (ii) If appointed from other service for a total period of one year on duty within a continuous period of two years :

Provided that the period of probation shall be deemed to have been extended unless his services are expressly confirmed :

Provided further that the decision regarding the said confirmation shall ordinarily be taken within a period of three years from the date of his initial joining of the post.

(2) The services of candidates may be terminated on the expiry of such period or even during the pendency of probation period without assigning any reason, if in the opinion of the District Judge his performance is not satisfactory.

14. Test.—(1) A person appointed in any of the categories (i) and (ii) above for promotion to Junior Selection Grade and Supertime Scale, shall have to pass such departmental examination that may be prescribed by the High Court from time to time.

(2) The District Judge shall hold such tests as may be directed by the High Court from time to time.

(3) Any person appointed to the categories of Clerk, Typist and Stenographers shall have to pass an examination of Civil and Criminal Court Rules and Hindi Noting and Drafting during the period of probation if he has not already passed the said tests.

15. Posting of Class III Staff.—(1) No Clerk should be appointed as a Bench Clerk unless he has completed five years of services.

(2) No clerk should be posted to one post for more than three years, except to the Selection Grade post and the post of Stenographer of the District Judge, if necessary.

(3) If a Clerk, who had held the post of Bench Clerk earlier is required to be given that post again, there must be an interval of at least two years between the earlier assignment and the new assignment.

Provided however, the District Judge in special circumstances may relax the above condition.

(4) Ordinarily, no one should be employed in the Copying Department as Comparing Clerk for more than three years.

16. Reservation.—Such number of vacancies shall be reserved for the members of the Scheduled Castes and Scheduled Tribes and Backward Class and other Backward Classes as per the policy decision of the State of Bihar.

17. Transfer.—(1) Transfer of the employees (inter District or intra District) shall be made in the following manner :—

- (i) In administrative exigencies and/or in public interest, on the recommendation of the District Judge concerned or otherwise, the Standing Committee may transfer any employee from one District to another.

- (ii) The employees at his own request may be transferred to another Judgeship by the Standing Committee provided, however, that in such a case, his position shall be last in the concerned gradation list of categories of such employees in the transferred Judgeship.
- (iii) The Standing Committee of the High Court may in consultation with the District Judge concerned, fill up any post by transfer of a person holding a post in another Judgeship corresponding to a post in the cadre concerned.
- (iv) The District Judge may effect transfer within his own jurisdiction including the transfer of office bearers of any Association or Union.
- (v) The appointing authority may, on the application of a holder of post of Junior Selection Grade *i.e.* Junior Selection Grade Clerk, Typist and Stenographer, transfer him to another unit.

Comments and Case law

[Transfer of class-III & IV employees from one judgeship to another judgeship. No allegation of mala fide has been made against the Standing Committee. Held, Standing Committee of the High Court is authorized to Transfer any Class-III or IV employee in administrative exigency and/or public interest on the recommendation of the District Judge concerned. Valid. *Shashi Kumar Singh vs. State of Bihar*, 2000(4) PLJR 320.]

18. Disciplinary Action.—The District Judge shall be the disciplinary authority of Class III and IV employees. The District Judge may suspend, initiate any disciplinary proceeding, issue a charge sheet, enquire into the charges against the delinquent employees himself or cause the same to be done by any other Judicial Officer and impose any of the penalties specified in Bihar and Orissa Subordinate Service (Discipline and Appeal) Rules, 1935.

19. Appeal.—(1) Any employee aggrieved by imposition of any minor/major punishments upon him by the disciplinary authority may prefer an appeal to the High Court within a period of 30 days from the date of receipt of a copy of the said order and/or from the date of communication of the said order upon the concerned employee.

(2) Such memorandum of appeal shall be forwarded by the District Judge concerned to the Registrar of the High Court together with his comments thereon, if any, within two weeks from the date of receipt of such memorandum of appeal.

(3) The Standing Committee of the High Court shall, dispose of such appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of the memorandum of appeal, if the same has been preferred against an order imposing a major penalty and by the Judge Administrative Department No. 1 in case of a minor penalty.

(4) All procedures for holding departmental proceeding, imposition of penalty, disposal of appeal, etc. shall be governed by such statutory rules as are applicable for the employees concerned.

20. Extension of Service.—If the District Judge is of the opinion that services of an employee upon his superannuation is essentially required for administrative exigencies he shall send the records of such employee to the

Registrar of the High Court with his recommendation which shall be considered by the Standing Committee of the High Court on its own merits. Ordinarily extension of service for a period of more than two years shall not be granted except in very exceptional cases and on public interests. In case of such extension for a period of one year or more, the same shall be effective only on his vacating the official quarters.

(2) The District Judge may subject to prior concurrence of the Standing Committee of the High Court re-employ the person who has superannuated if the same is necessary for administrative exigencies. The request of the District Judge may be disposed of expeditiously.

21. Promotion.—(1) A candidate shall not be promoted to the Junior Selection Grade or to a Supertime Scale in service unless he qualifies in the examination as prescribed by the High Court.

(2) Appointment to the higher grade of the ministerial establishment should ordinarily be made by seniority from lower grade provided they possess the prescribed educational and other qualification as laid down in these Rules or any other existing law that may be applicable and are otherwise fit to perform the duties attached thereto and pass the test, if any, prescribed under these Rules.

(3) Typist before his promotion to the Junior Selection Grade must pass another test of typing, the minimum speed of typing would be 50 words per minute in English or 35 words per minute in Hindi. Mistakes at the rate of $\frac{1}{2}$ words per hundred words shall only be allowed. Before a typist can be promoted to a Supertime Scale, he will have to pass an examination in practice and procedures and on such other papers as may be prescribed by the High Court from time to time.

(4) Before a Stenographer is promoted to the Junior Selection Grade, he will have to pass the test of Stenography at the rate of 100 words per minutes in English and 80 words per minute in Hindi and only 5% mistakes shall be allowed.

Before a Stenographer is promoted to the Supertime Scale he will have to pass the examination of practice and procedure and such other papers which may be specified by the High Court from time to time.

(5) Before a Clerk is promoted to the Junior Selection Grade, he will have to pass an examination in—

- (i) Civil Court and Criminal Court Rules framed by the High Court,
- (ii) Accountancy,
- (iii) Knowledge of drafting of correspondence and order sheets, and
- (iv) Practice and procedure.

(6) A Clerk before his promotion to Supertime Scale shall have to pass an examination on procedure (Civil and Criminal), Stamp Act, Court-fee Acts, Suits Valuation Act, Correspondence and Noting and Drafting. Junior Selection Grade Typist/Stenographers may be transferred to the post of Clerks if they pass the necessary examination as mentioned hereinbefore.

(7) If suitable persons are not available for promotion to the Supertime Scale of Clerk, it would be open to the appointing authority to fill up the said post by direct

recruitment subject to the prior concurrence of the High Court. The Qualification for direct recruitment in the post of Supertime Scale shall be B.A., B.Sc. and B.Com. or an equivalent degree from the recognised University and also degree in Bachelor of Law.

22. Special Qualification.—(1) No person shall be eligible for promotion to the posts specified hereto below unless he possess the qualifications that may be prescribed by the High Court from time to time as herein below—

- (i) Shirestadar of District Judge;
- (ii) Head Clerk of the District Judge;
- (iii) Shirestadar of any other Court and Accountant.

(2) A candidate for the direct recruitment in the post of Supertime Scale of Clerk as Shirestadar and Head Clerk of the District Judge shall have to pass such examination(s) as may be prescribed by the High Court and such appointment shall be subject to the other Rules as provided for hereinbefore.

23. Revision of orders of promotion.—An order of promotion made by the District Judge may be revised by the High Court. Such revision may be made either *suo-motu* and/or on a petition submitted by the aggrieved member within six weeks from the date of passing of the said order :

Provided that the said period of six weeks may be extended by the High Court if sufficient cause is shown for the delay in submission of the petition.

24. General orders regarding discipline.—Whenever any employee is personally interested in a case to be heard by the Court to which he is attached, he must bring the fact to the notice of the Presiding Officer.

25. Relaxation.—The Standing Committee of the High Court may by order dispense with or relax the requirements of any Rule to such extent and subject to such conditions as it may consider necessary in any particular case.

26. Other conditions of service.—The conditions of service in regard to matters not covered by these rules shall be the same as are or as may from time to time be prescribed by the State Government.

27. Savings.—Notwithstanding any order in consonance with the working of the Civil Court made in exigency of administration including appointment, transfer, posting, disciplinary action and any other order, ancillary or consequential thereto in accordance with the existing circular, rules, order or direction and passed by any authority defined in rule 2 of the these Rules, the same shall be deemed to have been made under these Rules and to that extent action taken thereof are saved and, accordingly, any order issued under any such powers of the authority defined in rule 2 of these Rules and in force immediately before the commencement of these Rules shall continue in force until and unless they are superseded under these Rules by order passed by the authority defined in rule 2 of these Rules.

28. Interpretation.—If any question arises relating to the interpretation of these Rules, it shall be referred to the State Government whose decision thereon after consultation with the High Court shall be final.



The Bihar Civil Court Staff (Class III and Class IV) (Amendment) Rules, 2001

The 11th July, 2001

S.O. 84, dated 13th July, 2001.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Bihar is pleased to amend “The Bihar Civil Court Staff (Class III and Class IV) Rules, 1998, namely :—

1. Short title, extent and commencement.—(1) These Rules may be called “The Bihar Civil Courts Staff (Class III and Class IV) (Amendment) Rules, 2001”.

(2) It shall extend to the whole State of Bihar.

(3) It shall come into force at once.

“2. Substitution of Rule 2 of the Rules, 1998.—Rule 2 of the Bihar Civil Court Staff (Class III and Class IV) Rules, 1998, shall be *substituted* by the following :—

2. Definitions.—(a) “*Appointment Committee*” means the Committee constituted under Rule 5 (ii) of these Rules;

(b) “*District Judge*” means the District Judge in charge of the Judgeship whether comprising of one or more Districts;

(c) “*Employee*” means an employee of Class III and Class IV as specified in Rule 4, hereinafter;

(d) “*High Court*” means the High Court of Judicature at Patna;

(e) “*Services*” means Class III and Class IV employees of the Sub-ordinate Courts;

(f) “*Standing Committee*” means the Standing Committee of the High Court constituted under chapter 1 of the Patna High Court Rules.

3. Amendment of Rule 4 of the Rules, 1998.—The words and figures “Category 6 (a) Driver of Staff cars” shall be *deleted*, and under heading “Class IV employee” after “(f) Daftary”, “(g) Driver of Staff cars” shall be *added*.

4. Amendment of Rules 5 to 12.—Rules 5 to 12 shall be *substituted* by the following Rules, namely :—

“APPOINTMENTS”

“5. (i) Appointing Authority :—The District Judge shall be the appointing authority of Class III and Class IV employees.

(ii) Constitution of Appointment Committee :—Appointment Committee shall be constituted consisting of the District Judge and two Senior-most Additional District Judges of the Judgeship or, in case of non-availability, the other Senior-most Judicial officer. If any member of the Committee declines to continue as member of the Committee for any reason, then in that event, the next Senior-most Judicial Officer in the Judgeship shall be the member of the Committee.

(iii) qualification and other eligibility criteria.

(A) Class III Employees

Educational qualification.—For appointment to the posts of Clerk Grade III and Typist Grade III the minimum qualification shall be B.A./B.Sc./B.Com. or equivalent degree of a recognised University. In addition for Clerk Grade III, knowledge in Shorthand/Type writing shall be an additional qualification. For the post of Stenographer a certificate in Stenography from

any institution recognised by any State Government or the Central Government shall be the requisite qualification, and such eligible Stenographers shall be selected for appointment after holding the Written test/tests.

(B) Class IV Employees

The candidates must be literate having working knowledge of both Hindi and English languages including reading and writing in the said languages. He should be physically fit and must know Cycle riding. In case of staff car Driver apart from the said qualification, the candidates must have valid Driving licence and possessing qualifications as prescribed under the Law.

(iv) Mode of Recruitment of Class III Employees

- (a) In the month of January of every alternate year, the District Judge will determine the existing vacancies as well as the anticipated vacancies, likely to occur by December of that year and will take steps for filling up such posts in the same month itself.

If the vacancies are up to ten, then the same should be filled up by an advertisement published in the local News paper. If the vacancies are more than ten, then it should be advertised in a Hindi News paper of wide circulation being published from Patna. In addition to this, in both the situations, the vacancies shall be notified in the Employment Exchange as well as on the General Notice Board of the Sub-divisional headquarters and District headquarters.

Comments & Case law

[Appointment of Bihar Civil Court Class III & IV Staff. The earlier directive of the High Court on its Administrative Side . State Act that for appointment to Class IV staff in Civil Court, newspaper advertisement not necessary. But the notices should be placed on the Notice-Board of the respective Civil Court premises and in the local daily newspaper of the Distt. Such directive was binding. Non compliance. No advertisement issued in any newspaper as well as no evidence of the Distt. Judge putting up any notice even on the notice board. High Court order striking down the appointments held to be unimpeachable. *Binod Kr. Gupta vs. Ram Ashray Mahto*, 2005(2) PLJR (SC)218 : 2005 AIR (SC)2103 : (2005)4 SCC 209.]

- (b) While making advertisement for filling up the vacancies of Class III, as the case may be, it will be open for the District Judge to charge from the candidate the fee, payable in such manner as may be indicated in the advertisement with a view to meet the expenses to be incurred in selection and appointment processes.
- (c) The Selection of the candidates will be made by the Appointment Committee on the basis of the written test followed by *viva-voce* of the candidates qualifying in the written test. In case of the number of applicants being unmanageable high in relation to the vacancies to be filled up, the Appointment Committee may call a limited number of candidates after screening the applicants by applying some uniform objective criterion, such as the marks obtained in the qualifying examination.
- (d) The written test/tests in Typing and Shorthand shall consist of 85 marks. 15 marks shall be allotted for *viva-voce*/personality test and interview (aggregating to 100 marks). For the written test, normally, the qualifying marks will be 45, in case of female candidates and candidates from the reserved categories the Appointment Committee may make suitable relaxation in the qualifying marks.

- (e) The written test will consist of four Sections—
 - (i) English language (letter writing, Essay, Precis, Comprehension and Vocabulary)—20 marks.
 - (ii) Hindi language (letter writing, Essay, Presis, Comprehension and Vocabulary)—20 marks.
 - (iii) Mathematics (of Matriculation standard)— 25 marks.
 - (iv) General knowledge and current affairs—20 marks.
- (f) Absolute confidentiality will be maintained regarding evaluation of the answer books and for that purpose the Appointment Committee will use the process of coding the answer books of the candidates as directed in the circular issued by the High Court in the past or as may be directed by the High Court in future.
- (g) Candidates securing qualifying marks in the written test will be called for the *viva-voce*. In case of number of candidates securing qualifying marks in the written test being very high, the Appointment Committee may, having due regard to the number of vacancies to be filled up, call for the *viva-voce* a limited number of qualified candidates on the basis of marks obtained in the written test. However, the ratio in which the candidates would be called for interview would be not less than three times the number of vacancies available and likely to be available in near future.
- (h) After holding *viva-voce* the select list will be prepared on the basis of marks obtained by the candidates in the written test and the *viva-voce*. There will be no qualifying marks for the *viva-voce*.
- (i) The preparation of the final merit list should normally be completed within three months from the date of issuance of the advertisement. All appointment shall be made from the final merit list. In case of non-joining of the candidates selected for appointment within the time mentioned in the appointment letter, such vacancies shall be filled up from the said list but no appointment in excess of the vacancies advertised shall be made from the said list. The panel shall remain subsisting till the end of the year in which it is prepared and after that it will lapse.

(v) Mode of Recruitment of Class IV Employees

The vacancies will be determined, notified and advertised in the same manner as in the case of Class III employees and the Selection of the candidates will be made on the basis of the interview only to be conducted by the Appointment Committee and, therefore, the appointment shall be made by the appointing authority. In case of staff car Driver, a test may be prescribed by the Appointment Committee.

6. Appointment by Promotion.—(i) The appointments to Class III posts by promotion from Class IV posts shall also be made by the Appointment Committee on merit-cum-seniority basis.

(ii) Twenty percent of vacant Class III posts shall be reserved for promotion from Class IV employees who possess the minimum educational qualification and have three years experience in the post held by them.

(iii) For promotion in terms of the preceding rule, the Appointment Committee shall hold a separate examination of the eligible candidates and

call for interview only such candidates who obtain the qualifying marks in the written examination.

7. General Rules For Appointment.—(i) All candidates shall fill up the applications for appointment for the posts for which they are eligible in their own hand and shall furnish such particulars as may be specified in the advertisement.

(ii) The candidates shall affix their latest photographs in pass-port size along with their applications, which must be attested by a gazetted officer.

(iii) Recruitment of candidates shall be subject to the general Rules for appointment as contained in these Rules.

(iv) All appointments would be subject to such directions as may be issued by the High Court from time to time.

Comments and Case law

[Appointment made without necessary consultation with the Hon'ble Inspecting Judge before final selection held to be illegal. *Lalit Prasad vs. State of Bihar*, 2005(4) PLJR 619.]

8. Security.—All Officers having any dealing with public money or holding posts of particular trust shall on appointment furnish such security as the High Court may from time to time prescribe.

9. Age Limit.—Lower and Upper age limits for appointment by direct recruitment to any of the posts in the services shall be the same as prescribed by the State Government for similar posts. In case of Departmental candidates, however, the maximum age bar shall be relaxed by the number of years he had been in actual service as an employee of the State Government. However, in a suitable case the High Court shall have the power to relax the upper age limit.

10. In order to make the rules regarding appointment more effective or to clarify or supplement them the High Court may issue general or special directions from time to time.

5. Amendment of Rule 17 of Rules, 1998.—Rule 17 of the Rules, 1998, shall be *substituted* by the following—

“17. Transfer of Class III and Class IV Employees from one Judgeship to another Judgeship as well as within Judgeship.

- (i) The Standing Committee on the recommendation of District Judge or otherwise may transfer Class III and Class IV employees from one Judgeship to another Judgeship on administrative ground or in public interest.
- (ii) In case of transfer of employees on request or in case of mutual transfer, the transferee shall be placed at the bottom of the category to which he belongs at the transferred place.
- (iii) In case of transfer on administrative ground or in public interest, the transferee shall carry his seniority to the transferred place.
- (iv) The District Judge may transfer Class III and Class IV employees, including the office bearers of the Association or Union, within his jurisdiction.”

