

THE COURTS MANUAL

PART II

INSTRUCTIONS AND ORDERS RELATING TO BOTH CIVIL AND CRIMINAL PROCEDURE

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တရားမနှင့် ရာဇဝတ်ကျင့်ထုံးနှစ်ရပ်လုံးနှင့် စပ်သည့် ညွှန်ကြားချက်များ
နှင့် အမိန့်များ။

PART II.

Instructions and Orders relating to both Civil and
Criminal Procedure.

CHAPTER III.

ADMINISTRATION AND CONDUCT OF CASES.

13. The Judge or Magistrate is responsible for the general management and control of the Court and its business. He should carefully supervise the working of the establishment and see that all duties are properly performed and all rules duly observed. The discharge of judicial functions is incomplete without constant attention to administrative matters. Judges or Magistrates should bare in mind that punctuality, courtesy, patience, observance of the prescribed procedure and avoidance of delay are essential.

*General Management
and Control.*

14. The Court should sit punctually at a fixed hour, as soon after 10 or 10-30 a.m. as is convenient, and should rise generally at a fixed hour, not later than 5 p.m. an interval of half an hour being allowed at a regular time in the middle of the day. Any temporary alteration of the usual hours should be made known, if possible, beforehand. A notice of the hours of sitting should be posted in a conspicuous place in, or outside of, the Court-room. The presiding officer of every Court should personally record daily in his benchdiary the hour at which he actually takes his seat on the bench and the hours at which he rises or adjourns. It is the duty of District Judges and District Magistrates to see that all Judges and Magistrates subordinate to them sit punctually and regularly.

Hours of Sitting.

15. Seven hours on five days in the week shall be the minimum standard of the office attendance to be observed in all Courts. Furthermore, two days in the week are permitted to be enjoyed as holidays . The office hours in the working days - from Monday to Friday, will be fixed from 0930 hours to 1630 hours (read with paragraph 14). †

Office Hours

† Government's Notification No. 4/82 and Letter No. 2/002-A/017

on a day other than on Saturdays (*cf.*, paragraph 114).

16. (a) At the beginning of the sitting the Judge or Magistrate should personally receive all complaints, appeals, petitions applications for execution and other applications, and shall hear fresh applications; and motions. Reserved judgments should also be delivered at the beginning of the sitting of the Court. Urgent applications should also be received, when necessary, immediately after the midday interval (*cf.*, paragraph 121).

(b) When a motion or application has reference to a pending matter not in the cause-list for the day, notice should be given by the party making it to the Court clerk to have the record ready, and, when practicable, notice should also be given to the opposite party.

17. Every Magistrate shall examine Criminal Register I when a case first comes before him and the first entry in the case diary should contain a statement to the effect that he has seen the entry of the case in Criminal Register I.

18. Criminal Courts may sit on any day when necessary, but should avoid sitting on any gazetted holiday as far as possible, and on Saturdays & Sundays altogether, except for every special or urgent cause. In large towns, where there are many petty police and other cases daily, and elsewhere on the occasion of a particular press of criminal business, special arrangements are required for the opening of Magistrates' Courts during the ordinary holidays.

Civil Courts should not as a rule sit on any gazetted holiday unless by special desire of, and arrangement with, the parties and others concerned.

Judges and Magistrates should specially avoid fixing cases for gazetted holidays and then postponing them on the ground that the Courts are closed.

19. Magistrate and Judges should, always consult their Bench Diaries in fixing cases in which Mahomedans are concerned so that they may not be put down for hearing on the following five days held specially sacred by Mahomedans :--

Mahomedans					
Sacred days.					
Muharram	...	2 days.	Id-ul-Fitr	...	1 day.
Id-uz-zuba	...	1 day.	Fatiha-i-dowazhdaham	...	1 day.

All Mohamedan employees of the Court who may ask for it should be granted leave for a sufficient time not exceeding two hours to say their *juma* prayers at such time as may be locally desired on Fridays: provided that, if necessary, the time is made up by extra work during some part of the day.

20. (1) Ordinarily criminal trials or inquiries should be held at the headquarters of the trying Magistrate. Magistrates who are touring officers should, whenever possible arrange to try cases when on tour, at or near the scene of occurrence. When a case is tried locally every endeavour should be made to complete the trial without adjournment. When a case is started on tour it should not be adjourned for completion of the hearing at headquarters. The trial of cases at places which are neither the Magistrate's headquarters nor at or near the actual scene of crime is strictly prohibited, save that a case may be tried at the headquarters of the Township or Subdivision within the limits of which it occurred.

(2) Sessions cases and Civil cases should be tried only at the Judge's headquarters.

(3) At headquarters cases are ordinarily to be enquired into and tried at the Court-house only, subject to any provision of the law for a

local enquiry. But *see* the judgement in *King v. U Khemein and another* (1940, Rangoon Law Reports, 122).

21. All Judges and Magistrates should try cases or hear appeals in the Court room, and not in a private chamber unless there are special reasons for so doings. Matters of an informal nature may in the discretion of the Judge or Magistrate be disposed of in chambers, but other judicial business of a formal nature should be transacted in open Court.

Hearing of cases in
open Court.

22. Avoidable postponement and unjustifiable delay are strictly forbidden. When a Subordinate Judge or Magistrate is really unable to overtake his judicial work, it is incumbent on him to represent matters to the District Judge or District Magistrate, as the case may be. It is the duty of these officers respectively to make suitable arrangements throughout the district for the disposal of all civil and criminal judicial business within a reasonable time.

Despatch of Work.

23. Delay in the disposal of judicial work is frequently caused by the facility with which adjournments are granted. The mere consent of parties or the absence of an advocate is not, in itself, necessarily a good reason for an adjournment. Ordinarily, if an advocate cannot be present on the date fixed for hearing, he should arrange for another advocate to appear in his place.

Adjournments.

It is not desired to lay down any absolute rule on the subject. Many cases may occur in which the consent of parties or the absence of an advocate may be reasonable ground for an adjournment. For instance, if the parties ask for time as there is a prospect of a settlement out of Court, or if an advocate is suddenly taken ill, the Court would rightly allow an adjournment.

All that it is desired to explain is that adjournments on these grounds should not be granted as of course. For further instructions regarding the granting of adjournments in civil and criminal cases, *see* Part III, paragraph 154, and Part IV, paragraphs 460-474.

24. Attention is also invited to the proviso to Order XVII, Rule 1, Code of Civil Procedure, which is frequently overlooked. When the hearing of evidence is begun, the **hearing must be continued from day to day** until all the witnesses in attendance have been examined, unless there are reasons, which must be recorded, for an adjournment.

This rule applies equally to criminal cases.

25. Adjournments must always be to a **fixed date**. If it is for any reason impossible at the time when an adjournment is made, to fix a definite day when the case can be proceeded with, a suitable date should be fixed for the proceedings to be put up for further orders.

26. Whenever a case is adjourned, its number should always be entered by the presiding officer **himself** against the proper date in his **bench diary** in order that he may be able to satisfy himself, by reference to the diary, that the case is duly put up on the date fixed (*cf.*, paragraph 45).

It is essential that the bench diary should be maintained by the presiding officer personally, and that the case record should be put up whenever a payment into Court or out of Court is made, and the payment, in or out, recorded by the presiding officer personally in the diary of the case, as this is a most important check against defalcations. It is especially important in criminal cases, where a fine has been imposed, and in civil execution cases, where sale of property has been ordered or the decree is being paid by instalments. When a fine is imposed in a criminal case, if the fine is paid at once, a date should be fixed and entered in the bench diary for the case to be put up for inspection of the chalan of credit of the fine to the Treasury. If time in which to pay the fine is granted, then a date must be fixed and entered in the bench diary for the case to be put up to verify that the fine is duly paid at the expiry of the period granted for this purpose, and that when paid it is duly credited to the Treasury, and the chalan produced for inspection.

In execution cases, when a sale of property is ordered, a date must be fixed and entered in the bench diary for the proceedings to be put up to verify the receipt by the Bailiff of the sale proceeds and the proper credit thereof by him to the Treasury. If the decree is being paid by instalments, then a date must be fixed and entered in the bench diary for the proceedings to be put up to verify the payment and credit to the Treasury of each instalment as it becomes due. (*See* paragraph 1045)

27. A case should not necessarily be adjourned without the examination of witnesses who are present, merely on account of the absence of one or more other witnesses. Attention is invited to Order XVII, Rule 3, Code of Civil Procedure, which should be applied in civil cases when the absence of witnesses is due to the default of the parties.

28. Section 23 of the Burma Medical Act, prescribes that no certificate required by law to be given by a medical practitioner or officer shall be valid, unless it is signed by a person who is registered under the Medical Act or under this Act. Medical certificates issued by unregistered medical practitioner are not valid, and Judges and Magistrates should refuse to accept them in cases where a medical certificate is required by law.

29. Judges and Magistrates should not ordinarily file or act on letters or telegrams addressed by pleaders or parties to the Court ; and they should decline to hear, or accept an application from, a pleader's clerk on behalf of his employer.

If any appearance has to be made, or application put in, it must be done by the party in person or by his pleader or, in cases where this is permissible, by a duly authorized agent. A pleader's clerk, as such, is not an authorized agent either of the pleader or of his client. There is no objection to one pleader making an application on behalf of another.

30. Where Additional Judges of Civil Courts are not able to try
 Method of minimising inconvenience to the public owing to absence of Judge where there is an Additional Judge. many cases, they may nevertheless do useful work by dealing in the absence of the Judge with matters of the following nature :—

- (a) The institution of suits. (This will include the receipt of complaints and the matters necessary to be examined or dealt with in this connection.)
- (b) The issue of summonses.
- (c) Receipt of written statements.
- (d) The issue of summonses to witnesses.
- (e) Receipt of applications for execution and issue of processes.
- (f) Withdrawal and adjustment of suits in urgent cases.
- (g) Payments into Court.
- (h) Arrest and attachment before judgment.
- (i) Temporary injunctions and interlocutory orders.

Disability of Judge or Magistrate.

31. Whenever any possible objection exists to the trial of a case in
 Report of objections to trial in particular case. a particular Court owing to the personal relations of the Judge or Magistrate or of any member of the Court establishment with the proceedings or any of the parties concerned in them, the matter should be reported to the District or other controlling Court.

32. Section 556 of the Criminal Procedure Code has been interpreted to mean that the mere fact that a Magistrate is in other capacities concerned with the administration of, e.g., stamps, excise and opium, does not debar him from trying cases of breach of the Stamps, Excise or Opium Law.

Legal Disability of
Magistrate.

Criminal Procedure
Code, 556.

But if he takes an active part in initiating or directing a prosecution under any such law, he would be debarred from trying the case. This rule does not apply to prosecutions under the Cantonments Act which are specially saved by section 29 of that Act.

Method of Citing Law Reports.

33. (1) The correct method of citing law reports in judgments is to give the names of the parties in the body of the judgment and the volume and page of the report in a foot-note. For example, *Hawa v. Sit Shein and another* (1) ; *Inayat Ali v. Mohar Singh* (2).

(2) In order to ensure uniformity of practice in all Courts as to the citation of Indian Law Reports (Rangoon Series), Rangoon Law Reports and Burma Law Reports, the following instruction is to be observed :--

(i) For "Indian Law Reports, (Rangoon Series)", the correct mode of citation will be the year of the report in brackets, followed by the letters I.L.R., the number of the volume, the word 'Ran ' and lastly the page as, for example,---(1929) I.L.R. 5 Ran. 1.

(ii) For "Rangoon Law Reports", the citation will be the year of the report in brackets, followed by the letters "R.L.R. ", and the number of the page, as, for example,---(1937) R.L.R. 1.

(iii) For "Burma Law Reports", the citation will be the year of the report in brackets, followed by the letters "B.L.R. ", and the number of the page, as, for example,---(1948) B.L.R. 1.

(1) 9 L.B.R. 93 [F.B. 1917]. (2) I.L.R. 28 All 142.

If decision from the *Bengal Law Reports* and the *Bombay Law Reporter* are cited, they will be cited as “Beng.L.R.” and “Bom.L.R.” respectively, to distinguish them from the Burma Law Reports.

(iv) In view of the fact that with effect from the 1st January 1949, separate pagings are being given for the Reports of the Supreme Court and those of the High Court, the “Burma Law Reports” should, from 1949 onwards, be cited as follows :--

B.L.R. (1949) S.C. 1.

B.L.R. (1949) H.C. 1.

Should there be more than one volume in the same year, the number of the volume should be put immediately after the year, thus :--

B.L.R. (1949, Vol. I) S.C. 1.

B.L.R. (1949, Vol. I) H.C. 1.

Language of Courts.

34. Burmese has been declared to be the official language of all Courts within the Union of Burma, but the use of the English language may, for the time being be permitted, except that the English language shall not be used ~~when~~ it is contrary to any direction contained in any Notification, General Letter, Memorandum or Circular issued, from time to time, by the Supreme Court or the High Court.*

35. When it is necessary under the Code of Civil Procedure or the Code of Criminal Procedure to take down evidence, it shall be taken down by the Judge or from his dictation in Burmese when the witness deposes in the Burmese language, and for the time being in English when the witness is unable to speak the Burmese language and either depose in the English language or through an interpreter in the English language.†

* Section 216 of the Constitution of the Union of Burma.

† High Court General Letter No. 6 of 1952, dated the 28th April 1952, and General Letters referred therein as Nos. (1), (2) and (4).

36. If the evidence, judgment or other order in a case is recorded in Burmese language, they should be divided into paragraphs; as is done if recorded in English language but the paragraphs should not be numbered.

Interpreters' Fees

37. (a) Where there are no interpreters paid by Government, and it is found necessary to employ an interpreter in a civil case, he shall be paid such fee, ordinarily not exceeding K 4 *per diem*, as the Court may fix. The fee shall be advanced by the party at whose instance the interpreter is required, and shall be treated as costs in the case. All payments of interpreter's fees shall be made through the Court and duly entered in Bailiff's Register II (*vide* Order XVIII, Rule 6A, Civil Procedure Code).

(b) In criminal cases the same rule shall apply *mutatis mutandis*, the fee to be borne by the party at whose instance the interpreter is required in non-cognizable cases and by Government in cognizable cases and at the discretion of the court, in cases in which the prosecution is instituted or carried on by or under the orders of a public servant. In Rangoon the Stipendiary Magistrates are authorized to sanction a fee from K 2 to K 5 *per diem* according to circumstances (*vide* General Department letter No. 326E24, dated the 29th July 1924).

Requisition of High Court Interpreters. ❖

38. (1) formerly Central Court organized and set up the Department of Translators and Interpreters and let them carry but their duties at the central and regional courts as the occasion arises. Now, the personnels of the old translators and interpreters has been transferred to the suitable Departments of the Central Court in accordance with the new organization of the Central Court.

(2) Therefore whenever the occasion arises to use the services of interpreters or translators in the regional courts. The Courts have to follow the instructions in Paragraph 38 and 108 of the Court Manual.

❖ The Central Court provided the Requisition of Court Interpreters and Translators. [Letter No. 637/ Section (15) 16/84, dated 30-3-1984.]

(3) The Court which requisitions the services of the interpreter should follow Paragraph 37 and the Court which requisitions the services of the translator should follow Paragraph 108 of the Courts Manual .

(4)	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

Dress

39. The following rules regulate the dress of military officers and soldiers appearing before a Civil or Criminal Court (other than a Court established under military laws) :--

(1) An officer or soldier required to attend a Court in his official capacity should appear in uniform, but
Dress of Officers
and Soldiers
appearing in Court.
except when on duty under arms or escort inside the Court will remove his head-dress whilst the Judge or Magistrate is present. [*Vide* paragraph 507 (b), Regulations for the Army and the Army Reserve, 1928.]
Attendance in an official capacity includes attendance :--

- (a) as witness, when evidence has to be given of matters which come under the cognizance of the officer or soldier in his military capacity ;
- (b) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command.

(2) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform.

(3) An officer or soldier shall not wear his sword or sidearms if he appears in the character of an accused person, or under military arrest, or if the presiding officer of the Court thinks it necessary to require the surrender of his arms, in which case a statement of the reasons for making the order shall be recorded by the presiding officer and, if the military authorities so require, forwarded for the information of the General Officer Commanding the Burma Army.

(4) Firearms shall under no circumstances be taken into Court.

40. A Police officer required to attend a Court in his official capacity should appear in uniform, but except when on duty under arms or escort inside the Court will remove his head-dress whilst the Judge or Magistrate is present. (*Vide* paragraph 1312, Burma Police Manual, Volume II, 5th Edition).

Cause-lists and Order of Business.

41. The cause-list is intended to be a list of all causes pending in Civil and Criminal Courts. It should be prepared in the prescribed form and posted in a glazed frame which should be hung in a prominent place in, or outside of, the Court-room where the public can see it. The frame should not be locked. In maintaining it as many sheets of the prescribed forms shall be utilized as may be necessary. The entries shall be in chronological order, sufficient space being allowed for each day as the experience of each Court shows to be suitable.

Cause-lists should be written in Burmese. Both Burmese and English dates should always be entered.

42. Cases should be entered the proper date as soon as the date for taking them have been fixed or ascertained, e.g., a case sent up by the police should be entered as soon as the day on which the accused or witnesses have been bound over under section 170, Code of Criminal Procedure, to appear is known.

Cases received during the absence of the Judge on tour or otherwise should be entered for his orders under the fixed for his return, unless otherwise arranged for. Jail appeals need only be entered in cause-lists when there is an appearance either for Government or for the appellant.

43. If a case is finished on the day fixed, a line shall be scored through the entry. If the case is not finished and the date to which it is adjourned falls within the current week, an entry shall be made of the date of adjournment in column 8. If the date of adjournment falls within a subsequent week the original entry shall be deleted and a fresh entry made in the list relating to that week.

44. At the end of each week, the sheet or sheets relating to that week shall be removed and filed. The files shall be preserved for one year, after which they shall be destroyed.

45. Every case must invariably be brought up by the Court clerk
Order of Business. for the orders of the Court on the day fixed (*cf.*, paragraph 26).

Cases should be taken in the order of the cause-list, except for special reason or with the consent of parties in waiting.

46. In certain cases, however the public interest and convenience
Priority of certain cases. require a departure from the ordinary course. Thus all suits and proceedings in Civil and Criminal Courts for the prosecution or defence of which--

- (i) Officers in the Army,
- (ii) Soldiers,
- (iii) other persons in the service of Government, and
- (iv) Members of the Reserve Forces

have obtained leave of absence must be disposed of by the Courts as soon as they are ripe for hearing irrespectively of the order in which they stand on the cause-list and as speedily as may be consistent with the due administration of Justice.*

* Section 122, Burma Army Act.

Section 122.-(1) On the presentation to any Court by or on behalf of any person subject to this Act of a certificate from the proper Military authorities of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall, on the application of such person, arranged, so far as may be possible for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper Military authority must state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee whatever shall be payable to the Court in respect of the presentation, of any such certificate, or in respect of any application by or on behalf of any such officer or soldier for priority for the hearing of his case.

(4) Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid it shall record its reasons for having been unable to do so and shall cause a copy thereof to be furnished to such person on his application, without any payment whatever by him in respect either of application for such copy or of the copy itself.

(5) If in any case a question arises to the proper Military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the Court to the nearest officer commanding a corps, whose decision shall be final.

47. Precedence must also be given to prosecutions under the Railways Act. These cases should be disposed of as early as possible at the sitting of the Court on each day on which there are any fixed for hearing.

48. (1) Criminal Cases.— Under section 352 of the Criminal Procedure Code, a Sessions Judge or Magistrate has discretionary power to exclude the public generally, or any particular person, from the room or building used by him as a Court during the enquiry into, or trial of, any particular case. Apart from this provision of law he has the power to take such steps as may be necessary to maintain order and prevent disturbances in Court. When conditions are such that there is reason to apprehend serious disturbances the adoption of the following precautions should be considered :--

(a) The issue by the presiding officer of a general order forbidding any person to bring into the Court room building any fire-arm, knife, lathi or other dangerous weapon.

(b) Enforcement of the above order by the search of all persons entering the Court room or building, except such as are specially exempted by the Court.

(c) Such search cannot be efficiently made without the supervision of a Police officer of some experience. District superintendents of Police will be instructed by the President of the Union to co-operate with the Courts in making arrangements to enforce these precautions when necessary.

(2) Civil Cases.— In civil cases a Judge may take precautions either by excluding undesirable persons from the Court room or building, or, when there is reason to apprehend serious disturbances, by issuing orders on the lines indicated above for the search for arms or weapons.

(3) In considering whether such precautions are necessary Judges and Magistrates should consult with the District Magistrate and District Superintendent of Police, and their advice should be carefully considered (see paragraph 483).

CHAPTER IV.

EVIDENCE--PRISONERS ACT--OATHS ACT.

Documentary Evidence.

49. Exhibit stamps should be in the following form:--

Stamping of Documents.

ရုံးတော်၌၊

၁၉

ခုနှစ်၊
နှိုင်း၊

ရာဇဝတ်တရားသူကြီးရုံးတော်၌
နံပါတ်

သက်သေခံအရာ
မည်သူကတင်ရန်ညွှန်ပြ
မည်သူကတင်ပြသည်
တင်ပြသည့်နေ့စွဲ
မည်သည့်နေ့ရက်လက်ခံသည်
မည်သည့်နေ့ရက်ပယ်သည်

တရားမတရားသူကြီး။
ရာဇဝတ်တရားသူကြီး။

One stamp is sufficient for both civil and criminal cases. In the case of a Magistrate who exercises no civil jurisdiction the heading in first space should be for example "In the Court of the Magistrate of *Magwe*" and in the Case of a Civil Judge without criminal jurisdiction the heading should be "In the Court of the Judge, *Magwe*".

The attention of judicial officers is drawn to a tendency on the part of clerks and others to use Exhibit Stamp in such a manner that the contents of the document are defaced or difficult to decipher.

A little care taken to stamp the exhibit on such part thereof as is blank would in most cases suffice to meet the requirements of these instructions. In some instances, however, the paper on which the document is inscribed is so completely covered with handwriting, typewritten or printed matter or inscriptions of some kind, that it is impossible to use the stamp without obliterating or rendering obscure parts of the document. It is most important that this should be avoided. In many cases the reverse of the sheet is blank and the stamp may be affixed thereon without interfering with the legibility of the document. When both sides of the document are so full that the stamp cannot be imprinted on it without covering some part of the original matter, the document should be affixed to a separate plain sheet of paper and the stamp should be impressed on the paper to which the exhibit is attached : at the same time the Judge or Magistrate should himself note on the document on such part thereof, as is sufficiently blank for the purpose, the letter or number of the exhibit, and should initial the note. If this course is followed, there will be little room for doubt as to the document to which an endorsement stamp on a separate sheet of paper refers, should the document and sheet become separated.

50. Copies on paper should be filed with the record when the originals are written on *parabaik* or palm-leaf and cannot be so filed.

The necessary particulars should be noted on the copies or such documents which should be filed with the record when the original is put in. The copy should be certified as a true copy under the signatures of the parties or their Advocates and of the Judge.

Parabaiks and Palm-leaves.

51. The original *parabaik* or palm-leaf should be shown to the witnesses, and it should be proved by one or more of the witnesses present at the execution, including the person who wrote and dictated it, if they were present. The custody from which the original was produced should also be stated in evidence, and how it came into such custody.

52. When a *parabaik* is produced as documentary evidence in a case, and is not filed with the record but is returned to the party producing it, it should be marked for identification with the stamp-punch.

Making of Parabaiks.

53. (1) If a document, which is in any way used in evidence, already

Documents which
cannot be filed on the
record.

forms part of another record from which it cannot properly be withdrawn, or if it is an entry in any shop-book, etc., which cannot reasonably be detained away from its proper place, it should not be permanently attached to the trial record ; but, after having been proved, when proof is requisite, and inspected by the Court and the parties, it must be marked and restored to its place (if it has been removed), and an authenticated copy of it must be put upon the trial record instead, bearing an endorsement indicating the place of custody of the original.

(2) Whenever a Judge or Magistrate sends for the record of another suit or case, or other official papers, and uses any part of such record of papers as evidence in a trial before him, he shall direct that an authenticated copy of the part so used shall be put up with the trial record, and shall further direct at the expense of which party such copy shall be made.

54. A court-fee is required on a copy of a document liable to stamp

Court-fee on Copy
of Document.

duty when left by any party to a suit or proceeding in place of the original withdrawn. *

55. No summons to produced a judicial record shall be issued.

Production of Judicial
Records in Civil Cases.

Any such record which may be required should be sent for in accordance with the provisions of Order XIII, Rule 10, Civil Procedure Code.

Before sending for the record of a case in another Court, the requisitioning Court shall ascertain whether it relates to a case which is pending or has been disposed of.

If the case is found to be pending, the Court shall consider whether a duly certified copy of the record, or of a portion of it, will not be sufficient for the purposes of justice, and if it considers that a certified copy as aforesaid will be sufficient it shall not make the requisition unless the parties cannot, without unreasonable delay or expense, or on account of poverty, obtain duly authenticated copies.

* Article 8, Schedule 1, Court-Fees Act.

If the Court decides to requisition a pending record, it shall briefly record its reasons for so doing, and shall send a copy of its reasons to the Court in which the case is pending.

If the Court requisitioning the record is subordinate to the Court in which the case is pending the latter Court may, for reasons to be recorded, refuse to comply with the requisition.

If the requisitioning Court is the superior Court, the Court in which the case is pending shall comply with the requisition, and shall stay its proceedings until the record is returned.

If it is found that the case has been disposed of, the requisitioning Court shall still have regard to the same considerations as in the case of pending records before making any requisition, but a requisition for a completed record shall be complied with by the Court from which the record is required.

56. (1) The law relating to the production of unpublished official records as evidence in Courts is contained in sections 123, 124 and 162 of the Evidence Act.

Procedure to be followed when a Government servant is summoned by a Court to produce official documents for the purpose of giving evidence.

(2) For the purposes of section 123 of the Evidence Act, the expression ' officer at the head of the department ' may be held to mean the head of the office in whose custody the document required by the Court is, and *vis-a-vis* the Court which demands its production, that officer should be treated as the authority to withhold or give the necessary permission.

(3) In respect of documents emanating (1) from a higher authority, viz., the Government or which have formed the subject of correspondence with such higher authority or

(2) from other Governments, whether Foreign or Dominion, the head of the department should obtain the orders of the President of the Union through the usual official channels before agreeing to produce the documents in Court, or allowing evidence based on them, unless the papers are intended for publication, or are of a purely formal or routine nature, when a reference to higher authority may be dispensed with.

(4) In the case of papers other than those specified in subparagraph (3), the head of the department should not allow production of the correspondence if it relates to matters which are generally regarded as confidential, or disclosure of which would in his opinion be detrimental to the public interest, or to matters which are in dispute in some other connection, or have given rise to a controversy between Government and some other party.

(5) In a case of doubt the head of the department should invariably refer to higher authority for orders.

(6) These instructions apply as well to cases in which Government is a party to the suit. In such cases much will depend on the legal advice as to the value of the documents, but before they are produced in Court, the considerations stated above must be borne in mind, and reference to higher authority made, when necessary.

(7) The Government servant who is to attend a Court as a witness with official documents should, where permission under the section 123 of the Evidence Act has been withheld, be given an order duly signed by the head of the department in the following form. He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the Court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

(8) The head of the department should abstain from entering into correspondence with the presiding officer of the Court concerned in regard to the grounds on which the documents have been called for. He should obey the Court's orders and should appear personally or arrange for the appearance of another officer in the Court concerned, with the documents, and act as indicated in sub-paragraph (7), and produce the necessary certificate if he claims privilege.

Order.

Summons from the Court of the _____ for the
production at _____ of the office files relating to the

(a) I direct _____ to appear with the files mentioned in the summons and to claim privilege for them under section 123 of the Evidence Act.

(b) I withhold permission to give any evidence derived from the files for which privileges is claimed under this order.

It should be represented to the Court that these files contain unpublished official records relating to affairs of State for the purpose of section 123 and that in view of the provisions of section 162 Evidence Act, the files are not open to the inspection of the Court.

Dated the

Head of Department.

57. When documents written in language other than the language of the Court are tendered for admission in evidence, Translation of Documents. the Court should see that they are translated into the language of the Court, and that evidence is taken to prove that the translation is correct.

58. U Ba Kyaing, B.Sc., Principal, Detective Training School, Insein, is an expert on hand writing and in all civil cases involving disputes as to the genuineness of documents, his services can be made available to give expert evidence.

59. For further instructions regarding documentary evidence and documentary exhibits *see* Part III, Chapter VII, paragraphs 155-164 ; and Part V, Chapter XXX, paragraphs 1075-1086.

Witnesses.

Removal of Persons undergoing Treatment in a Hospital to attend Court.

60. No person undergoing treatment in a hospital shall be removed to attend a Court, or for any other purpose, without the previous permission in writing of the Medical Officer in charge of the hospital. If the Medical Officer in charge of the hospital considers that any such person is unfit to be removed, he will grant a certificate in the following form to the officer who applies for permission to remove the person from the hospital.

Certified that is unfit to attend Court
to-day. He will probably be fit to attend in days.
She travel travel to

Summonses to witnesses.

61. When a summons is issued to a witness who is a member of the Buddhist monastic order or a person of rank or good social standing Form Civil 53 or Criminal 43 should be employed instead of Form Civil 52 or Criminal 42, as the case may be.

A monk should be described by his ecclesiastical title and his monastery.

Form of Summons to
Monks and others

A person of official rank should be described by his official title, and other persons of good position should be described by their recognized titles, those derived from their pious benevolence, such as Payataga, Kyaungtaga, etc., instead of the word "you" or "maungmin" which in Burmese is offensive to people of the higher classes. The appropriate title should be entered in the blank left in the form for the purpose.

The threat of penalty in the event of disobedience to the summons has been omitted in the civil form, but it is, of course, understood that this makes no difference as to the obligation imposed by law.

62. (a) Courts requisitioning the services of a Finger Print Expert for the purpose of giving evidence should make out a summons to "The Finger Print Expert" (not to any particular officer by name), which should be addressed through the District Superintendent of Police, to the Assistant Deputy Inspector-General of Police (Crime).

Summons to Finger
Print Expert.

(b) In Civil Cases, the Expert's Fee, Travelling and Subsistence Allowance must accompany the summons. The fee is K 20 in each case and Travelling and Subsistence Allowance is at the rates laid down in the Civil Service Regulations, according to which Finger Print Experts are classed as second class officers (*cf.*, paragraph 651).

63. When issuing a summons, sufficient time should be allowed both for the service of the summons and for the witness to attend the Court, having due regard to the distance to be travelled. A note should be made upon the summons of the date by which it is to be served. The summons must be returned to the Court by the date fixed for the appearance of the witness, with an endorsement of the cause of non-service, if it has not been served in one of the ways prescribed.

Date fixed for
attendance.

64. Summonses to procure the attendance of witnesses resident outside the Union of Burma cannot be issued in criminal cases. There are no provisions of the Court of Criminal Procedure for the issue to places outside the Union of Burma of summonses to procure the attendance of witnesses.

Summons to
resident of foreign state
in criminal cases.

65. When any process is sent for service or execution by a Criminal Court to any Court situated beyond the limits of Burma, it shall, unless it is written in English, be accompanied by a translation into English or in the language of the locality which it is to be served or executed. *

* Notification No. 4 (General), dated the 21st April 1909, as amended by Notification No. 17 (General), dated the 12th September 1910 and Notification No. 19 (General), dated the 25th October 1910.

66. For further orders and instructions concerning processes see Part V, Chapter XXIX.

The Prisoners Act.

67. Under the provisions of the Prisoners Act-

- (1) When a Court requires the attendance of a prisoner confined in a jail for the purpose of taking his evidence, the Court must issue an order to the officer in charge of the jail in the form prescribed in the First Schedule to the Act. Orders issued by a Civil Court subordinate to the District Court or by a Court of Small Causes must be countersigned by the Judge of the District Court. Orders issued by a Magistrate of the second or third class must be countersigned by the District Magistrate.
- (2) When the attendance of such a prisoner is required by a Court because of a charge of an offence against a prisoner, the form of the order should be that in the Second Schedule to the Act. Orders issued by a Magistrate of the second or third class must be countersigned by the District Magistrate.

When the attendance of the prisoner is required by an appellate Court in his appeal, or by a Court acting under the directions of the Court of Appeal, the order to the officer in charge of the jail should show the reason why the prisoner's attendance is ordered.

68. Under section 42, the President of the Union has issued the following directions concerning the removal of prisoners from the prisons in which they may be confined *:-

- (1) A state prisoner shall not be removed from the prison where he is confined without the sanction and order of the Government.
- (2) A prisoner under the sentence of death shall not be removed from the prison where he is confined to another prison without the sanction and order of the President of the Union.

* Judicial Department Notification No. 16, dated the 21st January 1909.

(3) A prisoner under sentence of death, transportation, or imprisonment for more than four years † shall not be removed from the prison in which he is confined to attend a Court situated at a station where there is no prison.

69. The following instructions have been issued for the guidance of Courts requiring the attendance of persons confined in prisons for the purpose of giving evidence or answering a charge * :--

* * * * *

(2) Under Part IX of the Prisoners Act, a civil or criminal Court has power ordinarily to require the attendance of a person confined in any prison within the limits of the High Court to which it is subordinate. If, however, the person whose attendance is required is confined in a prison over one hundred miles distance from the Court in which he is to give evidence, whether in a civil or criminal case, then under section 39 of the Act the Court requiring his attendance must apply in writing to the High Court, Rangoon; this restriction does not apply to the case of persons whose attendance is required by a criminal court to answer a charge of an offence.

(3) The powers set forth in paragraph 2 are, however, limited by the restrictions which the President of the Union in exercise of the powers conferred by section 42 of the Act has imposed in Judicial Department Notification No. 16, dated the 21st January, 1909. These limitations are three in number and based on three separate conditions, viz., the nature of the offence which prisoner has committed, the nature of the sentence which has been passed on the prisoner, and the presence or absence of a prison at the station in which the Court requiring the prisoner's attendance is situated. If the prisoner is a State prisoner or if he is under sentence of death, he cannot be removed from the prison where he is confined without the sanction of the President of the Union. Where such sanction is required the Court should address the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs. If there is no prison at the station in which the Court requiring the prisoner's attendance is situated, and the prisoner is under sentence to death or transportation or of imprisonment for more than four years he cannot be produced before the Court at the said station without the sanction and order of Government.

† The sentence of more than four years here referred to does not include a sentence in default of fine.

* Judicial Department Circular No. 41 of 1909, as amended by Miscellaneous Department Circular No. 3 of 1923.

Where such sanction is refused the evidence of the prisoner must either be taken on commission in the manner laid down in Chapter XL of the Code of Criminal Procedure, or, if the case is a civil case, in sections 44 and 46 of the Prisoners Act; or else the trial of the case must be transferred to a Court situated at a station where there is a prison.

(4) Superintendents of Jails are bound to obey an order for the production of a prisoner passed by a Civil or Criminal Court, provided it is made in conformity with the law as explained above, except in the circumstances detailed in section 43 of the Act. In case a prisoner has been sent back to the prison whence he came before the conclusion of his examination or trial, a fresh production order will be necessary to secure his attendance. But the Court may remand any such prisoner to custody in any local prison or lock-up until it has dispensed with his further attendance.

(5) These orders relate to the transfer of prisoners for the purpose of attending a Civil or Criminal Court only.

* * * * *

70. Applications under section 39 of the Prisoners Act, for the production of prisoners to give evidence before Courts, should be made in Form Civil 58, or Form Criminal 56, and should be submitted for countersignature to the Registrar of the High Court through the District Judge or District Magistrate, as the case may be, when applications are made by Judges or Magistrates subordinate to these officers. The District Judge or the District Magistrate will be expected to scrutinise the applications to see that they are in order, that they are not frivolous or unnecessary, and that the particulars for the identification of the prisoners have been shown on the reverse of the form quoted above. The same procedure as that detailed above should also be adopted in the case of applications made under section 40 of the Act.

71. Convicts who are produced under the orders of a Court should be kept in custody under the authority of the Jail Superintendent's warrant (Jail Form No. 210), and apart from passing temporary orders on the reverse of such warrant, Session Judges and Magistrates should issue no orders in the form of remand orders or otherwise for the custody of the convict. The only case in which a remand order of the Court for the actual detention of the convict may become necessary is when the period of imprisonment which he is undergoing expires or the sentence is set aside on appeal before he is sent back to the jail in which he was confined, and he is not released on bail. In such case, but in no other, the Court should issue a remand order ; and where the sentence is set aside on appeal the fact should be intimated to the jail in which he is kept in custody. If a convict is received without a warrant in the proper form from the Superintendent of the Jail the Court should communicate immediately by telegram with the Superintendent of the Jail from which the convict was produced, and his warrant should be obtained without delay, the necessary remand being ordered by the Court until the warrant is received.

Whenever a further sentence is passed on a convict produced from jail the fact should be entered on the Superintendent's warrant, and the warrant of commitment on the subsequent charge should be sent direct to the Superintendent of the Jail together with the warrant of the Superintendent of the jail from which he was produced.

72. Whenever a Judge or Magistrate requires the attendance of a Borstal or Senior Training School or Juvenile Jail inmate to give evidence before him, a letter should be written, through the District Magistrate or the District Judge concerned, to the Registrar, High Court, Rangoon, giving all the particulars necessary for the identification of the required Borstal or Senior Training School or Juvenile Jail inmate, and requesting him to move the President of the Union to direct that the Borstal or Senior Training School or Juvenile Jail inmate be produced before the Court for the purpose of giving evidence.

Oaths and Affirmations—Oaths Act.

73. Under section 6 of the Oaths Act, Hindu and Mahomedan witnesses, jurors or interpreters are not required to take an oath, but are required in lieu thereof to make an affirmation.

Under the same section also any juror, witness or interpreter whatever his creed may be, may object to take an oath, and, if he does so, must be required to make an affirmation.

74. Oaths are to be administered upon such symbol or accompanied by such act as may be usual, or as such witness, interpreter or juror may acknowledge to be binding on his conscience.

75. The following forms of oaths and affirmations have been prescribed by the High Court under section 7 of the Oaths Act.*

I.- *Oaths for Witnesses.*

For a Christian (on the Bible) and for a Jew (on the Old Testament):-

“I swear that what I shall state shall be the truth, the whole truth, and nothing but the truth. So help me God.”

For a Zoroastrian (on the Zenda Avesta held in the right hand) :--

“I swear that what I shall state shall be truth, the whole truth and nothing but the truth. Manasni, Gavasni, Koonasni.”

For a Buddhist layman (the witness taking the *kyansa* in both his hands) :--

“I declare that the evidence I shall give you in this case now before the Court shall be the truth, the whole truth and nothing but the truth. If I speak anything which is not the truth or conceal anything, may I suffer the curses described in this Holy Book. If I speak the truth, may I enjoy the blessings described in this Holy Book.”*

* Notification No. 20 (General), dated the 15th September 1923, as amended by Notification No. 29 (General), dated the 26th November 1940.

For a Buddhist pregnant woman (the *kyansa* being placed in front of the woman, who respectfully *shikoes* to it) :--

“ I declare that the evidence I shall give you in this case now before the Court shall be the truth, the whole truth and nothing but the truth. If I speak anything which is not the truth or conceal anything, may I suffer the curses described in this Holy Book. If I speak the truth, the whole truth and nothing but the truth, may I enjoy the blessings described in this Holy Book.”†

For a Buddhist monk or probationer (no book being held by, or shown to, the witness) :--

“ I declare that this case now before the Court I will speak the truth. If I do not speak the truth, may all the benefits derived from my religious observances be lost and destroyed.”

For a Chinese :—

- (1) “ I swear before Heaven and in the presence of the Judge, that I will speak the truth in this case : should I say anything false, may I disappear as this paper disappears by fire” : or
- (2) “ I swear before Heaven and in the presence of the Judge, that I will speak the truth in this case : should I say anything false, may my body be broken as this cup is broken.”

At the time of repeating the oath in Form No. 1, the witness shall burn a piece of yellow paper with the prescribed form of words inscribed on it in the Chinese character.

At the time of repeating the oath in Form No. 2, the witness shall break a cup.

For witnesses who are not Christians, Buddhists, Chinese or Zoroastrians :—

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

* The authenticated translation in Burmese is reproduced below :—

† The authenticated translation in Burmese is reproduced below :—

II.—*Affirmation for Witnesses.*

For Hindu and Mahomedan witnesses, and also for all witnesses, of whatever creed who object to take an oath :—

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

III.—*Oaths for Interpreters.*

For a Christian (on the Bible) and for a Jew (on the Old Testament):—

“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.”

For a Zoroastrian (on the Zenda Avesta held in the right hand) :—

“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. Manasni, Gavasni, Koonasni.”

For a Buddhist (the interpreter taking the *kyansa* in both his hands):—

“I 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 and explain. If I do otherwise, may I suffer the curses described in this holy book.”

For a Chinese :—

(1) “I swear before Heaven and in the presence of the Judge 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. If I do otherwise, may I disappear as this paper disappear by fire”: or

- (2) "I swear before Heaven and in the presence of the Judge, 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. If I do otherwise, may my body be broken as this cup is broken."

The instructions in Part I apply to the administration of oaths to Chinese interpreters.

For Interpreters who are not Christians, Buddhists, Chinese or Zoroastrians :-

"I swear before God 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, and that no part of my interpretation, translation, or explanation shall be false."

IV. - *Affirmation for Interpreters.*

For Hindu and Mahomedan Interpreters, and for all interpreters of whatever creed who object to take an oath : -

"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 and explain."

V. - *Oaths for Declarants of Affidavits.*

For a Christian (on the Bible) and for a Jew (on the Old Testament) : -

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

For a Zoroastrian (on the Zenda Avesta held in the right hand) : -

"I swear that this my declaration is true that it conceals nothing and that no part of it is false. Manasni, Gavasni, Koonasni."

For a Buddhist layman (the declarant taking the *kyansa* in both his hands) : -

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

If I have stated what is not true, or have concealed anything, may I suffer the curses described in this Holy Book. If I have stated what is true, or have not concealed anything may I enjoy the blessings described in this Holy Book”.

For a Buddhist pregnant woman (the *kyansa* being placed in front of the woman who respectfully *shikoes* to it) : -

“ I declare that this my declaration is true, that it conceals nothing, and that no part of it is false. If I have stated what is not true, or have concealed anything, may I suffer the curses described in this Holy Book. If I have stated what is true, or have not concealed anything may I enjoy the blessings described in this Holy Book.”

For a Buddhist monk or probationer (no book being held by, or shown to, the declarant) : -

“ I declare that this my declaration is true, that it conceals nothing, and that no part of it is *false*. If I have stated what is not true or have concealed anything, may all the benefits derived from my religious observances be *lost* and destroyed.”

For a Chinese : -

- (1) “I swear before Heaven that this my declaration is true, that it conceals nothing and that no part of it is false. If I have stated what is not true, or have concealed anything may I disappear as this paper disappears by fire” ; or
- (2) “I swear before Heaven that this my declaration is true, that it conceals nothing and that no part of it is false. If I have stated what is not true, or have concealed anything, may my body be broken as this cup is broken.”

The instructions in Part I apply to the administration of oaths to Chinese declarants.

For declarants who are not Christians, Buddhists, Chinese or Zoroastrians : -

“I swear before God that this my declaration is true, that it conceals nothing, and that no part of it is false.”

VI.- Affirmation for Declarants of Affidavits.

For Hindu and Mahomedan declarants and also for all declarants of whatever creed who object to take an oath : -

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

VII.- Oaths for Jurors.

For a Christian (on the Bible) and for a Jew (on the Old Testament) : -

“I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. So help me God.”

For a Zoroastrian (on the Zenda Avesta held in the right hand):-

“I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. Manasni, Gavasni, Koonasni.”

For a Buddhist (the juror taking the *kyansa* in both his hands):-

“I declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. If I do otherwise, may I suffer the curses described in this Holy Book.”

For a Chinese : -

- (1) “I swear before Heaven and in the presence of the Judge that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. If I do otherwise, may I disappear as this paper disappears by fire” or

- (2) "I swear before Heaven and in the presence of the Judge that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. If I do otherwise may my body be broken as this cup is broken."

The instructions in Part I apply to the administration of oaths to Chinese jurors.

For jurors who are not Christians, Buddhists, Chinese or Zoroastrians :-

"I swear before God that I will well and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence."

VIII.- *Affirmation for Jurors.*

For Hindu and Mahomedan jurors, and for all jurors of whatever creed who object to take an oath :-

"I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence."

IX.- *Form of Kyansa*

The following form of *kyansa* is prescribed for use in Subordinate Courts:-

Kyansa, or the Book of Imprecation on which Oaths are generally administered.

Namo tassa bhagavato arahato sammāsambudhassa, adoration to the Blessed, the Sanctified, the All Wise.

Cintitam sattasankhyeyam navaṣaṅkhyeya vacakam kayavasa
cātukhyatam buddhattam samupagami.

In accordance with the above stanza or gaṭṭha, may the great devās or nats, namely Cani, Paramisva, Mahāpinṇe, Kute and Goramanta who are the guardians of religion or the dispensation of the innumerable Pannadhikabuddhas, Viryadhikabuddhas and Saddhad'hitkabuddhas, who have obtained supreme wisdom by the perfect exercise of the ten principal paramittās, namely danāparami, charity, silāparami, the observance of the precepts, nekkhammapārami, abnegation of the world; paṇṇapārami, wisdom; viriyaparami, energy; khantiparami, patience; saccapārami, truth; adhiṭṭhanapārami, resolution; mettāparami, friendliness; and upekkhapārami, resignation; or equanimity, which are subdivided into thirty virtues of ordinary and inferior kinds, and with the continued efforts of the five laws of abnegation and the three carivas or exemplifying conduct for a period of four asankhyeyas* and 100,000 palpas, eight asankhyeyas and 100,000 kalpas, sixteen asankhyeyas and 100,000 kalpas, ultimately arrived at the knowledge of the four Sublime Truths, namely dukkhasaccam, suffering; samudayasaccam, the cause of suffering; nirodhasaccam, the cessation of suffering; and maggasaccam, the path leading to the cessation of suffering; and also may the guardians nats of devas of the Tipitaka and four vedas, Catulocapala devās; Mahamekhala devās, Rukkha devās (guardian nats of trees), Bhummadevās (guardian nats of the earth), Akasa devās (guardian nats of the firmament), the guardian nats or devās of the country and city, and the guardian nats or devās of the four cardinal and eight intermediate points, preserve me forever.

I will speak the truth only, and if I state what is not true, may the guardian nats or devās of Buddha who have attained perfect wisdom by the exercise of the aforesaid dasaparamitas, i.e., charity, the observance of the precepts, abnegation of the world, wisdom, energy, patience, truth, resolution, friendliness and resignation or equanimity for a continued period of four asankhyeyas and 100,000 kalpas, slay me.

May the guardian nats or devās of the divine relics of Buddha, i.e., forty teeth, whereof four are grinders, two collar bones, and other dhatus or bodily relics of eight sayut** measure, also slay me.

May the guardian nats or devās of the relics or dhatus of Sariputra and Maggalanna, chief disciples of Buddha Gautama, and of the eighty Rahantas, also slay me.

May the guardian nats or devās of Tripitaka or Buddhist scriptures consisting of five divisions Vinaya or discipline, three divisions of Sutta or discourses, and seven divisions of Abhidhamma or higher scriptures, and the 84,000 canonical scriptures, also slay me.

May the guardian nats or devās of the Cātuvedas, i.e., Sama, Rig, Yajur, and Atharva Vedas, also slay me.

* All asankhyeya n is the highest of the numerals and equal to 1 followed by 140 ciphers.

** As much as one can carry with two hands.

May the guardian nats or devás who preside over the period of 5,000 years during which the law of Buddha is to last, also slay me.

May the guardian nats or devás of the Jambudipa, Aparagoya, Uttarakuru and Pyuppavideha, the four great islands, 2000 smaller ones, and of the surrounding islands, also slay me.

May the guardian nats or devás of the five great rivers, namely Ganges, Yamuna, Asiravatti, Mahi, Sarabhu, and 500 smaller ones, lakes, canals and rivulets, also slay me.

May the guardian nats or devás of the Himavanta forests, including the Akasadeve, Vishnu, and the evil nats, also slay me.

May the Assamaukhi,† Candi, Paramisva, Mahágiri, the powerful Vessavana (Lord of the Yakkhas), Yakkha, Kumbhando (supernatural demon) and the chief Asurâ (fallen angel), also slay me.

May I perish a miserable death by vomiting clots of blood and by inflammatory diseases.

May I incur the eight dangers and the ten punishments and die a sudden death.

May the total destruction, as of an extinguished lamp, of children descendants, and property, befall me.

If I travel by water, may I be seized and devoured by crocodiles, nyans,~ porpoises, tortoises, fishes, and other water creatures of 100,000,000 kinds in number.

If I travel by land, may I be slain and devoured by tigers, leopards, elephants, bisons, boars, and other land animals of 90,000,000 kinds in number.

May I be bitten and slain by the cobra, cobra-de-capello, cerastes, and other snakes of the five kinds of poisonous serpents.

Furthermore as soon as I die, may I be precipitated into the eight great hells and 128 small ones, or into the four apayalokas, namely, hell, animal world, pretta world or among the inhabitants of the lokan darikal, naraka and asura world.

If I shall again become man, may I be tormented by all kinds of abominable complaints, itch, scurvy, leprosy, white and red spots, etc.,

May I perish by a sudden and violent death after calling in agony for the help of my parents and without being able to move my stretched out limbs.

May I incur the hatred and chastisement of the king and governors, meet the fate of having head, hands, and legs severed from the trunk and die a violent death with swords and other weapons.

May I be totally destroyed as a wrecked ship or barque in the midst of the wide ocean.

May I be reduced to a state like that of a cart-load of cotton burnt into ashes and leaving nothing that can be felt.

† A monster which has the face of a horse.

~ A water monster of the serpent species of 400 or 500 yards in length.

May I become wretched by losing children, slaves, plough -cattle, and all that I possess, and be reduced to a condition of utter poverty of unseemly character, and the features of a human preta and have to beg about the streets with an earthen begging bowl.

As Min Nanthu's imprecations may I gradually be consumed like firewood in fire and may I also be dissolved as lime in water.

If I speak the truth, may all the excellent nats or devās mentioned above look upon me with gracious eyes and preserve me to gain felicity both in mind and body as a reward for speaking the truth.

Moreover, in reward for speaking the truth, may the king, governors, ministers, and marshals, and soldiers and all the aforesaid inhabitants of land and water, as well as the enemies, entertain love and affection towards me as if I were the son of their bosom.

May the four elements preserve me and my descendants down to the seventh generation; and moreover, may I escape the consequences of bad luck, dangers, punishment of all descriptions, the ninety-six kinds of diseases, and may I possess ample wealth so as to be able to make repeatedly the great unparalleled offerings; and may I also become perfect in good actions so as to be able to assist the divine sasanā or religion.

When death overtakes me at last, may I escape, the four evil states, the three evil kalpas or periods, the eight evil stages, and the five enemies.

Finally, may I attain the felicity of Nirvāna after enjoying the happiness of the abodes of man and devās, and moreover, may all blessings and ponour attend on me and any descendants; and may riches and prosperity multiply daily like the waxing of the moon.

CHAPTER V.

COURT-FEES AND STAMPS—COURT-FEES ACT—STAMP ACT.

Court-Fees Act.

76. A petition of complaint of a cognizable offence need not be stamped. If the offence is a noncognizable offence one the petition, if presented to a Court, must bear a stamp of five kyats.†

A Petition of complaint of both a cognizable and a noncognizable offence must also bear a stamp of five kyats.†

† Act No. 6/ 90 Court Fees Amendment Act .

Court Fees Act 19, P-18 **77. Complaints of a public servant as defined in the Penal Code, a municipal officer or an officer or servant of the Burma Railways are exempted from Court-fees.**

Court Fees Act 18 **78. If a complaint of a non-cognizable offence or of wrongful confinement or of wrongful restraint, is not made by written petition the complainant must pay a fee of fifty pyas when his examination is reduced to writing unless the Court thinks fit to remit the payment.**

Court Fees Act 30 **79. The following is a summary of the law and rules as to the Cancellation of Court-fee Stamps cancellation of court-fees labels and impressed stamps:**

(1) Section 30 of the Court-fees Act is as follows : -

No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the Head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching in the case of impressed sheets through the figure of a peacock and adhesive labels through the figure of a Chinthe so as to leave the amount designated on the stamps untouched, and the part removed by punching shall be burnt or otherwise destroyed.

(2) 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. For such cancelling a round punch is supplied.

(3) The Court issuing copies, certificates, or other similar documents liable to be stamped under the Court-Fees Act must before issue cancel the labels affixed to them by punching out with a square punch a portion of the label in such a manner as to remove neither the figure nor that part of label upon which its value is impressed.

As an additional precaution the signature of the officer attesting the document with the date must be written across the label and upon the paper on either side of it.*

[N.B - The hole which is punched by the issuing Court on the stamp label affixed to copies, certificates, etc., under this rule does not do away with the necessity of cancelling by punching out the figure under section 30 of the Act, by the Court in which the copies or certificates, etc., may be produced or filed.]

(4) The Record-keeper of every Court, when a case is decided and the records are consigned to his custody, shall punch a hole with a triangular punch in each adhesive label district from that made under section 30 of the Court-fees Act and note the date of his doing so. In doing this he should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.~

[N.B. - Under this rule all court-fee stamps must be punched at least twice if they go into the record-room, namely, (1) under section 30 of the Act, and (2) by the Record-keeper. But if a stamped copy of a document is filed with the record in a judicial proceeding, it must be punched three times, namely, (1) by the Court which issued the copy, (2) by the Court in which the copy was filed and (3) by the Record-keeper.]

80. The Record-keeper should be supplied with a rubber stamp in the following form :-

Punching of adhesive
Court-fee labels.

Judicial Record Room. District. <u>Revolving Date</u> PUNCHED.

* Government of India, Financial Department Resolution No. 3373, dated 24th September 1875.

~ Government of India, Financial Department Resolution No. 1763, dated 24th July 1873, as modified by Finance and Commerce Department Resolution No. 3047, dated 5th September 1883.

This stamp should be impressed by the Record-keeper, at the time of punching the labels, on all documents the label or labels on which he has punched under paragraph 79 (4). It should not be impressed on the label itself, but on a convenient portion of the document where it can be easily read. When all the documents in a proceeding which bear labels have been stamped in this manner, the rubber stamp should be impressed also on the fly-leaf of the proceeding to indicate that the necessary punching has been completed.

81. Presiding Officers of Courts should take due care to see that court-fee labels on documents presented to them are punched before any action is taken on documents.

Writing of Names
across Court-fee
Labels.

As an additional precaution, the officer to whom the document is presented should write his signature and the date of presentation across the stamp so as to fall partly on the stamp and partly on the paper to which it is attached. The signature and date, however, should not be written in such a manner to render it difficult to read the vendor's endorsement on the stamp. Failure to cancel stamps facilitates trafficking in uncanceled stamps and stamp-papers by dishonest persons and consequently all Judges and Magistrates must satisfy themselves personally that stamps are cancelled as soon as they are presented, and before any action is taken on the document to which they relate.

82. Whenever in any Court or office a person seeks to present Court-fee stamps Court-fee Stamps not bearing the particulars referred to in Rule 24 or 25 as the case may be, of the Rules under section 34, Court-fees Act, relating to the sale of Court-fee Stamps, such stamps should not be accepted and the default of the vendor concerned should be reported to the Collector by the Officer to whom the stamps were presented. [See Court-fee Direction 11 A.]

Court-fee stamps
should bear particulars referred to in Rule 24 or 25 of the sale of Court-fee Stamps
Rules.

Remission and Reduction of Court-Fees.*

83. Under section 35 of the Court-fees Act, the President of the Union remits or reduces, as the case may be, the fees mentioned in the first and second schedules of the said Act to the extent detailed

below :-

- I. If the amount of the fee chargeable in any case involves a fraction of an anna, that fraction shall be remitted.
- II. No fee shall be chargeable in respect of the following application

:-

A.- General

1. Applications requesting that an enclosed petition may be forward to the person to whom it is addressed.
2. Applications made on behalf of Government by a Government officer or servant.
3. Applications for the return of documents filed in any Court or public office.
4. Applications for copies of documents in respect of which copies no Court-fee is chargeable.
5. Applications for repayment of deposits or payment of any sum the payment of which has been duly sanctioned by competent authority.
6. Applications for rectification or errors in assessment.
7. Applications for the advice or assistance of the Agricultural Department.
8. (1) A claim preferred to the revising authority by a person whose name is not entered on the electoral roll for the House of Representatives or any Municipality and who claims to have it inserted therein.

* Department of Lands and Revenue (Income-tax and Stamps Branch) Notification No. 10, dated the 29th September, 1939 as amended by Notification No.57, dated the 15th February 1947.

(2) An objection preferred to such authority by any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll.

9. Applications made by Consular Officers in pursuance of their official functions to Customs Officers.

10. An application or appeal under such statutory rules as may be in force for the discipline and internal administration of the public services preferred by any person who is or has been in the service of Government in Burma.

B.- Specific Enactments.

1. *Explosives Act.*- Applications for licence to possess gun-power, other explosives or detonators required *bonâ fide* for blasting purpose.

2. *Government Loans Enactments.*- Applications for the grant, suspension or remission of loans under the Land Improvement Loans Act or the Agriculturists' Loans Act.

3. *Income-tax Act.*- Applications to Income-tax Officers with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of Income-tax.

4. *Land Revenue Enactments.**- Applications for permission to occupy Government land for purposes of cultivation.

5. *Salt Act.*- Applications to purchase salt belonging to Government.

6. *Stamp and Court-fees Act.*- Applications for -

- (a) refund of the amount paid to Government for stamped paper which has become spoiled or unfit for use or is no longer required for use;

* Finance and Revenue Department Notification No.10, dated the 24th May 1945.

~ Ministry of Finance and Revenue (Excise and Taxes Branch) Notification No.285, dated the 29th November 1951.

- (b) renewal of stamped paper which has become spoiled or unfit for use;
- (c) return of documents impounded by Collector [Burma Stamps Act, section 42 (2)];
- (d) a stamp vendor's licence.

7. *Fisheries Act.*- Applications for fishery leases made by or on behalf of fishery Co-operative Societies.~

III. The fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure shall be limited to the amounts chargeable under Article 11 of the Second Schedule.

IV. No Court-fee shall be chargeable upon copies in the following cases; -

- (a) Copies of proceedings or orders supplied to applicants requiring such copies for their private use only, and not such presented to any public Court or officer.
- (b) Copies of proceedings or orders supplied to Government officers or servants in the course of their duties.
- (c) Copies of documents in connection with any legal proceedings which are required by or for any person duly retained on behalf of or at the expense of Government to assist in such legal proceedings.
- (d) Copies directed to be furnished free of cost under the Code of Criminal Procedure.
- (e) Copies of entries in settlement and supplementary survey maps and registers relating to land standing in the name of, or actually in the occupation of, the applicant.
- (f) Copies of papers required by a pensioner in connection with the commutation of his pension.

V. Plaints.- (a) When a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the Presiding Judges or Officers without summoning the defendant rejects it, not for cal error in form only and so as to leave the plaintiff free to prosecute precisely the same case in another form against shall be refunded on its presentation to the Collector of the district with a certificate from the Judge or Officer, who rejected it, that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded.

(b) The value of the subject matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable to the suit, be deemed not to exceed five times such portion of the revenue assessed on the holding as may be payable in respect of the share.

VI. *Probates and Letters of Administration.*- (a) No fee shall be chargeable in respect of Burma Probates, Letters of Administration or Succession Certificates in the share or other interest a deceased member of a company formed under the Burma Companies Act, provided that the said share or interest was registered in a branch register in the United Kingdom under the provisions of section 41 of the said Act and that such member was as the date of his decease domiciled elsewhere than in Burma.

(b) The fees chargeable under Article 11 and 12 of the First Schedule, on the property of -

- (i) any person subject to the Naval Discipline Act, the Army Act, the Burma Reserve Forces Act, the Burma Territorial Force Act, the Burma Auxiliary Force Act, the Burma Royal Naval Volunteer Reserve (Discipline) Act, all the Burma Volunteer Air Force (Discipline) Act,* who is killed while on active service or on service which is of a war like nature or involves the same risk as active service, or dies from wounds inflicted, accidents occurring or disease contracted while on such service,

* Finance and Revenue Department (Excise and Taxes Branch) Notification No.57, dated the 15th February 1947.

(ii) any person being a Government servant, civil or military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties and

(iii) any person, other than those mention above who dies between the 3rd September 1939, and twelve months after the end of the present emergency from injuries caused by the operations of war, shall be remitted to the following extent:-*

- (1) where the amount or value of property in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Succession Act, does not exceed K 50,000, the whole of the fees leviable in respect of that property;
- (2) when the said amount or value exceeds K 50,000, the whole of said fees in respect of the first K50,000;
- (3) where any property passes more than once in consequence of such deaths, in the case of the second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

VII. No fee shall be chargeable in respect of any bond prescribed by the Code of Criminal Procedure.

VIII. No Court-fee shall be chargeable upon applications for the grant or renewal of licences or duplicates under the Arms Rules, 1924, in respect of which a fee is payable under those rules, and all Court-fees exceeding the amount mentioned in Article 1(a), Schedule II of the Court-Fees Act chargeable upon other applications relating to licences or duplicates granted or renewed under the said rules shall be reduced to the amount mentioned in Article 1(a), Schedule II of the Court-Fees Act.~

* Finance and Revenue Department (Excise and Taxes Branch) Notification No. 57, dated the 15th February 1947.

~ Department of Lands and Revenue (Income-Tax and Stamps Branch) Notification No. 235, dated the 17th October 1950.

With the concurrence of the Defence Department this notification is applicable to the areas specified in Part I of the Second Schedule to the Government of Burma Act, 1935 in which the Court-fees Act is in force.

This notification is also applicable to the areas specified in Part II of the Second Schedule to the Government of Burma Act, 1935.

84. For remission of court-fees on copies under the Land Acquisition Act, *see* Part III paragraph 325.

85. Judges should satisfy themselves that the stamps on papers are correct and have been cancelled according to instructions.

Duty of Judge

86. Court-fees payable on a copy of judgement in a criminal case (when not foregone altogether) should be assessed under Article 9 of Schedule I of the Court Fees Act.

Judgement in Criminal Case

87. *See* Part III, paragraph 332, for the rule regarding prepayment of the proper court-fee on probate or letters of administration.

88. (a) Section II of the Court Fees Act, applies to mesne profits ascertained under the provisions of Order XX, rule 12, Court-fees must be paid on the difference between the amount of the mesne profits claimed in the plaint under Order VII, Rule 2, and the amount actually ascertained to be due. A final decree under Order XX, Rule 12(2)(c), should not be passed until these Court-fees have been paid (10 L.B.R. 276).

Mesne Profits

(b) The same considerations apply to a claim for a share an estate brought in an administration suit.

89. In an administration suit the value of the suit both for the purposes of Court-fees and jurisdiction is the amount at which the plaintiff values his shares.

Method of levying Court fees in Administration suits

Such a suit falls under section 8 of the Suits Valuation Act, and Court-fees are payable *ad valorem*, and the suit is not of any of the classes referred to in paragraphs V, VI, IX and paragraph X, Clause (d), of section 7 of the Court-Fees Act. (*See* I.L.R. 7 Rangoon 164, 7 Rangoon 165 and 1941 Rangoon L.R. 512.)

90. Attention is drawn to the rules* for regulating the number of stamps to be used for denoting any fees chargeable under the Act. The stamp of the highest procurable value must be used.

The fixing of the court-fee labels so as to overlap one another must not be allowed. Money must not be taken in place of court-fee stamps. Also *see* Part V, Chapter XXX, paragraph 1109 with regard to affixing stamps in the left-hand margin.

Court Fees
Act-13,14,15

91. The attention of Appellate Courts is called to sections 13, 14 and 15 which provide for the refund of the fee on the memorandum of appeal or application for review of judgment in certain cases therein specified.

92. When a certificate for the refund of court-fees is granted under the provisions of section 13, 14, and 15 of the Court Fees Act it shall be prepared in triplicate in Form Civil 133.

One copy of the certificate shall be given to the person entitled to receive it, the second shall be sent direct to the officer in charge of the Treasury for comparison with the certificate presented for payment, and the third shall be endorsed by the person to whom the certificate is granted as a proof that he has received it and filed in the final record of the case.

93. On the occurrence of any forgeries or fraudulent alterations of stamp labels and stamped papers, a report shall be made to Government showing the nature of the fraud or forgery perpetrated and forwarding specimens if possible.

* Burma Stamp Manual (1945), page 51.

94. The practice of receiving money instead of court-fee stamps is prohibited, and when clerks receive court-Receipt of money. fees in stamps a receipt must be given (*vide* Chapter XXIX, paragraph 1030).

Special rules apply to the payment of watching fees which are paid to the Bailiff in cash. That officer gives a receipt therefore [*cf.* Chapter XXIX paragraph 1003, Rule 22 (2) (a), and Order XXI, Rule 45A, Code of Civil Procedure.]

10. I-IV 95. A defendant who wishes to confess judgement is not bound to put in any written application on the subject. Court-fee on written statements and applications. He may make a statement orally, in which case the Judge should examine him under Order X, Rules 1-4, of the Civil Procedure Code and record his statement. If before or at the first hearing he presents a written statement under Order VIII, Rule I, Civil Procedure Code; in which he admits liability without pleading a set-off or counter-claim, no stamp is required.
- 8.1

If at a subsequent stage of the suit he wishes to confess judgment he can only do so on application, which must be duly stamped, unless the application is made orally in Court on the date fixed for hearing.

A written statement pleading a set-off or counter-claim requires to be stamped. (*See* Part III, paragraph 150.)

- 8.1&6(3) 96. Where a written application is required it must be stamped. This does not apply to written statements presented under Order VIII, Rules I and 6(3), Civil Procedure Code, in which no set-off or counter-claim is pleaded. Such written statements cannot be required to be stamped.

97. Close attention should be paid to the valuation of suits and appeals, and care should be taken that the proper court-fee is paid in every instance.
- Valuation of Suits.

The expression "distinct subjects" is equivalent to "distinct causes of action." It is not necessary for a suit to fall under more than one of the categories of suits mentioned in section 7 of the Court Fees Act before it can embrace distinct causes of action.

Stamp Act.

98. Small fines under the Stamp Act are probably worse than unless because they only encourage others to take the risk of breaking the law, which everyone knows is done everyday. It would be much better to prosecute rarely and in conspicuous instances only, in which it would be proper to impose a substantial punishment likely to have a deterrent effect generally.

Malpractices in the direction of sales of undefaced adhesive stamps at low prices for subsequent illegal use are not of infrequent occurrence, and involved serious loss of revenue. The only remedy for this particular type of fraud lies in a more rigid enforcement of section 12 and 63 of the Stamp Act, which make it a punishable offence to refrain from cancelling adhesive stamps when put into use.

Frauds of this nature are of a very serious character, and the attention of all Magistrates is invited to these provisions. Magistrates should enforce the provisions of the sections in question in cases that may come to their notice.

99. For exemption from stamp duty of certain documents under the Land Acquisition Act, *see* Part III, paragraph 325.

100. An instrument acknowledging the receipt of a sum of money and agreeing to settle the debt by a subsequence delivery of grain is not a agreement relating to the sale or goods exclusively and therefore does not come under Exemption (a) to Article 5, Schedule I, of the Stamp Act. It should be stamped under Article 5 (c) of Schedule I.

This kind of instrument is very commonly used in Burma.

101. As there appears to be some doubt as to the liability to stamp Bonds. duty of security bonds and other instruments of obligation given in Court, the attention of Judges and Magistrates is drawn to Article 6, Schedule II, of the Court Fees Act, and Article 57, Schedule I, of the Stamp Act.

Bonds which are required by the Court under the express provisions of the Code of Civil or Criminal Procedure (e.g., security bonds under Order XXXVIII, Rule 5, Code of Civil Procedure) are liable under the former article to a court-fee stamp of one kyat and fifty pyas[†]

On the other hand, bonds which are not expressly provided for by the Code of Civil or Criminal Procedure (e.g., security bonds for the release of attached property which is the subject of a claim under Order XXI, Rule 58, Code of Civil Procedure) are liable to stamp duty under Article 57, Schedule I, of the Stamp Act.

These rules do not apply to bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise which are exempt from liability to the payment of any court-fee under section 19, clause (xv), of the Act.

Stamp Act,
33

102.(1) Under Section 33 (1) of the Stamp Act, it is the duty of every presiding Officer of a Court to see that all instruments, which are produced before him or come before him in the performance of his functions, have been duly stamped. For this purpose the presiding Officer is required to examine every instrument chargeable with duty, and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the Union of Burma when such instrument was executed or first executed. Every such instrument not duly stamped must be impounded.

Stamp Act,
35

(2) Under Section 35 an instrument which is not duly stamped may not be admitted in evidence for any purpose:

Provided that -

- (i) An insufficiently stamped instrument may be admitted in evidence in a criminal proceeding, other than proceedings under Chapter XII or Chapter XXXVI of the Criminal Procedure Code.

[†] Act No. 6/ 90 Court Fees Amendment Act.

- (ii) Except an instrument chargeable with a duty of one anna or half an anna, or a bill of exchange of promissory note, an insufficiently stamped instrument may be admitted in evidence on payment of the duty, with which it is chargeable, and penalty under proviso (a) to see section 35.

(3) When an instrument is impounded it should be endorsed in the following manner :-

“Impounded under section 33 of the Burma Stamp Act”

Signature

Designation

Date

“This instrument comes before me (here enter name and office) of (place).

It is a (here enter the nature of the document) falling under Article _____ of Schedule I of the Burma Stamp Act.

It should bear a stamp of the value of K.....

It is actually stamped with a stamp of the value of K.....

Therefore the deficient stamp duty is K..... I am of opinion that there was (or was not) an intention of evading payment of the proper duty because (here give reasons).”

Stamp Act,
38 (2)

(4) If the document is not admitted in evidence, it should be further endorsed as follows :-

“ I forward the document to the Collector under the provisions of section 38(2) of the Burma Stamp Act.”

The document should be forwarded in original to the Collector.

The procedure in this sub-paragraph applies also to insufficiently stamped documents admitted in evidence, without payment of duty or penalty, in criminal proceedings.

(5) If the document is admitted in evidence after payment of duty and penalty, it should be further endorsed as follows :-

“The deficit duty K..... together with penalty K....., in all amounting K....., have been realised in this Court from Plaintiff of and have,
Defendant

been credited into the Treasury, *vide* Chalans Nos..... dated

“I forward herewith an authenticated copy of the document impounded, together with copies of the chalans of credit of the deficit duty and penalty, to the Collector under Section 38 (1) of the Burma Stamp Act.”

The presiding Officer must endorse and authenticate the document himself, and should see that a copy thereof is duly forwarded to the Collector as above.

(6) Monies realised under Chapter IV of the Stamp Act are to be accounted for by the Collector and not by the presiding Officers of Courts.

(7) Where an evasion of the Stamp Law has been detected by a person to whom a reward can suitably be granted this fact should be stated in the report to the Collector under section 38 of the Stamp Act in order that the Collector may consider the question of granting a reward.

CHAPTER VI.

TRANSLATIONS AND COPIES — INSPECTION OF RECORDS.

Copies and Inspection of Records.

103. In exercise of the powers conferred by clause (b) of section 27 of the Union Judiciary Act, 1948, the High Court makes the following rules regulating the procedure in cases where any person is entitled to inspect a record of any Court in Burma (except the Supreme Court, the High Court and the Rangoon City Civil Court)* or to obtain a copy of the same, and prescribing the fees payable by such person for searches and copies, in suppression of the rules contained in this Court's Notification No. 3 (General), dated the 25th April 1946, as subsequently amended :-

† RULES. ❖

(1) x x x x x x x x

from

(42) x x x x x x x x

Note : Cancelled *vide* High Courts Rules Relating to
Copying Proceedings, dated 24-3-89.

* Separate rules have been framed for the High Court and the Rangoon City Civil Court, *vide* High Court Notification No. 17 (General) dated the 6th November 1930, and High Court Notification No. 1 (General), dated the 6th November 1930.

† High Court Notification No. 5 (General), dated the 25th October 1951.

❖ High Court provided the rules of Translations and Copies - Inspection of Records, dated the 24th May 1989.

Inspection of Records.

(43) Parties may be allowed inspection of the records of pending and decided cases on the written order of the Judge of the Court to which the records appertain, or of the District Judge or District Magistrate. Legal practitioners may be allowed inspection of the records of pending cases in which they are engaged without special order.

(44) The order authorizing inspection of a record shall be written on an application bearing Court-fee stamp of the value of one Kyat which shall be punched and cancelled

The applications shall be preserved for one year, after which they shall be destroyed under the orders of the Judge.

(45) Inspection will be allowed on every open Court day at stated times to be fixed by the Judge and in the presence of the Record-keeper.

(46) A legal practitioner inspecting a record may make notes, but no extracts shall be made by any one but an officer of the Court from the records. If extracts are required, application for copies must be made in the manner hereinbefore specified.

(47) The Record-keeper shall keep a note-book (Record-room Register II), in which shall be entered the name of the legal practitioner or other person inspecting any record, and the time and duration of inspection.

(48) Advocates or pleaders and parties to suits will be allowed to inspect the Register of Suits in the office between the hours fixed under Rule (45)

Costs.

(49) In calculating the costs incurred by a party in a case, the amount of copying and other fees incurred by him and paid through the Court in respect of documents and papers filed in the Court and admitted in evidence shall be included as part of his costs and allowed for in taxation.

Copying Rules

103.A . In exercise of the powers conferred by Section 20 of the Myanmar Judiciary Law, the Supreme Court make the following rules: -

Chapter (1)

Title and Definitions

1. These rules shall be called as copying rules.
2. The following expressions contained in these rules shall have the meanings given hereunder:
3.
 - (a) **Copying** means copying the papers and records of criminal and civil proceedings of the court in handwriting or by machines of the court. The expression shall include certified and uncertified copies.
 - (b) **Uncertified copy** means the copy compared with the original and certified to be a true copy thereof by the authorized officer.
 - (c) **Certified copy** means the copy duly stamped in accordance with the provisions of Court fees Act or the copy which is exempted by the Court Fees Act, compared with the original and certified and signed to be true copy by the authorized officer.
 - (d) **Controlling Officer** means the judicial officer who has been appointed by notification to supervise the copying of the records of the courts or controlling officer of the Judicial Record-Room.

- (e) **Authorized officer** means a judicial officer who has been appointed by notification and authorized to issue an uncertified or certified copies in accordance with these rules.
- (f) **Record-keeper** means a person who keeps the records in the recordroom and includes the court clerk responsible for the custody of records of the court when the records have not yet been transferred to the recordroom.

Chapter (2)

Controlling Officer, Authorized Officer and the Copyists.

3. The State and Divisional Judges shall be the controlling officers to supervise the copying work at the State and Divisional courts and for other courts he shall appoint and notify the following persons to be controlling officers: -

- (a) For the courts of the township group, Judicial officer Grade (1) or Judicial officer Grade (2) in charge of township group.
- (b) For the township courts, Township Judicial Officer concerned.

4. Controlling Officer concerned of the recordroom shall have responsibilities as a Controlling Officer on the copying work of the proceedings at the recordroom.

5. The State and Division Judges shall appoint and notify the following persons to be authorized officers :-

- (a) A Judicial Officer Grade (3) or more, if necessary while there is over-loaded duties, for the copying work of the pending proceedings or the decided cases but have not yet been transferred to the recordroom and temporarily detained proceedings of the lower courts.
- (b) For the copying work of the pending proceedings or the decided cases at the township group court which have not been sent to the record-room, at the township group Court a judicial officer Grade (4) stationed at the township group concerned.
- (c) For the copying work of the pending proceedings or the decided cases which have not been sent to the record-room. at the township courts, a judicial officer Grade (4) stationed at the township court.
- (d) For the copying work of the proceedings at the record-room, the judicial officer Grade (4) who has been appointed under sub-paragraph(c).

Explanation: The authorized officer shall not be the controlling officer.

6. It is the duty of the court to deliver the copies to the applicants without delay. In order to deliver the copies to applicants without delay, copyists shall be appointed and assigned duties as follows: -

- (a) The State and Divisional Judges are to appoint and notify one suitable clerk or more, a typist or more of their courts to be copyist for the State or Divisinal courts. If necessary, may appoint outsiders as copyists.
- (b) The Additional State and Divisional Judges and the Township Judges are to appoint and notify one suitable clerk or more, a typist or more of their court to be copyists of their respective courts. If necessary may appoint outsiders as copyists.

- (c) The Judges concerned are to appoint a suitable person to copy documents written other than in English and Myanmar.

7. The record-keeper shall act copyist for copying the records in the record-room.

8. If a staff of the court is appointed as copyist, he shall perform his copying duties outside office-hours.

9. All copyists shall obey orders of the authorized officer and accept his control and supervision. It shall be the duty and responsibility of the authorized officer to see that the copyists abide by these copying rules and deliver the copies without undue delay.

Chapter (3)

Persons Entitled to copies

10. In criminal cases, parties are entitled to obtain copies of police papers which have been admitted as exhibits and confessions which have not been admitted as exhibits either the whole or part of the proceeding at any stage.

11. Copies of documentary exhibits filed in criminal case should not, except on good cause shown, be granted to persons who are strangers to the case without the consent of the person who put up the exhibits.

12. A plaintiff or defendant in a civil suit or his authorized agent or his lawyer, is entitled at any stage of the suit to obtain copies of the suit or any portion thereof including exhibits which have been put in evidence.

13. A stranger to a suit may after decree obtain copies of the plaint, written statements, affidavits or petitions filed in the suit, and he may for sufficient reason shown, obtain copies of any such documents before decree.

14. No court shall deliver copies of exhibits put in evidence except with the consent of the person by whom they were produced.

15. A stranger to a civil case or criminal proceedings may obtain copies of judgments, decrees or orders.

Chapter (4)

Application for copies and taking action.

16. Application for copies shall be made by filling up the application form (Annexure A) and shall bear stamp as prescribed the Court Fees Act. The application shall be presented to the authorized officer and signed either by the applicant in person or his lawyer, or authorized agent.

17. If an applicant wishes to obtain copies of documents from more than one case, he shall put up one application for each case and if he wishes to obtain copies of more than one document from the same case, he can do so in one application.

18. Action shall be taken on the day of the receipt of the application for copy. But application received after 3:00 p.m may be taken action on the following day. (if the following day is a holiday) on the day on which the court opens.

19. The authorized officer shall check the application on presentation to copy under the prescribed rules. If it is not permissible, he shall endorse reasons of refusal on the application and return it to the applicant.

20. If the application for copy is permissible, the authorized officer ~~shall~~ immediately enter the application in the Register of application (annexure B form). He shall record the number of Registration in the application and on the same day enter the amount of copying fees calculated in accordance with rule 42. At the same time, shall fill up the forms of receipt of application (Annexure c). On the same day he shall return the application after filling up where necessary.

21. Application, which, after registration are found to be not clear, shall be returned without delay to the applicant, to enable him to make necessary corrections therein and he shall be warned to return such application duly corrected to the authorized officer within 24 hours of the time he received it back. The applicant shall return such application, duly corrected, to the authorized officer within 24 hours of the time he received back. The authorized officer, on receiving the duly corrected application shall calculate the copying fees under rule 20 and fill up the necessary endorsement on the application and return the application to the applicant on the same day.

22. In cases in which duly corrected application cannot be returned to the applicant on the same day, the date and time of the receipt of the application the date and time to take back the application shall be filled up in the receipt and counter-foils of the application for copy in form (annexure D) and the original receipt shall be given to the applicant.

23. If the applicant fails to take the application within the twenty four hours of the time fixed on the receipt of the application, that application for copy shall be struck off the Register of application and a note to this effect shall be made on the counterfoil.

24. On receipt of the duly filled in application, the applicant shall pay the copying fees noted on the application to the Bailiff of the court concerned and obtained the acknowledgment of receipt by the bailiff. Then he shall put up the application before the authorized officer.

25. On receipt of the application with the acknowledgment of the receipt of the copying fees by the bailiff, the authorized officer shall call for the proceeding from which copies are to be made from the Record-keeper in requisition slip form (Annexure.E),The Record-keeper shall deliver the proceeding on day he received the requisition slip. If he is unable to deliver the proceeding , he shall record on the requisition slip the reasons of the inability to do so and submit it to the authorized officer.

26. The authorized officer shall verify the entries in the application with the documents in the proceeding. If found correct, he shall record on the lower part of the application the date on which the copy must be ready and sign it and return it to applicant. At the same time he shall record on the upper part of the application, the date on which copy must be ready and send it to the copyist with the proceeding from which copy is to be made or to the Record-keeper if the proceeding is in the Record-room to be copied in time.

27. If there is any discrepancy any between the entries in the application and the documents in the proceeding, or in case of copying fees paid is less than what it should be paid , the authorized officer shall direct the applicant to amend application where necessary or to pay the difference to the bailiff and endorse on the application that such direction has been made and return the application to the applicant . On compliance of the direction of the authorized officer by this applicant, he shall follow the provisions of rule 26.

28. The copyist shall make copies under the control of the authorized officer.

29. If the original is written on plain paper , the copy shall be made on plain paper , and if on judicial form, copy shall be made on judicial form. The necessary forms and plain paper shall be provided by the court.

30. Copies shall be made paragraph by paragraph as in the original. A one-fourth margin on the left side of the front page and a one-fourth of margin on or right side of the observe page shall left blank in making copies. Copies are not to be made page to page of the original. When one is full the copy is to be continued to the next page. The page number of the original shall be written just in front of the opening words on the original page . Copies shall be written on both sides of the paper and separate page number shall be written.

31. All copies, whether certified or uncertified shall , before issue, be examined and compared with the original by the authorized officer and shall be written at the bottom of the copy as "Examined and certified

to be correct” and signed by the authorized officer. If it is a certified copy, “certified copy” shall be added and signed by the authorized officer. The name of the authorized officer, his designation and date shall be fixed. All corrections shall be initialed by the authorized officer. Much corrected copies shall be rejected and fresh copies be made.

32. Copies, whether certified or uncertified, not made from the original shall not be issued.

33. Certified copies, before issue to the applicant shall be stamped as required under Articles 6 to 9 of Schedule of the Court fees Act. But no court-fee is required on copies of certain documents referred to in the rules framed under section 35 of the Court Fees Act.

34. Uncertified copies may be converted into certified copies upon the application of the person to whom they have been granted and upon his delivering to the authorized officer the court fee stamps required by law. Such conversion and issue shall be noted in the Remarks Column of the Register of application for copies.

35. The following particulars shall be recorded by the copyist on the last page of the copy if there is any blank space and if not on a separate sheet of paper and shall be signed by the authorized officer-

- (a) date of the application;
- (b) date on which the estimated cost of copying is communicated to the applicant;
- (c) date of return of the application to the authorized officer after payment of fees;
- (d) date on which the copy is ready for delivery;
- (e) date of delivering the copy to applicant;

- (f) the copying fees (to be inserted in words as well as in figures)
- (g) Serial number of the certificate.

36. The authorized officer shall complete the certificate and counter-foil form (Annexure C) and enter the date and sign the certificate. He shall attach the certificate to the copy and make over to the applicant. The authorized officer shall complete the second original of the certificate (Annexure C) with date and his signature thereon . Then he shall attach second original of the certificate to the copying proceeding and enter the date of application, date of delivery of the copy and name of the document for which copy has been issued in diary sheet of the copying proceeding and sign it. The applicant or his lawyer or his agent shall enter the date and sign on the prescribed space of the application in acknowledgement of the receipt of the copy and the authorized officer shall file the upper and lower parts of the application form.

37. If the copies are not claimed within 60 days of the date on which they are ready for delivery, they shall be destroyed.

38. Only the authorized officer shall deliver the completed copies to the applicant. He shall endorse the necessary facts on the copy in accordance with rule 35. No copy shall be delivered without a duly completed certificate in form ^{Judicial} ~~general~~ 17 A attached thereto. No copy of a record of any court shall be used in any manner unless so endorsed and accompanied by such a certificate. No copies unless made in accordance with these rules shall be delivered.

39. The delivery date shall not be later than ~~two~~ ^{two} weeks from the day on copying fees are paid.

40. In case of application for urgent copies, shall be ready for delivery within 48 hours of the payment of copying fees.

41. In calculating the time prescribed in this chapter, office holidays shall be excluded.

Chapter (5) Rate of copying fees

42. Copying fees shall be collected as follows:-

- (a) for every page of the original and part of a page-five kyats each.
- (b) for copies to be made on forms three kyats per page.
- (c) Maps, designs of building and other paper assessed at the special rate will be assessed by the authorized officer depending upon its size and the amount of effort put in for the preparation of copy. Note: Skilled persons must be employed in making copy of map, building drawing and other papers.
- (d) Urgency copying fee shall be three times of ordinary copying fees.

43. In the following case copies shall be granted free of charge:-

- (a) copies of the papers of a proceeding required for the public purpose by the government, supreme court, Attorney General's and Accountant-General's office.
- (b) copies of the papers of a proceeding required to be used in verifying conduct and character of person who is concerned in a case.

- (c) copies of the paper of a proceeding required by a public official in the discharge of his duties for a public purpose.
- (d) copies of judgement requested by an accused in a cognizable case. This clause applies to the accused. Prosecuted under Sections 109 and 110 of the Criminal Procedure Code .
(An accused person is entitled to only copy free of charge).
- (e) A copy of Judgment requested by a convicted person for the purposes, of appeal or for an application for revision if no appeal lies.
- (f) Copy of an order for payment of maintenance of a wife or child passed under section 490 of the Criminal Procedure Code.
- (g) Copy of an order in favour of a person passed under the provision of Land Acquisition Act or carries of a contract.
- (h) Copy of proceeding for a lawyer engaged by the government for poor persons accused of offences punishable with death.

44. Copy of the memorandum of local inspection if required by the law officer, complainant or the accused person shall be granted free of charge.

45. The copies of the judgment in appeal where the accused was sentenced to three or more years if requested by the Director-General of prison department for the purpose of filling in the record of convicted prisoners.

46. Copy of the judgment in which a public servant is convicted shall be delivered free of charge to the Head of the Department immediately after the correction whether he asks for the judgment or not. But in cases where a public servant is acquitted or discharge, copy of judgment shall be delivered free of charge to the Head of Department only when he asks for it.
47. When an order is passed under Young Offender Act or 1955 Children Act to send an offender to a training school under the management of Social Welfare Department, a copy of the judgment shall be issued free of charge to the Headmaster of the training school. If the order is passed by the appellate court, both the judgment of the original court and that of the appellate court shall be issued free of charge to the Headmaster of the training school.
48. When a trainee of a training is convicted of an offence while on parole under section 33 of the Young offender Act or under section 58 of the 1955 Children Act, a copy of the judgment of the court shall be delivered free of charge to the Ministry of Social Welfare.
49. All copies supplied free of charge shall be entered in red ink in the Register of applications. A note 'free copy' shall be made in the Register opposite to the entries.
50. The authorized officer shall enter the fact that copying fees have been paid into the bank with supporting vouchers in the Register of application.

51. Copyist concerned is entitled to two-third of the copying fees and the rest one-third is for the government. All copying fees shall be paid into the bank with a chalan by the Bailiff. The amount for the copyist and the amount for the government shall be noted separately on the chalan. The drawing officer of the court concerned shall withdraw the money due to copyists in accordance with departmental accounting procedure and financial regulations and pay the copyists.

52. Fees once paid cannot be refunded if the work for which the fees are paid has been done. If only part of the work has been done, a proportionate part of the fee paid may be refunded to the applicant by the drawing officer in accordance with the rules as mentioned in Rule 52, with sanction of the authorized officer.

Chapter (6)

Supervision and Report

53. The controlling officer shall supervise the copying work to be carried out in accordance with these rules. The controlling officer shall check the certificate counterfoil book with the Register of application for copy and Bailiff register I. He must satisfy himself that all the applications have been duly Registered I. He must satisfy himself that all the applications have been duly registered in the respective Register and copying fees have been duly received and credited to the bank. The controlling officer shall report any breach of the copying rules to the State and Divisional Judge.

54. To inform the higher court of the delay in copying , the State and Divisional Judge shall report monthly to the Supreme Court of the delay of more than two weeks from the date of application for copies in the State or Divisional court, and the Township Judge shall report monthly to the State and Divisional Judge of such delay in the township court in Form (Annexure F). A copy of the report by the township Judge shall be sent to the Supreme Court. If there is no delay for more than two weeks, the fact shall be reported.

55. The fresh certificate books shall be kept either by the Judge concerned or by the controlling officer authorized for this purpose. The officer in charge of certificate books shall maintain a register to record receipt and issue of certificate books. He shall not issue more than one certificate book at a time. The issuing officer shall satisfy himself that the counter-foil of the certificate book has been duly filled up and fully used up. Then only he shall issue new certificate book. The officer issuing the book shall record the number pages of the new on its cover and certify it with his signature. The used book of counter-foils shall be kept by him for three years from the date of last entry.

56. The annual report with regard to copying (Form annexure-G) shall be submitted in the same as an annual Report.

Chapter (7)

General

57. The rules with regard copying of case and proceedings issued by the former High Court in its Notification 5 (General) dated 25 th October 1954 are hereby withdrawn by these rules.

Application for copy

1. Name of Applicant
2. Proceeding from which copy is wanted : -
 - (a) Name of the Court
 - (b) Kind of proceeding Year and No.
 - (c) Name of the parties
3. Date of application
4. Kind and name of document to be copied

5. Number of pages of the Original document

6. Kind of copy apply for
7. Court fee for certified copy (if any)
8. How the applicant is cocern with proceeding

Date

Signature of Applicant

NRC No.

..... Town Court
 Proceeding No VS papers to
 be copied

Received the application for uncertified / certified copy of the
 above mentioned papers of the mentioned proceeding from.....on
day ofat Toam/ pm

Date.

Authorized officer

Signature

Name

The copying fees for the copy as applied on the reversed side are
 as follows:

Particulars	Fees		Remark
	Kyat	Pya	
(a) For () pages at the rate of K 5 per page on plain paper of original, K 5 for part of a page.			
(b) For () pages of copy an office from at the rate K 3 per page.			
(c) For () pages of map. design of building and other papers assessed at special rate.			
(d) Urgent fees for copy			
Total			

The applicant shall pay the copying fee within twenty hours of the receipt of this form and obtain acknowledgement of receipt by the Bailiff to and put up this application before the authorized officer.

Date Authorized officer
 Received the above mentioned copying fee of (K)

Date Bailiff

The copyist shall make the copy ready by AM / PM / /

Date Authorized officer

As the copy shall be ready by AM / PM / /
 claim the copy by presenting this receipt

Date Authorized officer

Signature

Name

Received the copy applied for.

Date

Applicant / His Agent

Signature

NRC No

Register of application for copies

[illegible]

Judicial General Form No 17 (A)

Counterfoil

Name of applicant

Kind of copy applied for

Date of receipt of application

Date of entry in the Register

Serial No in the Register

Date of delivery

No of pages

Copying fees paid

Chalan-No

Date of Chalan

Certificate original

Date Month Year

.....

.....

As the application for copy from---

has been received and registered

under Registration No () in the

Register copies.

A copy has been issued on ()

..... / 98 and it contains ()

pages and certified that a copying

fees of K is paid to the

government.

Authorized officer

Signature

Name

Rank

Authorized officer

Signature

Name

Rank

Certificate original

Date Month Year

.....

.....

As the application for copy from---

has been received and registered

under Registration No () in the

Register copies.

A copy has been issued on ()

..... / 98 and it contains ()

pages and certified that a copying

fees of K is paid to the

government.

Authorized officer

Signature

Name

Rank

Original

Certificate of receipt of Application for copy

Received the application for copy from
 at ^{AM}/_{PM} on/// and entered in the Register of
 Application as No

The applicant shall present the application and calculated
 due copying fees at ^{AM}/_{PM} on// copying fees
 are paid on// and the copy shall be ready for delivery
 at on//

Authorized officer

Signature

Name

Rank

Second original**Certificate of the receipt of the application for copy.**

Received the application for copy from
 at ^{AM}/_{PM} on/// and entered in the Register of
 Application as No

The applicant shall present the application and calculated
 due copying fees at ^{AM}/_{PM} on// copying fees
 are paid on// and the copy shall be ready for delivery
 at on//

Authorized officer

Signature

Name

Rank

Judicial General Form 17.

Requisition slip to Record - Keeper

1. Serial No.
2. Proceeding requisitioned.
 - (a) Name of court
 - (b) Kind of proceeding: its number & year
 - (c) Name of the parties
3. Date of judgment/ last date of hearing
4. Reason for requisitioning
5. Last date to send the proceeding
6. Date .../ .../ .../

Authorized officer

Signature

Name

Rank

1. Serial No.
2. Proceeding requisitioned.
 - (a) Name of court
 - (b) Kind of proceeding: its number & year
 - (c) Name of the parties
- * The above proceeding is submitted
 The above proceeding could not be submitted for the following reason / reasons.
- * To obliterate the unnecessary.
- Date///

Record - Keeper

Signature

Name

Rank

**Monthly Report with regard to Applications for copies which
were delayed for more than 2 weeks**

Name of Court

Period for which report is due/...../.....

Serial No.	No. in Register (5)	No. of proceeding from which copy is wanted	Date of application for copy	Date of delivering	Reason of unability to deliver within 2 weeks
1	2	3	4	5	6

Signature

Name

Rank

Date

Direction how to use the form

1. To mention only the application for which copy could not be delivered within 2 weeks of the date of application.
2. To mention the serial no. in column (1) of Civil and Criminal Register (5) in column (2) of this form.
3. To mention the particulars of the copy applied for and the kind, no. and year of the proceeding from which copy is wanted in column 3 of this form. (e.g copy of diary for 1.1.86, copy of the order passed on 1.1.86, Judgment Decree passed on 1.1.86.)
4. To mention the date in column (4) of Civil and Criminal Register in column (4) of this form.
5. To mention the main reasons of delay fully in column 6 of this form (e.g. Proceeding not yet received, though copy is ready for delivery, failure to pay the copying fees, failure of the applicant to come and claim the copy.)

Annual Report on Copying

Name of Court

..... (period for which report is submitted)

[illegible]

Signature | Name | Rank | Date

Inspections of Records of Civil and Criminal Cases by Police and other Government Officers.

104. In the event of a District Superintendent of Police or other gazetted Government officer desiring to inspect any of the records of a Magisterial or Civil Court, his proper course is to apply through the Public Prosecutor to the District Magistrate or the District Judge, as the case may be, and on obtaining permission, the Public Prosecutor or the officer making an application or someone authorized on his behalf may inspect the record in the room where the record is kept. If any copies of the record are required, necessary application should be made by the Public Prosecutor of such documents as he wants in the usual manner.

In the case of District and Sessions Court records, similar procedure should be adopted and the necessary applications made to the District and Sessions Judge.

If a Departmental Officer of the Government desires to inspect a record belonging to the High Court, he can apply to the Attorney-General, Burma, to make such inspection, and the Attorney-General or one of the Government Advocates may then inspect the same in the room where the record is kept. If any copies of the record are required, necessary application should be filed by the Attorney-General, in the usual way, in accordance with the rules of the High Court

Provided, that the Court shall forward the proceedings, on receipt of a written requisition for the records of decided criminal cases by the Superintendent of the Jail or the Judicial Ministry, in connection with the clemency applications of prisoners undergoing a sentence of imprisonment, by the Jail Revisory Board for the purpose of reviewing the sentences.

But the requisition requiring the criminal cases may be forwarded directly to the Sessions Judge or District Magistrate or otherwise. That Judge may forward, on his own consent, those cases to the Officer who want to peruse them, with the restriction not more than 14 days at a time.

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Provided, that the Court shall forward the proceedings, on receipt of a written requisition for the records of decided criminal cases by the Superintendent of the Jail or the Judicial Ministry, in connection with the clemency applications of prisoners undergoing a sentence of imprisonment, by the Jail Revisory Board for the purpose of reviewing the sentences.

But the requisition requiring the criminal cases may be forwarded directly to the Sessions Judge or District Magistrate or otherwise. That Judge may forward, on his own consent, those cases to the Officer who want to peruse them, with the restriction not more than 14 days at a time.

Furthermore, after receiving the permission from the respective magistrate or judge, may permit to the Social Welfare Officer to peruse the criminal cases concerning with the convicted juveniles.

105. Officers of the Income-tax Department may be permitted to inspect Civil Register No.1 and records of Insolvency and Civil Cases in Civil Courts, and to take extracts from them provided that the inspection is carried out after permission has been obtained from the District Judge concerned as to the mode and time of inspection.

Inspection of Civil Register No.1 and records in Insolvency and Civil cases.

Rules Providing for the Translation of documents and preparation of bench copies.* ❖

106. The following rules have been made providing for the translation of documents and copying of papers filed in the High Court and requiring from the person, at whose instance they are filed, the payment of expenses of translation or copying :-

Translators.

1. The Chief Justice may appoint persons to be Translators of the High Court (hereinafter refer to as "Translators")

* High Court Notification No.28 (General), dated the 18th November 1940 as amended by Notification No.1 (General), dated the 23rd March 1950 and Notification No.2 (General), dated the 7th August 1951.

❖ The Supreme Court provided for the Translation of Documents and Preparation of Bench Copies. (Letter No. 637/ Section (15/16/84, dated 30-3-1984)

2. Every Translator shall make an oath or affirmation under the Oaths Act. that he will translate correctly to the best of his ability all documents which may be given him for translation.

Authorized Translations.

3. Every translations required by these rules shall be transcribed by a Translator ; Provided that -

- (a) If any document cannot be translated by any Translator it may be translated by such means and by such person as a Deputy Registrar may approved ; and
- (b) the person undertaking such translation shall make an oath or affirmation that he will translate correctly.

Documents which must be translated.

4. No document or record in any language other than English or Burmese shall be referred to at the hearing of, or tendered as evidence in, any civil case unless accompanied by a translation in English or Burmese .

Provided that nothing in this rule shall apply to any document produced in Court at the instance of a party which is not within the possession or power of such party. Such a document may be referred to or received in evidence subject to translation, and a translation shall be then made in accordance with the procedure laid down in Rule 6.

NOTE.- It is not necessary to translate any more of a document than is being tendered in evidence.

Procedure in obtaining Translations.

5. (i) Parties who may desire to have documents translated, may apply in Form High Court to the Chief Translator, between the
G.D 45

hours of 11 a.m. and 2 p.m.

(ii) The Chief Translator will note the serial number on the document presented and enter the said number in the Register of Translations to be maintained under Rule 27, and the document with an estimate of translation fee shall be returned to the party presenting the document. The party shall then deposit the fee with the Bailiff, obtain his receipt, and bring the same back with the document to the Chief Translator. The Chief Translator shall take charge of the document and acknowledge its receipt by him by putting his initials and the date on the Bailiff's receipt which shall be duly returned to the party.

(iii) The translation will not be taken in hand until such fee has been paid to the Bailiff of the High Court.

(iv) If the estimated amount of fees deposited is likely to fall short of the actual cost of the whole translation, the Chief Translator shall cause a notice to be served on the party concerned for the deposit of an amount sufficient to cover the deficit.

(v) On completion of the translation the Chief Translator shall endorse on the document the date of his receiving the same from the Translator and the correct fee payable for the translation. The deficit fee, if any, shall be recovered before the document and its translation are made over to the party. The party depositing a document shall be required to claim its return and its translation (producing for this purpose the Bailiff's receipt or receipts for the translation fee) within thirty days of the translation having been completed. In default it will not be delivered unless good cause is shown for the delay. All documents and their translations which remain unclaimed for more than ninety days after the translations have been completed shall be liable to destruction.

(vi) A party who claims the return of a document and its translation without producing the estimate or the Bailiff's receipt for the translation fee must prove his claim by filing an affidavit and obtain an order of the Registrar or a Deputy Registrar directing the return to him of the document together with its translation.

(vii) Documents tendered for translation shall be returned, together with the translations thereof, to the parties between the hours of 11 a.m. and 3 p.m. on weekdays and 11 a.m. and 1 p.m. on Saturdays. On working days during vacation they shall be returned between the hours of 11 a.m. and 2 p.m.

6. (i) Documents tendered subject to translation under the proviso to Rule 4 shall be received by the Bench Clerk and forwarded without avoidable delay to the Chief Translator, together with a memorandum giving the name of the person or advocate tendering the document and any special directions by the Judge as to their translation.

(ii) The procedure laid down in Rule 5 shall then be followed.

7. Documents delivered for translation under Rule 5 or tendered subject to translation under the proviso to Rule 4 shall be accompanied by a written application requesting translation, which shall be stamped with a stamp of thirteen pyas under the fourth clause of Article 1 (a) of Schedule II of the Court-Fees Act.

Fees.

8. The fee to be charged for translation shall be Kyat one for every one hundred words or fractional part thereof and, in the event of the document being written in two or more languages, a separate fee shall be charged for each language; Provided that -

- (i) if only one name or one signature or one date or any two or all of these form a document of which a transliteration only is required, no charge shall be levied. Such transliteration shall be made either orally by an Interpreter of the Court or in writing by a Translator under the orders of a Judge or a Deputy Registrar ;
- (ii) nothing in this or any other of these rules shall prevent a Judge from ordering a translation of any document to be made in the course of the hearing of a suit on such terms and in such manner as he thinks fit.

9. When an applicant desires a translation to be made urgently, he may have it prepared on payment by him of an urgency fee equal to and in addition to the fee chargeable under Rule 8.

10. In the case of translation made in accordance with the proviso to Rule 3 the fee shall be the actual cost incurred in procuring the translation.

11. No fee shall be chargeable for the translation of documents or records in the following cases :-

- (a) where the Court orders the translation of any part of the record of a criminal case under Rule 24: Provided that the Court may in its discretion require an appellant or applicant for revision to pay the fees prescribed by Rules 8 to 10 ;
- (b) where the translation is required by a Government officer for public purposes ;
- (c) (if the Court so directs) where the party requiring the translation is a pauper and it is necessary for the disposal of the proceeding.

Inclusion of Fees as Costs.

12. In calculating the costs incurred by a party in any proceeding the fees paid by him for translations and bench copies under these rules shall be included and shall be allowed for in taxation.

Refunds and Payments.

13. Any sum paid by a party as translation fees in excess of the amount eventually found to be due under Rule 8 may be refunded to him.

14. Any sum paid by a party as translation fees under the proviso to Rule 3 shall be paid to the person making the translation.

15. (a) No payment under Rule 13 or Rule 14 shall be made except on the written order of a Deputy Registrar.

(b) Any person receiving a payment under Rule 13 or Rule 14 shall acknowledge the same by signing the Bailiff's Register. [*The remaining rules are not reproduced as they do not concern subordinate Courts.*]

Translation of documents filed in Courts subordinate to the High Court.

107. The following rules* have been made by the High Court in exercise of the powers conferred by section 28 of the Union Judiciary Act, 1948, for the translation of documents filed or intended to be filed in Court subordinate to the High Court :-

1. Subordinate Courts submitting documents to the High Court for translation should make an estimate of the fees in accordance with the provisions of Rules 7, 8 and 9 of the High Court Translation Rules. The cost so estimated should be recovered from the parties concerned and remitted to the High Court at the same time as the document of which a translation is required.

Documents for which no fees are received will be returned without translation.

1.A Every document submitted for translation under these rules shall be accompanied by a written application, to be made by the party tendering the document as evidence, requesting translation thereof, which application shall be stamped with a stamp of thirteen pyas under the fourth clause of Article 1 (a) of Schedule II of the Court Fees Act.

2. In making an estimate of the fees with regard to the translation of documents in Criminal cases the following principles should be observed :-

- (a) documents translated under the orders of the Court will be translated free ;
- (b) in cognizable cases all documents will be translated free;

* Notification No.8 (General), dated the 16th June 1925, as amended by Notification No.5 (General), dated the 29th March 1930.

- (c) in non-cognizable cases fees will be charged for documents translated on behalf of the complaint, as a rule, and for documents translated on behalf of the accused when such is the recommendation of the Court forwarding the documents for translation. In forwarding the documents to the High Court for translation, officers should be careful to include in the covering letter particulars as to the offence, the party at whose instance the translation is required, and the recommendations of the Court as to whether translations should be supplied free, or on payment of fees.

3. If the sum received is insufficient, the balance due will be recovered from the Court concerned and credited to the Treasury. This will be done before the translation is furnished. If the sum received is found to be in excess, the High Court will instruct the Court concerned to refund the excess after deducting money-order commission and forward the payee's receipt. The amount will then be repaid to the Court concerned by the High Court by money order.

108. It should be observed that Courts are under no obligation to send documents for translation to the High Court. It is open to them to have documents translated locally, but if this is done the translator must be summoned as a witness and examined on oath to prove the correctness of his translations.

Local Translation
of documents.

109. When costs of translation are remitted to the High Court under paragraph 107, the money order commission should be deposited by the parties concerned and should be entered in Bailiff's Register II, the disbursement of the money order commission being shown in column 12 of that Register.

Costs of translation
and money order
commission.