# THE COURTS MANUAL

## PART III

### CIVIL PROCEDURE


| | PARA |
|---|---|
| CHAPTER VII- Procedure in Suits and Miscellaneous Proceedings ..... | 110-182 |
| CHAPTER VIII- Procedure in Execution ..... ..... …..... | 183-283 |
| CHAPTER IX- Arrest and attachment before Judgment-Injunction..... | 284-288 |
| CHAPTER X- Commissions ..... | 289-293 |
| CHAPTER XI- Pauper Suits ..... | 294-297 |
| CHAPTER XII- Suits by or againt government Attorney- General ..... | 289-299 |
| CHAPTER XIII- Appeal, Refemce and Revision..... | 300-309 |
| CHAPTER XIV- Procedure under Special Enactments- | |
| 1. Specific Relief Act ..... | 310-311 |
| 2. Transfer of Property Act ..... | 312-315 |
| 3. Myanmar Small Cause Courts Act. ..... | 316-321 |
| 4. Land Acquisition Act ..... | 322-326 |
| 5. Myanmar Companies Act ..... | 327 |
| 6. Myanmar Succession Act …..... | 328-337 |
| 7. Administrator- General's and Official Trustee's Acts ..... | 338 |
| 8. Money Lenders Act, 1945 ..... | 339 |
| 9. Myanmar Insolvency Act ..... | 340-357 |
| 10. Mussalman Wakf Act ..... | 358 |
| 11. Arbitration (Protocol and Convention) Act ..... | 359 |
| 12. Arbitration Act, 1944..... | 360-362 |

# အပိုင်း ၃

## တရားမကျင့်ထုံး

ဤအပိုင်းတွင် စာပိုဒ်များ နံဘေးအစွန်း၌ ထပ်မံညွှန်ပြချက် မပါမရှိဘဲ၊ ပုံသေးနှင့် ဖော်ပြထားသည့် ဂဏန်းများသည် တရားမကျင့်ထုံး ဥပဒေပုဒ်မများကို ရည်ညွှန်းဖော်ပြသည်။ စာလုံးမဲနှင့် ဖော်ပြထားသည့် ဂဏန်းများနှင့် ၎င်းတို့နှင့် ဆက်တွဲပါရှိသည့် ပုံသေးနှင့်ပြထားသော ဂဏန်းများသည်၊ တရားမကျင့်ထုံးဥပဒေ ပထမစာရင်းရှိ အမိန့်များနှင့် နည်းဥပဒေများကို ရည်ညွှန်းသည်။

## PART III

## Civil Procedure

In the margin of paragraphs of this Part Arabic numerals without further indication refer to sections, and Roman numarals followed by Arabic numerals to Orders and Rules of the First Schedule, of the Code of Civil Procedure.

## CHAPTER VII

## PROCEDURE IN SUITS AND MISCELLANEOUS PROCEEDINGS

### The Law to be administered.

**110.** The Procedure of the Civil Courts in Myanmar is regulated by the **Code of Civil Procedure.**

Referring to the Code of Civil Procedure, the Act itself contains little beyond the essential principles of procedure. Detailed provisions regarding procedure are placed in the first schedule which comprises a number of sets of Rules. The third schedule contains rules regarding the execution of decrees by the Collector. The rules contained in the first schedule may, under the provisions of the Code, be annulled or altered by the Rule Committee appointed under section 123, and all such amendments are therefore published as "schedule"notifications.

**111.** The law to be administered by Civil Courts is prescribed in section 13 of the Burma Laws Act.*

---

* Burma Code, Volume.I.

## Jurisdictions of Courts †

112 (1) The Supreme Court, under section 9 of the judiciary Law invests the State and Divisional Judges with the jurisdiction of the District Judge.

(2) The Supreme Court under section 9 of the Judiciary Law. invests the State and Divisional judges with the civil jurisdiction to try civil original suits or original proceedings of unlimited value.

(3) The Supreme Court, under section 11 of the Judiciary Law, invests the under mentioned judges of the State and Divisional Courts with the civil jurisdiction mentioned against them as follows:-

| **Serial No.** | **Judges invested with jurisdiction** | **Jurisdiction invested** |
|---|---|---|
| (a) | State Judge or Divisional Judge | Jurisdiction to try original civil suits or original proceedings of unlimited value |
| (b) | Additional State or Divisional Judge | Jurisdiction to try civil original suits or original proceeding of unlimited value |
| (c) | Deputy State or Divisional Judge | Jurisdiction to try civil original suits or original proceedings not exceeding kyats two millions in value. |
| | **Proviso** | To try civil original suits or origi -nal proceedings,not exceeding kyats three millions if distributed by State or Divisional Judge. |
| (d) | Assistant State or Divisional Judge | Jurisdiction to try original civil suits or original proceeding not exceeding kyats one million in value. |

†No25/98 and 26/ 98 Supreme Courts Notification

| | |
|---|---|
| Proviso | Jurisdiction to try civil original suits or original proceedings not exceeding kyats one million and five hundred thousand if distributed by State or Divisional Judge. |

(4) The Supreme Court, under section 11, of the Judiciary Law invests the following judges with the civil jurisdiction to hear appeal on the decree, or order passed by any court exercising original jurisdiction as mentioned against them as follows :-

| Sr.No | Judge invested with durisdiction | jurisdiction invested. |
|---|---|---|
| (a) | State or Divisional Judge | Jurisdiction to hear appeals on the decrees or orders passed by the township court in original civil suits or original proceedings. |
| (b) | Additional state or Divisional Judge | Jurisdiction to hear appeals distributed by the state or Divisional judge. |
| (c) | Deputy state or Divisional Judge | Jurisdiction to hear of appeals the value of which does nor exceed kyats two millions. **Proviso.** Jurisdiction to hear appeals the value of which does not exceed kyats four hundred thousand if distributed by the State or Divisional Judge. |
| (d) | Assistant state or Divisional Judge | Jurisdiction to hear appeals the value of which does not exceed kyats one hundred thousand if distributed by the State or Divisional Judge. |

(5) The State or Divisional Judge may exercise the Jurisdiction of calling for the case which he has distributed and try it himself or distribute it to other judge for disposal.

113. (1)The Supreme Court under section 9 of the Judiciary Law invests the undermentioned Township Judges with the jurisdiction to try civil original suits or original proceedings the value of which does not exceeding kyats five hundred thousands.

(2) The Supreme Court, under section 11 of the Judiciary Law invests Township Judges with the jurisdiction of hearing the reference cases under section 32(1) of the 1960 Urban Rent Control Act.

(3) The Supreme Court under section 11 of the Judiciary Law invests undermentioned Township Judges with the civil jurisdiction mentioned against them as follows: -

| Sr .No | Judges invested with jurisdiction | Jurisdiction invested |
|---|---|---|
| (a) | Township Judge | To try civil orignal suit or original proceedings the value of which does not exceed kyats five hundred thousands. |
| (b) | Additional Township Judge | To try civil original suits or original proceedings the value of which does not exceed kyats five hundred thousand . |
| (c) | Deputy Township Judge | To try civil original suits or proceedings the value of which does not exceed one hundred thousands. |
| | **Proviso** | May try civil original suits or original proceedings the value of which does not exceed three hundred thousand if distributed by the Township Judge. |

(4) The Township Judge shall in accordance with instruction of the Supreme Court distribute the cases to the Additional Township Judge(s) or Deputy Township Judge(s) of the township court for disposal.

(5) The Township Judge may exercise the jurisdiction of calling for the case which he has distributed and try it himself or distribute it to the other Additional Township Judge or other Deputy Township Judge for disposal.

(6) In the temporary absence of the Township Judge, he may authorize the other judge to distribute the case on his behalf.

## Joiner of Parties.

**114.** The Courts should insist, so far as possible, on all persons interested being brought into the suits before them as parties so as to ensure finality of litigation.

When this is not done in the Court of First Instance the omission should, if convenient, be corrected in appeal. The matter should be put right at the earliest possible opportunity, as great embarrassment may be caused by any oversight of the kind when the case comes before the Court of ultimate resort.

1.8,10
VI-17,18.
VII-11

By due employment of the powers conferred by Order I, Rules 8 and 10, Order VI, Rules 17 and 18, and Order VII, Rule 11, the Court ought to be able to exercise efficient control for insisting on the proper **joinder of all necessary parties.**

**115.** Judges of District Courts are desired to impress on all Judges subordinate to them the essential importance of this matter and the responsibility they are liable to incur for the mischievous consequences of breach of the rules concerning it. Any flagrant case of wilful disobedience or neglect of instructions should be especially brought to notice.

**116.** These remarks apply particularly to **mortgage suits, suits for partition, the recovery of joint family property** and the like, in which ca e should be taken to have brought on the records as parties all co-sharers and other persons interested in the estate or inheritance or other object of the suit.

**Recognized Agents.**

III.2 **117.** The persons by whom appearances, applications and acts may be made or done as "recognized agents" of the parties to a suit are specified in Order III, Rule 2.

XXVIII, 1. **118.** The attention of Judges is drawn to the provisions of Order XXVIII, Rule 1, of the Code of Civil Procedure regarding the authorization by military officers and other ranks of any persons to sue or defend for them.

**Pleadings**

VI. **119.** The rules in Order VI concerning pleadings (which term includes both plaints and written statements) are very important and should be carefully studied and applied. The forms of pleadings in Appendix A of the First Schedule of the Code or forms of a like character, are prescribed for adoption. The object of these provisions is to compel litigants to come to trial with all issues clearly defined and thus to save time and expense.

The paragraphs of pleadings should be concise and to the point, and all matters not strictly relevant to the question in dispute should be rigidly excluded. Indefinite and prolix statements of fact should not be tolerated.

VI. 17. Order VI, Rule 17, enables the Court to alter and amend the pleadings at any stage of the proceedings. These powers should be freely exercised, where necessary. (See paragraph 153.)

I.1-2 **120.** The attention of the Courts is drawn to the provisions of Order II, Rules 1 and 2. Litigants on occasions sue for a part instead of the whole of a claim, generally on the pretext of immediate want of sufficient funds, but in reality probably for the sake of obtaining a judicial test of the soundness of their case in the most economical way. When such attempts are made, the Courts should point out to suitors the provisions of the abovementioned sections and the consequences of their contravention in shutting out further claims on the same cause of action, and should afford them opportunity so far as possible amending their plaints so as to include the whole claim.

Suit to include whole claim.

## Receiving of Plaints.

IV.1 **121.** (1) Although Order IV, Rule 1, empowers a Court to appoint an officer to receive plaints, these powers must not be exercised except during the temporary absence of the Judge.

Receipts of plaints and applications.

(2) Plaints, appeals, applications, etc., should be received at the beginning of the sitting of the Court. All plaints, appeals, petitions, applications for execution, and other applications of whatever kind, shall be received by the Judge personally when he is at his headquarters, and orders thereon shall be passed by the Judge himself from the Bench.

When a Judge is peripatetic, such arrangements as are possible will have to be made for the receipt of plaints, applications, etc., during the absence of the Judge, but in such cases, whatever possible, some other Judicial officer should be deputed to receive them and the duty should not devolve upon a ministerial officer unless no other arrangement is possible (cf. paragraph 16).

Receipts of plaints, etc., during absence on tour.

**122.** Every Judge presiding over a Court shall, if practicable, appoint an officer to receive plaints, appeals (if the Judge has civil appellate powers), and applications at the place where his Court is ordinarily held during his temporary absence from such place, excepting days on which the Court is closed for authorized holidays. It shall be the duty of the officer so appointed to note upon each plaint, appeal, or application the date of receipt. Upon his return the Judge shall pass orders as to the admission or other disposal of the plaints and appeals received in his absence, and as to such of the applications as require his orders.

If the matter is urgent, the party should be informed that if he wishes to be heard at once he must proceed to the place where the Judge is sitting or inspecting.

Peripatetic Judges to post notices of sittings.

**123.** Every Judge who holds Court at different places shall post up in the Court-house a notice of the dates of his sittings at each. District Judges shall send a copy of this notice to the District Magistrate.

## Plan of Immoveable Property to be filed in Suit.

VII, 3. **124.** The attention of all Courts is directed to the necessity of the plaint containing a **sufficient description** of the property in dispute for its identification, whenever **immoveable property** is the subject of the suit.

When the property is land included within the Cadastral Survey the description in the plaint should be a reference to the particulars shown on the *kwin* maps; and an extract from the latest *kwin* map, with the boundary of the land in suit marked with a distinctive colour, should be annexed to the plaint.

The plaint before admission should be examined to see if the description is sufficient, and if it is insufficient, the plaint should be returned for amendment.

**125.** Plans which are attached to the plaint merely for the purpose of defining the land to which the plaint relates should not, except as provided in the following sentence, be treated as documentary evidence but should remain attached to the plaint, of which they form an integral part and which would be defective without them. If the plaintiff proves such a plan and tenders it in evidence of a fact in issue or relevant fact, it may be marked as an exhibit and entered in the list of documents, but it should not be removed from its original place on the record.

## Jurisdiction and Value of Suit.

15. 99. **126.** Judges are reminded of their obligation, before admitting a suit, to satisfy themselves that it is, as regards value, one which they are competent to try.

Section 15 of the Code lays down that every suit shall be instituted in the Court of lowest grade competent to try it. Nevertheless this section does not oust the jurisdiction of a superior Court in suits within the jurisdiction of an inferior Court; thus, a Subdivisional Court has jurisdiction to try all suits not exceeding K 10,000 in value, not merely suits between K 1,001 and K 10,000 in value. Consequently, should a superior Court try a suit which was within the competence of an inferior Court, this error would be only an immaterial error curable by section 99 of the Code and would not affect the validity of the proceedings.

Hence Courts should not allow themselves to become involved in a protracted trial of an issue as to valuation because the opposite party alleges that the suit is within competence of a Court of lower grade. Such an allegation, if raised, must be inquired into, but the inquiry should be as summary as possible.

VII. 1(1). **127.** In suits relating to **immoveable property** in which the Court-fee on the plaint is calculated under clause (v) or (vi) or (ix) of section 7 of the Court Fees Act, **the valuation for the purposes of jurisdiction** is not identical with the **valuation for Court-fee** but is the actual or market value of the land in suit. In every such plaint **both values should be stated,** and the plaint should not be admitted until they are stated.

Valuation for jurisdiction and valuation for Court-fee.

## Rejection and Return of Plaints.

VII. 10, 13. **128.** Rules 10 to 13 of Order VII deal with the return or rejection of plaints. The cases in which a plaint may be rejected are set out in Rule 11.

**129.** When a plaint is rejected, it should not be returned, but filed for record. If a plaint is disposed of by rejection or by return before it is admitted and registered under Order IV, Rule 2, the case should entered in Register III and Annual Statement No. 5, and not in Register I or Annual Statement Nos. 2, 3 and 4. If it is rejected or returned after having been admitted and registered, the case should be entered in Register I and Annual Statements Nos. 2, 3 and 4.

## *Date of Hearing.*

V. 6. **130.** Sufficient time must be allowed to defendants to take notice of the claims against them and make arrangements for meeting them or for preparing their defence, and the Courts in fixing the date for the first hearing of the case must give reasonable time to defendants. In cases where parties are living in foreign countries, the date for hearing must be so fixed as to allow a period of at least four months from the date of posting the summons or notice.

Reasonable time to be allowed to parties.

**Persons exempted from appearance in Civil Courts.**

**131.** The President of the Union* has exempted from personal appearance in Courts in civil cases, the following persons : -

Pankangyi Supaya,

Gaingdauks,

Gaingôks,

Gainggyôks and all Buddhist ecclesiastics of higher rank.

The names of other persons who are exempted for certain periods are notified by Government from time to time and a list must be kept by each Court of such persons so exempted as reside within the local limits of its jurisdiction.

**Issue of Summons.**

V. 1(3). **132.** Any Judge may appoint an officer to sign summonses for issue to defendants, and may appoint an officer to receive applications for the issue of summonses to witnesses and to issue the summonses. The Head Clerks of Courts may in many cases be suitably appointed to perform these functions. Unless a formal order appointing the Head Clerk of the Court under Order V, Rule 1 (3), has been passed, the presiding Judge must sign processes himself, and in any case all processes, except summonses to defendants or witnesses, must be signed by the presiding Judge. The clerk, whose duty it is to receive stamps on account of process-fees, should never be allowed to sign processes, as thereby one check on the levy of process-fees is lost.

V. 30. **133.** When it is necessary for a Civil Court to issue a summons to a Chief of a Shan State, a letter should be addressed to the Chief under the provisions of Order V, Rule 30, and sent to the Secretary, Ministry of the Shan State.

Summons to Shan Chiefs.

---

* Judicial Department Notification No. 37, dated the 23rd February 1910, 2 Rules Manual, 137.

Summons to Officers of Land Records Department.

**134.** Officers of the Land Records Department should only be required to attend Court as witness when the Court has satisfied itself that the evidence he is required to give is not already exhibited in his official maps or registers.

V, 5.

Summons for final disposal.

**135.** The attention of Judges is drawn to Order V, Rule 5, of the Code, which lays down that the Court *shall determine,* at the time of issuing the summons, whether the summons is to be for issues or final disposal. This direction is equivalent to saying that the question must be considered. Judges frequently order summons for the settlement of issues in any case, however simple and petty, without any consideration. Much unnecessary trouble and delay is caused to litigants by this procedure.

**136.** For the rules as to payment of process-fees, *see* Part V, Chapter XXIX, paragraph 1001.

## Service of Summons.

XVI,12-20.

**137.** Courts must satisfy themselves, taking evidence when necessary, that service of summons has been duly and effectually made within a time reasonably sufficient to allow of the appearance of the defendant (*cf.*, paragraph 171).

When a summons or notice is posted, the copy of plaint or application or petition, etc., accompanying the summons or notice, must be attached to the summons or notice and posted with it.

XV, 9.

**138.** Where the person summoned is a public officer or servant of the Burma Railways, sufficient time shall be allowed in order to give the witness an opportunity of communicating with his departmental superior, so as to arrange for the discharge of his duties during his temporary absence from his post. If it appears to be most convenient, the summons may be served through the head of his office.

V. 25. 26.

**139.** (1) The attention of all Judges is invited to order V, Rule 26, of the Code of Civil Procedure, whereby processes in civil cases for service on persons residing in foreign territories, are required to be served through the Political Agent or certain Courts. The service of such process should be affected through the Embassy concerned. In order to enable the High Court to transmit such processes to the appropriate authorities, Judges are directed that processes for service on a person or persons residing in foreign territories should first be submitted to the Supreme Court.

Service of Processes on persons residing in Foreign Territories.

(2) Under the provisions of clause (b) of Rule 26 of Order V of the Code of Civil Procedure, the President of the Union has declared, in respect of any Court situated in Pakistan, *that service by such Court of any summons issued by a Court of the Union of Burma shall be deemed to be valid service.

(3) In order to enable a person from a foreign territory to attend a Court in Burma on the date fixed, Judges are directed that whenever a person residing in foreign territory is required to appear before a Court in Burma, at least four months' clear notice from the date of issue of a Summons to the date on which such person in required to appear before a Court should be given.

V, 28, XVI, 8.

**140.** Under Order V, Rule 28, where the defendant is a member of the Burma infantry, naval or air forces the Court shall send the summons for service to his Commanding Officer. Under Order XVI, Rule 8, these provisions apply to the service of summons on persons whose attendance is required to give evidence or to produce documents.

Service on Armed Force personnel.

**141.** There are special rules regarding summons received from other Courts for service - *see* Order V, Rule 23A.

Summons received from other Courts.

---

* Judicial Department Notification No. 309, dated the 18th Octover 1954.

## Summons issued by Foreign Courts.

**142.** Under the provisions of section 29 of the Code of Civil Procedure, summons issued by any Civil or Revenue Court in Pakistan* and India† may be sent to the Courts in the Union of Myanmar and served as if they had been issued by such Courts.

## Expenses of Witnesses.

**143.** (a) The rules regarding the travelling and other expenses of witnesses in civil cases in all Courts subordinate to the High Court, except the Rangoon City Civil Court, are contained in Order XVI, Rule 2 (3).

Expenses of Witnesses.

(b) Copies of Order XVI, Rule 2(3), in Burmese should be pasted on stout boards and hung up in the verandahs of Civil Courts and in the waiting sheds for witnesses attached to such Courts. There should be a heading in bold letters **"Notice to witnesses in Civil Cases,"** and the words **"No expenses of witnesses will be included in the costs allowed in decrees unless they are paid through the Bailiff,"** also in bold letters, should be added at the foot of the rules.

**144.** A Government officer who is summoned to give evidence otherwise than in his official capacity or in any civil case to which Government is not a party, is entitled to receive his expenses in the same way as any other person.

XVI. 3.

**145.** Expenses of witnesses must be tendered by the process-server on service of summonses. It is irregular to retain the expenses for payment to a witness at the time of his appearance. If the witness is literate, the process-server should take, above his signature on the back of the summons, an express acknowledgment of the expenses received. If the witness is illiterate, the process-server should take, above his mark, a similar acknowledgment attested by a third party.

Mode of payment of expenses of witnesses.

---

* Judicial Department Notification No. 308, dated the 18th October 1954.

† Judicial Department Notification No.276, dated the 15th July 1961.

XVI. 14. **146.** When the Court summons a witness under Order XVI, Rule 14, it shall decide in whose interest the witness is called and may in its discretion require that person to pay process-fees for the issue of subpœna and the expenses of the witness.

Witnesses called by Courts.

**147.** The cost of remitting by **postal money order** the expenses of a witness on whom a summons is served through another Court or through the head of an office *(vide* paragraph 132) should not be recovered from the party requiring his attendance, but should be treated as a contingent charge of the Court making the remittance.

## Trial of Cases Ex-parte.

IX. 6. **148.** In *ex-parte* cases, unless service is duly proved by affidavit (see paragraph 117), the deposition of the process-server should be recorded with any other evidence deemed requisite; and evidence must be taken sufficient to establish the claim satisfactorily although no one appears to dispute it. It is not necessary to frame issues in *ex-parte* cases. Judges should remember that the mere absence of the defendant does not justify the presumption that the claim is true, and are bound to see that at least a *primâ facie* case is made out.

## Written Statements.

VIII. 2-5. **149.** The provisions of Order VIII, Rules 2 to 5, concerning written statements, require careful study. Attention is particularly drawn to Rule 5, regarding the effect of failure in the written statement to deny specifically any allegation of fact in the plaint.

VIII, 6. **150.** Written statements pleading a set-off or counterclaim require to be stamped under Article 1 of Schedule I of the Court Fees Act.

## Interlocutory Applications.

**151.** Applications materially affecting the conduct of the suit or the legal position or rights of either party should be received only in writing. In matters of mere routine or indulgence and matters wholly within the discretion of the Judge motions may be made orally.

## Examinations of Parties by the Court.

X. 1-4. **152.** (1) Courts trying original cases should when necessary examine the parties or their advocates before fixing issues. The object of the Judge should be to ascertain precisely the points in dispute between the parties before framing the issues.

(2) Parties should not be examined and cross-examined on oath before issues are framed and the statements made by parties in examination before issues should not be treated as evidence in the suit. They must be examined again on oath, in the ordinary way, after issues have been framed.

**Note.** Under order L, Rule 1, Courts invested with the jurisdiction of a Court of Small Causes under section 10 of the Courts Act, 1950, need not frame issues in suits tried in the exercise of such jurisdiction, and the substance of the examination of parties need not be reduced to writing.

VI. 16-17. **153.** If the examinations of the parties show that the plaint and the written statement do not accurately bring out the real questions in controversy between the parties, such amendments as are necessary should be made in either or both. The Court has power to order or allow the amendment of either the plaint or the written statement at any stage of the proceedings.

Amendment of Pleadings.

Where possible such amendments should be made at once, and the case should not, if it can be avoided, be adjourned to allow of amendments being made.

## Conduct of Trials - Adjournments.

**154.** The following general instructions as to the manner in which the trial of a civil suit should be conducted are of importance:-

Preliminary matters.

(1) All matters preliminary to a trail should be settled before a date is fixed for trial. Neglect of this rule may involve reopening a case after the arguments have been heard. Preliminaries include the settlement of questions as to the addition of parties and the amendment of the plaint when if does not conform to the forms given in the Code, the appointment of the guardian of a minor defendant, the production of document, securing admissions as to facts and documents, the framing of issues, the execution of commissions for preparing essential maps or plans, and the disposal of preliminary issues, if any.

Admissions.

(2) The attention of the Bar should be frequently drawn to the rules in Order XII which provide that either party may call on the other to admit any fact or document and indicate how the cost of proof should be borne if the party noticed neglects or refuses to make the desired admissions. These useful provisions are ordinarily neglected, though action under them saves trouble and expense to the parties and enables essential preliminaries to be settled between the institution of the suit and the first hearing.

Lists of Witnesses Process-fees.

(3) On the completion of all preliminaries it will generally be convenient to fix an early date for giving in lists of witnesses and paying the necessary process-fees and expenses. On that day an estimate should be formed in consultation with the pleaders of the probable length of the trial and a date or several consecutive dates should then be fixed for recording evidence.

Adjournments.

(4) A date once fixed for hearing should be strictly adhered to and no adjournment should be granted except for some good reason. The grant of an adjournment is a matter which is generally within the discretion of the Court. A party has no right to an adjournment merely to suit his own convenience, or because his pleader is absent, or because he is not ready to go on with the case, or because he has neglected to obtain copies of documents which he ought to have procured beforehand.

It has also been observed that some Courts are prepared to grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. The Hon'ble Judges desire to impress on subordinate Courts that the offer of payment of cost of adjournment is not in itself a sufficient ground for adjournment. An adjournment granted otherwise than on full and sufficient grounds is a favour, and in civil suits favour can be shown to one party only at the expense of the other.

Adjournments to obtain Copies.

(5) Adjournments for the production of documents which ought to have been produced before should not be granted as a matter of course. When an adjournment is asked for on the ground that the applicant has to obtain certified copies of certain documents, the Judge should ordinarily require a written application supported by reasons and accompanied by an affidavit indicating that the applicant has not hitherto been guilty of undue delay in applying for copies and that he has not already got such copies in his possession; if the application is granted, all costs of production and proof should be thrown on the applicant.

Adjournments for appearance of Witnesses.

(6) A party is not entitled as of right to an adjournment because witnesses have not appeared; more especially if their non-appearance can be attributed to his own default in securing timely issue of summons. It is true that he must be granted summonses at any time before the date fixed for the examination of his witnesses if he pays for them, and should receive all reasonable assistance from the Court in securing service.

But he is bound to be reasonably diligent in obtaining the issue of summonses so as to be served in time and is not entitled to require that the proper and orderly routine of the Court's business be disturbed.

If therefore through delay in obtaining issue of summonses it is unlikely that they will be served in time in the course of the ordinary routine of the process-serving establishment, he must pay for a special process-server and. if necessary, furnish an identifier, or take his chance of the summonses not being served in time.

(7) The responsibility of parties for doing all that lies in their power to secure due service of summonses on their witnesses should be enforce. Where the date for attendance is more than thirty days ahead of that fixed for payment of process-fees and expenses it should be regarded as the duty of a party to move the Court promptly by a suitable application wherever a summons has been returned without due service.

The District Judge should see that in each Court facilities are afforded to parties and their pleaders for ascertaining what processes have been returned unserved: to this end the exhibition of a list of such processes may be found necessary or desirable.

Adjournments at request of Pleaders.

(8) A pleader who foresees any difficulty in conducting his client's case is bound, if he desires an adjournment, to apply for it a reasonable time beforehand. If the adjournment is refused, he is bound to arrange, so far as he can do so, that his client is represented on the day appointed in such a way that the case can proceed.

Procedure at Trial.

(9) On the date fixed for hearing the procedure laid down in Rule 2 of Order XVIII should be strictly followed in suits other than "Small Causes," the evidence of each side being preceded by a terse but complete statement of the case to be made out, showing the exact nature of the claim, the facts to be established by the evidence which will be adduced, the general character and bearing of that evidence, and a clear statement of any proposition of law involved.

After a party has stated his case the evidence of all his witnesses in attendance should be recorded. The mere fact that some witnesses are absent is no reason for omitting to record the evidence of those who are present.

Hearing to continue from day to day till completion.

(10) The hearing of the suit should, if necessary, be continued from day to day until all the witnesses in attendance have been examined: the fact that another case is or other cases are fixed for the following day is not a sufficient reason for adjourning to a later day.

Costs of Adjournment.

(11) When an adjournment is granted in the interests of one party only, that party should, unless there is some special reason for ordering otherwise, be directed to deposit the costs occasioned to the other party by the adjournment.

Orders as to the costs of adjournments should not be lost sight of when the decree is drawn up.

Final Arguments.

(12) Final arguments, if offered or required, should be heard as soon as all the evidence has been recorded and while it is fresh in the minds of both pleader and Judge. Adjournments for the preparation of arguments should be cautiously granted and should never be for any but a very short period.

A case once closed and adjourned for arguments should never be reopened by allowing parties to produce evidence unless for good cause clearly established to the satisfaction of the Judge.

The practice of permitting advocates and pleaders to file written arguments in contested suits is prohibited. Arguments must be addressed orally to the Court.

(13) Adjournments for want of time should rarely be necessary if the Judge arranges his cause list properly and takes at the beginning of the day cases in which evidence has to be recorded. Special precedence should invariably be given to such case which have already been once adjourned for want of time.

Adjournments "for want of time."

(14) All Civil Judges should remember that it is their duty to get at the truth; they are not mere umpires in a game between opposing pleaders and must when necessary supplement the examination and cross-examination of witnesses by asking such questions as they consider necessary to get at the real facts of the case.

Supplementary questions by Judge.

## Documentary Evidence.

VII, 14(1), 17. **155.** When the suit is brought on a document, the document, if in the plaintiff's possession or power, must be produced with the plaint and filed with it; or a copy must be filed as in the case of an entry in a shop-book. In the latter instance, save in the case mentioned in Order VII, Rule 17, the original must be marked by the Court for identification, and the copy must be attested.

VII, 14(2), 15. **156.** When other documents are relied on in support of the claim, they must be entered in a list added or annexed to the plaint; and if any of them are not in the plaintiff's possession or power he must, if he can, state in whose possession or power they are. The plaintiff should give notice for the production of documents not in his own possession or power, or ask the Court to cause their production.

VII, 18. **157.** The penalty for not producing a required document with the plaint or entering it in the list is the prohibition of its receipt in evidence at the hearing without the special leave of the Court.

158. Similarly a list of documents relied on by the defendant should be filed with the written statement.

XIII. 1. 2. 159. Parties are required by Order XIII, Rule 1, not merely to have their documentary evidence ready, but **actually to produce it** at the **first hearing** (which is at the settlement of issues in suits where summonses are issued for that purpose).

When the parties through ignorance omit to do so or to give notice for production, the Courts should explain what is necessary and should give opportunity for the requisite steps to be taken, or, if need be, should act under Order XIII, Rule 2.

The intentional keeping back of the tender of documentary evidence to a late stage of an action is, of course, liable to the penalty of the total exclusion of such evidence, but it is generally in the earlier stages that the omission referred to occur, and they are commonly due to pure ignorance of the rules of evidence and not to deliberate intention.

160. (a) Attention is drawn to the necessity for seeing that *original* documents, and not copies, are produced in evidence by the parties in suits.

(b) When original documents have once been produced they must be retained by the Court and treated in accordance with the instructions laid down in Order XIII.

161. Judges are reminded that the form entitled History of a Holding (Land Records 127) is not admissible as evidence of the facts recorded therein.

Histories of Holdings.

The entries in this form purport to record all details as to ownership of the land described in the form, throughout a number of years.

The details for each year must be proved by separate certified extracts from the registers of that year.

Judges should also note that where, for the sake of convenience, a number of certified extracts from Revenue Registers are made on one sheet of paper, every one of the extracts must bear a separate Court-fee stamp and there must be at the foot of the sheet a certificate worded so as to leave no doubt that it covers the whole of the extracts recorded on it.

List of Documents.

**162.** The provisions of Order XIII regarding the use of the list of documents *tendered* in evidence ( Form $\frac{\text{Judicial}}{\text{General 23}}$ ) and of documents *admitted* in evidence ( Form $\frac{\text{Judicial}}{\text{General 25}}$ ), the marking of documents admitted, the filing of exhibits and these lists, and the use of papers from another record, should be carefully studied (cf. Part II, paragraphs 49-55 and Part V, paragraphs 1073-1074).

Original documents to be sent to Appellate Court.

**163.** When proceedings are submitted to an Appellate Court the original documents produced by the parties in the Court of First Instance should ordinarily and in the absence of special reason to the contrary, be forwarded at the same time. This is particularly necessary when any question has been raised as to the genuineness of the document. The Court clerk is made responsible for seeing before the despatch of proceedings that all documentary evidence that ought to be on the record is complete and corresponds with the prescribed list.

XIII, 9.

Return of Documents.

**164.** On every copy of a decree given to the parties to a suits or case there shall be a printed notice calling upon them to withdraw their exhibits as soon as the decree shall have become final. Application should be made to the Court in which the suit was originally tried, even if the record has been forwarded to the record room.

## Oral Evidence and Affidavits.

137. **165.** The rules as to the language to be used in Court are to be found in Part II, paragraphs 34 to 36.

XVIII, 12. **166.** Remarks on the **demeanour of a witness**, if required, should be recorded at once by the Judge when he signs the deposition and not subsequently as an after-thought.

Demeanour of Witness

XVIII, 5. 6. **167.** The attention of Judges is called to the provisions of Order XVIII, Rules 5 and 6, of the Code of Civil Procedure. In recording evidence it is essential to mark clearly the beginning of each stage of the examination of the witness i.e., examination-in-chief, cross-examination, and re-examination.

As the evidence of each witness is completed it must be read or translated to him by such person as the Judge may direct. It is not necessary that the reading or translation should be done by the Judge himself or in his presence, but when it has been read or translated, the witness should be asked by the Judge himself whether it is correct.

Mode of Recording Evidence.

If he admits its correctness, or when any necessary corrections have been made, the Judge shall certify to this effect at the foot of the record. Some such words as "Read and acknowledged correct" over his signature are sufficient and suitable. Although the law does not expressly require this certificate, it is desirable that it should be appended.

The date on which the certificate is signed should be noted immediately below the signature of the Judge.

139. **168.** Judges of District Courts have been empowered to appoint, specially for their own and Subordinate Courts, officers to administer the oath to the declarant in the case of affidavits under the Code.*

Affidavits.

**169.** The rules made for the guidance of Bailiffs, clerks and others appointed to administer the oath to declarants of affidavits are contained in Order XIX, Rules 4-12.

139. **170.** Bailiffs, clerks and others appointed under section 139 of the Code to administer oaths to persons making affidavits, should remember that the swearing of such persons is not a mere formality, and should be very careful to observe the prescribed procedure.

Duty of Officer Administering Oath.

Forms of oath and affirmation to be administered to declarants are given in Part II, paragraphs, 73-75.

**171.** (1) The attention of all Courts is called to the forms of affidavit in respect of the service of, or failure to serve, processes (Civil Nos. 41-46). If the Courts insist on the proper use of these forms by Bailiffs and others appointed to administer oaths to declarants, under section 139 of the Code of Civil Procedure, it will seldom be necessary for the Court itself to make further enquiry as to the matters sworn to in these affidavits, and it will not be necessary to detain the process-servers at headquarters for the purpose of giving evidence.

Affidavits of Process-servers and Identifiers.

(2) Clerks writing affidavit of process-servers and identifiers must understand that the affidavit must contain the following statements in addition to those which the form requires : -

(a) Both the process-server's affidavit and that of the identifier must specify the place, i.e., house, mill, shop, or part of public road (specifying it) where a defendant or respondent was served. It is not enough to say that service was effected, e.g., at Shwegyin.

---

* Judicial Department Notification No. 40, dated the 23rd February 1910.

(b) When after such summons has been posted, the process-server must state either that he knows that at the time of posting, the defendant or respondent was actually residing / carrying on business or at the premises on which the copy of the summons, etc., was posted or that he was told by the identifier (naming him) that he knew that at the time of posting the defendant or respondent was actually residing / carrying on business in or at the said premises. In the absence of such knowledge or information, summons or notice should not be posted unless under an order for substituted service. Reasons for not posting and returning unserved must be stated.

(c) The identifier's affidavit, where a summons or notice is posted, must state not only that defendant or respondent ordinarily resides in such a house but also whether at the time of posting he was to his knowledge actually residing / carrying on business there.

(3) The names of the person or persons to be served, of the identifier, and of any other person mentioned in the affidavit, must be entered in the form in every case. The words plaintiff, defendant, appellant, applicant, respondent, should never be used in any part of an affidavit (cf. paragraph 137).

## Judgments.

**172.** All judgements, except judgments delivered orally at the conclusion of the hearing, shall be written by the Judge before they are delivered.

The judgment should contain a distinct finding on each issue.

XX, I. In accordance with the provisions of Order XX, Rule 1, if judgment is not delivered at once it shall be only delivered after due notice to the parties or their pleaders. This rule is habitually disregarded, and the procedure frequently adopted is that judgment is reserved, and then the next diary order in the case reads that judgment has been delivered and notice thereof should be given to the parties.

This practice is contrary to law, and in consequence of its adoption many appeals which are *primâ facie* time-barred have to be admitted. Ordinarily, when judgment is not pronounced at once at the conclusion of the case, a definite date for its pronouncement should be given at the time, and judgment should not be reserved without fixing a date for its delivery. If for any good reason it is impossible at the conclusion of the hearing to fix a date for delivery of judgment, when the Judge is ready to deliver judgment he should then fix a date for its delivery, and cause notice of that date to be served on the parties or their pleaders. Only when such notice has been duly served can judgment be delivered.

## Decrees.

**173.** The Court rate of interest allowed to decree-holders under section 34 of the Code of Civil Procedure, should ordinarily be fixed at nine percent or at such lesser rate as may be expressed or implied in the contract.

XX, 6. **174.** (a) In every case a formal decree must be drawn up and sealed with the seal of the Court. In decrees the names and descriptions of all the parties to the proceedings should be entered in full.

Judges are required to note on each decree the date on which the decree is actually signed as well as the date of the decree, *c.f.*, Order XX, Rule 7.

XX, 9. (b) A decree concerning immoveable property should contain a description of the property sufficient to identify it, and if it has been surveyed the boundaries or survey numbers should be given.

Decrees concerning immoveable property.

XXIII, 3. (c) The provisions of Order XXIII, Rule 3, should not be overlooked. When a suit has been lawfully compromised, the Court should pass a decree in accordance with the compromise.

Decree on Compromise.

175. The drawing up of the decree or order, which is the final and permanent expression of the relief to which the successful party is entitled, is one of the most important and difficult steps in the proceedings. Upon its accuracy and completeness the future rights of the litigants depend, and a defective, incomplete or uncertain decree or order may not only give rise to loss to the parties themselves but may also often give rise to further quite unnecessary litigation in a Court of Appeal or elsewhere. The following instructions should be carefully followed:-

Drafting of Decrees and Orders.

(1) The clerk whose duty is to draft the decree should, from a careful reading of the whole of the Judge's judgment, first be satisfied that he himself really understands what relief is intended to be granted by the Judge and, where it rests upon some particular section of an Act, Order or Rule, he must assure himself under what such section, Order or Rule the relief is granted. In this respect it is not sufficient to read and to accept merely the concluding paragraph or paragraphs of the judgment and to copy what is there set out into the decree or order. The Judge, in the majority of cases, does not intend, and cannot be expected, to do more in his judgment than to indicate in outline the relief he proposes to grant.

(2) In cases of any doubt whatever, the duty of the clerk drafting the decree or order is to approach the Judge to ascertain what his intentions are as to the form of the decree or order. The responsibility for the accuracy and completeness of the decree or order is that of the Judge, who should never sign a decree or order drafted and put up to him by the clerk without scrutinizing it carefully to make certain that it is correct.

(3) Where forms of decrees or orders appropriate to the particular case are to be found provided in the Code of Civil Procedure or elsewhere those forms *must* be made use of, with such adaptations (if any) as the particular case may require. In particular this applies to mortgage decrees.

A decree in such a form as:- 'It is decreed that there shall be a decree for redemption. . . . . , etc., is quite meaningless.

(4) When decrees come before District Courts on appeal from subordinate Courts, the District Judge should, in addition to determining the appeal on its merits, be careful to scrutinize the form of the decree of the lower Court, and if necessary, correct it.

(5) In cases in which relief is granted under any particular section of an Act, Order or Rule, that section, Order or Rule, as the case may be, should wherever possible be specified in the decree or order and where particular words are used by that section, Order or Rule those words should, as far as possible, be used in the decree or order.

(6) In cases of complication or difficulty the Judge should issue a notice to the pleaders concerned to attend before him for the purpose of settling the draft order or decree. It is also suggested that, in cases where the drawing of complicated and difficult orders or decrees is involved, the Judge might ask the pleader who has the carriage of the matter to bring in to the Court minutes of the formal order or decree to which he considers he is entitled, in order that an agreed decree may be passed.

(7) Attention is drawn to the provisions of paragraphs 1115-1118. Cases occur in which orders which are far more than 'short' or 'formal' are made merely by entries in the diary. Diary orders should be confined to more or less routine matters such as adjournments, fixing days and so forth and in nearly all cases in which substantive orders are made a formal order should be drawn up. Ambiguity often follows from orders in the form of mere diary entries, for they are really mere minutes or memoranda of what the Judge has directed. Pleaders do not as a rule interest themselves, as they should, in the form of the decree or order and, therefore, the responsibility falls upon the Judge of deciding when a formal order should be drawn up and when it should not.

Court Fees Act, II.

**176.** (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.

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

## Costs

XX, 6.

**177.** Order XX, Rule 6, requires that the decree shall state the amount of costs incurred in the suit, and by whom or out of what property, and in what proportions such costs are to be paid. The decree should therefore show the total cost of each party allowed by the Court and should also show what amount is, in accordance with the judgment, to be paid by one party to the other.

Costs to be shown in Decree.

For example, *A* sues *B* for K 500 and costs. The court by its judgment awards. *A* K 300 from *B*, rejects the claim as to K 200, and directs the parties to bear costs in proportion.

The decree should show costs as follows:-

***Costs of Suit.***

| **Plaintiff.** | | | **Defendant.** | | |
|---|---|---|---|---|---|
| | **K** | **Pyas** | | **K** | **Pyas** |
| Stamp for plaint | 50 | 00 | | | |
| Stamp for power | | 75 | Stamp for power | 0 | 75 |
| Pleader's fees | 30 | 00 | Pleader's fees | 30 | 00 |
| Subsistence for witnesses | 5 | 00 | Subsistence for witnesses | 3 | 00 |
| Process fees | 2 | 00 | Process fees | 2 | 00 |
| Total | 87 | 75 | Total | 35 | 75 |

| | | K | Pyas |
|---|---|---|---|
| Deduct disallowed | Stamp on plaint for K 200 | 20 | 00 |
| | Plaintiff's pleader's fee on K 200 | 12 | 00 |
| Deduct fee of defendant's pleader on K200 | | 12 | 00 |
| | | 44 | 00 |
| Total costs to be paid to the plaintiff by defendant | | 43 | 75 |

**178.** (1) The provisions of the Code of Civil Procedure relating to costs are as follows:-

Taxation of Costs.

(i) Section 35, which gives full discretion to the trial Court in the matter of costs.

(ii) Section 35A, which makes provision for penal costs in false or vexatious suits.

(iii) Rule 2 of Order XVI, which lays down a scale of witnesses' expenses in civil suits.

(2) Copies of pleadings are always prepared by the advocate or pleader who is instructed in the case and the preparation of such copies is as much a part of his duty as is the preparation of the original plaint or defence. Consequently remuneration for this expenditure is included in the allowances for advocates' or pleaders' fees. The cost of applications or affidavits and searching fees should, however, always be included in the taxed costs of the case.

(3) It is impossible to include in the taxed costs any compensation for the loss of earnings of a successful party, or even for his loss of time prior to his appearance in Court, but compensation for loss of time after appearance has been entered can be made.

Therefore in the taxed costs allowance should be made, in accordance with the scale laid down in Rule 2 of Order XVI, for the loss of time and travelling expenses of parties, in regard to their actual appearance before the Court, in the same way as is done in the case of witnesses. All Judges have full power, under the provisions of section 35 of the Code, to direct that such compensation for loss of time and travelling expenses of parties shall be included in the taxed costs.

(4) Judges are recommended to draw the attention of parties to the provisions of section 35A of the Code, dealing with punitive costs in false or vexatious claims, in all suitable cases.

## Communication of Decrees and Orders affecting Immoveable Property to Land Records and Registration Departments.

XX, 21-23.

**179.** The rules for the communication of information to the Land Records Department and to the Sub-Registrar of Deeds are contained in Order XX, Rules 21 and 22, and Order XXI, Rules 94A and 94B. The Judge must note in the diary of the case that copies of certificates have been sent as required by these rules.

Punitive Costs.

**180.** Under section 35A of the Code of Civil Procedure, punitive costs may be awarded by way of compensation in respect of false or vexatious claims or defences in civil suits or proceedings. For the guidance of Courts called upon to exercise this power, the following instructions have been issued:-

(1) The power given may be exercised in the case of a suit or other proceeding not being an appeal. The Court cannot act of its own motion but only on an objection by one or other of the parties there to and then only if the objection has been taken at the earlier opportunity. The claim or defence must have been disallowed, abandoned or withdrawn in whole or in part. The Court must be satisfied that the claim or defence is either false or vexatious to the knowledge of the party by whom it has been put forward and also of the justice of the objection.

(2) The Court must give the party against whom the objection is made an opportunity of meeting it. After hearing him. unless he fails to appear or does not desire to be heard, the Court may proceed to make an order for payment of compensatory costs. This order should be included in the judgment.

(3) The Court must always fully record its reasons for holding the claim or defence to be false or vexatious.

(4) A claim or defence may be held to be "vexatious" when its main objects is to cause annoyance and this object can be gathered from the nature and substance of the claim or defence itself and from the surrounding facts and circumstances. If primarily designed to cause delay or to put the objector to needless expense, it may well be held to be "vexatious."

(5) The limit of the amount that may be awarded is set out in sub-section (2) to the section, but it is not intended that the maximum amount should be allowed as a matter of course in every case in which compensatory costs can properly be allowed. The primary object is to compensate the successful objector for the trouble and expense to which he has been unnecessarily put. It is not to punish or to mark the displeasure of the Court though it may be hoped that the possibility of an order for compensatory costs may lead to some reduction in the number of the false claims and defences that are at present so frequently put forward.

(6) Section 95 of the Code makes a somewhat similar provision for the case of an arrest or an attachment or a temporary injunction and in such cases that section should still be applied.

(7) The Courts should exercise the greatest care and discretion in the use of these powers now granted. It will not be sufficient that the claim or defence fails.

It must be shown to be false or vexatious to the knowledge of the party and the Courts must be careful to appreciate the difference between a claim or defence which is not proved and one which is demonstrably false.

## Champerty.

**181.** (1) Champertous agreements, that is, agreements whereby a person who has no interest in the subject-matter of a suit or proceeding gives monetary assistance or legal advice to, or otherwise maintains, the plaintiff in consideration of an agreement by the plaintiff to give to him a share of the proceeds of the litigation, if successful, or in consideration of the plaintiff having transferred his interest or part thereof in the subject-matter of the suit, although not illegal, are nevertheless objectionable. All Judges should therefore scrutinise the circumstances under which a plaintiff appoints an attorney under a power-of-attorney, and if the attorney is not a close friend or relative of the plaintiff or an agent appointed in the ordinary course of business. Judges should insist on the personal appearance of the plaintiff under the proviso to Order III, Rule 1.

III, 1.

(2) In all applications to sue *informa pauperis* the petitioner should be specifically questioned as to whether he has given a power-of-attorney to any person, or whether he has entered into any such agreement as is mentioned in order XXXIII, Rule 5, Clause (e). If he has appointed an attorney, the attorney should be examined as to whether there is any such agreement.

XXXIII, 5.

(3) Criminal proceedings should be taken against persons who are found to have instituted blackmailing or dishonest claims by means of suits. The circumstances of any such case occurring in a subordinate Court should first be reported to the District Judge for orders before criminal proceedings are instituted.

(4) Attention is also invited to the Order XXV, Rule 2 of this Order provides that when it is proved that the plaintiff has entered into a champertous agreement with any person a Court may award cost againsts the plaintiff on a special scale and may also order him to give security for the estimated amount of such costs.

XXV, 2.

On failure to furnish security within the time fixed by the Court the suit may be dismissed.

(5) When a suit is filed to enforce a champertous agreement, the Court has power to decide whether the agreement was unfair to the plaintiff, and if so to declare the agreement unenforceable as opposed to public policy under section 23 of the Contract Act. It may also, instead of giving a decree (for the full amount claimed under the agreement, grant the maintainer a decree only) for the sum actually spent by him *plus* reasonable interest.

**Receivership Proceedings.**

The following instructions should be observed in the conduct of all cases, *except Insolvency Cases,* where a Receiver is appointed.

**182.** (1) No ministerial officer of the Court, other than the Bailiff, should ever be appointed as a Receiver. There is no objection to the appointment of the Bailiff as Receiver in respect of estates of small value, provided that he gives sufficient additional security for the performance of his duties as such. But in the case of estates of considerable value an Advocate or Pleader of the Court, or some other person of standing not connected with the Court, should be appointed as Receiver.

(2) Proceedings connected with the appointment of a Receiver should never be taken in a regular suit. They should always form the subject of a separate miscellaneous case.

(3) The formal order appointing a Receiver should be made out in Form Civil 119. A copy of the order should be given to the Receiver on appointment.

(4) The amount of security demanded from the Receiver should be fixed at a sum approximately equal to the gross annual income of the estate. There is no objection to a Receiver's bond being given in the form of a Fidelity Guarantee Bond.

(5) The order appointing a Receiver should mention specifically the property of which he is appointed Receiver, and the powers conferred upon him. It should set out that he will be remunerated in accordance with the scale contained in Rule 2 of Order XL, Code of Civil Procedure.

It should require him -

(i) within one month of the date of appointment to take over possession of all moveable and immoveable property belonging to the estate, and to file in Court lists of all property of which he has taken possession;

(ii) to file accounts at the end of the first month and subsequent accounts at the end of each subsequent period of three months;

(iii) on each occasion before filing his accounts to pay all monies in his hands into the Treasury through Bailiff's Register No. I, except a sum to be fixed in the order, which he may be allowed to keep in his hands to meet current expenses. The chalan of credit to the Treasury must be submitted each time for check by the Judge when the accounts are filed.

(6) When the Receiver submits his accounts, this should be noted in the diary of the connected Miscellaneous case, and the amount deposited into the Treasury, and the chalan number and date, and the fact that the chalan has been seen by the Judge, should also be noted in the diary.

(7) The chalan of credit of monies to the Treasury should be returned to the Receiver after inspection. Accounts submitted by him should be filed in the case.

(8) When accounts are filed, notices should be issued at once to all parties to the litigation that the accounts for a certain period, to be named, have been filed by the Receiver and will be taken into consideration on a date, which should be fixed. On that date the objections of the parties to the accounts, if any, should be heard, and the Receiver should also be heard, if necessary, and formal order should be passed, either approving of the accounts or directing the Receiver as to what further steps he is to take in regard to them.

In the latter case a new date should be fixed for filing revised accounts by the Receiver after taking necessary action as directed by the order, and the parties in a similar way should be given an opportunity to object to the revised accounts. On each occasion on filing accounts, the accounts must be taken into consideration and passed in this manner.

(9) Where the Bailiff is appointed Receiver, he must at once pay into the Treasury through Bailiff's Register I all moneys received less such amounts as are required for immediate disbursement in connection with the expenses of the Receivership. The payment of such sums into Treasury should be noted in the diary of the proceedings in the manner laid down in paragraph 1043(2). In other respects the rules contained in sub-paragraphs (1) to (8) should be followed.

(10) Under Order XL, Rule 3(b) of the Code of Civil Procedure, the accounts of the Receiver shall be in such form as the Court direct. To facilitate audit of the accounts, it is advisable to direct in all cases that a Receiver shall maintain a Cash-book such as is prescribed in paragraph 355(4) for Receivers insolvency cases, and a file of vouchers, chalans and other connected papers arranged in chronological order. Other accounts to be prescribed will depend upon the nature of the particular estate that is to be administered by the Receiver. In cases where it is necessary for many receipts to be given by the Receiver it may be convenient to provide him with printed books of receipts. Where a person other than the Bailiff is appointed that he should submit his accounts for audit by the outside audit staff of the Accountant-General's Office.

## CHAPTER VIII.

### PROCEDURE IN EXECUTION.

183. (1) On the presentation of applications for execution, orders thereon should, except in a very few complicated cases, be passed on the same day, and in all cases should be passed at the latest on the next day after presentation.

Application for execution.

(2) Applications for execution should not be returned on frivolous or insufficient grounds. If a wrong amount is entered in the application, should correct the error and issue execution for the amount as corrected. All technical errors should be similarly dealt with.

When it becomes necessary to return an application for amendment, an order must be passed setting out specifically the matters in which the application is inaccurate, and when an application is so returned all objections to it should be noted thereon, once for all.

## Precepts.

**184.** The Court which passes the decree may, on the application of the decree-holder, issue a precept to any other competent Court to attach the judgment-debtor's property pending transfer of the decree for execution in the ordinary course. This attachment remains in force for only two months, unless the Court which passed the decree takes action as indicated in the proviso to section 46.

46.

## Transfer of Decrees for Execution.

39.

**185.** Applications under section 39 for the transfer of a decree for execution to another Court shall be made by a verified petition in which the reasons for the transfer shall be set out and the particulars mentioned in clauses (a) and (b) of this section if either applies, shall be clearly stated. Under Order XXI, Rule 6, every application shall be accompanied by a copy of the decree and two certificates.

Application for Transfer.

XXI, 6.

39.
XXI, 4, 5, 7.

**186.** The conditions under which a decree may be sent for execution to another Court are set forth in section 39. Except in the case of a transfer to a Court subordinate to itself, a Court can transfer a decree for execution only on the application of the decree-holder.

Conditions of Transfer.

XXI, 6.

**187.** A Court sending a decree to another Court for execution must send a copy of the decree, a certificate of non-execution, or of partial execution, as the case may be, *and* a copy of any order for the execution of the decree or a certificate that no such order has been made. The certificate of non-execution, or of partial execution should be in Form Civil 71.

Documents to accompany decrees transferred.

XXI. 5. **188.** If the Court to which a decree is sent for execution is in the same district as the Court which passed the decree, the papers described in the last paragraph shall be sent direct. If not, the papers shall be sent to the District Court of the district in which the decree is to be executed.

Court to which Decree may be sent.

**189.** The papers specified in paragraph 187 should ordinarily be sent by registered post, and not by the hand of the decree-holder. All incidental charges such as those for postage and registration should be paid as contingent charges of the Court by which they are sent; and should not be demanded from the person at whose instance the papers are transmitted.

Mode of transmission. - Incidental charges.

**190.** When a decree is transferred to another Court for execution the execution proceedings in which the order for transfer is passed should be closed forthwith on the decree being duly transferred in accordance with the order.

XXI, 8. **191.** A District Court, to which a decree is sent, may direct any Subordinate Court to execute it, provided that the Court cannot execute a decree in a suit the value of which is in excess of the pecuniary limits of its jurisdiction.

Discretion of District Court.

XXI, 10A. **192.** For the procedure of the Court to which a decree is sent for execution if no application is made to its to execute the decree, *see* Order XXI, Rule 10A.

41. **193.** A Court to which a decree is sent for execution by another Court certify to the Court which passed the decree the fact of execution or, where the decree has not been executed, the circumstances attending the failure to execute it. A special form (Form Civil 72) has been prescribed for the certificate of execution or non-execution.

Certificate of Execution.

## Application for Execution.

XXI, 11(1). **194.** In the case of a decree for the payment of money, if the judgment-debtor is within the precincts of the Court at the time of the passing of the decree, an oral application may be made for immediate execution by his arrest. On an oral application under Order XXI, Rule 11(1), execution can only be granted against the person

Oral application.

XXI, 10. **195.** Subject to this provision an application for execution must be made to the Court which passed the decree or to the Court to which it has been sent for execution. *It must be in writing* and must contain in a tabular form the particulars specified in Order XXI, Rule 11(2). It must be verified in the *same* way as a plaint. An application for execution need not be accompanied by a copy of the decree to be executed, but the Court may require one.

Written application necessary except in above case.

XXI, 11(2).

XXI, 11(3).

XXI, 11. **196.** (1) When, at the time of passing the decree under Order XX, Rule 11(1), or after passing the decree under Order XX, rule 11(2), an order is made for payment of the decretal amount at a deferred date or by instalments, or when the parties agree that payment of the decretal amount shall be made at some deferred date or by instalments, application for execution can be made by the decree-holder only when the date fixed for payment has passed, or one or more of the instalments have become due under the order or agreement and remain unpaid. When an application for execution is made in the latter case the execution proceeding should be closed as soon as the instalments in respect of which the proceeding has been opened have been realized or proved wholly or in part to be irrecoverable in that proceeding. Action in that proceeding cannot be taken for the recovery of any other instalments besides those the payment of which was overdue at the time the application was made, and the proceeding cannot be kept open for the recovery of any other instalments besides those mentioned in the original application.

Payment by Instalments.

XXI, 46, 48. (2) In the case of decretal amounts payable by instalments under Order XXI, Rule 46 or Rule 48, the execution proceedings should not be closed until the full amount due under the decree has been recovered or further recovery cannot be made.

XXI, 12. **197.** An application for the attachment of moveable property belonging to the judgment debtor but not in his possession must be accompanied by an inventory of the property to be attached.

List of property to be attached.

XXI. 13. Plan of immoveable property.

**198.** An application for the attachment of immoveable property should be accompanied by a plan of the land to be attached.

XXI. 14. Attachment of land registered in Collector's Office.

**199.** If the property to be attached is land registered in the Collector's Office, the Court may require the applicant to produce an extract from the register of that office giving the particulars specified in Order XXI, Rule 14.

48, Limitation Act. Schedule II. 83. Limitation of execution.

**200.** As an ordinary rule, an application for the execution of a decree must be made within twelve years from its date. But an application may be barred by limitation under the Limitation Act in a shorter period.

XXI. 17. Rejection of application.

**201.** If an application does not comply with the requirements of Order XXI, Rules 11(2), 12, 13 and 14, so far as applicable, it may be rejected or returned for amendment.

XXI. 21. The Court may in any case **Refuse Execution** at the same time against the person and property of the judgement debtor.

Procedure on admission of application.

**202.** When an application is admitted, a note of the application and the date on which it was made must be entered in Register No II, and, subject to the following paragraph, execution must be ordered in accordance with the application.

XXI, 22. Notice of Judgment-debtor

**203.** Subject to the proviso in Order XXI, Rule 22(1) and to Rule 22(2), instead of issuing process the Court must issue notice to the judgment-debtor to show cause -

(a) when the decree is more than three years old;

(b) when execution is sought against the legal representative of the judgment-debtor.

Notice is not necessary merely because the decree was passed *ex-parte*.

XXI. 23. **204.** If after notice has been issued under Order XXI, Rule 23, the judgment-debtor does not appear, or does not show sufficient cause, execution must be ordered.

XXI. 18. **205.** If execution of cross decrees is sought, only the decree for the larger sum can be executed, subject to Order XXI, Rule 18.

Cross-decrees.

**206.** Members of Court establishments are strictly prohibited, on pain of dismissal, from giving notice of applications for attachment except by Special order of the Court in each case.

## Mode of Execution.

56, 60, XXI. 11(1), 21, 42. **207.** Subject to the discretion allowed by Order XXI, Rule 21 (paragraph 201), and to the exceptions noted in paragraphs 194, 214, 215, 217 and 269, a decree for money may be enforced by the imprisonment of the judgment-debtor, by the attachment and sale of his property, or by both.

Decree for Money.

XXI, 31. **208.** A decree for specific moveable may be enforced by seizure and delivery of the moveables or by the imprisonment of the judgment-debtor, or by the attachment of his property, or by both imprisonment and attachment.

Decree for specific moveables, etc.

XXI, 32, 33. **209.** Decrees for specific performance may be enforced by imprisonment or attachment of property, or both. A decree for restitution of conjugal rights cannot be enforced by imprisonment.

Decrees for specific performance, etc.

XXI, 45(1). **210.** Decrees for the delivery of immoveable property are executed by the delivery of possession and the removal, if necessary, of any person bound by the decree. See also Order XXI, Rule 35(2) and (3).

Decree for delivery of immoveable property.

If the property is occupied by any person not bound by the
XXI. 36. decree to vacate it, delivery is made by affixing the amount on the property and notifying or proclaiming it to the occupant.

XXI. 24(3). 25 (1).

**211.** A date must be specified in every warrant for execution on or before which it must be executed. The warrant must be returned with and endorsement showing date and manner of execution or the reason of non-execution.

Ececution and Return of Warrant.

**212.** Ordinarily decrees for partition should not be sent to the Collector for execution. Section 54 of the Code of Civil Procedure applies only to estates assessed as a whole to land revenue, and does not cover estates in Burma which consist of land that has been brought under supplementary survey and is assessed at acre rates. In such cases partition does not involve any alteration either in the total land revenue collected or in the rate at which it is levied.

Decrees for the partition of land.

The proper procedure therefore for a Civil Court which has issued a decree for the partition of an estate in Burma is for the Judge on the application or with the consent of the parties, to appoint a Commissioner to carry out the partition at such fees as he thinks suitable. Ordinarily an officer of the Land Records Department not below the rank of Inspector may be appointed to carry out the partition (*see* also paragraph 292).

**213.** When process has issued it is the duty of the Bailiff, subject to Order XXI, Rules 45A and 45B, to execute it unless the process is withdrawn by the Court or unless the amount of the decree is paid to him for deposit in Court. It is the duty of the decree-holder, or of the judgment-debtor under Order XXI, Rule 2, to certify to the Court any adjustment or payment in satisfaction of the decree. There need be no objection to the temporary stay of actual execution of a process to enable the decree-holder to certify any payment or adjustment but that is the utmost extent to which the Bailiff can take action when either of the parties reports to him the satisfaction of the decree.

Duty of Bailiff in execution of Process.

## ATTACHMENT

**214.** Property liable to attachment in execution of a decree is described in section 60 of the Code. Special attention should be paid to the list in this section of property not liable to attachment. In particular care should be taken to exclude from attachment, in the case of agriculturist, property described in paragraphs 215 and 216.

**215.** × × × × × × **216.** × × × × × × In the case of the agricultural produce and the property of an agriculturist which are liable to attachment in execution of a decree, the methods how to function on such a matter were, then, shown in sections 215 and 216 of Burma Courts Manual. But in accordance with the provisions under The Peasant's Right Protection Law, the agricultural produce and the property of an agriculturist cannot be attached in execution of a decree. Thus, the aforesaid sections were delected and had to, in great care, study on the provisions under The Peasant's Right Protection Law and Court Instructions No. 3/64.

**217.** (1) Special attention is directed to section 60(1), proviso (i), and the following provisions of the Burma Army Act: -

*Section 26* † - 'Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.'

(2) The pay and allowances of persons subject to the Army and Air Force Acts are not liable to attachment in respect of liabilities incurred after the 31st December 1938 [See section 136(2) of the Army Act and Air Force Act, and Notification under section 60 (1) (*l*) of the Code of Civil Procedure*].

---

† Myanmar Army Act, 1959

* Judical Department Notification No.271, dated the 5th December 1938 as amanded by Notification No.65, dated the 23rd January 1939

**218.** Rules to regulate the procedure of all Courts in connection with the issue of warrants for the attachments of moveable property and with the employment and payment of temporary peons for the custody of such property are contained in Order XXI, Rule 45A.

Attachment of Moveable Property.

**219.** Judges of Civil Courts are required to observe the following principles when issuing warrants of attachment of properties:-

(a) The warrant must be properly worded.

(b) The schedule of properties to be attached must clearly state what properties are to be attached and vague terms should be avoided. This schedule must be attested by the Judge's signature.

(c) Where a large dump of paddy or the like is to be attached it may be all right to leave the attachment to a process-server, but in the case of miscellaneous goods of considerable value, such as goods in a shop or house, and especially at the headquarters of a Bailiff, attachment should be made by the Bailiff or an Assistant Bailiff himself or under his direct supervision.

(d) The Bailiff or Assistant Bailiff should be held responsible for the safe custody of the attached properties and if there is no room to store the properties he must find a suitable dry godown where they can be stored at the decree-holder's expense. Particular attention must be paid to the storing of perishable articles seized.

(e) If the properties consist of boxes or closed receptacles they should be sealed with the Bailiff's seal or if that is impossible with the judgment-debtor's *but never with the decree-holder's seal.*

Judges must satisfy themselves that the Bailiffs under them understand these rules and observe them.

XXI. 43, 51. **220.** Attachment of moveable property other than agricultural produce in the possession of the Judgment-debtor, including negotiable instruments, is made by actual seizure.

The attention of Judges is also invited to the warning printed at the head of Form Civil 81. This warrant of attachment is only to be used when the property is actually in the possession of the judgment-debtor. The processserver must not seize property belonging to the judgment-debtor in the possession of a third party.

Rules for Custody of Live-stock, etc.

**221.** Order XXI, Rule 45B contains the rules regarding the maintenance and custody, while under attachment, of live-stock and other moveable property, etc.,

**222.** When an objection, preferred to attachment of moveable property, is disallowed, the Court should ordinarily direct that the additional expense incurred for custody, and feeding and tending charges, if any, of the property pending the decision of the objection should be made costs in the case and borne by the objector.

XXI. 46

Prohibitory order.

**223.** Attachment of debts not secured by negotiable instrument, shares, or moveable property not in the possession of the judgment-debtor, is effected by prohibitory order.

One copy of the prohibitory order should be served on the person prohibited under sub-rule (1) of Rule 46 of Order XXI, to whom it should be addressed, and one copy should be posted on the Courthouse.

XXI. 63A. to 63G.

Realization of attached debt.

**224.** (1) Attention is invited to Rules 63A to 63G of Order XXI, regarding the realization of attached debts by means of *garnishee* proceedings. The person who owes the debt to the judgment-debtor is called the "garnishee". If he does not pay the amount of the debt into Court, or does not dispute his liability, or fails to appear in answer to a notice to show cause, the Court may order him to pay the amount into Court and issue execution against him as though such order were a decree against him.

(2) If the garnishee disputes his liability to pay the debt attached, the Court can in the execution proceedings proceed to determine his liability as though it were an issue in a suit.

225. (a) Attachment of a salary of a public officer or servant of the Railway should be made by the issue of an order in Form Civil 78 to the officer designated by Government in this behalf, or if no such officer has been designated, to the disbursing officer, directing him to withhold monthly a specified portion of the salary. Under the Code of Civil Procedure (Second Amendment) Act, 1937, the first K100 of the salary and one-half of the remainder cannot be attached. The amount withheld is usually paid into Court by the withholding officer. (*See* Government Financial Department Circular No. 26 of 1907.)

(b) Various notifications (printed as Appendix VI) have been issued under Order XXI, Rule 48 (1), relating to the attachment of salaries of Government officers.

(c) When prohibitory orders are to be sent by post, they should be *addressed to the officer by name* and sent by *registered post acknowledgment due* and not by ordinary post.

(d) When a portion of the salary of a public servant is attached under the provisions of Order XXI, Rule 48, it is for the Court and not for the Disbursing officer to decide how much of the salary is attachable, and the Prohibitory order should specify the amount which is to be deducted from the salary each month. In order that this may be done the decree-holder should be required to state at the time of his application for attachment what is the salary of the judgment-debtor. The Disbursing officer is only responsible for deducting the amount he is ordered to deduct under Order XXI, Rule 48 (1), unless the attachable portion is already being withheld and remitted to a Court under a previous order of attachment, in which case he must return the Prohibitory order under Rule 48 (2).

XXI. 48

Failure of Heads of Departments to enforce orders of attachment of salaries of subordinates.

226. Under Order XXI, Rule 48 (3), the Government of the local authority is responsible that the sums of money included in prohibitory orders issued against its servants are realized, and the liability of the Government or local authority can be legally enforced. Heads of Departments have been warned that when a prohibitory order attaching a portion of the salary of a Government servant in their Department is sent to them they must comply immediately and without protest or discussion with the orders of the Court, as they are the agents of the Government in carrying out the orders of the Judiciary.

Any Head of Department therefore, who fails promptly to deduct from the salary of a Government servant in his Department the sum of money entered in a prohibitory order sent to him for execution, renders the Government liable for that sum. This liability the Government, at its discretion, may transfer to its disbursing officer, and if any case is reported to the Government where the Head of a Department has failed to realize the sums due under prohibitory orders issued through him it will be for the consideration of the Government whether he should not be called upon to make good any loss that by the Court concerned, through the District Court, to the Registrar, High Court, who will take such action as may appear to be necessary in each case.

**227.** The salaries of employees in private firms cannot be attached in the same way as can the salaries of Government officers and others. Attachment can only issue on the salary of an employee of a private firm after it has become due, as a debt incurred by a third party (in this case the employer) in favour of the employee (in this case the judgment-debtor). The form applicable is Civil 76.

Attachment of Royalties.

**228.** Where the royalties due to a judgment-debtor from any source are to be the subject of attachment by prohibitory order addressed to a company or other concern paying those royalties, it shall be expressly stated in the prohibitory order that the royalties are to be paid by the addressee directly into the Treasury, on chalans countersigned by the presiding officer of the Court.

XXI, 17(4).

Excessive Attachment Prohibited.

**229.** Care should be taken to observe the direction in Order XXI, Rule 17 (4), that in the execution of a decree for money, the value of the property must as nearly as may be, correspond with the amount of the decree. The practice of attaching property of value largely in excess of the amount of the decree should be carefully avoided.

XXI, 52, 53.

Attachment of Immoveable Property.

**230.** Rules for the attachment of property deposited in Court or with a public officer, and of decrees, are contained in Order XXI, Rules 52 and 53.

XXI. 54. Attachment of Immoveable Property.

**231.** Attachment of immoveable property is made by a prohibitory order which should be posted on the Court-house and property and proclaimed on or near the property.

XXI. 55. Withdrawal of Attachment.

**232.** If the decree is satisfied or reversed, any attachment subsisting at the time is deemed to be withdrawn. In the case of immoveable property, if the judgment-debtor applies and pays the necessary costs, the withdrawal must be proclaimed in the manner provided for making attachments.

XXI. 31. Duration of Attachment under Decree for specific moveables, etc.

**233.** Property attached to enforce a decree for specific moveables remains under attachment for three months which period may on application be extended to six months if the decree is not obeyed in the meantime. At the end of that period it may be sold on the application of the decree-holder and the proceeds applied as directed in Order XXI, Rule 31. If no application for sale is made and granted, the attachment ceases after that period.

XXI. 32. Duration under Decree to specific performance.

**234.** Property attached to enforce a decree for specific performance or for restitution of conjugal rights is subject to the rule in the last preceding section, the maximum period of attachment being one year instead of six months.

XXI. 58-63. Claims attached Property.

**235.** Claims to attached property or objections to attachment are investigated under Order XXI, Rules 58 - 63. Care should be taken to note in the execution record the substance of any order passed on such investigation and to communicate it to the Bailiff.

**236.** When a warrant of attachment is issued with a view to the sale of the property attached, the Judge shall invariably enter in the diary of the case the date fixed for the return of the warrant; and shall adjourn the case to that date. The decree-holder shall be informed of the date, and shall be warned that if he fails to pay the court-fees for the proclamation of sale and for the necessary notices on or before that date, the application for execution will be dismissed and the attachment withdrawn.

## Sale of Property.

XXI. 25. Procedure subsequent to Attachment.

**237.** When a warrant of attachment has been issued with a view to the sale of the property attached, the Judge shall, on the date to which the case is adjourned for the return of the warrant, scrutinize the endorsement made thereon under Order XXI, Rule 25, and shall make sure that the attachment has been properly carried out in accordance with Order XXI, Rules 43-54. This scrutiny is most important in the case of immoveable property. He shall also ascertain that the court-fees for the sale and for the issue of notices under Order XXI, Rule 66 (2), have been duly paid. If satisfied on these points; he shall, in the absence of any objection to the attachment or other sufficient cause for postponing the sale, fix a further date for setting the particulars to be entered in the proclamation of sale, and shall issue notices of the date so fixed to the decree-holder and the judgment-debtor, as required by Order XXI, Rule 66 (2).

XXI. 43 - 54.

XXI. 66(2).

XXI. 66(4). Particulars to be inserted in Proclamation of Sale.

**238.** On the date fixed for the settlement of the particulars for the proclamation, the decree-holder and the judgment-debtor shall, if they appear, be given an opportunity of being heard regarding the particulars. The Judge shall also hold any further inquiry that he may think necessary under Order XXI, Rule 66 (4). When satisfied that all the necessary particulars for insertion in the proclamation are available, he shall, without requiring any further formal application, pass an order for the sale of so much of the property as may be necessary to satisfy the decree.

Courts should not enter into a prolonged investigation under Rule 66 (2) (*e*) of Order XXI, to determine the value of the property to be sold, but should enter the estimated value of the property in the sale proclamation by entering therein the estimates of the value given by both the decree-holder and judgment-debtor, or by making a rough estimate of the value having regard to the circumstances of the case.

**239.** When property is ordered to be sold, the Judge should consider, with reference to Order XXI, Rule 65 (2) and (3), what will be the most suitable place for holding the sale with a view to obtaining the highest net sale-proceeds and should pass orders as to where the sale shall be held and whether the property shall be produced at the place of sale or not.

240. As to the time and place of sale of agricultural
× × × produce and specially growing crops are
× × × mentioned in the Courts Manual is now deleted The Peasant's Right Protection Law, 1963 prohibits the attachment and sale of the agriculture produce and the property of the agriculturist. To take due care to study the Peasant's Right Protection Law, 1963.

Sale of land liable to resumption.

241. The attention of all Civil Courts is called to Rule 20, clause (3), of the rules under the Burma Land and Revenue Act, which makes it a condition of all grants and leases that the holder shall not, within a certain period, suffer the whole or any part of the land granted or leased to be sold in execution of a decree. It follows that the sale of such land in execution of a decree within the period specified will render the land liable to resumption by Government under Rule 21.

By Burma Land Revenue Direction 83 at page 153 of the Lower Burma Land Revenue Manual, 1938, the permanent transfer to non-agriculturists of land occupied by squatters, in Lower Burma, in which the right of land-holdership has not accrued, is ordered to be discouraged, and it is stated that land so transferred is to be resumed.

Similarly, by Burma Land Revenue Direction 86 at page 146 of the Upper Burma Land Revenue Manual, 1939, State Land in Upper Burma is ordered to be prevented from falling into the hands of non-agriculturists and it is laid down that State Land so transferred is liable to be resumed.

XXI, 66(2)*(e)*. Order XXI, Rule 66 (2)*(e)*, of the Code of Civil Procedure requires a proclamation of sale to specify everything that the Court considers it material for the purchaser to know in order to judge of the nature and value of the property to be sold. In any case, therefore, in which it is brought to the notice of the Court in any way that land about to be sold in execution of a decree is land to which the abovementioned orders apply, although there is no provision for refusing an order for sale on this account, it is the plain duty of the Court to enter distinctly in the proclamation of sale the fact of the liability to resumption after the sale. If necessary an inquiry in this matter should be made under Order XXI, Rule 66(4), before the proclamation is issued.

242. When a Judge orders the sale of attached property he shall record on the diary of the execution proceeding :-

Dates to be fixed on ordering sale.

(a) the date on which the method of publishing the proclamation shall be reported to him;

(b) the date fixed for the sale; and

(c) the date on which the report of the sale shall be submitted: and shall adjourn the case to the date (a). The decree-holder shall be informed of these dates.

XXI. 67. 68.

243. On the date fixed for the report regarding to proclamation, the Judges shall scrutinize the report and make sure that the proclamation has been published in the manner prescribed in Order XXI, Rule 67, and that the copy has been fixed up in the Court-house in due time with reference to Order XXI, Rule 68. If satisfied that the manner and time of the publication have been correct he shall adjourn the case to the date fixed for the report of the sale.

Publication of Proclamation.

244. If the sale is for any reason postponed by the Bailiff, he shall make a report of the reason for the postponement and of the date to which it is postponed, on or before the date originally fixed for his report. If the sale is postponed by the Court, the Judge shall record the reasons for the postponement in the proceedings. In either of such cases the Judge shall adjourn the case to a fresh date for the sale report.

Postponement of Sale.

245. When the property has been sold, the Bailiff shall attend the Court on the date fixed with his report of the sale, which shall not be written on the warrant, but shall be in Form Civil 95. At the same time he shall submit for inspection the entry in his Register No. I of the amount of the sale-proceeds or of such portion thereof as may have been paid at once.

Report of Sale.

If the property sold is immoveable property, and a portion of the purchase money still remains outstanding at the time of the report, the case shall be again adjourned to the first suitable date after the lapse of fifteen days from the date of the sale. On that date the Bailiff shall again submit his Register No. I for the inspection of the entry of the balance of the sale proceeds.

Verification of Chalans by the Judge.

**246.** Whenever money realized in execution is paid into the Treasury the Bailiff shall submit the chalan for inspection and his Register No. 1 for the Judge's initials to the appropriate entry at the earliest opportunity. If the money has been already paid into the Treasury at the time of the submission of the register under paragraph 252 the chalan may conveniently be submitted for inspection, and the register initialled by the Judge at the same time.

Case to be called in open Court.

**247.** On every date to which a case has been adjourned for any report under paragraphs 242-245, it shall be called in open Court, and if any interested party appears, he shall be given an opportunity of being present during the proceedings connected with the report.

Sale by Process-server.

**248.** The duty of conducting a sale in execution of a decree may be entrusted to a process-server when the property is moveable property not exceeding K 50 in value and when, in the opinion of the Court, for reasons recorded in the diary of the case, the Bailiff cannot personally conduct the sale. *See* Order XXI, Rule 65(1).

XXI, 65.

Clerks not to bid at sales.

**249.** The following order has been issued by Government -

No clerk in the office of any Deputy Commissioner, Subdivisional Officer, or Township Officer shall, without first obtaining the Deputy Commissioner's written permission to do so, bid for any property, moveable or immoveable, put up for sale in execution of a decree within the district in which he is serving*. This order also applies to clerks employed in the offices of District Judges, and other Civil Judges.

XXI, 73.

Restriction on bidding at sales.

**250.** An officer having any duty to perform in connection with a sale is absolutely prohibited from bidding directly or indirectly.

---

* Appointment Department Circular No. 15 of 1892.

XXI. 77. **251.** The price of moveable property must be paid when directed by the Bailiff; and in default of payment the property must be resold forthwith.

Payment of price of moveable property.

XXI. 72. Subject to the provision of Order XXI, Rule 72, a sale of moveable property becomes absolute as soon as the purchase money is paid, and a receipt, which the Bailiff is bound to give, furnished. No order of confirmation of the Court is required.

**252.** Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Arms Act, are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers, and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Arms Act. *See* Order XXI, Rule 81A.

Arms sold by public auction in execution of decree.

34, Act IX of 1887. **253.** An ordinary Court invested with Small Cause powers under section 10 of the Courts Act, 1950 can *on the regular side* attach and sell immoveable property in execution of decrees passed on the Small Cause side.

Sale of immoveable property in execution of Small Cause decrees.

XXI, 83. **254.** The provisions of Order XXI, Rule 83, which authorize the Court to allow the amount of the decree, except decrees for sale in enforcement of a mortgage of, or charge on, immoveable property, to be realized by lease, mortgage, or private sale of immoveable property, should be borne in mind.

Private sale, etc., of immoveable property.

XXI, 84, 85. **255.** One-fourth of the price of immoveable property must be paid at once and the rest within fifteen days. In case of default in payment of the percentage the property must be resold forthwith; in

Payment of price of immoveable property.

XXI. 86, 87. case of default in payment of the full amount, the property must be sold after a fresh proclamation. In the latter case the deposit may be forfeited to Government.

XXI. 72. Purchase by Decree-holder.

256. Under Order XXI, Rule 72, where the decree-holder purchases the property he is entitled as of right, subject to any orders for rateable distribution of the sale proceeds, to set off the amount of his decree against his purchase money, and Order XXI, Rule 84(2), says that in such a case the Court may dispense with the deposit required by that rule.

XXI. 84.

XXI, 71. Loss on Resale.

257. Any loss on a resale of either moveable or immoveable property may be recovered from the defaulting purchaser.

XXI, 72, 89, 90, 91, 92. Application to set a side sale

258. Application to have a sale of immoveable property set aside may be made by the judgment-debtor or other interested person on making a deposit as provided in Order XXI, Rule 89(1), or by the decree-holder or any person whose interests are affected by the sale on the ground of material irregularity or fraud (Rule 90), or by the purchaser on the ground that the judgment-debtor had no saleable interest in the property sold (Rule 91). The period of limitation for every such application is thirty days.

Limitation Act. Schedule II. Art. 166.

XXI, 93. Return of purchase money.

259. When a sale is set aside under Order XXI, Rule 93, the purchaser is entitled to receive back his purchase money with or without interest as the Court may direct.

XXI, 92(1) Limitation Act, 1st Schedule, Article 166. Confirmation of sale of immoveable property.

260. A sale of immoveable property does not become absolute till it is confirmed by the Court. The order of confirmation shall be recorded in the execution file. It should not be passed till the period of limitation for applications under Order XXI, Rule 89, 90 or 91, has expired, or until any such application has been disposed of.

XXI, 94, Stamp Act, Schedule I, Art. 18, Registration Act, 89. Certificate of Sale.

261. When a sale of immoveable property is confirmed, the Court must grant a certificate to the purchaser on payment by him of the prescribed stamp duty. A copy of the certificate should be filed in the execution record and a copy should be sent to the Sub-Registrar.

Communication of sales to Land Records Department.

**262.** The rule for the communication of sales to the Land Records Department is contained in Order XXI, Rule 94B (also *see* Order XX, Rules 21 and 22). The Judge must note in the diary of the case that copies of certificates have been sent as required by these rules (*cf.* paragraph 179 *supra*).

XXI, 95, 96.

Delivery of possession of immoveable property sold.

**263.** Delivery of possession of immoveable property sold is effected in the manner prescribed in Order XXI, Rules 95 and 96.

67.

**264.** No rules under section 67 have been issued in respect of any local area in Burma.

## Payment of Money.

XXI, 56. 58, 64.

Disbursement of money.

**265.** The Court should record a formal order on the execution file for the payment to the decree-holder of money paid into Court, seized on attachment, or realized by sale of property, to the extent necessary to satisfy the decree, and for the disposal of any sum in excess either by payment to the judgment-debtor or otherwise. The disbursement of any money under any such order should also noted on the execution record.

73.

Reteable distribution.

**266.** (1) The rules for the distribution of money realized in execution among several decree-holders are contained in section 73, Civil Procedure Code. Section 73 must be read in conjunction with section 63 of the Code, and so the word 'Court" in section 73 (1) includes not only the Court which actually holds the assets, but also any other Court by which attachment has been made and on account of which the assets are therefore in part held under section 63 by the Court which holds the assets. (*See* I.R.R., 6 Ran., 131.)

(2) Where in several execution cases some, but not all, of the judgment-debtors, are common to all the execution cases, the decree-holders are entitled to participate rateably in the distribution of the assets according to the interests by their respective judgment-debtors in the property sold. Its is not necessary that all the judgment-debtors of all the decree-holders should be identical.

## Arrest and Imprisonment.

Exemption from arrest under Burma Army Act.

**267.** In connection with the arrest of judgment-debtors in execution of decrees, attention is drawn to the following provisions of the Burma Army Act:-

*Section 27*

(1) No person subject to this Act shall so long as he belongs to Burma Forces be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue Court or revenue officer.

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the Court by the complainant.

Exemption of members of the Legislature.

**268.** Members of either Chamber of the Union of Parliament are exempted from arrest and detention in civil prison during the continuance of any meeting of such Chamber or any Committee thereof and during 14 days before and after meeting.

XXI. 32(1).

Exemption of Women from Arrest.

**269.** A woman may not be arrested or imprisoned in execution of a decree for the payment of money. A woman is liable to arrest or imprisonment in all other cases in which a male would be so liable.

XXI. 37. **270.** Instead of issuing a warrant for the arrest of a judgment-debtor in execution of a decree for money, the Court may issue a notice to him to appear and show cause why he should not be sent to jail. If he does not appear, a warrant of arrest must issue if the decree-holder so requires. There is a tendency to issue warrants of arrest in cases in which the decree could be executed with success in some other way. This must be strictly checked.

Notice in lieu of Warrant of Arrest.

XXI. 39. **271.** Before a judgment-debtor is arrested, the decree-holder must pay into Court subsistence money at the rate specified in paragraph 276 for the period between his arrest and his production in Court.

Payment of subsistence money before arrest.

**272.** The actual cost of conveyance of a civil prisoner shall be borne by the Court ordering his arrest or requiring his attendance at Court, as the case may be, and shall not be charged to the judgment-creditor *see* Order XXI, Rule 38A.

Payment of cost of conveyance of civil Prisoners.

A party requiring the attendance of a civil prisoner as a witness shall deposit the cost of conveying such prisoner from and to the jail.*

**273.** A judgment-debtor on arrest should be brought forthwith before the Court and should not be kept in the custody of a peon or the bailiff until the date fixed for the return of the warrant.

XXI. 37.

XXI. 40. **274.** A judgment-debtor who appears in obedience to a notice issued under Order XXI, Rule 37, or who is brought up in arrest, may be released if the Court is of opinion that he is unable, from poverty or other sufficient cause, to pay the amount of the decree. Imprisonment for debt should be the exception and not the rule.

Descretion of Court.

55(3) 4. **275.** Whenever a judgment-debtor is arrested in execution of a decree for money and brought before a Court under Order XXI, Rule 40, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he complies with the provisions of the law of insolvency for the time being in force.

Release of judgment-debtor applying to be declared insolvent.

---

* *See* section 50 of the Prisoners' Act.

If the judgment-debtor expresses his intention to apply as above and furnishes security to appear when called upon and to apply within one month to be declared an insolvent he may be released.

XXI. 39(4).

Payment of subsistence money before imprisonment of judgment-debtor.

**276.** (1) Before a judgment-debtor can be sent to jail the decree-holder must pay into Court subsistence money for the remainder of the current month. Subsequent payments of subsistence money must be made to the jail.

(2) Under section 57 of the Code of Civil Procedure, the Government * has directed that the rates of subsistence allowance for civil prisoners shall be fixed in the manner provided in the following rules for the classification of such prisoners into two separate divisions, *viz.*, the Special Division and the Ordinary Division:-

(i) Classification in the Special Division shall be confined to civil prisoners who by social status, education or habit of life have been accustomed to a superior mode of life. For prisoner so classified, the rate of subsistence allowance shall be fixed at a flat rate of Kyat three *per diem.*

(ii) Civil prisoners not included in the Special Division shall be classified in the Ordinary Division. For such prisoners the rate of subsistence allowance shall be fixed at a flat rate of Kyat 1.50 *per diem.*

Imprisonment in execution of more than one decree.

**277.** When a civil prisoner is kept in confinement at the instance of more than one decree-holder he shall only receive the same allowance for his subsistance as if he were detained in confinement upon the application of one decree-holder. Each decree-holder shall, however, pay the full allowance for subsistence, and when the debtor is released, the balance shall be divided rateably among the decree-holders and paid to them. [*See* Order XXI, Rule 39(2).]

58.

Period of imprisonment.

**278.** A person who is committed to prison in execution of a decree for the payment of a sum of money exceeding K 50 must be committed for six months; in the case of a decree for the payment of K 50 or less, for specific moveable property, for specific performance, or for an injunction, the period for which he must be committed is six weeks.

* Judicial Department Notification No. 62, dated the 7th March 1932.

The Court has no power to commit a person for a shorter period than six months or six weeks, as the case may be; but he must be released before the expiration of the period if the decree is satisfied, or if the decree-holder asks for his release or fails to pay the subsistence allowance due.

**Note:** The cost of clothing and bedding is not "subsistence allowance" as contemplated in section 58, Civil Procedure Code.

Place of Detention.

279. The President of the Union * has appointed the places shewn in the first column of the subjoined statement for the detention of persons ordered to be detained by the Courts situated in the districts or parts of districts shewn in the second column against such places, and has directed that all s uch persons if liable to detention for a period exceeding six weeks shall be transferred to such place on the expiry of one month under detetion.

Those liable to detention for a period of six weeks or less should be detained in the civil prison of the district in which the Court ordering the detention is situate or in the civil prison nearest thereto.

| *Place of confinement.* | *District or part of District.* |
|---|---|
| **Akyab Jail** ... | Aklyab District.<br>Hill District of Arakan.<br>Kyaukpyu District.<br>Sandoway District. |
| **Rangoon Jail** ... | Rangoon Town District.<br>Insein District.<br>Hanthawaddy District<br>Tharrawaddy District.<br>Pegu District.<br>Paungdè Subdivision of the Prome District. |
| **Bassein Jail** ... | Bassein District.<br>Myaungmya District. |
| **Henzada Jail** ... | Henzada District.<br>Maubin District.<br>Pyapôn District. |

* Judicial Department Notification No. 193, dated the 7the October 1922.

| *Place of confinement.* | *District or part of District.* |
|---|---|
| **Thayetmyo Jail** ... | Thayetmyo District. |
| | Prome District (excluding Paungdè Subdivision) |
| | Magwe District. |
| | Minbu District. |
| **Moulmein Jail** ... | Amherst District. |
| | Tavoy District. |
| | Mergui District. |
| | Thatôn District. |
| **Toungoo Jail** .... | Toungoo District. |
| | Salween District. |
| | Meiktila District. |
| | Yemèthin District. |
| **Mandalay Jail** ... | Mandalay District. |
| | Pakôkku District. |
| | Bhamo District. |
| | Myitkyina District. |
| | Putao District. |
| | Katha District. |
| | Shwebo District. |
| | Sagaing District. |
| | Lower Chindwin District. |
| | Upper Chindwin District. |
| | Chin Hills District. |
| | Kyauksè District. |
| | Myingyan District. |
| | Southern Shan States. |
| | Northern Shan States. |

(2) **280.** In exercise of the power conferred by sub-section (2) of section 55 of the Code, the President of the Union has directed that before a warrant is issued by a Civil Court for the arrest of a railway servant of any of the classes specified in column 1 of the subjoined list, within the area noted in column 3, seven clear days' notice shall be given to the superior officer as shown in column 2: *

Provided that such arrest shall be effected within five daysof the expiry of the notice, failing which a fresh notice of the arrest shall be issued.

***List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments***

| **Class of Servants.** (1) | **Superior Officer to be advised and Headquarters.** (2) | **Extent of Jurisdiction.** (3) |
|---|---|---|
| | **TRAFFIC DEPARTMENT.** | |
| Ballast Train Inspectors<br>Bhisties<br>Booking Clerks<br>Brakesmen<br>Carpenters<br>Cash Verifiers<br>Conductors<br>Coolies<br>Cranemen<br>Crane Porters<br>Durwans<br>Gardeners<br>Gatemen | District Traffic Superintendent, Rangoon. *Headquarters, Rangoon.* | Insein D.O.S. to Thingangyun D.O.S., including the Suburban Stations of Latter Street, Keighley Street and Botataung. |
| | District Traffic Superintendent, Irrawaddy. *Headquarters, Rangoon.* | Prome to D.O.S., Insein and Letpadan to Tharrawaw (inclusive). |

* Judicial Department Notification No. 14, dated the 17th January 1912, as amended by Judicial Department Notification No. 94, dated the 12th June 1913 and No. 110, dated the 22nd June 1938.

**NOTE:** D.O.S. = Down Outer Signal.

*List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - contd.*

| Class of Servants. (1) | Superior Officer to be advised and Headquarters. (2) | Extent of Jurisdiction. (3) |
|---|---|---|
| | **TRAFFIC DEPARTMENT.** | |
| Goods Clerks<br>Goods Supervisors<br>Guards<br>Jemadars<br>Lampmen<br>Luggage Clerks<br>Number Taker<br>Parcel Clerks<br>Peons<br>Platform Inspectors<br>Pointsmen<br>Porters<br>Running Room Bearers<br>Running Room Call Boys<br>Running Room Cooks<br>Running Room Dhobies<br>Shunting Porters<br>Signallers<br>Signalmen<br>Station Clerks<br>Station Masters (Assistant)<br>Station Masters<br>Telegraph Peons<br>Ticket Collectors<br>Tinsmiths<br>Traffic Inspectors<br>Travelling Ticket Examiners.<br>Travelling Ticket Inspectors.<br>Trollymen<br>Sweepers<br>Weighment Inspectors<br>Yard Foremen | District Traffic Superintendent. Henzada. *Headquarters, Henzada.* | Bassein to Tharrawaw Shore (including Ferry) and Henzada to Kyangin (inclusive). |
| | District Traffic Superintendent, Toungoo. *Headquarters, Toungoo.* | D.O.S., Thingangyun to Hngetthaik and up to the U.O.S., Yamethin. |
| | District Traffic Superintendent, Mandalay. *Headquarters, Mandalay.* | Yamethin U.O.S. to Mandalay Shore (including Myingyan and Amarapura Shore Branches). |
| | District Traffic Superintendent, Ywataung. *Headquarters, Ywataung.* | Amarapura Shore to Myitkyina (including Alon and Katha Branches and Sagaing Ferry). |
| | Assistant Traffic Superintendent, Kyaikto. *Headquarters, Kyaikto.* | North O.S. Pegu to Moulmein. |
| | Assistant Traffic Superintendent, Maymyo. *Headquarters, Maymyo.* | Myohaung U.O.S. to Lashio. |

NOTE: U.O.S. = Up Outer Signal.

*List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - contd.*

| Class of Servants. (1) | Superior Officer to be advised and Headquarters. (2) | Extent of Jurisdiction. (3) |
|---|---|---|
| | **LOCOMOTIVE DEPARTMENT.** | |
| Ashpit Cleaners<br>Bhisties<br>Blacksmiths<br>Boilermakers<br>Call Men (Call Boys)<br>Carpenters<br>Carriage Attendants<br>Carriage Cleaners<br>Carriage Examiners<br>Carriage Inspectors<br>Cleaners<br>Clock Winders<br>Crane Jemadars<br>Drivers<br>Fitters<br>Fittrer Coolies<br>Firemen (First)<br>Firemen (Second)<br>Foremen<br>Foremen (Assistant)<br>Fuel Clerks (Fuel Issuers)<br>Holders<br>Lampmen<br>Lifters<br>Lighters<br>Locomotive Inspectors<br>Oilers<br>Packers<br>Painters<br>Pointsmen<br>Pumpmen<br>Shed Jemadars<br>Shunters<br>Steampump Drivers<br>Strikers<br>Sweepers<br>Tinsmiths<br>Watch and Ward Staff<br>Wheel Tappers<br>Wood fuel Inspectors | **District Loco. Superintendent, Lower District.** ***Headquarters, Rangoon.*** | Prome South O.S. to U.O.S., Yamèthin, Letpadan to Tharrawaw (inclusive) and Pegu-Moulmein Branch. |
| | District Loco. Superintendent, Delta District. *Headquarters, Hanzada.* | Tharrawaw (inclusive) to Kyangin and Bassein and Ferry. |
| | District Loco. Superintendent, Middle District. *Headquarters, Mandalay.* | Yamèthin to Mandalay (including Myingyan, Lashio and Amarapura Shore Branches). |
| | District Loco. Superintendent, Upper District. ***Headquarters, Ywataung.*** | Sagaing to Myitkyina (including Alôn and Katha Branches and Sagaing Ferry). |
| Carpenters<br>Coal Trimmers<br>Donkeymen<br>Ferry Commanders<br>Ferry Engineers<br>Firemen<br>Fitters<br>Helmsmen | District Loco. Superintendent, Delta District. *Headquarters, Hanzada.* | Ferry. |

*List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - concld.*

| Class of Servants. (1) | Superior Officer to be advised and Headquarters. (2) | Extent of Jurisdiction. (3) |
|---|---|---|
| | **LOCOMOTIVE DEPARTMENT- concld.** | |
| Khalasies<br>Lascars (First Class)<br>Lascars (Second Class)<br>Serangs<br>Storemen<br>Tindals | District Loco. Superintendent. Upper District. *Headquarters, Ywataung.* | Sagaing Ferry. |
| Workmen in Railway Shops. | District Loco. Superintendent, Upper District. *Headquarters, Ywatauntg.* | Ywataung Workshops. |
| | Superntendent, Workshops, Insein and Carriage and Wagon Divisional Superintendent, Insein. | Insein Workshops. |
| | **ENGINEERING DEPARTMENT.** | |
| Blacksmiths<br>Bellowsmen<br>Carpenters<br>Durwans | District Engineer, Rangoon. *Headquarters, Rangoon.* | Prome to Pegu South O.S. and Tharrawaw Branch up to North Points Tharrawaw Station; also Suburban lines but excluding the length between Pagoda Road and Pazundaung Stations, both inclusive. |

*List of Railway Servants and their Superior Officers in the Traffic, Locomotive and Engineering Departments - concld.*

| Class of Servants. (1) | Superior Officer to be advised and Headquarters. (2) | Extent of Jurisdiction. (3) |
|---|---|---|
| | **ENGINEERING DEPARTMENT. concld.** | |
| Gatemen | District Engineer. Works District. *Headquarters. Rangoon.* | The length between Pagoda Road and Pazundaung Stations. both stations inclusive. |
| Hammermen | District Engineer. Henzada. *Headquarters. Henzada..* | Tharrawaw North Points to Bassein and Henzada to Kyangin. |
| Masons | District Engineer. Toungoo. *Headquarters. Toungoo.* | Pegu South O.S. to North O.S., Yamèthin and Pegu-Moulmein line. |
| Patrolmen | District Engineer,-Mandalay. *Headquarters. Mandalay.* | North O.S. Yamèthin to Mandalay and Amarapura Shore, Maymyo, Lashio and Thazi-Myingyan Branches. |
| Permanent-way Inspectors | District Engineer, Ywataung. *Headquarters, Ywataung.* | Amarapura Shore to Myitkyina (including Sagaing. Alôn and Katha Branches). |
| Signalmen or flagmen<br>Trollymen<br>Signal Inspectors<br>Assistant Signal Inspectors | Signal Engineer, Rangoon. | All parts of the railway where Signal Inspectors and Assistant Signal Inspectors are employed. |

55(B) 281. In exercise of the power conferred by sub-section (2) of section 55 of the Code, the President of the Union has directed that before a warrant is issued by a Civil Court for the arrest of an employee of the offices noted below, and of a village headman, notice shall be given to the superior officer designated in column 2 of the sub-joined list for the period specified in column 3 of the list : -

| Division or office to which the employee belongs. (1) | Superior officer to be advised. (2) | Period of notice. (3) |
|---|---|---|
| (1) * Upper and Lower Burma Division, Postal and Telegraph Department | Directors of Posts and Telecommunications. | Seven clear days. |
| Akyab | Do. | Fourteen clear days. |
| (2) † High Court, Rangoon. | Registrar, High Court, Rangoon. | Seven days. |
| (3) ‡ Village Headman. | Township or Subdivisional Officer concerned. | Fourteen days. |

## Miscellaneous.

XXI. 26-29. XLI. 5. 6.

Stay of Execution.

**282.** Provisions regarding stay of execution are contained in Order XXI, Rules 26-29, which should be read with Order XLI, Rules 5 and 6.

XXI. 97-103.

Resistance to Execution.

**283.** Provisions regarding resistance to execution are contained in Order XXI, Rules 97-103.

* Judicial Department Notification No. 63, dated the 5th June 1923.

† Judicial Department Notification No. 229, dated the 17th August 1933.

‡ Judicial Department Notification No. 351, dated the 11th December 1930.

## CHAPTER IX.

### ARREST AND ATTACHMENT BEFORE JUDGMENT-INJUNCTIONS.

XXXVIII. Record of Application.

**284.** Applications for arrest or attachment of property before judgment, and the connected papers, should not be filed in the records of the suits in which they are made, but as distinct miscellaneous cases, and should be registered in Civil Register III. A reference to the miscellaneous case should be noted on the fly-leaf of the suit record.

XXXIX, 1.

An application for a Temporary Injunction under Order XXXIX, Rule 1, should however be filed in the record of the suit to which it relates.

XXXVIII, 5-12. Procedure on Application for attachment before judgment.

**285.** Cases in which attachment before judgment may properly be allowed are rare. Judges should carefully study Order XXXVIII, Rules 5-12.

When an application for the attachment of property before judgment is filed, the Judge must take no action until he is satisfied by evidence on affidavit or taken orally by him-

(1) that the defendant is about to dispose of or remove his property or has himself left the jurisdiction of the Court, and

(2) that his *intention* in so doing is or was to *obstruct or delay the execution* of any decree that may be passed against him.

If it is proved that *both* these conditions are fulfilled, the Judge should issue a notice calling upon the defendant to furnish security or to show cause against doing so. An order for conditional attachment of the property may be passed at the same time, but this should only be done when the risk of the plaintiff's being defrauded is shown to be imminent. In any case the attachment must be removed if the required security is furnished.

Judges should not be satisfied with a bare statement by an applicant that a defendant has quitted the jurisdiction of the Court, or that he is about to dispose of property or remove it from the jurisdiction of the Court, with intent to obstruct or delay the execution of any decree that may be passed against him. They should fully and carefully examine the applicant and any witnesses he may produce with a view to ascertaining whether the facts justify a conclusion that the defendant has quitted the jurisdiction or that he is about to do one of the acts mentioned in Order XXXVIII, Rule 5, with the above intent; and in orders directing conditional attachment they should set out the facts which they consider justify such a conclusion.

The attention of all Judges is also drawn to the provisions of sections 60*(i)(b)* and 61 of the Code of Civil Procedure, and to the necessity for satisfying themselves before issue of attachment before judgment in suits against agriculturists for recovery of rent or agricultural loans that the property sought to be attached is such as may legally be attached and sold in execution of the decree that may be passed in the suit. It must also be noted that in such suits a Receiver cannot be appointed before judgment to take possession of property which is not the subject matter of the suit and which is exempted from attachment in execution of the decree which may be passed.

Moveable property attachment before judgment.

**286.** After judgment has been given in a suit in connection with which moveable property has been attached before judgment, no further fees for safe custody and no further payments on account of feeding and tending charges should be received by the Court, unless and until an application for execution has been admitted.

Agricultural Produce.

**287.** Order XXXVIII, Rule 12, prohibits the attachment before judgment of agricultural pr ·e in the possession of an agriculturist.

XXXIX. 3. Procedure on application for injunction.

**288.** The attention of Judges is drawn to the provisions of Rule 3 of Order XXXIX by which the Court is required before granting an injunction to direct notice to be given of the application to the opposite party, in all cases except where it appears that the object of granting the injunction would be defeated by the delay.

An interlocutory injunction should be granted *ex parte* only in very exceptional circumstances and, practically speaking, should never be granted unless the plaintiff establishes in a convincing manner that by no reasonable diligence on his part could he have avoided the necessity of applying behind the back of the defendant.

Such injunctions when granted at all should invariably be limited to hold good only until a specific and very early date, *i.e.*, a minimum time within which the defendant can come effectively before the Court, and the greatest care should be taken to state exactly what the acts forbidden are.

The granting of an *ex parte* injunction is a serious responsibility and a Judge who has granted such an injunction is under a duty to take the greatest pains to do everything possible to protect the absent defendant. Injunction matters should be dealt with, not merely without breach of the Rules of Order XXXIX, but in accordance wih legal principles and common-sense.

## CHAPTER X.
## COMMISSIONS.

XXVI, 5.

Expenses of Commission.

**289.** A commission for any purpose should in no circumstances be issued until the party at whose instance the commission is issued has deposited with the Bailiff a sum sufficient to cover the expenses of the commission.

XXVI, 19-26.

Rules 19-26 of Order XXVI, prescribe the fees to be allowed to Commissioners.

XXVI.

Postage and Registration, and Money Order Commission.

**290.** (1) When commissions are issued under Order XXVI, all incidental charges such as those for postage and registration, should be paid as contingent charges of the Court by which they are issued; and should not be demanded from the person at whose instance the commission is issued.

(2) The money order commission in respect of money remitted as expenses of a commission should not be borne by Government, but should be paid out of the sum deposited for the expenses of the commission under Order XXVI, Rule 15, Code of Civil Procedure, and paragraph 289. It follows that the sum so deposited should be sufficient to cover the money order commission as well as the other expenses of the commission. The whole of this sum should be deposited in Bailiff's Register II. When money is paid out of the deposit in payment of money order commission the sum so paid should be entered separately in column 12 of Bailiff's Register II, so as to distinguish the money order commission from the other expenses remitted by the money order.

Powers of Commissioners.

**291.** A commissioner appointed under the Code of Civil Procedure to take evidence has all the powers under Chapter X of the Evidence Act to control the examination of witnesses. When such a Commission is issued to a foreign Court attention to the above powers of the Commissioner should be drawn by means of a note attached to the letter issuing the commission.

## COMMISSIONS FOR LOCAL INVESTIGATION.

XXVI. 9.

Appointment of Land Records Officer as Commissioner.

**292.** The President of the Union has directed that when, in any suit or proceeding a local investigation for any of the purposes specified in Order XXVI, Rule 9, is deemed necessary, the Court shall, before issuing a commission to a Superintendent of Land Records, or to any officer subordinate to him, obtain the sanction of the Commissioner of Settlements and Land Records, Burma, through the Collector, to the appointment of the officer selected and to the receipt by him of fees for the execution of the commission. In forwarding applications for sanction to the appointment of officers of the Land Records Department as Commissioners to make partitions of estates, Judges should state clearly : -

(a) the area and situation of the land and whether it is inside supplementary survey or not;

(b) the probable duration of the duty; and

(c) the scale and kind of survey. *

The President of the Union has sanctioned a scale of fees to be paid to officers of the Land Records Department and the apportionment of such fees between the Land Records staff and Government, for undertaking surveys or effecting partitions for private persons or Courts, in the manner indicated in the Table below:-

| Class of Officer. | Fee payable by party. | | | | Amount credited to Government for each day *inclusive of* days spent in travelling. | | Amount payable to officer for each day *exclusive of* days spent in travelling. | |
|---|---|---|---|---|---|---|---|---|
| | For each day of work. | | For each day of travelling. | | | | | |
| (1) | (2) | | (3) | | (4) | | (5) | |
| | K | P | K | P | K | P | K | P |
| Surveyor | 10 | 00 | 3 | 50 | 3 | 50 | 6 | 50 |
| Inspector | 20 | 00 | 6 | 50 | 6 | 50 | 13 | 50 |
| Extra Assistant Superintendent of Land Records or Assistant Superintendent of Land Records | 50 | 00 | 16 | 50 | 16 | 50 | 33 | 50 |
| Superintendent of Land Records. | 100 | 00 | 33 | 50 | 33 | 50 | 66 | 50 |

In addition to these fees, travelling allowance at the ordinary rates will be charged and credited to Government for subsequent disbursement to the officer. The minimum fee will be the fee for one day of employment *plus* travelling allowance as and when earned. The fee for days of travelling is only admissible when more than one day is spent in proceeding to the site, doing the work and returning to headquarters.

COMMISSIONS FOR TAKING EVIDENCE OR ACCOUNTS.

293. Before issuing a commission the Court shall (a) call on the party at whose instance the commission is issued to supply an abstract of the pleadings and issues for the use of the Commissioner, and (b) after consulting the parties, to make an estimate of the duration of the examination of each witness.

* Judicial Department Notification No. 190, dated the 11th June 1934.

When the estimate is exceeded the Court may enquire into the cause of delay and disallow any charges of the Commissioner which it finds to be unreasonable, or make such other order in the matter of costs as may seem just.

## CHAPTER XI.

### PAUPER SUITS.

XXXIII, 1 - 5.

Procedure on petition to sue *in forma pauperis*.

**294.** On receipt of a petition to sue *in forma pauperis* the petition should be registered in Register III, and the inquiry into pauperism should be treated as a miscellaneous case. If the petition is granted, the accompanying plaint should be removed from the miscellaneous case, and registered in Register I.

XXXIII, 2, 3.

Form and presentation of petition.

**295.** The petition and plaint must contain all the particulars required in plaints in suits, must be signed and verified, and must be presented in person. A schedule of all the property of the petitioner, and the estimated value thereof, must be attached to the petition. The consequence of any failure to comply with the provisions of Rules 2 and 3 is that the petition must be rejected. Rejection for such cause is a bar to a subsequent petition.

Recovery of Court fees.

**296.** Under Order XXXIII, Rule 7, at the conclusion of a pauper suit the Court is bound to make an order by its decree that the court fee prescribed for the plaint shall be paid to the Collector, and to forward a copy of this order to the Collector. If the Court fails to make the required order, the Collector may apply at any time to the Court for the order to be made. The order may direct that the court fee shall be paid by any party or parties to the suit, and in such proportion as the Court may deem just.

This order may be executed by the Collector. The Court must also order the court fee to be paid to the Collector out of any money or other property held or recovered by the Court on behalf of the party or parties ordered to pay the court fee.

**GOVERNMENT PLEADERS.**

**297.** × × × × × × × × × × × × × × × × × × × × × × ×

× × × × × × × × × × × × × × × × × × × × × × ×

× × × × × × × × × × × × × × × × × × × × × ×

**(See CHAPTER XXVI)**

## CHAPTER XII.

### SUITS BY OR AGAINST GOVERNMENT.

### Suits by or against Government or Public Officers.

XXVII. **298.** Rules for the conduct of suits by or against Government or Public Officers are contained in Government Circular No. 74 of 1910.

The provisions of section 80 of the Code of Civil Procedure regarding the necessity for notice to a public officer against whom a suit is to be filed in respect of any act purporting to be done by him in his official capacity should not be overlookded.

---

* Ministry of Judicial Affairs, General Branch Notification No. 61, dated the 23rd April 1948.

299. × × × × × × × × × × × × × × × × × × × × × × ×

× × × × × × × × × × × × × × × × × × × × × × ×

× × × × × × × × × × × × × × × × × × × × × × ×

(See CHAPTER XXVI)

## CHAPTER XIII

### APPEAL, REFERENCE AND REVISION.

### Appeals and Revisions.

Limitation of Revision Applications.

**300.** Ordinarily no application for revision of the order of a Court other than the Rangoon City Civil Court, filed more than ninety days or of the order of the Rangoon City Civil Court, filed more than thirty days, after the date of the last order complained of will be considered, unless it is accompanied by an explanation of the delay and the necessary affidavits.

Copies required in Appeals and Revisions.

**301.** Parties are often ignorant of what copies are required, and in order to save them from needless trouble and expense, the copying department of every Court should be directed to let appellants and applicants for revision know of what documents a copy is necessary for the purpose in view.

---

* Ministry of Judicial Affairs, Judical I Branch Notification No. 200, dated the 24th May 1955.

The documents are -

*For First Appeal.*

XLI. 1. (1) A copy of the decree appealed against, that is, the decree of the Court of First Instance. This is indispensable.

(2) A copy of the judgment on which that decree is founded that is, a copy of the judgment of the First Appellate Court. This can only be dispensed with by the Court of Second Appeal, that is, by the High Court.

(3) A copy of the judgment of the Court of First Instance, unless dispensed with by the High Court.

Transmission of record when appeal is to High Court.

**302.** When an application for copy of judgment and decree is received the officer entertaining the application should ascertain whether the copies are required for the purposes of appeal to the High Court; and, if so, should bring the fact to the notice of the presiding Judge of the Court.

After the copies have been supplied the Judge should direct the early transmission to the High Court of the record of his proceedings, together with the proceedings of the Court of First Instance, under cover of a proceeding, reporting why the records are transmitted. Before transmitting the records the Judge should cause copies of the decree or decrees to be made and retained in his Court in case application may be made for execution of decree.

Original Documents to be submitted.

**303.** When proceedings are submitted to an Appellate Court the original documents produced by the parties in the Court of First Instance should ordinarily, and in the absence of special reasons to the contrary, be forwarded at the same time.

This is particularly necessary when any question has been raised as to the genuineness of a document. The Head Clerk should be made responsible for seeing before the despatch of proceedings that all documentary evidence that ought to be on the record is complete and corresponds with the prescribed list.

304. All Judges when sending up cases called for by the High Court, either in appeal or revision, shall see that the records are forwarded under cover of Form Civil 126, which should contain particulars as to the numbers of the cases and the names of the parties, as detailed in the order calling for records.

Submission of Records called for by the High Court.

305. At the first hearing for admission of an appeal from the decree of a Court of First Instance, the Appellate Court should lay down distinctly any points, the determination of which is, in its opinion, necessary for the right adjudication of the cause, and which have been omitted from the grounds of appeal. If any additional points are thus determined, the Court should state them to the parties or their pleaders, who should be allowed to suggest any further points, which the Court should either adopt or record its reasons for refusing to adopt. If at the actual hearing of the appeal any further point should appear necessary, the Court should lay it down, stating its reasons for this course.

Points for Determination.

XLI, 24. The provisions of Order XLI, Rule 24, which allow, in proper cases, any Appellate Court to resettle the issues framed in the Court of First Instance, should not be overlooked.

XLI, 31. 306. (1) When a Court of first Appeal upholds the decicion of the trying Court on a question of fact if there was evidence to support it that decision becomes final and it cannot be called in question in second appeal. Consequently the responsibility which rests on the first Appellate Court is equally heavy whether it affirms or reverses the decision of the Court of first instance. Therefore, in either case, the judgment of the Appellate Court should contain such discussion of the evidence as the nature of the case requires and should be such as to show that the Judge has given careful and intelligent consideration to the evidence and has arrived at a decision for himself and not merely accepted that of the trying Court. It is not enough to say merely that the Judge agrees with the finding of the Court below or sees no reason to differ from it. On the other hand it is not always necessary to discuss the evidence in close detail or to refer to every item of it, and what is required in a judgment must inevitably depend on the circumstances of the particular case.

Contents of Judgment.

But genearlly speaking, the judgment should contain enough to show that the Judge has himself given due consideration to the evidence on the record.

XLI, 11. (2) The above applies as much to a judgment dismissing an appeal under Order XLI, Rule 11, as to one given after a hearing of both parties.

XLI, 31. (3) Where the decree appealed from is reversed or varied, the judgment must state specifically the relief to which the appellant is entitled.

When the appeal is dismissed it is not necessary to say any more (except as regards costs), for the decree of the Lower Court is confirmed. But if the appeal is allowed, whether wholly or in part, it is obviously necessary to say what the final decree in the case is to be. Where, for instance, the plaintiff has succeeded in the lower Court and this decision is reversed, the appellate judgment should say that the appeal is *allowed,* the judgment and decree of the Lower Court are set aside and the plaintiff's suit is dismissed with costs in both Courts. Again, if the suit has been dismissed by the trying Court and this decision is reversed, it is necessary to say in the appellate judgment what decree is granted to the plaintiff.

XLI, 24. **307.** District Judges are reminded that, when the judgment of the Lower Court has been confirmed, varied or reversed, as much care must be taken in drafting the *decree* as in original cases; and that, in such cases, the decree should be drafted so as to contain in itself (without cross-references to other portions of the record) a complete and detailed definition of the mutual rights of the contesting parties.

Appellate Decree.

**308.** In order that the Judge, who decided a suit or first appeal, may have an opportunity of seeing the judgment passed by the High Court in appeal or revision from his decision and may derive benefit from any criticisms which may have been made, a copy of the judgment of the High Court in all civil appeals and revisions, where the appeal or application is not summarily dismissed but is dealt with on its merits, will, immediately after its delivery, be sent by name to the Judge or Additional Judge of the District Court who passed the Judgment appealed against; that is, in the case of the first appeals it will be sent to the Judge who tried the original suit, and in the case of second appeals and revisions it will be sent to the Judge who heard the first appeal.

Supply of copies of appellate judgments passed by the High Court to the Judges who passed the Judgments appealed against.

This order will not apply to revisions under secttion 25 of the Burma Small Cause Courts Act.

Judges and Additional Judges of District Courts should maintain personal files of all such copies of the decisions of the High Court, which are sent to them, for their perusal and guidance in the trial of future cases.

### References.

113, XLVI. Reference under section 113.

**309.** Whenever a question is referred under section 113 and Order XLVI, the Court referring the point shall, together with the statement of the point as to which it is in doubt and the Court's own opinion, forward the record of the case and all the proceedings connected therewith.

## CHAPTER XIV.

### PROCEDURE UNDER SPECIAL ENACTMENTS.

### 1. Specific Relief Act.

21. **310.** The attention of the civil Courts is drawn to the provisions of section 21 as amended of the Specific Relief Act, which forbids the specific enforcement of a contract for a reference to arbitration in the following terms:-

"Save as provided by the Arbitration Act, 1944, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."

42. **311.** Attention is invited to the provisions of the proviso to section 42 of the Specific Relief Act, regarding declaratory suits. The proviso does not apply to suits brought under Rule 63 of Order XXI of the Civil Procedure Code.

## 2. Transfer of Property Act.

**312.** (a) The following Table gives the dates on which the various sections of the Transfer of Property Act were brought into force in defferent parts of Burma:-

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 1. | 1-1-1893, *vide* J. D. Notification No. 237, dated 20th June 1892. | The whole | Area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon. |
| 2. | 1-1-05, *vide* J. D. Notification No. 339, dated 30th September 1904. | The whole | Area included within the limits of Rangoon Town as from time to time defined for the purpose of the Lower Burma Courts Act, 1900, under the power conferred by section 2, clause (d) of that Act. |
| 3. | 1-1-05, *vide* J. D. Notification No. 387, dated 1st November 1904. | (a) The whole | Areas included within the local limits of the Municipalities of Moulmein, Bassein and Akyab. |
| 4. | 1-1-05, *vide* J. D. Notification No. 387, dated 1st November 1904. | (b) Sections 54, 59, 107, 117, 118 and 123. | Whole of Lower Burma exept the areas excluded from time to time from the operation of the (Indian) Registration Act, 1877. |
| 5. | *Vide* Section 29, Cantonment Act, 1910. | Section 54, paragraphs 2 and 3, and sections 59, 107 and 123. | Every Cantonment in British (India) with respect to transfer of property by registered instrument. |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 1. | 1-9-14, *vide* J. D. Notification No. 100, dated 20th June 1914. | Sections 54, 59, 107, 117, 118 and 123. | Whole of Upper Burma except the areas from time to time excluded from the operation of the (India) Registration Act, 1908. |
| 7. | 1-1-1922, *vide* J. D. Notification No. 200, dated 15th December 1920. | The whole | Whole of Burma except:-<br>(i) The Northern Shan States;<br>(ii) The Southern Shan States;<br>(iii) The Chin Hills;<br>(iv) The Kachin Hill Tracts;<br>(v) The Arakan Hill Tracts;<br>(vi) The Victoria Point Subdivision and the Bôkpyin Township of the Megui District;<br>(vii) The Leiktho Township and the Tabye and Mabalan circles of the Tantabin Township of the Toungoo District;<br>(viii) The Gangaw Subdivision and the Saw Township of the Pakokku District;<br>(ix) Such parts of the Ngape, Salin and Sidôktaya Townships of the Minbu District as are not under supplementary survey;<br>(x) The Bhamo District, except the Municipality and Cantonment of Bhamo and the town of Shwegu; |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 7. | 1-1-1922, *vide* J.D. Notification No. 200, dated 15th December 1920. | The whole | Whole of Burma except:-<br>(xi) The Myitkyina District except (a) the town of Myitkyina (b) the village-tract of Rampu, Okkyin, Tatkon and Sitapur of the Myitkyina Township, and (c) the Mogaung Township;<br>(xii) The Pinlebu and Banmauk Townships of the Katha District;<br>(xiii) The Tagaung Township of the Ruby Mines District except the village-tracts of Inywa, (East), Tonge, Maugan-Ngapichaung, Kyetta-gaung Tagaung, Kanni, Shwe-o-ya, Satkya Sinnyat, Aungtha, Magyigôn, Myadaung, Yayin and Tawya;<br>(xiv) The Shwedwin, Mansein and Yebawmi village-tracts of the Maingkaing Township of the Upper Chindwin District;<br>(xv) The Yeyaman tracts of the Kyaukse District, the boundaries of which are described below:- |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 7. | 1-1-1922, *vide* J.D. Notification No. 200, dated 15th December 1920 –contd. | The whole | Whole of Burma except:-<br>*North:*-From the south-eastern corner of Mithwebôk East *kwin*, No. 51A, along the Myitnge or Namtu River till it reaches the base of the Twaktuhill.<br>*East:*-Thence along the summits of Tawing-ma, Twantaw-se and Loipan-tang to the summit of the Hpatumong hills.<br>*South:*-Thence along the summits of the Yenge, Shanmango, Sisi, Mogatkyi, Mogatkale, and Wetyôk hills to Wetlu-daung; thence in a westerly direction to the point where the Leikthuko *chaung* meets the north-western boundary of the Baw State.<br>*West:*-Thence along the eastern boundaries of the Kyauksè and Singaing Townships.<br>(xvi) The hill-tracts of the Meiktila District situated to the east of the boundary described below:- |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 7. | 1-1-1922, *vide* J.D. Notification No. 200, dated 15th December 1920 – contd. | The whole | Whole of Burma except:-<br>- A line starting from a point situated on the eastern boundary of the Meiktila District about one and a quarter mile north of trigonometrical station and also situated on the eastern boundary of the Sindaung reserved forest and thence running southwards along the eastern boundaries of the Sindaung and Yupadaung reserved forests to a point on the south-east corner of the latter reserved forest; thence a straight line running eastwards to the north-west corner of the Yebokson reserved forest; thence a line running eastwards about three and a half miles along the northern boundary of the said reserved forest to a point about half a mile north-west of Yebokson village; thence a straight line running eastwards to the south-west corner of the Kubyin reserved forest; thence a line running along the southern boundary of the last mentioned reserve forest to a point opposite furlong post 34/5 on the Thazi-Taunggyi Public Works Department Road; and thence a line running south-eastwards up the Kywemasa stream to the southern boundary of the Meiktila District. |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 7. | 1-1-1922, *vide* J.D. Notification No. 200, dated 15th December 1920 –concld. | The Whole | Whole of Burma except:-<br>(xvii) The hill-tracts of the Yamèthin District, situated to the east of the boundary described below:-<br>From the point of contact of the eastern boundary of the Twinywa village-tract with the boundary between the Yamèthin and Meiktila Districts, a line along that village-tract boundary; thence along the eastern bondaries of Pinthaung, Kontha, Shwenyaung-bu, Dahatkôn, Wagon, Nanlon, Tanaunggon, Kanbu, Pawthwè, Theingon, Paukkaing, Myinna, Pyinbya, Indaing, Bwet, Sigon, Kanyogyi, Zigon, Chinzu Th itseinbin, Nyaunggon, Natma, Kundaw, Natkin Kangyi Kyatpye, Thayetok, Magyigon, Kangon, Thabyegon, |

| No. | Dates and Notifications. | Sections of the Act. | Area. |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 7. | 1-1-1922, *vide* J.D. Notification No. 200, dated 15th December 1920 –concld. | The whole | Whole of Burma except:-<br>(xvii) Zigon, Zayatkyi-gon, Shwemyo, Thabye-chaung, Kyauk-kwet, Pogun, Tegon, Mayin-gyi, Nan-aw, Yezin, Chaungbya Ma-u-daw, Zibyu-gon, Kyaukpon, Shanzu, Kyidaung, Nattaw-aing, We-gyi, Kado-zeik, Sebyubin and Kungyan village-tracts to a point where the eastern boundary of the latter strikes the left of the Sittang River; thence the left bank of the Sittang River southwards to the north-western boundary of the Thit-sin village-tract; thence the northern boundary of the Thit-sin and Thitkyein village-traets to the point where it meets the boundary between the Yamèthin and Toungoo Districts.<br>(xviii) The Putao District. |
| 8. | 22-12-1924,*vide* J.D. Notification No. 216, dated 22nd December 1924. | The whole | Whole of Burma except:-<br>(i) The Northern Shan States;<br>(ii) The Southern Shan States;<br>(iii) The Chin Hill Tracts; |

| No. (1) | Dates and Notifications. (2) | Sections of the Act. (3) | Area. (4) |
|---|---|---|---|
| 8. | 22-12-1924,*vide* J.D. Notification No.216, dated 22nd December 1924- concld. | The whole | Whole of Burma except:-<br>(iv) The Kachin Hill Tracts;<br>(v) The Arakan Hill Tracts;<br>(vi) The Victoria Point Subdivision and the Bôkpyin Town-ship of the Mergui District;<br>(vii) The Leiktho Town-ship and the Tabye and Mabalan Circles of the Tantabin Township of the Toungoo District;<br>(viii) The Gangaw Subdivision and the Saw Township of the Pakôkku District;<br>(ix) Such parts of the Ngape, Salin and Sidoktaya Town-ships of the Minbu District as are not under supplementary survey;<br>(x) The Bhamo District, except the Municipality and Cantonment of Bhamo and the town of Shwegu;<br>(xi) The Myitkyina District, except (a) the town of Myit-kyina, (b) the village-tracts of Rampur, Okkyin, Tatkon and Sitapur of the Myitkyina Township and (c) the Mogaung Town-ship;<br>(xii) The Pinlèbu and Banmauk Townships of the Katha District other than the areas under supplementary survey in the said townships; |

| No. (1) | Dates and Notifications. (2) | Sectoins of the Act. (3) | Area. (4) |
|---|---|---|---|
| 8. | 22-12-1924,*vide* J.D. Notification No. 216, dated 22nd December 1924 – concld. | The whole | Whole of Burma except:-<br>(xiii) The Tagaung Township of the Ruby Mines District except the village-tracts of Inywa (East), Tonge, Maugan Ngapi-Chaung, Kyettagaung, Tagaung, Kanni, Shwe-o-ya, Sinnyat, Aungtha, Magyigon, Myadaung, Yayin and Tawya;<br>(xiv) The Shwedwin, Mansein and Yebawmi village-tracts of the Maingkaing Township fo the Upper Chindwin District;<br>(xv) The areas east of the Rangoon-Mandalay Railway line in the Kyaukse, Meiktila and Yamèthin Districts which are not under supplementary survey except the village-tracts of Indiangtha, Kywedatson, Tagundaing, Pyinnyaung, Lèbyin, Tidwin, Myindaik and Kanbain in the Meiktila District.<br>(xvi) The Putao District. |
| 9. | 20-5-1925, *vide* J.D. Notification No. 73, dated 20th May 1925. | The Whole | The Putao District. |

(b) The provisions of the Act, particularly as to the methods whereby sales, mortgages, leases, exchanges, and gifts of immoveable property must be effected, should be carefully studied.

Mortgage Suits.

313. Special attention is drawn to Order XXXIV of the Civil Procedure Code, as amended by the Transfer of Property (Amendment) Supplementary Act, XXI of 1929. This Order, which prescribes the procedure in suits on mortgages, is applicable to all Civil Courts whether the Transfer of Property Act has been extended to the areas of their jurisdiction or not. Even where the Transfer of Property Act is not wholly in force, Courts should, for the sake of uniformity, be guided as far as may be by the provisions of sections 83 and 84 of that Act regarding the deposit of money due on mortgages.

Section 148 of the Civil Procedure Code, by which a Court is given direction to enlarge the time granted for the performance of any act, has special reference to suits on mortgages.

Usufructuary Mortgages.

314. The difference between usufructuary mortgages, which are so common in this country, and other mortgages should be carefully noted. A usufructuary mortgagee as such cannot generally institute a suit for foreclosure or sale.

Rules under the Transfer of Property Act.

315. The following rules have been made for carrying out the provisions of Chapter IV of the Act in the High Court, Rangoon and in Civil Courts subordinate to it in places to which the Act has been extended * :-

*Rules*

(1) In these rules-

"the Act" means the Transfer of Property Act, as amended from time to time;

---

* Notification No. 5 (General), dated the 18th December 1922.

"mortgagor" includes every person entitled to redeem a mortgage;

"mortgagee" includes every person entitled to the benefits and remedies of the holder of a mortgage security.

(2) Every deposit under section 83 of the Act shall be accompanied by a petition stating the facts in connection with the mortgage, and the amount due for principal and interest. The petition shall be verified in the manner prescribed by the Code of Civil Procedure for verification of plants.

(3) Unless otherwise ordered, there shall be paid into Count, in addition to the sum deposited under section 83 or any subsequent section, a sum sufficient to provide for the issue and service of notices by the Court and for the mortgagee's costs of obtaining payment out of Court; and also when such payment is made under section 83, and a retransfer of the property is required, a further sum to provide for the mortagee's costs of transferring the property, and causing such transfer to be registered.

(4) Every order for payment of money into Court, under section 83 of the Act, shall specify the sums to be paid and the purpose for which each sum is intended.

(5) The notice to be served, under section 83 of the Act shall be in Form Civil 151.

(6) Every notice directed by the Act or these rules to be served shall be served in one of the modes prescribed for service of summonses by Order V of the Code of Civil Procedure, or by sending it by registered post to the last known address of the person to be served.

(7) Where it shall appear that, previous to any payment into Court under section 83, a sufficient tender was made to, and refused by, the mortgagee, he shall not be allowed to obtain payment of the amount deposited in Court to meet his claim without deduction of the fees and charges which the mortgagor may have incurred by reason of his payment of the money into Court, nor shall he be allowed, the costs of drawing out the money paid in. Except as aforesaid, or when otherwise ordered, the mortgagee shall be allowed all costs properly incurred by him.

(8) On an application for payment of money out of Court, under section 83, by a mortgage who has complied with the orders of the Court and the provisions of the Act and of the rules made in this behalf, so far as they relate to him, or apply to his case, and who has, when required so to do, transferred the property and possession free from encumbrances, and caused such transfer to be registered, and has accounted for the documents of title which were held by him, the Court shall make such orders as to it shall seem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

(9) Every enforceable order made under section 83 may be enforced under the provisions of the Code of Civil Procedure, and shall for that purpose be deemed to have been made in a suit instituted under that Code.

### 3. Burma Small Cause Courts. Act.

**316 to 321.** × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × × ×

(Repeal by Law No 13/74)

### 4. Land Acquisition Act.

Collector refusing to make reference to the Court.

**322.** In the absence of rules framed under section 55 of the Land Acquisition Act on the subject of appeals from the orders of a Collector or regarding revisions of such orders, if a Collector wrongly refuses to make a reference under section 18 of the Act, or passes any other order in the course of his proceedings which a party may

wish to appeal against, there is no authority to whom the party can make application unless it be to a superior executive or revenue officer.

Proceedings before Court.

323. When a reference is made to the Court under section 19 of the Land Acquisition Act, the proceedings in the Court are intended to constitute a separate inquiry and must terminate with a specific award. A mere dismissal of the application is not contemplated by the Act.

324. Proceedings before the Court under section 22 of the Land Acquisition Act are not a continuation of the administrative proceedings before the Collector, but are judicial. The decision therein must therefore be based solely on evidence before the Court or on admission by the parties.

It is compulsory for the Judge to take into consideration the matters referred to in section 23 of the Act and to allow compensation for such of them as are admitted or proved to exist.

Remisssion of Stamp Duty.

325. Attention is drawn section 51, which is as follows;-

No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Disposal of Monies paid into Court.

326. The following instructions have been issued as to the disposal of monies paid into Court under sections 31 and 33 of the Land Acquisition Act * :-

(1) Every sum received from the Deputy Commissioner under section 31, sub-section (2), of the Land Acquisition Act shall be treated as a judicial deposit and shall be dealt with in conformity with the instructions relating to the keeping of Bailiff's Register I, save in respect of the matters dealt with below.

---

* *See.* - Direction 77, Financial Commissioner's Notification No. 150, dated 10th October 1907; Land Acquisition Manual, 1908, p. 23.

(2) Where the deposit is to be invested in the purchase of land under section 32, sub-section *(1)*, clause (a), the purchase shall be effected under the Court's orders through the Deputy Commissioner or other Revenue authority of the district.

(3) Where the deposit is to be invested under section 32, sub-section *(i)*, clause (b), or section 33 in Government or other approved securities, the purchase shall be effected through the Accountant-General, Burma, who will arrange for the safe custody of such securities.

In such cases the procedure laid down in Article 116 of the Civil Account Code, Volume I, shall be followed.

(4) Each item of deposit should be invested separately unless there be more than one item of deposit in favour of the same person, in which case the total amount deposited in his favour may be made the subject of one investment.

(5) The interest or other proceeds arising from either of the form of investment above mentioned shall similarly be treated as judicial deposits and similarly dealt with.

### 5. Burma Companies Act.

**327.** Rules framed under section 246 of the Burma Companies Act, were published at page 1023 *et sequi,* Part IV of the *Burma Gazette,* dated the 26th October 1940, and have been reproduced in the High Court Rules and Orders; but as they are not of general importance they have not been reproduced here.

### 6. Burma Succession Act.

Necessity for Probate, etc.

**328.** The attention of Judges of District Courts is drawn to the provisions of section 54 of the **Administrator-General's Act,** of sections 253, 254 and 269 of the **Burma Succession Act,** and of sections 20, 21 and 22 of the **Police Act,** regarding the procedure to be followed for the **Protection of the Property of Deceased** persons, subject to the Burma Succession Act, dying within their jurisdiction.

In a case brought to notice, a portion of the effects of a deceased person, subject to the provisions of section 54 of the Administrator-General's Act, were allowed to be sent out of the country without grant of a probate, letters-of-administration, or certificate, and the present caution is therefore given to prevent the occurrence of similar irregularity.

Applicant to file a valuation of property.

**329.** The attention of District Courts is specially invited to the provisions of section 19 I, of the Court Fees Act, which require the applicant for Probate of Letters-of-Administration to file a valuation of property in the form given in the Third Schedule of that Act. The form must be used as prescribed, with only such modifications as may be necessary, If the deceased was possessed of none of certain of the items entered in Annexure A, the word "none" should be entered opposite those items. If he was possessed of property not falling within any of those items, the property should be entered under an appropriate manuscript heading.

Proclamations under the Police Act.

**330.** Proclamations by the District Magistrate issued under section 21 of the Police Act, which is the Act generally applied to the unclaimed estates of deceased Indians to whom the Burma Succession Act does not apply, need not be made outside the district in which the property is found.

Security.

**331.** Section 291 of the Succession Act *requires* security to be taken from persons to whom Letters-of-Administration are granted, other than a grant under section 241 of the Act, and the District Judge *may* in his discretion demand a like bond from any person to whom probate is granted.

In a case brought to notice, in which Letters were granted without security being taken, the administrator absconded after misappropriating the property and the deceased's family were left without any effective remedy.

Generally speaking the practice should be to take a personal unregistered security bond from the surety or sureties after the fact that they are good for the amount required has been verified. If the Court learns later that one or all of the sureties are financially unsuitable, fresh security should be demanded from the administrator.

**332.** Section 19 I, clause (i), of the Court Fees Act, requires prepayment of the proper Court-fee before orders are passed granting Probate or Letters-of-Administration. The *ad valorem* Court-fee prescribed by Statute, which is payable in the form of an impressed stamp, if the duty is K10 or over, need not accompany the affidavit of valuation filed with the application, but should be provided when the Court has announced its intention of granting letters or probate. Such intention may be announced in an order to the following effect:-

Court-fee on Probate or Letters-of-Administration.

Letters-of-Administration will be granted to ..... ..... on $\frac{\text{his}}{\text{her}}$ furnishing security in K ..... .. to the satisfaction of the Court, and depositing in Court within .. .....days from this date of court-fee stamp sheet for K ..... . . . If the security is not furnished and the court-fee sheet is not deposited within the above period the application of ..... ..... will stand dismissed.

The rate at which the amount payable as Court-fees on Probate of a will is to be assessed must be calculated on the net value of the estate according to the scale laid down in Article 11 of the First Schedule to the Court Fees Act.

No court-fee can be levied for Probate or Letters-of-Administration when the net value does not exceed K 1,000.

**333.** All Probates and Letters-of-Administration issued by Courts should be engrossed or written upon the impressed stamp, filed in accordance with the procedure prescribed in the last preceding paragraph.

When however in any case the fee payable in less than K 10, the Probate or Letters should be written on stout plain paper of foolscap size, the adhesive court-fee stamp or stamps denoting the fee being affixed on the top of the paper.

**334.** Section 317 of the Burma Succession Act requires executors and administrators to file inventories within six months, and accounts within one year, from grants.

If an inventory and accounts are not filed within the above times, respectively, the Judge should of his own motion pass an order requiring the executor or administrator to file an inventory or accounts as the case may be, and cause such order to be served on the executor or administrator.

Inventories and Accounts.

If this order is not obeyed, proceedings may be instituted be-

fore a Magistrate for the prosecution of the offender under section 176 of the Penal Code. The Probate or Letters-of-Administration may also be revoked under section 263 of the Burma Succession Act.

Upon the filing of an inventory the Judge should at once give notice by letter to the Collector of the date on which it was filed.

Custody and Inspection of Wills.

335. The following rules have been made by the President of the Union for the custody, preservation, and inspection of wills filed in District Courts * :-

1. All original wills presented to a District Judge in accordance with the provisions of section 276 of the Burma Succession Act shall, immediately upon the passing of the order granting Probate or Letters-of-Administration under sections 289 and 290, be committed to the care of the Head Judicial Clerk, or Chief Ministerial Officer of the Judge's Court, who shall be responsible for their safe custody.

2. The said Ministerial Officer shall, on the receipt of every original will, cause a copy of the same to be carefully entered in a register to be kept for that purpose and shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and page of the register in which a copy of the will is entered, shall be recorded in the annexed form :-

*Index to Wills.*

| Name of testator. (1) | Residence, etc. (2) | Number and year of register. (3) | Page. (4) |
|---|---|---|---|
| | | | |

* Judicial Department Notification No. 106, dated the 4th March 1892.

3. The original wills shall be deposited in a fireproof safe which shall be kept in the office room of the Head Judicial Clerk or other Chief Ministerial Officer to whom the safe custody of the will may have been entrusted.

Where the Court has no iron safe the wills may be placed in a small block-tin box, the key of which shall remain with the Judge, and the District Registrar or, if there be no District Registrar, the Treasury Officer shall, if the Judge require him, lock up this box in his fireproof safe, giving it up to the Judge on his written demand from time to time.

4. Every inspection of original wills or the register thereof, as well as applications for copies of wills, shall be made within the hours fixed by the Judge, and published by a notification posted in a conspicuous place in the Court and shall be subject to the conditions contained in the rules next hereinafter following.

5. The inspection of an original will shall be allowed only on the written order of the Judge previously obtained, and shall take place in the presence of the Head Clerk, or other officer who may have charge of the same, and that officer shall be responsible that the will is not taken out of his sight during such inspection and also that no erasures or alterations are made in it.

6. Application for a copy of an original will shall be submitted to the Judge, and such copy shall only be granted subject to the conditions which attach to the inspection of original wills.

7. The following fees shall be levied in court-fee stamps for the inspections of wills, etc. :-

(1) For the inspection of an original will - a court-fee stamp of the value of one kyat.

(2) For the inspection of copy of a will in the register - a court-fee stamp of the value of 50 pyas.

(3) For copies - the same fees as for inspection, in addition to the copying charges, which shall be at the usual rate obtaining in the Civil Courts, and shall be levied in the same way as such charges are levied in the Civil Courts.

8. All applications for copies or inspection of wills and registers of wills shall be entered in the register of applications for copies prescribed for the Court.

9. All wills now in any District Court shall be entered forthwith in the index prescribed by Rule 2 and copies of such wills shall be forthwith entered in chronological order in the register prescribed by Rule 2.

336. An Annual Return showing the duty levied on Probates, Letters-of-Administration, and Succession Certificates in the district for the year ending the 30th September, in Form Civil 11, should be submitted so as to reach the Registrar, High Court, by the 1st December of each year.

337. In exercise of the powers conferred by sections 223 and 236 of the Burma Succession Act, the President of the Union is pleased to make the following rules * :-

1. In these rules -
   (a) "Share capital" includes stock; and
   (b) "Trust business" means the business of acting as trustee under wills and settlements and as executor and administrator.

2. The conditions to be satisfied by a company in order to render it eligible for the grant of probate or letters-of-administration under the Burma Succession Act, shall be the following, namely:-

   (1) The company shall be either-
      (a) a company formed and registered under the Burma Companies Act or under the Indian Companies Act, 1913, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 or a company formed under any other Act of the Governor-General in Council or of the Indian Legislature, or

---

* Home Department Notification No. F.-349-32 - Judicial, dated the 17th January 1933, as amended by Notification No. F.-242-35 - Judicial, dated the 27th March 1935.

(b) a company constituted under the law of the United Kingdom of Great Britain and Northern Ireland or any part thereof and having a place of business in India or Pakistan, or

(c) a company established by Royal Charter and having a place of business in India or Pakistan.

(2) The company shall be a company empowered by its constitution to undertake trust business.

(3) The company shall have a share capital for the time being subscribed of not less than -

(a) K 10 lakhs in the case of a company of the description specified in sub-clause (a) of clause (1), and

(b) £ 100,000 in the case of a company of the description specified in sub-clause (b) of clause (1)

of which at least one-half shall have been paid up in cash.

Provided that the President of the Union may exempt any company from the operation of this clause.

### 7. Administrator-General's and Official Trustee's Acts.

338. Rules under the abovementioned Acts have been framed by the Government and published in Judicial Department Notifications Nos. 50 and 51, dated the 1st April 1914; but as they are not of general importance have not been reproduced here.

### 8. Money Lenders Act, 1945.*

339. (1) With effect from the 3rd November, 1945, the Usurious Loans Act was repealed and sections 1, 2, 3, 10(1), 11(1), 12, 13, 14, 15, 16, 17 in so far as it relates to the provisions contained in sub-section (1) of section (15) and section 19 of the Money Lenders Act, 1945, came into force†.

---

* *See Burma Gazette* Part I, at page 285, dated the 27th April, 1946.

† *See* Notification No. 13 in the Commerce and Supplies Department, dated Simla 2nd Novemb[illegible] 1945, republished at page 288, *Burma Gazette*, Part I dated 27th April, 1946.

(2) Whereas under the Usurious Loans Act action by the Court was discretionary, the provisions of the Money Lenders Act, 1945, affecting the recovery of interest on loans advanced after the commencement of the Act are obligatory.

(2) 2. (3) The definition of the word "loan" should be carefully studied; it is more precise than that in section 2(2) of the Usurious Loans Act. In the new Act *sabape* and other transactions in goods are included in the definition, while certain important transactions are specifically excluded.

(4) Under the Money Lenders Act, 1945, the maximum
10. rates of interest legally recoverable on loans advanced after the com-
11. ing into force of the Act are twelve per cent per annum on secured loans and eighteen per cent per annum on unsecured loans; agree-
12. ments to pay compound interest are void, and the total interest recoverable shall not exceed the principal.

13. (5) In respect of loans advanced before the Act came into force, in proceedings instituted before of after the commencement of the Act, Courts of first instance, Appeal and Revision, have power to reopen the accounts between the parties, go back to the original loan, and decide how much of any subsequent monies that passed or allowances that have been made shall be treated as interest, and relieve the debtor of all liability in respect of any interest so calculated as may exceed twelve per cent per annum in the case of a secured loan and eighteen per cent per annum in the case of an unsecured loan.

Provided that not more than six years has elapsed between such consolidation and the institution of the suit, and provided that the reopening of the accounts does not affect the decree of a Court in a previous suit.

Provided further that if anything has been paid or allowed in respect of interest in excess of the rates mentioned above, the creditor cannot be required to repay the amount so paid or allowed.

In the case of a mortgage, or pledge, or any security given or agreement made, in respect of the loan, the Court has power to set aside or revise the security given or agreement made, and further power to order the creditor to indemnify the debtor if the creditor has parted with the security.

(6) A District Court may exercise similar powers in Insolvency Cases, on an application by a creditor for admission of his debt in the schedule framed under section 33 of the Burma Insolvency Act.

14. (7) A debtor may deposit in Court any sum tendered as principal or interest, which the creditor refuses to accept, and the Act 15. provides for the disposal of this money and the legal effect of the 16. deposit. The taking of an incorrect or incomplete document as evi- 17. dence of a loan makes such document void, and is punishable with fine. Molesting a debtor to recover a debt is a cognizable offence.

## 9. Burma Insolvency Act.

**340.** Statutory rules issued under the Burma Insolvency Act, are reproduced in Appendix II.

Statutory Rules.

74. **341.** The provisions of section 74, regarding summary administration of the insolvent's estate, when his property is not likely to exceed K 500 in value, should be invariably invoked in small insolvencies.

Small insolvencies.

**342.** Section 27 of the Burma Insolvency Act directs the Court to specify in the order of adjudication "the period within which the debtor shall apply for his discharge": and section 43 *(1)* directs that "if the debtor does not apply for an order of discharge within the period specified by the Court the order of adjudication shall be annulled." Under section 33 of the same Act creditors should tender proof of their respective debts and the Court should frame a schedule of such creditors and debts.

Pendency of cases.

An insolvency case in the District Court is therefore still pending until the Court has either annulled the adjudication or disposed of the application for discharge under section 41*(2)* of the Burma Insolvency Act.

4. 68. **343.** There is a tendency, especially on the part of the public to regard possession of property by a Receiver in an insolvency case in the same light as an attachment in an execution case, and to treat a subsequent inquiry on an application for removal of the Receiver from possession as an ordinary miscellaneous application for the removal of an attachment after decree. An application to decide a question of title to property arising from a Receiver having taken possession of the property falls under section 4 of the Burma Insolvency Act, and any decision on such application is final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them. Consequently the decision is in fact *res judicata,* and ordinarily no subsequent suit would lie to decide the question of title to such property. An inquiry, therefore, under section 4 of the Burma Insolvency Act is of much greater importance than a miscellaneous inquiry for removal of attachment under the Civil Procedure Code. The inquiry should be conducted and tried like a regular suit as it is in fact an action to establish the title to the property. There should be a proper statement of the claim and written statements by the respondent or respondents. Issues should be framed and the procedure should follow in general the lines of a regular suit. Such proceeding form part of the insolvency proceedings and should not be filed separately as separate proceedings.

Claim to property as against the Receiver.

20. **344.** Where the debtor is the petitioner, and where property is disclosed in the petition, an *interim* Receiver should ordinarily be appointed at once to take possession of the property. The Court should not wait until the debtor is adjudicated, but should appoint an *interim* Receiver as soon as the debtor files his petition disclosing the fact that he has property.

*Interim* Receiver.

Where, however, a creditor is the petitioner an *interim* Receiver can only be appointed on the application of a creditor. Where the debtor is the petitioner, it will ordinarily not be possible to require the deposit of fees before the *interim* Receiver is appointed.

24. Examination of Insolvent.

**345.** When a debtor is examined under section 24 on the date fixed for hearing his petition, he should be examined as to his property and dealings under subsection *(2)* of section 24 in order that the Receiver may have early information on these points, and if any of the creditors wish to question the debtor thereon, they should be given an opportunity to cross examine the debtor on these points. But when sufficient *prima facie* information for this purpose has been obtained from the debtor, his detailed examination should be reserved until his application under section 41 for discharge is before the Court, when the matters referred to in section 42 will have to be considered and both the creditors and the Court will in most cases be in a better position to examine the debtor.

29. Stay of pending suits.

**346.** When a defendant in a suit is adjudicated insolvent during the pendency of the suit, the proceedings in the suit should ordinarily be stayed. In any case in which the suit is one to establish a claim which in the insolvency would be a provable debt or liability, the correct course is to stay the suit and for the plaintiff to prove his claim in the insolvency, obtaining at the same time leave to prove for the costs incurred in the suit. The only cases in which suits should be allowed to go on against the insolvent or the Receiver are cases in which the insolvent has an interest of his own, or cases in which the plaintiff is insisting upon a right which is not a mere claim to a provable debt, *e.g.*, where the plaintiff is a mortgagee insisting upon his security. The principles upon which this section is based should be brought to the notice of all subordinate Courts.

33. Schedule of Creditors.

**347.** A schedule of creditors and the debts due to them must invariably be framed as soon as possible after debts have been proved. The framing of a schedule is obligatory under the Act, and failure to carry out the provisions of section 33 shows extremely bad administration on the part of the Judge conducting the case.

It is also important to notice that any creditor of the insolvent may, at any time before the discharge of the insolvent, prove his debt and apply to the Court for an order directing his name to be entered in the schedule under sub-section (3) of section 33. If a creditor makes such an application after the schedule has already been framed, the Court must issue notice to the Receiver, and also to the other creditors who have already proved their debts, and must fix a date for hearing any objections to the application.

42. Applications for discharge.

**348.** (1) Cases frequently arise in which an insolvent whose assets are not equal to fifty pyas in the Kyats applies for discharge on the ground that his business has failed, or that his crops have been destroyed by flood, or for some other reason, and in such cases there is frequently no opposition to his application for discharge. In these cases, it is not usually necessary to undertake a detailed examination of the insolvent as to his method of conducting his business. The burden of proving that the insolvent's position has resulted from circumstances for which he cannot justly be held responsible is of course on the insolvent, but if he has not otherwise done anything for which his discharge might be refused, and if there is no opposition to his application for discharge, discharge may ordinarily be granted on the *prima facie* statement of the insolvent giving the reasons for his position.

(2) The Court should insist on the presentation of the application for discharge within the prescribed time. If at the time of considering the application for discharge it appears that there is still property to be realised, the discharge can, if necessary, be suspended.

53. 54. Annulment of Transfers.

**349.** When a Receiver has been appointed, he is the proper person to make applications for annulment of transfers under sections 53 and 54. A creditor wishing to take action under either of these sections must first move the Receiver to take action, and if the latter refuses to do so, the former may then move the Court direct. Under no circumstances should the creditor be allowed to move the Court direct in the first instance.

56. **350.** Frequently a creditor alleges that the insolvent has property which has not been disclosed and in such cases he sometimes moves the Receiver to take possession of the property from the possession of a third party. Sub-section (3) of section 56 lays down that where a Receiver is appointed the Court may remove the person in whose possession or custody any property is from the possession or custody thereof, provided that the Court may not remove from the possession or custody of property any person whom the insolvent has not a present right so to remove. Consequently, a Receiver should not act arbitrarily on the application of a creditor to take possession of property from a third party. When he receives such an application, he should refer the matter to the Court, and the Court must then decide the question whether the insolvent has the right to remove the person in possession. It should not order the Receiver to take possession until it has satisfied itself that the insolvent has a present right to remove the person in possession. Suspected collusion between a third party and the insolvent does not justify an arbitrary seizure of the property, either by the Receiver on his own authority, or under an order of the Court, and it is essential that in each case an inquiry as to the insolvent's present right to remove a third party from possession must first be held by the Court. If, owing to the delay which must necessarily be caused by holding such an inquiry, the property becomes incapable of seizure, the remedy lies in the prosecution of the insolvent under section 69.

Taking possession of property from a third party.

59. **351.** Sales by a Receiver in insolvency are not governed by the Civil Procedure Code, and formal proclamations of sale are unnecessary. Sales in insolvency proceedings can be conducted by the Receiver as private sales, and if a good offer is received there is no necessity to advertise the property, or to auction it. Subject to the general supervision of the Court, the Receiver has an unfettered discretion to accept any offer which he may consider to be to the advantage of the estate.

Sales.

62, 63, 64. Dividends.

352. In declaring *interim* dividends, a Receiver must retain sufficient money to meet the cases mentioned in section 62. Under section 64, before declaring a final dividend, notices in Form No. 15, must issue to the creditors who have not proved their debts.

69. Prosecutions.

353. Whenever there appears to be sufficient proof that an insolvent has committed any of the offences described in section 69, a prosecution should invariably be instituted.

Remuneration of Receivers.

354. The remuneration of Receivers appointed in Insolvency cases is provided for in Rule 20 of the rules under the Act, which rules should invariably be consulted before passing orders under the Act. In order to secure uniformity in the remuneration paid to Receivers in all districts, the following directions are issued for the observance of District Courts:-

(1) A Receiver appointed in an Insolvency case should ordinarily be paid a commission on the amount of the estate which he realizes, after deducting sums paid to secured creditors.

(2) The Receiver should also be paid a further commission on amounts distributed as dividends to unsecured creditors.

(3) The usual rate of commission is five per cent on amounts so realized and a further five per cent on amounts distributed as dividends.

The remuneration of the Receiver should ordinarily be at this rate in all cases, but if, owing to the peculiar circumstances of any case, the Judge thinks that the remuneration should be at some other rate, he may fix any other suitable rate for that particular case, but if he does so his reasons for departing from the usual rate of five per cent should be recorded in writing.

(4) When the Receiver realizes the security of a secured creditor the Judge may, for reasons to be recorded in writing, direct an additional remuneration to be paid to him, in the shape of a percentage on the amount so realized in cases where the Receiver has, independently of his work in connection with the general realization of the estate, done special work for the benefit of such secured creditor.

(5) All fees payable to a Receiver under Rule 20 and this paragraph shall be credited by him to Government through Bailiff's Register No. I.

Appointment of the Bailiff as Receiver.

355. (1) The appointment of the Bailiff as Receiver in an Insolvency case is by an order in writing signed by the Court. Copies of the order sealed with the seal of the Court are served on the debtor and forwarded to the Bailiff, who should be supplied with a copy of each Insolvency petition in regard to which he is appointed as Receiver, and also a copy of the Court Schedule of creditors and debts when such Schedule has been framed under section 33 of the Act. The property of the insolvent thereupon vests in the Receiver. The court fixes the amount to be paid as remuneration for the services of the Bailiff as Receiver out of the assets of the insolvent.

Accounts.

(2) Each Bailiff who is called upon to act as a Receiver in Insolvency Cases should maintain the following books :-

(1) Register of Insolvency Cases (Form Civil 7B).
(2) Cash Book (Form Civil 178).
(3) Ledger (Form Civil 179).
(4) Bailiffs Register No. I for Insolvency Cases.

Register of Insolvency Cases.

(3) Copies of the insolvency petitions presented to the Court under section 13 of the Burma Insolvency Act, when received by the Receiver, should be recorded in the Register of Insolvency Cases (Form Civil 7B) with particulars as required by the form.

Cash Book.

(4) The fundamental Account is the *Cash Book* which is maintained in Form Civil 178. It should show in chronological order according to date all receipts and disbursements. On its receipt side should be shown all monies received for which the Receiver is required to give receipts Judicial General 27 under section 59 (b) of the Burma Insolvency Act, and which he should within 48 hours deposit in the Treasury as Civil Court deposits, except such amount as the Court may allow him to retain in his hands for emergent or contingent expenditure.

Every sum received in cash must be entered immediately in the cash received column, and when it is credited to the Treasury it must be entered in both the Treasury receipt column and the cash expenditure column. This procedure will enable separate balances to be made showing the cash in hand and the balance in the Treasury and there will be no difficulty in checking the cash in hand. All disbursements except emergent or contingent expenditure, are drawn from the Treasury under the Court's orders. In making disbursements he should draw up a voucher in Form T.F. No. 70 and hand it to the payee after it has been signed by the Judge. In fact, in regard to both receipt and disbursement, he must obey the ordinary rules contained in paragraphs 1032 - 1051.

The Cash Book should be balanced every day on which there are transactions, and the Cash Book should be checked and the cash balance verified once a month by the District Judge or by an Assistant Judge who has been invested with powers under the Burma Insolvency Act. The District Judge should perform the check himself, but if there is an Assistant Judge who exercises jurisdiction in insolvency cases, at the district headquarters the District Judge may by order delegate this duty to him. A yearly balance should also be entered up in Cash Book on the 30th September of each year showing the following particulars :-

(i) Balance of previous year.
(ii) Total receipts.
(iii) Total amount of claims satisfied.
(iv) Other expenses, including commission.
(v) Balances carried forward.

(5) The Ledger should be maintained in Form Civil 179. It should be divided into cases and estates, each

Ledger.

one of which should get one or more pages in the ledger. Every item in the Cash Book should be carried forward to the Ledger, which should be written up from the Cash Book once a week.

The Ledger should be balanced on the 30th September each year, or earlier if an estate is closed before that date. The balance at the credit of each estate should be verified with the Bailiff's Register No. I, and a certificate to that effect recorded in the Ledger with the initials of the Bailiff. The Receiver should go through his accounts in October each year and transfer to the *lapsed deposit account*, - taking the Treasury Officer's signature in his Ledger - all sums which feel due for payment and could have been drawn by the persons concerned on or before the end of September *three* years earlier, *e.g.*, in October 1953 he will transfer all such amounts which could have been drawn before the end of September 1950.

(6) The Bailiff should maintain a separate register in the form of Bailiff's Register No. I for insolvency cases, and on no account should any transaction relating to insolvency be entered in the general Bailiff's Register No. I. The receipts and payments appearing in the Cash Book should be recorded at once in this register, the receipts being recorded in chronological order and the payments against the respective receipts out of which they are made. This register should check with the Cash Book and the Ledger.

Bailiff's Register No. I.

(7) In addition to the registers mentioned above, the Bailiff Receiver should maintain an ordinary correspondence file for each insolvency case. In this file should be placed copies of the order appointing him as Receiver and other orders of the Court, copies of the reports of the Bailiff as Receiver in the case, copies of chalans and vouchers, and all other papers connected with the particular case.

File of orders.

**356.** Where an Official Receiver has been appointed under section 57 of the Act, the above orders regarding the accounts of the Bailiff as Receiver in Insolvency cases, shall apply *mutatis mutandis* to the Official Receiver, who shall maintain exactly similar registers, accounts and records.

Official Receivers.

**357.** The accounts of the Bailiff as Receiver in Insolvency cases or of the Official Receiver if there is one, will be audited either annually or biennially by the outside Audit Department of the Accountant-General's Office. The cost of the audit as fixed by Government shall be paid out of the respective estates.

Audit and Audit Fees.

## 10. Mussalman Wakf Act.

**358.** (1) In exercise of the powers conferred by section 1, sub-section (2) of the Mussalman Wakf Act, the President has directed that sections 2 to 13 of the Act shall come into force in the following districts with effect from the 1st August 1924 * ; -

(1) Rangoon Town District.
(2) Mandalay District.
(3) Amherst District.
(4) Bassein District.
(5) Akyab District.
(6) Prome District.

(2) In exercise of the powers conferred by section 2, clause (b) of the Mussalman Wakf Act, the President of the Union has designated the District Court, Hanthawaddy, as the Court for all purposes under the Act in all cases arising within the limits of the Ordinary Original Civil Jurisdiction of the High Court, Rangoon.†

(3) Rules under the Act have been framed and were published in Judicial Department Notification No. 241, dated the 12th September 1924 as amended by Miscellaneous Department Notification No. 35, dated the 14th October 1931 and Miscellaneous Department (Ministry of Education), Notification No. 6, dated the 9th January 1935.

## 11. Arbitration (Protocol and Convention) Act.

**359.** The following rules for the regulation of matters connected with proceedings in Courts subordinate to the High Court have been made under section 10 of the Arbitration (Protocol and Convention) Act * :-

***Rules***

Title of applications, etc.

1. All applications, affidavits and proceedings under the Act shall be instituted in the matter of the Act and in the matter of the arbitration.

---

* Judicial Department Notification No. 178, dated the 22nd July 1924.
† Judicial Department Notification No. 179, dated the 22nd July 1924.
‡ High Court Notification No. 2 (General), dated the 19th January 1939.

2. Applications under section 3 of the Act shall be made in writing and shall be numbered and registered as miscellaneous proceedings.

Applications under section 3.

3. The procedure in all proceedings under the Act shall be in accordance with the provisions of the Code of Civil Procedure.

Procedure.

4. Upon an application for stay of proceedings under section 3 of the Act being filed the Court shall direct notice to be given to the party or parties to the legal proceedings, other than the applicant, requiring him or them to show cause, within a time specified, why the order should not be made, unless the Court is satisfied that the object of the application would be defeated by the delay occasioned by such notice.

Stay of Proceedings under section 3 of the Act.

5. The party seeking to enforce a foreign award shall produce with his application :-

Documents to be produced with the application for enforcement of a foreign award.

(a) the document specified in section 8(1) of the Act and, where such document is in a foreign language, a translation thereof into English certified in the manner prescribed by sub-section (2) of section 8;

(b) the original agreement for arbitration or an authenticated copy thereof and when the same is in a foreign language, a translation thereof into English certified in the manner prescribed by sub-section (2) of section 8 of the Act;

(c) an affidavit or affidavits showing that the award is a foreign award and that the conditions mentioned in sub-section (1) of section 7 or the Act are satisfied; and

(d) other necessary documents in support of his application.

Procedure to be followed in case of non-production of documents with application for enforcement of award.

6. If the application under section 5 of the Act be presented without the document specified in Rule 5 (a) above, it shall forthwith be returned to the party presenting it. If such application is unaccompanied by the documents specified in Rule 5 (b) and (c) above, the Court may allow a reasonable time within which such documents must be filed.

Execution of decrees and orders.

7. The provisions of the Code of Civil Procedure relating to execution of decrees and orders shall, *mutatis mutandis,* be applicable to the execution of decrees and orders under the Act.

Fees payable in proceedings.

8. The fees in respect of proceedings under the Act shall be according to the scales of fees in force in civil Courts subordinate to the High Court, so far as the same are applicable.

## 12. Arbitration Act, 1944.

Application of Act.

**360.** Section 89 and the Second Schedule of the Code of Civil Procedure and the Arbitration Act, 1899, have been repealed by the Arbitration Act, 1944, which is in force throughout the Union of Burma. Consequently all arbitrations must be conducted in accordance with the provisions of the Arbitration Act, 1944. *See* section 47.

Rules.

**361.** Rules under section 44 of the Act have not yet been published by the High Court.

Arbitrators' Fees.

**362.** Arbitrator's fees for every effective meeting should not ordinarily exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour.