THE LAWS OF ZANZIBAR

CHAPTER 8

CIVIL PROCEDURE

(PRINCIPAL LEGISLATION)

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CHAPTER 8

CIVIL PROCEDURE

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CHAPTER 8

CIVIL PROCEDURE

[1ST JANUARY, 1917.]

17 of 1917.
Cap. 68, 1922.
Cap. 84, 1922.
Cap. 4, 1934.
Cap. 11, 1934.
3 of 1945.
26 of 1948.
20 of 1950.
4 of 1952.
G.N. 93 of 1953.
118 of 1953.
142 of 1954.

PRELIMINARY

Title and application.

1.—(1) This Decree may be cited as the Civil Procedure Decree.

(2) It shall apply to proceedings in the High Court and, subject to the provisions of any other law for the time being in force, to proceedings in all courts subordinate to the High Court, other than district courts established under the provisions of the Courts Decree or under the provisions of the British Subordinate Courts Order. Cap. 3.

Interpretation.

2. In this Decree, unless there is anything repugnant in the subject or context—

"advocate" means any person entitled to appear and plead for another in court;

"court", "civil court", "the courts" and "court of justice" mean the High Court and any court subordinate thereto other than a district court established under the provisions of the Courts Decree or the British Subordinate Courts Order; Cap. 3.

"decree", as used in reference to a suit, means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final or partly preliminary and partly final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 35 or section 122, but shall not include—

(*a*) any adjudication from which an appeal lies as an appeal from an order, or

(*b*) any order of dismissal for default;

"decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;

"final decree" means a decree in a suit when such adjudication completely disposes of the suit;

"foreign court" means a court situate beyond the limits of Zanzibar which has no authority in Zanzibar;

"foreign judgment" means the judgment of a foreign court;

"judge" means the presiding officer of a civil court;

"judgment" means the statement given by the Judge of the grounds of a decree or order;

"judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;

"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

"mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

"movable property" includes growing crops;

"order" means the formal expression of any decision of a civil court which is not a decree;

"preliminary decree" means a decree in a suit when further proceedings have to be taken before the suit can be completely disposed of;

"public officer" means a person falling under any of the following descriptions, namely—

(*a*) every Judge;

(*b*) every member of the Government;

(*c*) every commissioned or gazetted officer in the naval, military or air forces of Her Majesty, whilst serving under the Government;

G.N. 93 of 1953.

(*d*) every officer of a court of justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorised by a court of justice to perform any of such duties;

(*e*) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(*f*) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(*g*) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(*h*) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

"Rules" means Rules and Forms contained in the First Schedule or made under section 110;

"share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds; and

"signed", save in the case of a judgment or decree, includes stamped.

Savings.

3.—(1) In the absence of any specific provision to the contrary, nothing in this Decree shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in subsection (1), nothing in this Decree shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

PART I

SUITS IN GENERAL

Jurisdiction of the Courts and Res Judicata

Courts to try all civil suits unless barred.

4.—(1) The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

(2) A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Stay of suit.

5. No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other court in Zanzibar having jurisdiction to grant the relief claimed:

Provided that the pendency of a suit in a foreign court does not preclude the courts in Zanzibar from trying a suit founded on the same cause of action.

Res judicata.

6.—(1) No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

(2) For the purposes of this section—

(*a*) "former suit" denotes a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto;

(*b*) the competence of a court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court;

(*c*) the matter referred to in this section must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other;

(*d*) any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit;

(*e*) any relief claimed in the plaint, which is not expressly granted by the Decree, shall, for the purposes of this section, be deemed to have been refused;

(*f*) where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further suit.

7. Where a plaintiff is precluded by Rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any court to which this Decree applies.

When foreign judgment not conclusive.

8. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(*a*) where it has not been pronounced by a court of competent jurisdiction;

(*b*) where it has not been given on the merits of the case;

(*c*) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Zanzibar in case in which such law is applicable;

(*d*) where the proceedings in which the judgment was obtained are opposed to natural justice;

(*e*) where it has been obtained by fraud;

(*f*) where it sustains a claim founded on a breach of any law in force in Zanzibar.

Presumption as to foreign judgments.

9. The court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Place of suing

Court in which suits to be instituted. Cap. 3.

10. Subject to any direction which may be given by the Zanzibar Court under section 14 of the Courts Decree, or by the Chief Justice of Her Britannic Majesty's High Court for Zanzibar under paragraph 11 of the British Subordinate Courts Order, every suit shall be instituted in the court of the lowest grade competent to try it.

Suits to be instituted where subject matter situate.

11.—(1) Subject to the pecuniary or other limitations prescribed by any law, suits—

(*a*) for the recovery of immovable property, with or without rent or profits;

(*b*) for the partition of immovable property;

(*c*) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;

(*d*) for the determination of any other right to or interest in immovable property;

(*e*) for compensation for wrong to immovable property;

(*f*) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

(2) In this section "property" means property situate in Zanzibar.

Suits for immovable property situate within jurisdiction of different courts.

12. Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognisable by such court.

Place of institution of suit where local limits of jurisdiction of courts are uncertain.

13.—(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional court that a decree or order in a suit relating to such property was made by a court not having jurisdiction where the property is situate, the appellate or revisional court shall not allow the objection, unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or movables.

14. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

Other suits to be instituted where defendants reside or cause of action arises.

15.—(1) Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

(*a*) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain:

(*b*) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(*c*) the cause of action, wholly or in part, arises.

(2) Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

(3) A corporation shall be deemed to carry on business at its sole or principal office in Zanzibar or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Objections to jurisdiction.

16. No objection as to the place of suing shall be allowed by any appellate or revisional court, unless such objection was taken in the court of first instance at the earliest possible opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Power to transfer suits which may be instituted in more than one court.

17. Where a suit may be instituted in any one of two or more subordinate courts and is instituted in one of such courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement apply to the High Court to have the suit transferred to another cour

and the High Court, after considering the objections of the other parties (if any), shall determine in which of the several courts having jurisdiction the suit shall proceed.

General power of transfer and withdrawal.

18.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(*a*) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or

(*b*) withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and

(i) try or dispose of the same;

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) The court trying any suit transferred or withdrawn under this section from a subordinate court shall, for the purposes of such suit, be deemed to be a court of the same class as the court from which such suit was transferred or withdrawn.

Institution of suits

Institution of suits.

19. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

Summons and discovery

Summons to defendants.

20.—(1) Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Service of summons where defendant resides in another district.

(2) Any document which is required to be served in connection with a suit may be sent, in such manner as may be prescribed, for service in another district to a court having jurisdiction in that district.

(3) The court to which such document is sent, shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the document to the court of issue together with the record (if any) of its proceedings with regard thereto.

Service of foreign summonses.

21. Summonses issued by any civil court situate beyond the limits of Zanzibar may be sent to the courts in Zanzibar and served as if they had been issued by such courts.

Power to order discovery and the like.

22. Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

(*a*) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(*b*) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(*c*) order any fact to be proved by affidavit.

Summons witness.

23. The provisions in sections 20 and 21 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default.

24. The court may compel the attendance of any person to whom a summons has been issued under section 22 and for that purpose may—

(*a*) issue a warrant for his arrest;

(*b*) attach and sell his property;

(*c*) impose a fine upon him not exceeding seven hundred and fifty shillings;

(*d*) order him to furnish security for his appearance and in default commit him to the civil prison.

Judgment and decree

Judgment and decree.

25. The court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Interest

Interest.

26.—(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

Costs

Costs.

27.—(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing.

(3) The court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

PART II

EXECUTION

General

Application to orders.

28. The provisions of this Decree relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of "court which passed a decree".

29. The expression "court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include—

(*a*) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance, and

(*b*) where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Courts by which decrees may be executed

Court by which decree may be executed.

30. A decree may be executed either by the court which passed it, or by the court to which it is sent for execution.

Transfer of decree.

31.—(1) The court which passed a decree may, on the application of the decree-holder, send it for execution to another court—

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other court;

(*b*) if such person has not property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court;

(*c*) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which passed it; or

(*d*) if the court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other court.

(2) The court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction.

Result of execution-proceedings to be certified.

32. The court to which a decree is sent for execution shall certify to the court which passed it the fact of such execution, or where the former court fails to execute the same the circumstances attending such failure.

Powers of court in executing transferred decree.

33. The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such court in the same manner as if it had passed the decree; and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Precepts.

34.—(1) Upon the application of the decree-holder the court which passed the decree may, whenever it thinks fit, issue a precept to any other court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the court which passed the decree or unless before the determination of such attachment the decree has been transferred to the court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

Questions to be determined by court executing decree

Questions to be determined by the court executing decree.

35.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

(4) For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

Transferees and legal representatives

Transferee.

36. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative.

37.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Procedure in execution

Powers of court to enforce execution. 26 of 1948, s.2.

38.—(1) Subject to the other provisions of this Part and to such conditions and limitations as may be prescribed, the court may, on application by the decree-holder in the prescribed manner, enforce the execution of the decree—

(*a*) by ordering delivery of any property specifically decreed;

(*b*) by ordering attachment and sale, or sale without attachment, of any property;

(*c*) by ordering the arrest and detention in prison of the judgment-debtor;

(*d*) by appointing a receiver;

(*e*) in such other manner as the nature of the relief granted may require.

(2) A decree for the restitution of conjugal rights shall not be enforced otherwise than by ordering periodical payments to be made by the judgment-debtor for the benefit of the decree-holder and the children of the marriage, or either or any of them, in such manner and subject to such conditions as may be prescribed:

Provided that any such order, subject to such limitations as may be prescribed, and so much of a decree for the restitution of conjugal rights as relates to the payment of costs by either of the parties, may be enforced in the same manner as a decree for the payment of money.

(3) Save as provided in subsection (4), the court shall not, in the case of a decree for the payment of money, order the arrest or detention in prison of a judgment-debtor unless it is proved to the satisfaction of the court that the judgment-debtor either has or has had since the date of the decree the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same; and for the purposes of this subsection—

(*a*) proof of the means of the judgment-debtor may be given in such manner as the court thinks just, and the judgment-debtor and any witnesses may be summoned and examined on oath; and

(*b*) the court may, in lieu of ordering immediate detention, order that any sum payable by the judgment-debtor in pursuance of the decree shall be paid by instalments and that, in default of the payment of any instalment on the due date, the judgment-debtor shall be arrested and detained in prison, and may from time to time vary or rescind such order.

(4) The High Court may order the detention in prison of the judgment-debtor, without the proof of means referred to in subsection (3) of this section, in the following cases—

(*a*) default by a trustee or person acting in a fiduciary capacity in payment of any sum in his possession or control which he was ordered by the court to pay;

(*b*) default by an advocate or vakil in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court;

(*c*) default by an insolvent in payment for the benefit of his creditors of any portion of his salary or other income in respect of payment of which the court is authorised to make an order.

Enforcement of decree against legal representative.

39.—(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.

Liability of ancestral property.

40. For the purposes of section 37 and section 39, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Arrest and detention

Arrest and detention. 26 of 1943, s.3.

41.—(1) Where the court has ordered the arrest of a judgment-debtor in execution of a decree, he may be arrested at any hour and on any day, and shall, as soon as practicable, be brought before the court and his detention may be in the civil prison of the district in which the court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the British Resident may appoint for the detention of persons ordered by the court of such district to be detained:

Provided that—

(*a*) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise;

(*b*) no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;

(*c*) if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;

(*d*) where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The British Resident may, by notification in the *Gazette*, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the British Resident in this behalf.

Prohibition of arrest or detention of women or subordinate police officers in execution of decree for money. Cap. 50.

42. Notwithstanding anything in this Part, the court shall not order the arrest or detention in the civil prison of:—

(*a*) a woman in execution of a decree for the payment of money; or

(*b*) a member of the Zanzibar Police Force of or below the rank of Sergeant-Major enlisted under the Police Decree in execution of a decree for the payment of a sum of money not exceeding four hundred and fifty shillings.

Subsistence-allowance.

43. The British Resident may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Detention and release.

44.—(1) Every person detained in the civil prison in execution of a decree shall be so detained—

26 of 1948, s.4.

(*a*) where the order for detention is made by the High Court under subsection (4) of section 38, for a period of six months; and

(*b*) in any other case for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison;

(ii) on the decree against him being otherwise fully satisfied;

(iii) on the request of the person on whose application he has been so detained; or

(iv) on the omission by the person on whose application he has been so detained, to pay subsistence-allowance:

Provided also, that he shall not be released from such detention under paragraph (ii) or paragraph (iii), without the order of the court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

Release on ground of illness.

45.—(1) At any time after a warrant for the arrest of a judgment-debtor has been issued the court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(*a*) by the British Resident, on the ground of the existence of any infectious or contagious disease; or

(*b*) by the committing court, or any court to which that court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 44.

Attachment

Property liable to attachment and sale execution of decree.

46.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts due or accruing due, salary accrued or to become due, shares in a

corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely—

(*a*) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children and such personal ornaments as, in accordance with religious usage cannot be parted with by any woman;

(*b*) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the Land Alienation Decree or any other law for the time being in force; Cap. 94. G.N. 142 of 1954.

(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(*d*) books of account;

(*e*) a mere right to sue for damages;

(*f*) any right of personal service;

(*g*) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the *Gazette* by the British Resident in this behalf, and political pensions;

(*h*) allowances (being less than salary) of any public officer while absent from duty;

(*i*) the salary or allowances equal to salary of any such public officer as is referred to in paragraph (*h*), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed sixty shillings monthly;

(ii) sixty shillings monthly, where the salary exceeds sixty shillings and does not exceed one hundred and twenty shillings monthly; and

(iii) one moiety of the salary in any other case;

(*j*) the wages of labourers and domestic servants whether payable in money or in kind;

(*k*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*l*) a right to future maintenance;

(*m*) subject to the provisions of section 25 of the Co-operative Societies Decree, the share or interest of a member of a society registered, or deemed to be registered, under the last mentioned Decree;

Cap. 154.

(*n*) property of a ward to whom the provisions of section 6 of the Arab and African Guardianship Decree apply.

Cap. 54.

(2) The particulars mentioned in paragraphs (*g*), (*h*), (*i*) and (*j*) of subsection (1) are exempt from attachment or sale whether before or after they are actually payable.

(3) Nothing in this section shall be deemed—

(*a*) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land; or

(*b*) to affect the provisions of the Army Act or of any similar law for the time being in force.

Seizure of property in dwelling-house.

47.—(1) No person executing any process under this Decree directing or authorising seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time precaution, consistent with these provisions, to prevent its clandestine removal.

Property attached in execution of decrees of several courts.

48.—(1) Where property not in the custody of any court is under attachment in execution of decrees of more courts than one, the court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a court executing one of such decrees.

Private alienation of property after attachment to be void.

49.—(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) For the purposes of this section claims enforceable under an attachment include claims for the rateable distribution of assets.

Sale

Purchaser's title.

50. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

51.—(1) No suit shall be maintained against any person claiming the title under a purchase certified by the court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Distribution of assets

Proceeds of execution-sale to be rateably distributed among decree-holders.

52.—(1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons:

Provided as follows—

(*a*) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(*b*) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(*c*) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor who have, prior to the sale of the property, applied to the court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

Priority of wages.

53.—(1) Notwithstanding any other provisions of this Decree, whenever any attachment has been issued against the property of an employer in execution of any decree against him, the proceeds realised in pursuance of such execution shall not be paid by the court to any decree-holder until any decree or order obtained against such employer in respect of the wages or earnings of any servant or plantation worker has been satisfied to the extent of a sum not exceeding four months' wages or earnings of such servant or plantation worker:

Provided that nothing in this section contained shall be deemed to prevent a servant or plantation worker from recovering any balance due on such last mentioned decree or order, after such satisfaction as aforesaid, by ordinary process of law.

(2) In this section—

"employer" means any person who enters into a contract of service to employ any servant or plantation worker, and the agent, foreman, manager, or factor of such person and where a servant or plantation worker enters into a contract of service with the Government or with any officer on behalf of the Government, the officer under whom such person is working shall be deemed to be his employer;

"plantation worker" means a person who enters into an agreement verbal or written to receive wages day by day or at any other intervals not exceeding one week in respect of a stated amount of plantation work;

"servant" means any person employed for hire, wages or other remuneration as an artisan, boatman, domestic servant, herdsman, labourer, messenger, porter, sailor or in any employment of like nature to any of the foregoing, and includes a person to be exhibited in any capacity in a circus, show or exhibition, but does not include any member of the local civil service, or a plantation worker or any person remunerated at a rate exceeding such amount as may be prescribed.

Resistance to execution

Resistance to execution.

54. Where the court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

PART III

INCIDENTAL PROCEEDINGS

Commissions

Power of court to issue commissions.

55. Subject to such conditions and limitations as may be prescribed, the court may issue a commission—

(*a*) to examine any person;

(*b*) to make a local investigation;

(*c*) to examine or adjust accounts; or

(*d*) to make a partition.

Commission to another court.

56.—(1) A commission for the examination of any person may be issued to any court situate in a district other than the district in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every court receiving a commission for the examination of any person under subsection (1) shall examine him or cause him to be examined pursuant thereto, and the commission when it has been duly executed, shall be returned together with the evidence taken under it to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Letter of request.

57. In lieu of issuing a commission the High Court may issue a letter of request to examine a witness residing at any place not within Zanzibar.

Commissions issued by foreign courts.

58. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

(*a*) courts situate beyond the limits of Zanzibar and established by the authority of Her Majesty;

(*b*) courts situate in any part of the British Empire other than Zanzibar; or

(*c*) courts of any foreign country.

PART IV

SUITS IN PARTICULAR CASES

Suits by or against the Zanzibar Government or Public Officers in their official capacity

Suits by or against Government.

59. Suits by or against the Zanzibar Government shall be instituted by or against the British Resident.

Two months' notice to be given.

60.—(1) No suit shall be instituted against the Zanzibar Government, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of, the Chief Secretary to the Zanzibar Government or the District Commissioner of the district, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims: and the plaint shall contain a statement that such notice has been so delivered or left.

(2) For the purposes of this section and of sections 59, 61 and 62 a Township Council established under the provisions of the Townships Decree shall be deemed to be a part of the Zanzibar Government.

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(3) In computing the period of limitation prescribed for any suit to which this section applies the period of such notice shall be excluded.

(4) Nothing in this section shall apply to any suit against the Administrator-General in which no relief is claimed against him personally.

Exemption from arrest and personal appearance.

61. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

(*a*) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree; and

(*b*) where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Execution of decree.

62.—(1) Where the decree is against the Zanzibar Government or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the court shall report the case for the orders of the British Resident.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

Suits by Aliens and by or against Foreign Rulers

When foreign States may sue.

63.—(1) Alien enemies residing in Zanzibar with the permission of the British Resident, and alien friends, may sue in the courts of Zanzibar as if they were subjects of Her Majesty.

(2) No alien enemy residing in Zanzibar without such permission, or residing in a foreign country, shall sue in any of such courts.

(3) Every person residing in a foreign country the Government of which is at war with the United Kingdom and carrying on business in that country without a licence in that behalf under the hand of one of Her Majesty's Secretaries of State or of the British Resident, shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in a foreign country.

When aliens may sue.

64.—(1) A foreign State may sue in any Zanzibar court:

Provided that such State has been recognised by Her Majesty or by the British Resident:

Provided also that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every court shall take judicial notice of the fact that a foreign State has or has not been recognised by Her Majesty or by the British Resident.

Interpleader

Where interpleader suit may be instituted.

65. Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided no such suit of interpleader shall be instituted.

PART V

SPECIAL PROCEEDINGS

Arbitration

Arbitration. G.N. 118 of 1953.

66. All references to an arbitration by an order in a suit, and all proceedings thereunder, shall be governed by the provisions contained in the Third Schedule.

Special Case

Power to state case for opinion of court.

67. Where any persons agree in writing to state a case for the opinion of the court, then the court shall try and determine the same in the manner prescribed.

Suits relating to public matters

Public nuisances.

68.—(1) In the case of a public nuisance the Attorney-General, or two or more persons having obtained the consent in writing of the Attorney-General, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Public charities.

69.—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney-General, may institute a suit, whether contentious or not, to obtain a decree—

(*a*) removing any trustee;

(*b*) appointing a new trustee;

(*c*) vesting any property in a trustee;

(*d*) directing accounts and inquiries;

(*e*) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(*f*) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(*g*) settling a scheme; or

(*h*) granting such further or other relief as the nature of the case may require.

(2) For the purposes of this section and of section 68 any document purporting to bear the fiat of the Attorney-General shall be received as *prima facie* evidence in any proceeding without proof being given that the signature to such fiat is that of the Attorney-General.

PART VI

SUPPLEMENTAL PROCEEDINGS

Supplemental proceedings.

70.—(1) In order to prevent the ends of justice from being defeated the court may—

26 of 1948, s.5.

(*a*) subject to the provisions of subsection (2), order that the defendant be arrested and detained in prison for a period not exceeding six months unless and until he shall sooner give such security for appearance as the court may direct;

(*b*) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;

(*c*) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(*d*) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(*e*) make such other interlocutory orders as may appear to the court to be just and convenient.

(2) The jurisdiction conferred by paragraph (*a*) of subsection (1) shall not be exercised unless the plaintiff, at any time before final judgment, proves to the satisfaction of the court—

(*a*) that he has good cause of action against the defendant to the amount of two hundred shillings or upwards; and

(*b*) that there is probable cause for believing that the defendant is about to quit the Protectorate unless he be apprehended; and

(*c*) that the absence of the defendant from the Protectorate will materially prejudice the plaintiff in the prosecution of his suit.

Compensation for obtaining arrest, attachment or injunction on insufficient ground.

71.—(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section—

(*a*) it appears to the court that such arrest, attachment or injunction was applied for on insufficient grounds; or

(*b*) the suit of the plaintiff fails and it appears to the court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the court, and the court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand five hundred shillings, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII

APPEALS

Appeals from original decrees

Appeal from original decree.

72.—(1) Save where otherwise expressly provided in the body of this Decree or by any other law for the time being in force, an appeal shall lie from every decree passed by any subordinate court to the High Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the court with the consent of parties.

Appeal from final decree where no appeal from preliminary decree.

73. Where any party aggrieved by a preliminary decree passed after the commencement of this Decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Decision where appeal heard by two Judges.

74. Where an appeal is heard by a Bench of two Judges, and they differ, the opinion of the senior Judge shall prevail.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

75. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court.

Appeals from appellate decrees

Second appeal, when allowed. 20 of 1950. s.2.

76.—(1) Save where otherwise expressly provided in the body of this Decree or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely:—

(*a*) that the decision is contrary to law or to some usage having the force of law;

(*b*) that the decision has failed to determine some material issue of law or usage having the force of law;

(*c*) that there is a substantial error or defect in the procedure provided by this Decree or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Second appeal on no other grounds. 20 of 1950, s.2.

77. No second appeal shall lie except on the grounds mentioned in section 76.

No second appeal in certain suits. 20 of 1950, s.2.

78. No appeal shall lie in any suit when the amount or value of the subject matter of the original suit does not exceed one thousand shillings, unless special leave has been first obtained from the second appellate court.

Appeals by poor persons. 20 of 1950, s.2.

79. There shall be no appeal as a poor person to any appellate court save in such cases and in such manner as may be prescribed by Rules made under Part X, or in the case of a second appeal, in such manner as may be prescribed by Rules made by the second appellate court.

Power to reserve questions of law for opinion of the Court of Appeal. 20 of 1950, s.2.

80.—(1) Subject to such conditions and limitations as may be prescribed, a Judge of the High Court may reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of any suit or matter, and may give judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine every such question.

(2) Such power of reservation shall be in addition and without prejudice to any right of appeal conferred by this Decree.

Appeals from orders

Orders from which appeal lies.

81.—(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this decree or by any law for the time being in force from no other orders—

(*a*) an order superseding an arbitration where the award has not been completed within the period allowed by the court;

(*b*) an order on an award stated in the form of a special case;

(*c*) an order modifying or correcting an award;

(*d*) an order filing or refusing to file an agreement to refer to arbitration;

(*e*) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(*f*) an order filing or refusing to file an award in an arbitration without the intervention of the court;

(*g*) an order under section 71;

(*h*) an order under any of the provisions of this decree imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(*i*) any order made under Rules from which an appeal is expressly allowed by Rules.

(2) No appeal shall lie from any order passed in appeal under this section.

Other orders.

82.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in subsection (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

General provisions relating to appeals

Powers of appellate court.

83.—(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

(*a*) to determine a case finally;

(*b*) to remand a case;

(*c*) to frame issues and refer them for trial;

(*d*) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Decree on courts of original jurisdiction in respect of suits instituted therein.

Orders from which appeal lies.

84. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals from orders made under this Decree or under any special or local law in which a different procedure is not provided.

Appeals from High Court. 4 of 1952, s.2.

85. Subject to the other provisions of this Decree or of any other law for the time being in force and subject to such conditions as may be prescribed whether by Rules made under this Decree or by any Rules of Court made under the Eastern African Court of Appeal Order in Council, 1950, an appeal shall lie to the Court of Appeal from any decree or any part of any decree or from any order of the High Court passed or made in the exercise of its original jurisdiction under this Decree.

No new trial for improper admission or rejection of evidence.

86. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Omission to make oath.

87. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever in, or in respect of, which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

PART VIII

REFERENCE, REVIEW AND REVISION

Reference to High Court.

88. Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Review.

89. Subject as aforesaid, any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed by this Decree, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is allowed by this Decree; or

(*c*) by a decision on a reference from a subordinate court,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

Revision.

90. The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(*a*) to have exercised a jurisdiction not vested in it by law;

(*b*) to have failed to exercise a jurisdiction so vested;

(*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

PART IX

LIMITATION OF APPEALS AND APPLICATIONS

Definitions

Definitions applicable to this Part.

91. In this Part, unless there is anything repugnant in the subject or context—

"applicant" includes any person from or through whom an applicant derives his right to apply;

"defendant" includes any person from or through whom a defendant derives his liability to be sued.

Limitation of appeals and applications

Appeals or applications made after period of limitation.

92. Subject to the other provisions of this Decree every appeal preferred, and application made, after the period of limitation prescribed therefor by the First Schedule shall be dismissed although limitation has not been set up as a defence:

Provided that where any period is fixed for the doing of any act allowed or prescribed by this Decree, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed may have expired.

Limit of time for execution.

93.—(1) Notwithstanding the provisions of Article 24 of the First Schedule, no application for execution of a decree, not being a decree granting an injunction, shall be entertained upon an application presented after the expiration of twelve years from—

(*a*) the date of the decree sought to be executed; or

(*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(*a*) to preclude the court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(*b*) to limit or otherwise affect the operation of Article 24 of the First Schedule.

Where court is closed when period expires.

94. Where the period of limitation prescribed for any appeal or application expires on a day when the court is closed, the appeal or application may be instituted, preferred or made on the day on which the court re-opens.

Extension of period in certain cases.

95.—(1) Any application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

(2) The fact, that the applicant was misled by any order, practice or judgment of the court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal disability.

96.—(1) Where a person entitled to make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability he may make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in subsections (1) and (2) shall apply.

Disability of one of several applicants.

97. Where one of several persons jointly entitled to make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Special exception.

98. Nothing in section 96 or 97 shall be deemed to extend for the period within which any application may be made for a period of more than three years from the cessation of the disability or the death of the person affected thereby.

Continuous running of time.

99. Where once time has begun to run, no subsequent disability or liability stops it.

Computation of period of limitation

Exclusion of time in certain proceedings.

100.—(1) In computing the period of limitation prescribed for any appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of proceeding *bona fide* in court without jurisdiction.

101.—(1) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in an appellate court against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In excluding the time during which a former application was pending, the day on which that application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

(3) For the purposes of this section—

(*a*) an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(*b*) misjoinder of parties or causes of action shall be deemed to be causes of a like nature with defect of jurisdiction; and

(*c*) nothing shall be deemed to be done in good faith which is not done with due care and attention.

Exclusion of time during which proceedings are suspended.

102. In computing the period of limitation prescribed for any application for the execution of a decree, the execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Effect of death before right to apply accrues.

103.—(1) Where a person who would, if he were living, have a right to make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of making such application.

(2) Where a person against whom, if he were living, a right to make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may make such application.

Effect of fraud.

104. Where any person having a right to make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

105.—(1) Where, before the expiration of the period prescribed an application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Evidence Decree, oral evidence of its contents shall not be received.

Cap. 5.

(3) For the purposes of this section—

(*a*) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right;

(*b*) an application for the execution of a decree or order is an application in respect of a right; and

(*c*) "signed" means signed either personally or by an agent duly authorised in this behalf.

Effect of payment of interest as such or of part payment of principal.

106.—(1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Effect of receipt of produce of mortgaged land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of subsection (1).

(3) In this section "debt" includes money payable under a decree or order of court.

Agent of person under disability

107.—(1) The expression "agent duly authorised in this behalf", in sections 105 and 106, shall in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

Saving

Saving.

108. Nothing in this Decree shall affect or alter any period of limitation specially prescribed for any appeal or application by any special or local law now or hereafter in force.

PART X

RULES

Effect of Rules in Second Schedule.

109. The Rules in the Second Schedule shall have effect as if enacted in the body of this Decree until annulled or altered in accordance with the provisions of this Part.

Matters for which Rules may provide.

110.—(1) The Chief Justice shall have power to make Rules not inconsistent with the provisions in the body of this Decree and, subject thereto, to provide for any matters relating to the procedure of civil courts.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), such Rules may provide for all or any of the following matters, namely—

(*a*) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(*b*) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

(*c*) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;

(*d*) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(*e*) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(*f*) summary procedure—

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

on a contract express or implied;

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty;

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only;

on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(*g*) procedure by way of originating summons;

(*h*) consolidation of suits, appeals and other proceedings;

(*i*) delegation to any Registrar or other official of the court of any judicial, quasi-judicial and non-judicial duties; and

(*j*) all forms, registers, book, entries and accounts which may be necessary or desirable for the transaction of the business of civil courts.

(3) Rules framed under this section shall not have effect until approved by the British Resident. 3 of 1945, s.2.

PART XI

MISCELLANEOUS

Exemption of certain women from personal appearance.

111.—(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Decree.

Exemption of other persons.

112.—(1) The British Resident may, by notification in the *Gazette*, exempt from personal appearance in court any person whose rank in the opinion of the British Resident, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the British Resident and a list of such persons shall be kept in such court, and a list of such persons as reside within the local limits of the jurisdiction of each court subordinate to the High Court shall be kept in such subordinate court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Arrest other than in execution of decree.

113. The provisions of sections 41, 43 and 45 shall apply, so far as may be, to all persons arrested under this Decree.

Exemption from arrest under civil process.

114.—(1) No Judge, magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their advocates, and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from

arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

26 of 1948, s.6.

(3) Nothing in subsection (2) shall enable a judgment-debtor to claim exemption from arrest where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Procedure where person to be arrested or property to be attached is outside local limits of jurisdiction of court.

115.—(1) Where an application is made to a subordinate court that any person shall be arrested or that any property shall be attached under any provision of this Decree, and where such person resides or is found, or such property is situate, outside the local limits of the jurisdiction of the court to which the application is made, the court may in its discretion issue a warrant of arrest, or make an order of attachment, and send to the magistrate of the subordinate court within the local limits of whose jurisdiction such person resides or is found or such property is situate the warrant or order together with the probable amount of the costs of the arrest or attachment.

(2) On the issue of such warrant or order the magistrate of the subordinate court within whose jurisdiction the person to be arrested resides or is found or the property to be attached is situate, as the case may be, shall have power—

(*a*) to endorse and execute such warrant or order; or

(*b*) to issue, before such endorsement, a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under such provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced and endorsed within such time as may seem reasonable.

(3) The court ordering an arrest under subsection (2) shall upon receipt of the original warrant send the person arrested to the court by which the original warrant was issued, unless such person shows cause to the satisfaction of the former court why he should not be so sent, or unless he furnishes sufficient security for his appearance before the latter court or for satisfying any decree that may be or may have been passed against him by that court, in either of which cases the court making the arrest shall release him and shall inform the court by which the original warrant was issued accordingly.

Transfer of property in pending suit.

116. During the active prosecution in any court in the Protectorate of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, such property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except on the authority of the court and on such terms as it may impose.

Language of courts.

117.—(1) The British Resident may declare what shall be the language of any court and in what character applications to and proceedings in such courts shall be written.

(2) Where this Decree requires or allows anything other than the recording of evidence to be done in writing in any such court, such writing may be in English; but if any party or his advocate is unacquainted with English a translation into the language of the court shall, at his request, be supplied to him; and the court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

Assessors.

118.—(1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the court may direct or as may be prescribed.

(3) In any other civil suit or proceeding any court may on its own motion or at the request of any of the parties call in the aid of one or more assessors specially qualified and shall in that case record the opinion of such assessor or assessors:

Provided that no assessor so called in as aforesaid shall have any voice in the decision of the court.

Miscellaneous proceedings.

119. The procedure provided in this Decree, in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

Orders and notices to be in writing.

120. All orders and notices served on or given to any person under the provisions of the Decree shall be in writing.

Postage.

121. Postage, where chargeable on a notice, summons or letter issued under this Decree and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the Judge may remit such postage, or fee, or both, or may with the consent of a Secretary of State prescribe a scale of court-fees to be levied in lieu thereof.

Application for restitution.

122.—(1) Where and in so far as a decree is varied or reversed, the court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the court may make

any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).

Enforcement of liability of surety.

123. Where any person has become liable as surety—

(*a*) for the performance of any decree or any part thereof;

(*b*) for the restitution of any property taken in execution of a decree; or

(*c*) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 35:

Provided that such notice as the court in each case thinks sufficient has been given to the surety.

Proceedings by or against representatives.

124. Save as otherwise provided by this Decree or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Consent or agreement by persons under disability.

125. In all suits to which any person under disability is a party, any consent or agreement, as to any proceedings shall, if given or made with the express leave of the court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

Enlargement of time.

126. Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Decree, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power to make up deficiency of court fees.

127. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Transfer of business.

128. Save as otherwise provided, where the business of any court is transferred to any other court, the court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Decree upon the court from which the business was so transferred.

Saving of inherent powers of court.

129. Nothing in this Decree shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Amendment of judgments, decrees or orders.

130. Clerical or arithmetical mistakes in judgments, decrees, or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

General power to amend.

131. The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Evidence of signature of British Resident or Attorney-General to fiat.

132. Whenever the fiat of the British Resident or the Attorney-General is necessary before any action is commenced, any document purporting to bear the fiat of the British Resident or the Attorney-General (as the case may be) shall be received as *prima facie* evidence in any proceeding without proof being given that the signature to such fiat is that of the British Resident or the Attorney-General (as the case may be).

FIRST SCHEDULE
(Section 92)

Limitation of Appeals and Applications

PART I

APPEALS

Description of appeal.	*Period of limitation*	*Time from which period begins to run*
1. To the High Court.	Ninety days ..	The date of the order or decree appealed from.

PART II

APPLICATIONS

Description of Application	*Period of limitation*	*Time from which period begins to run*
2. To set aside an award.	Twenty days ..	When the award has been filed and notice of filing had been given to the parties.
3. For leave to appear and defend a suit under the summary procedure referred to in section 110(2)(*f*) or under Order XLII of the Second Schedule—		
(*a*) When the summons is issued and the defendant is served in the same Island of the Protectorate.	Ten days ..	When the summons is served.
(*b*) When the summons is issued in one Island of the Protectorate and is served on the defendant in another Island.	Fifteen days ..	When the summons is served.
4. For an order to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days ..	When the application for review is rejected.
5. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days ..	The date of the dismissal.
6. By a defendant, for an order to set aside a decree passed *ex parte*.	Thirty days ..	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.
7. By a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	do. ..	The date of the dispossession.
8. To set aside a sale in execution of a Decree.	do. ..	The date of the sale.
9. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	do. ..	The date of the resistance or obstruction.

Description of Application	*Period of limitation*	*Time from which period begins to run*
10. For the re-admission of an appeal dismissed for want of prosecution.	Thirty days ..	The date of the dismissal.
11. For the re-hearing of an appeal heard *ex parte*.	do. ..	The date of the decree in appeal or, where notice not duly served, when the applicant has knowledge of the decree.
12. For leave to appeal as a pauper. ..	do. ..	The date of the decree appealed from.
13. For leave to appeal from a subordinate court.	do. ..	The date of the decree or order appealed from.
14. For an order to set aside an abatement.	Sixty days ..	The date of the abatement.
15. By the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	do. ..	The date of the order of dismissal.
16. For a review of judgment. ..	Ninety days ..	The date of the decree or order.
17. For the issue of a notice to show cause why any payment made out of court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	do. ..	When the payment or adjustment is made.
18. For payment of the amount of a decree by instalments.	Six months ..	The date of the decree.
19. To have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	do. ..	The date of the death of the deceased plaintiff or appellant.
20. To have the legal representative of a deceased defendant or of a deceased respondent made a party.	do. ..	The date of the death of the deceased defendant or respondent.
21. For the filing in a suit made in any matter referred to arbitration by order of a court.	do. ..	The date of the award.
22. By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years ..	When the sale becomes absolute.
23. Applications for which no period of limitation is provided elsewhere in this Schedule or by any other Decree.	do. ..	When the right to apply accrues.
24. For the execution of a decree or order of any civil court not provided for by Article 25, subject to the provisions of section 93 of the Decree.	Three years; or, where a certified copy of the decree or order has been registered, six years	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the appellate court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper court for execution, or to take some step in aid of execution of the decree or order, or 6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Decree, or

Description of Application	*Period of limitation*	*Time from which period begins to run*
24. For the execution of a decree or order of any civil court not provided for by Article 25, subject to the provisions of section 93 of the Decree.	Three years; or, where a certified copy of the decree or order has been registered, six years.	7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date. *Explanation 1.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject matter as payable or deliverable to each, the application mentioned in clause 5 of this Article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. *Explanation 2.*—"Proper court" means the court whose duty it is to execute the decree or order.
25. To enforce a judgment, decree or order of Her Majesty in Council.	Twelve years ..	Where a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been payed, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the dates of such revivors, payments, or acknowledgments, as the case may be.

***SECOND SCHEDULE**

(Section 109)

RULES

***THIRD SCHEDULE**

(Section 66)

ARBITRATION

* Printed under Subsidiary Legislation. *See* pages 49 and, *et seq.*, below.

THE LAWS OF ZANZIBAR

CHAPTER 8

CIVIL PROCEDURE

(SUBSIDIARY LEGISLATION)

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, ZANZIBAR

CHAPTER 8

CIVIL PROCEDURE

THE CIVIL PROCEDURE RULES

(Second Schedule, s. 109)

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[**Subsidiary**]

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RULES

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[Subsidiary]

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R.L.Z., 1934, Vol. IV, pp. 237-452.

CHAPTER 8

CIVIL PROCEDURE

THE CIVIL PROCEDURE RULES

G.N. 23 of 1935. 30 of 1938. 134 of 1940. 215 of 1945. 234 of 1945. 285 of 1946. 65 of 1947. 101 of 1947. 12 of 1949. 66 of 1949. 115 of 1950. 40 of 1951. 180 of 1951. 26 of 1952. 91 of 1953. 197 of 1953. 76 of 1957.

(Being the Second Schedule to the Decree as amended by Rules made under section 110)

ORDER I

PARTIES TO SUITS

Who may be joined as plaintiffs.

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

Power of court to order separate trials.

2. Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Who may be joined as defendants.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

Court may give judgment for or against one or more of joint parties.

4. Judgment may be given without any amendment—

(*a*) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(*b*) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant need not be interested in all the relief claimed.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Joinder of parties liable on same contract.

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

When plaintiff in doubt from whom redress is to be sought.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

One person may sue or defend on behalf of all in same interest.

8.—(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under paragraph (1) may apply to the court to be made a party to such suit.

Misjoinder and nonjoinder.

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit in name of wrong plaintiff.

10.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or against whom the defendant claims to be entitled to contribution or indemnity, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) The proceedings as against any person added as a defendant shall be deemed to have begun only on service of the summons:

Provided that this paragraph shall not apply to—

(*a*) a case where a party is added or substituted owing to an assignment or devolution of interest during the pendency of a suit; or

(*b*) where a plaintiff is made a defendant or a defendant is made a plaintiff.

Conduct of suit.

11. The court may give the conduct of the suit to such person as it deems proper.

Appearance of one of several plaintiffs or defendants for others.

12.—(1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in court.

Objections as to non-joinder or misjoinder.

13. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II

FRAME OF SUIT

Frame of suit.

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

Suit to include the whole claim.

2.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

Relinquishment of part of claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished:

Provided that nothing contained in this paragraph shall be deemed to prevent a mortgagee, who has obtained a decree for the payment of money in satisfaction of a claim arising under a mortgage, from thereafter instituting a suit for sale in enforcement of such mortgage.

Omission to sue for one of several reliefs.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

(4) For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Recognised agents.

3.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Only certain claims to be joined for recovery of immovable property.

4. No cause of action shall, unless with the leave of the court, be joined with a suit for the recovery of immovable property, except—

(*a*) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(*b*) claims for damages for breach of any contract under which the property or any part thereof is held; and

(*c*) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Claims by or against executor, administrator or heir.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of court to order separate trials.

6. Where it appears to the court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the court may order separate trials or make such other order as may be expedient.

Objections as to misjoinder.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III

RECOGNISED AGENTS AND ADVOCATES

Appearances, etc., may be in person, by recognised agent or by advocate. 26 of 1952, r.2.

1. Any appearance, application or act in or to any court required or authorised by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by an advocate duly appointed to act on his behalf:

Provided that any such appearance, application or act shall, if the court so directs, be made or done by the party in person.

Recognised agents.

2. The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

(*a*) persons holding powers of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties:

40 of 1951, r.3.

Provided that, where the principal named in such power of attorney is a woman, the said power shall have been acknowledged by her in the manner in this Order hereinafter prescribed;

26 of 1952, r.3.

And provided also that no person holding such power of attorney shall institute any suit in any court without the leave of such court first had and obtained and subject to such terms and conditions as such court may impose;

(*b*) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

Power of attorney by a woman to be acknowledged.

3. No power of attorney authorising a recognised agent to make and do appearances, applications and acts on behalf of a woman shall be valid and effectual for the purposes of this Order, unless the said power be acknowledged by her in the manner hereinafter provided.

Acknowledgment, how made. 40 of 1951, r.4.

4. Every power of attorney to be executed by a woman for any of the purposes of this Order shall, except in the cases hereinafter provided by rule 7, be produced and acknowledged by her as her act and deed before a Magistrate or a Kathi exercising jurisdiction in the district in which such woman resides.

Woman to be questioned before her acknowledgment is received. 40 of 1951, r.4.

5. Before he shall receive the acknowledgment by a woman of any such power of attorney as is referred to in this Order, the Magistrate or Kathi shall question her, apart from any person other than an interpreter, and shall ascertain whether she understands and freely and voluntarily consents to such power, and unless he is satisfied that she understands and freely and voluntarily consents thereto, he shall not permit her to acknowledge the same; and in such case the said power shall, so far as relates to the execution thereof by such woman, be deemed to be void for the purposes of this Order.

Acknowledgment by woman living outside Protectorate or woman who is ill etc. 40 of 1951, r.4.

6. Where it is proved to the satisfaction of the court by evidence upon oath that by reason of residence outside the Protectorate, or ill-health, or any other sufficient cause that any woman is prevented from making the acknowledgment required by this Order before a Magistrate or Kathi in the manner hereinbefore provided, it shall be lawful for the court to issue a commission appointing any person therein named to be a commissioner to take the acknowledgment by the woman to be therein named of any such power as aforesaid:

Provided that every such commission shall be made returnable within such time, to be therein expressed, as the court shall think fit;

And provided also that, in a case where the woman resides outside the Protectorate, the court may, if it thinks fit, accept, in lieu of a power of attorney acknowledged in the manner prescribed by this Order, a power of attorney executed before and authenticated by a Notary Public or any Judge, Magistrate, British Consul or Vice Consul.

Memorandum of acknowledgment. 40 of 1951, r.4.

7.—(1) When a person taking an acknowledgment under this Order is satisfied that the woman fully understands and voluntarily and freely consents to the provisions of the power of attorney, he shall sign a memorandum to be indorsed on or written at the foot or in the margin of the said power in Arabic, English, or Kiswahili in Form No. 16 of Appendix I.

(2) Where for any reason it is not possible to indorse or write the said memorandum upon the power of attorney, the same shall be drawn up on a separate paper which shall be annexed to the power of attorney by sealing wax or otherwise annexed in a permanent manner to the said power and such memorandum shall contain particulars as to the date of execution of the said power and of the parties thereto.

(3) For the purposes of this Order a power of attorney appointing a recognised agent shall, where the principal is a woman, be deemed to be valid with effect from the date of her acknowledgment thereof in the manner hereinbefore prescribed.

Service of process on recognised agent.

8.—(1) Processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person, unless the court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent.

Service of process on advocate.

9. Any process served on the advocate of any party or left at the office or ordinary residence of such advocate, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the advocate represents and, unless the court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to accept service.

10.—(1) Besides the recognised agents described in rule 2 any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in court.

40 of 1951, r.5.

(3) Where the principal is a woman the appointment shall be acknowledged by her in the manner hereinbefore in this Order prescribed for the acknowledgment of a power of attorney by a woman.

ORDER IV

INSTITUTION OF SUITS

Suit to be instituted by plaint or application for summons.

1.—(1) Every suit in the High Court shall be instituted by presenting a plaint to the court or to such officer as may be appointed in this behalf.

(2) Every suit in a subordinate court shall be instituted either by presenting a plaint or by applying verbally or in writing for a summons with a concise statement of the claim indorsed thereon to the court or to such officer as may be appointed in this behalf.

(3) Where a suit is instituted in a subordinate court otherwise than by the presentation of a plaint the court may at any stage of the proceedings order the plaintiff to file a plaint within such time as the court may direct or upon his failure to do so may dismiss the suit.

(4) Every plaint shall comply with the rules contained in Orders VI and VII so far as they are applicable.

Register of suits.

2. The court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints or applications are admitted.

ORDER V

ISSUE AND SERVICE OF SUMMONS

Issue of Summons

Summons.

1.—(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under paragraph (1) may appear—

(*a*) in person;

(*b*) by an advocate duly instructed and able to answer all material questions relating to the suit; or

(*c*) by an advocate accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the court.

Copy or statement annexed to summons.

2. Every summons shall be accompanied by a copy of the plaint, if any, or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person.

3.—(1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

(2) Where the court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within Zanzibar.

4. No party shall be ordered to appear in person unless he resides within Zanzibar.

Summons to be either to settle issues or for final disposal.

5.—(1) Unless the court otherwise directs every summons in the High Court shall be in Form No. 2 of Appendix B, and shall be for directions only except when the defendant fails to appear.

(2) Unless the court otherwise directs every summons in a subordinate court shall be for the final disposal of the suit and shall be in Form No. 1 of Appendix B.

Fixing day for appearance of defendant.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

On issue of summons for final disposal, defendant be directed to produce his witnesses

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons within the Jurisdiction

Delivery or transmission of summons for service.

9.—(1) When the defendant resides or has an agent who is empowered to accept service of a summons resident within Zanzibar the summons shall, unless the court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates. If required the plaintiff or some person on his behalf must accompany the serving officer to point out the defendant.

(2) The proper officer may be an officer of a court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13.—(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Service on agent in charge in suits for immovable property.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on male member of defendant's family.

15.—(1) Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

(2) A servant is not a member of the family within the meaning of this rule.

Persons served to sign acknowledgment.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service indorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report indorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Indorsement of time and manner of service.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, indorse or annex, or cause to be indorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons. Such indorsement shall be deemed to be evidence of service.

Examination of serving officer.

19. Where a summons is returned under rule 17, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

20.—(1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.

Effect of substituted service.

(2) Service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.

(3) Where service is substituted by order of the court, the court shall fix such time for the appearance of the defendant as the case may require.

Service of summons where defendant resides within jurisdiction of another court.

21. A summons may be sent by the court by which it is issued, whether within or without the district, either by one of its officers or by post to any court having jurisdiction in the place where the defendant resides.

Duty of court to which summons is sent.

22. The court to which a summons is sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the summons to the court of issue, together with the record (if any) of its proceedings with regard thereto.

Service on defendant in prison.

23. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service on a public officer or member of H.M. Forces.

24.—(1) Where the defendant is a public officer or a member of Her Majesty's Naval, Military or Air Forces or is serving on board any British or foreign vessel the court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed or to his commanding officer or to the master of the ship in which he is serving.

(2) Any signed statement by the person to whom the summons is sent under paragraph (1) or the written acknowledgment of the defendant shall be deemed to be evidence of service.

Substitution of letter for summons.

25.—(1) The court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under paragraph (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of paragraph (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by special messenger selected by the court, or in any other manner which the court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

Service of summons outside the Jurisdiction

In certain cases service of summons allowed out of the jurisdiction.

26. When the defendant is out of Zanzibar and has no agent in Zanzibar empowered to accept service the summons may not be served upon him except with the leave of the court and in accordance with other provisions of these Rules.

When service out of the jurisdiction allowed.

27. Service of a summons on a defendant outside Zanzibar may be allowed by the court whenever---

(*a*) the whole subject matter of the suit is land situated in Zanzibar (with or without rents and profits);

(*b*) any act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside or enforced in, the suit;

(*c*) any relief is sought against any person domiciled or ordinarily resident in Zanzibar;

(*d*) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled in Zanzibar or for the execution (as to property situate in Zanzibar) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Zanzibar;

(*e*) the action is one brought to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of the breach of a contract—

(i) made in Zanzibar,

(ii) made by or through an agent trading or residing in Zanzibar on behalf of a principal trading or residing out of Zanzibar, or

(iii) by its terms or by implication to be governed by Zanzibar law, or is one brought in respect of a breach committed in Zanzibar of a contract wherever made, even though such breach was preceded or accompanied by a breach out of Zanzibar which rendered impossible the performance of the part of the contract which ought to have been performed in Zanzibar;

(*f*) the action is founded on a tort committed in Zanzibar;

(*g*) any injunction is sought as to anything to be done in Zanzibar, or any nuisance in Zanzibar is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(*h*) any person out of Zanzibar is a necessary or proper party to an action properly brought against some other person duly served in Zanzibar.

Court to exercise discretion.

28. Where leave is asked under rule 27 to serve a summons in Kenya, Uganda, Nyasaland or Tanganyika if it shall appear that there may be a concurrent remedy in the place of the defendant's residence the court shall have regard to the comparative costs and convenience of proceedings in Zanzibar or in the place where the defendant resides.

Notice in lieu of summons.

29. When the defendant is neither a British nor a Zanzibar subject and is not in Her Majesty's dominions or in any British Protectorate or Territory administered by or on behalf of Her Majesty's Government under any Trust, notice of the summons and not the summons itself is to be served upon him.

Application to be supported by evidence.

30. Every application for leave to serve such summons or notice on a defendant out of Zanzibar shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place and country such defendant is or probably may be found, and whether such defendant is

a British or Zanzibar subject or not, and the grounds on which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of Zanzibar under this order.

Order to fix time for filing written statement.

31. Any order giving leave to effect such service of a summons or notice shall limit a time after such service within which the defendant is to file a written statement, such time to depend on the place or country where or within which the service is to be effected.

How service out of the jurisdiction is to be effected.

32. Where leave is given to serve a summons or notice of a summons on a defendant residing out of Zanzibar such service may be effected in any one of the manners following—

(*a*) when the defendant resides in France or in Belgium or other foreign country with which a convention for the service of legal process is in force, so far as such convention extends, in accordance with the provisions of such convention;

(*b*) when the defendant resides in a foreign country with which no convention for the service of legal process is in force—

(i) by forwarding the summons through the British Resident to Her Majesty's diplomatic representative in the country concerned for transmission to the judicial authority in such country competent to effect such service; or

(ii) Where the local law of such country permits a British Consular Officer to effect such service, by forwarding the summons through the British Resident to Her Majesty's Superintending Consular Officer in such country wherein the service of the summons is desired;

and if such judicial authority or Consular Officer returns the summons with an indorsement signed by or on behalf of such judicial authority or Consular Officer that the summons has been served on the defendant such indorsement shall be deemed to be evidence of service. Such service shall be good service if effected in the manner prescribed for service in Zanzibar or in the place in which the defendant resides;

(*c*) when the defendant resides within Her Majesty's dominions or any British protectorate or territory administered by or on behalf of Her Majesty's Government by any trust, by forwarding the summons to any political or other officer administering the country or to any court exercising jurisdiction in the place of the defendant's residence by post or otherwise and, if such officer or court returns the summons with an indorsement signed by or on behalf of such political or other officer or any Judge or officer of such court that the summons has been served on the defendant such indorsement shall be deemed to be evidence of service. Such service shall be good service if effected in the manner prescribed for service in Zanzibar or in the place in which the defendant resides;

(*d*) by registered post, in which case the official "avis de réception" or any official indorsement on the packet may be accepted as evidence of service; or

(*e*) in such other manner as the court may in any special instance direct.

Extension of procedure to any order or notice.

33. Any other order, notice or summons shall be deemed to be duly served upon a person resident out of Zanzibar if served in the manner prescribed for service of a summons on a defendant resident out of Zanzibar.

Service of Foreign Legal Process in Zanzibar

Procedure in ordinary cases.

34. Where in any civil or commercial matter pending before a court or tribunal of a foreign country a letter of request from such court or tribunal for service on any person in Zanzibar of any process or citation in such matter is transmitted through the diplomatic channel to the British Resident, and by him transmitted to the High Court, with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:—

(1) The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

(2) Service of the process or citation shall be effected by the process-server, whom the Chief Justice may appoint from time to time for the purpose, or his authorised agent.

(3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the Rules and practice of Her Britannic Majesty's Court regulating service of process.

(4) After service has been effected the process-server shall return to the Registrar one copy of the process, together with the evidence of service by affidavit of the person effecting the service verified by notarial certificate, and particulars of charges for the cost of effecting such service.

(5) The particulars of charges for the cost of effecting service shall be submitted to the Registrar, who shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges and certificates shall be forwarded to the British Resident.

(6) The Registrar shall forward to the British Resident for transmission to Her Majesty's Secretary of State for the Colonies the letter of request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the High Court for use out of the jurisdiction. Such certificate shall be in Form No. 13 of Appendix B.

Procedure when Convention exists. G.N. 23 of 1935.

35. Where in any civil or commercial matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made and applied to Zanzibar, a request for service of any document on a person in Zanzibar is received by the Registrar of Her Britannic Majesty's High Court for Zanzibar from the Consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:—

(1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request and the copy of the translation, to the party or person to be served in person by a process-server of the court.

(2) No court fees shall be charged in respect of the service. The particulars of the charges for the cost of effecting service shall be submitted to the Registrar of Her Britannic Majesty's High Court for Zanzibar who shall certify the amount properly payable in respect thereof.

(3) The Registrar of Her Britannic Majesty's High Court for Zanzibar shall transmit to the Consular or other authority making the request a certificate establishing the fact and the date of the service in person or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify to the said Consular or other authority the amount of the charges certified under paragraph (2).

General powers of the court.

36. Upon the application of the Attorney-General the court or a Judge may make all such orders for substituted service or otherwise as may be necessary to give effect to these Rules.

ORDER VI

PLEADINGS GENERALLY

Pleading.

1. "Pleading" shall mean plaint or written statement.

Pleading to state material facts and not evidence.

2. Every pleading shall be in the English language and shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures.

Forms of pleading.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Particulars to be given where necessary.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Further and better statement, or particulars.

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Condition precedent.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Departure.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Effect of document to be stated.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, knowledge, etc.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract, or relation.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Pleading to be signed.

14. Every pleading shall be signed by the party and his advocate or wakyl (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Verification of pleadings.

15.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

Striking out pleadings.

16. The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Amendment of pleadings.

17. The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Failure to amend after order.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court.

ORDER VII

PLAINT

Particulars to be contained in plaint.

1. The plaint shall contain the following particulars—

(*a*) the name of the court in which the suit is brought;

(*b*) the name, description and place of residence of the plaintiff;

(*c*) the name, description and place of residence of the defendant, so far as they can be ascertained;

(*d*) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(*e*) the facts constituting the cause of action and when it arose;

(*f*) the facts showing that the court has jurisdiction;

(*g*) the relief which the plaintiff claims;

(*h*) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(*i*) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

In money suits.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

Provided that where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

In suits by moneylenders. 234 of 1945, r.2. 115 of 1950, r.2.

3.—(1) Where an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to any such money is brought by the lender or an assignee, the plaint shall state, in addition to any other particulars, the fact that at the time of making the loan or contract the plaintiff or (in an action by an assignee) the original assignor was a licensed moneylender, and shall also state—

(*a*) the date on which the loan was made;

(*b*) the amount actually lent to the borrower;

(*c*) the rate per cent. per annum of interest charged;

(*d*) the date when the contract for re-payment was made;

(*e*) the fact that a note or memorandum of the contract was made, and was signed by the borrower;

(*f*) the date when a copy of the note or memorandum was delivered or sent to the borrower;

(*g*) the amount repaid;

(*h*) the amount due but unpaid;

(*i*) the date upon which such unpaid sum or sums became due;

(*j*) the amount of interest accrued due and unpaid on every such sum.

(2) In this rule "moneylender" shall have the meaning assigned to it in the Money lenders Decree. Cap. 166.

Where the subject matter of the suit is immovable property.

4. Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

When plaintiff sues as representative.

5. Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's interest and liability to be shown.

6. The plaint shall show that the defendant is or claims to be interested in the subject matter, and that he is liable to be called upon to answer the plaintiff's demand.

Grounds of exemption from limitation law.

7. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

Relief to be specifically stated.

8. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Relief founded on separate grounds.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

Procedure on admitting plaint.

10.—(1) The plaintiff shall indorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Concise statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the court shall sign such list and copies or statements if, on examination, he finds them to be correct.

Return of plaint.

11.—(1) The plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted.

Procedure on returning plaint.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint.

12. The plaint shall be rejected in the following cases—

(*a*) where it does not disclose a cause of action;

(*b*) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(*c*) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;

(*d*) where the suit appears from the statement in the plaint to be barred by any law;

(*e*) where the provisions of rule 3 have not been complied with. 234 of 1945, r.3.

13. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order. Procedure on rejecting plaint.

14. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Where rejection of plaint does not preclude presentation of fresh plaint.

ORDER VIII

WRITTEN STATEMENT AND SET-OFF

1. The defendant may, and, if so required by the court, shall, at or before the first hearing or within such time as the court may permit, present a written statement of his defence. Written statement.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. New facts must be specially pleaded.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admite the truth, except damages. Denial to be specific.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. Evasive denial.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Specific denial.

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Counter-claim by defendant.

6.—(1) A defendant in a suit may set up by way of set-off or counter-claim against the claim of the plaintiff, any right or claim, whether such set-off or counter-claim sounds in damages or not, and such set-off or counter-claim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit both on the original and on the cross-claim; and the court may, on the application of the plaintiff before trial, if in the opinion of the court such counter-claim cannot be conveniently disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit in respect thereof.

Counter-claim.

(2) Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Counter-claim by money-lender. 234 of 1945, r.4.

(3) In counter-claims by a moneylender or assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to any such money, the counter-claim shall state, in addition to any other particulars, the particulars referred to in sub-paragraphs (*a*) to (*j*) of paragraph (1) of rule 3 of Order VII.

Title of counter-claim.

(4) Where a defendant by his written statement sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his written statement a further title similar to the title in a plaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-suit, would be defendants to such cross-suit, and shall deliver copies of his written statement to such of them as are parties to the suit within the period which he is required to deliver it to the plaintiff.

Claim against a person not a party.

(5) Where any such person as in the last preceding rule mentioned is not a party to the suit, he shall be summoned to appear by being served with a copy of the written statement, endorsed with a summons to appear in the same form as in a summons issued on the institution of a suit and such service shall be regulated by the same Rules as are prescribed with respect to the service of a summons.

Appearance by third parties.

(6) Any person not a defendant to the suit who is served with a written statement and counter-claim as aforesaid, must appear thereto as if he had been served with a summons to appear in a suit or shall suffer the same consequence as if he failed to appear to such a summons.

Reply to counter-claim.

(7) The plaintiff or any person named in a written statement as a party to a counter-claim may present a reply by way of defence to the counter-claim within fourteen days of the service on him of the written statement and counter-claim or within such further period as the court may allow.

Judgment for balance.

(8) When in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Defence or set-off founded on separate grounds.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

New ground of defence.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Subsequent pleadings.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Procedure when party fails to present written statement called for by court. 234 of 1945, r.5.

10. Where any party who has been ordered to present a written statement or other pleading fails to present the same within the time fixed by the court, the court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit:

Provided that in suits by a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to any such money, the court shall not pronounce judgment against any party so failing to present a written statement or other pleading but in lieu thereof, unless the court sees fit to make some other order in relation to the suit, the provisions of rule 7 of Order XI shall apply in the same manner as they would apply in any case in which the plaintiff appears and the defendant does not appear when the case is called for hearing.

"Moneylender" defined. Cap. 166. 234 of 1945, r.6.

11. In this Order "moneylender" shall have the meaning assigned to it in the Moneylenders Decree.

ORDER IX

THIRD PARTY PROCEDURE

Third Party notice.

1.—(1) Where in any suit a defendant claims as against any person not already a party to the suit (in this Order called the third party)—

(*a*) that he is entitled to contribution or indemnity, or

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or

(*c*) that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

the court or Judge may give leave to the defendant to issue and serve a "third-party notice".

(2) The court or Judge may give leave to issue and serve a "third-party notice" on an *ex parte* application supported by affidavit, or, where the court or Judge directs a summons to the plaintiff to be issued, upon the hearing of the summons.

(3) Notwithstanding anything contained in paragraph (2), leave to issue a "third-party notice" for service on the British Resident under section 59 of the Decree, or a public officer in respect of any act purporting to be done by such public officer in his official capacity shall not be granted except after service of the notice prescribed by section 60 of the Decree in the manner therein prescribed and except upon an application to the court or a Judge by summons served upon the plaintiff and the Chief Secretary to the Zanzibar Government or the District Commissioner of the District.

(4) Leave to serve a "third-party notice" upon the British Resident shall not be granted unless the court or a Judge is satisfied that the Zanzibar Government is in possession of such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the said Government has arisen and as to the departments and of public officers concerned.

Form and issue of notice.

2. The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with Form No. 7 or Form No. 8 of Appendix B, with such variations as circumstances may require, and shall be sealed and served on the third party in the same manner as a summons is sealed and served under Order V.

Effect of notice.

3. The third party shall, as from the time of the service upon him of the notice, be a party to the suit with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

Default by third party.

4. If a third party duly served with a third-party notice does not appear on the day fixed by the notice for him to appear or makes default in delivering any pleading which he has been ordered to deliver, he shall, unless the court or Judge for any special reason otherwise directs, be deemed to admit the validity of and shall be bound by any judgment given in the suit, whether by consent or otherwise, and by any decision therein on any question specified in the notice; and when contribution or indemnity or other relief or remedy is claimed against him in the notice, he shall, unless the court or Judge for any special reason otherwise directs, be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy:

Provided that in the case of third-party proceedings against the Zanzibar Government the foregoing provisions of this rule shall not apply unless the court or a Judge so orders; and any application for such an order shall be made by summons served not less than seven days before the day fixed for the hearing thereof.

Absence of third party.

5.—(1) Where a third party does not appear on the day fixed by the notice for him to appear or makes default in delivering any pleading which he has been ordered to deliver and the defendant giving the notice suffers judgment by default, such defendant shall be entitled at any time, before or after satisfaction of the judgment against himself, by leave of the Court or Judge, to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third-party notice, or by leave of the Court or Judge to enter such judgment in respect of any other relief or remedy claimed as the Court or a Judge shall direct:

Provided that it shall be lawful for the Court or Judge to set aside or vary such judgment against the third party upon such terms as may seem just.

(2) A defendant shall not in any event be entitled to enter judgment against the Zanzibar Government under this rule without the leave of the Court or a Judge. Any application for leave to enter judgment against the Zanzibar Government under this rule shall be by summons served not less than seven clear days before the day fixed for the hearing thereof.

Third party directions.

6.—(1) If the third party appears on the day fixed in the summons for him to appear the Court or Judge may—

(*a*) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice, or

(*b*) if satisfied that there is a question or issue proper to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed in the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order such question or issue to be tried in such manner as the Court or Judge may direct, or

(*c*) direct that the name of the third party be struck out and that the third-party proceedings shall be set aside.

(2) Any directions given pursuant to this rule may be given either before or after any judgment has been obtained by the plaintiff against the defendant in the suit, and may be varied from time to time and may be rescinded.

Leave to defend.

7. On the day fixed in the notice for the third party to appear or at any other stage of the proceedings the court or Judge may, if it shall appear desirable to do so, give the third party liberty to defend the suit, either alone or jointly with the original defendant, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, pleadings or documents to be delivered, or amendments to be made, and give such directions as to the court or Judge shall appear proper for having the question and the rights and liabilities of the parties most conveniently determined and enforced and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgment in the action.

At trial.

8.—(1) Where the suit is tried, the court or Judge who tries the suit may, at or after the trial, pass such judgment as the nature of the case may require for or against the defendant giving the notice against or for the third party, and may grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to a suit duly instituted against him by the defendant:

Provided that execution shall not be issued without leave of the court or a Judge until after satisfaction by the defendant of the judgment against him.

(2) Where the suit is decided otherwise than by trial, the court or Judge may, on application by motion or summons, make such order as the nature of the case may require, and, where the plaintiff has recovered judgment against the defendant, may order such judgment as may be just to be entered for or against the defendant giving notice against or for the third party.

Costs.

9. The court or Judge may decide all questions of costs as between a third party and other parties to the suit, and may order any one or more of them to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.

Fourth and subsequent parties.

10.—(1) Where a third party makes as against any person not already a party to the action such a claim as is defined in rule 1, the provisions of this Order regulating the rights and procedure as between the defendant and the third party shall apply *mutatis mutandis* as between the third party and such other person, and the court or Judge may give leave to such third party to issue a third-party notice, and the preceding Rules of this Order shall apply *mutatis mutandis*, and the expression "third-party notice" and "third party" shall apply to and include every notice so issued and every person served with such notice respectively.

(2) Where a person served with a notice under this rule by a third party in turn makes such a claim as is defined in rule 1 against another person not already a party to the action, this Order as applied by this rule shall have effect as regards such further person and any other further person or persons so served and so on successively.

Co-defendants.

11.—(1) Where a defendant claims against another defendant—

(*a*) that he is entitled to contribution or indemnity, or

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or

(*c*) that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant making the claim and should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff and that defendant and another defendant or between any or either of them,

the defendant making the claim may without any leave issue on such other defendant a notice making such claim or specifying such question or issue.

(2) No appearance to such notice shall be necessary and the same procedure shall be adopted for the determination of such claim, question or issue between the defendants as would be appropriate under this Order if he were a third party.

(3) Nothing herein contained shall prejudice the rights of the plaintiff against any defendant to the suit.

Counter-claim.

12. In this Order the words "plaintiff" and "defendant" respectively shall include a plaintiff and a defendant to a counter-claim.

ORDER X

ORIGINATING SUMMONS

Who may take out originating summons and in respect of what matters. 2 of 1938. G.N. 27 of 1938.

1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, and the Commissioner of Debts appointed under the Land Protection (Debts Settlement) Decree, 1938, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative, or as *cestui qui trust* under the trust of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out, as of course, an originating summons, returnable before the Judge sitting in Chambers for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust of any of the following questions—

(*a*) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, legal representative, or *cestui qui trust*.

(*b*) the ascertainment of any class of creditors, devisees, legatees, legal representatives, or others.

(*c*) the furnishing of any particular accounts by the executors, administrators, or trustees and the vouching (when necessary) of such accounts.

(*d*) the payment into court of any moneys in the hands of the executors, administrators, or trustees.

(*e*) directing the executors, administrators, or trustees to do, or abstain from doing , any particular act in their character as such executors, administrators, or trustees.

(*f*) the approval of any sale, purchase, compromise or other transaction.

(*g*) the determination of any question arising in the administration of the estate or trust.

Order for administration of estate or of trust.

2. Any of the persons named in rule 1 may, in like manner, apply for and obtain an order for—

(*a*) the administration of the estate of the deceased;

(*b*) the administration of the trust.

Vendor or purchaser may take out summons.

3. A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, and from time to time, take out an originating summons returnable before the Judge sitting in Chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract).

Mortgagee or mortgagor may take out such summons.

4. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable before the Judge in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

When a partner may take out such summons.

5. When the existence of the partnership or the right to, or the fact of the dissolution thereof is not in dispute, any partner in a firm or his representatives may take out an originating summons, returnable before the Judge sitting in Chambers against his partners, or former partners, or their representatives (if any), for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of and winding up such partnership.

Persons interested under deed, etc., may take out such a summons.

6. Any person claiming to be interested under a deed, will, or other written instrument, may apply in Chambers by originating summons for the determination of any question of construction arising under the instrument, and for the declaration of the rights of the person interested.

Court not bound to determine question of construction.

7. The court or Judge shall not be bound to determine any such question of construction if, in their or his opinion, it ought not to be determined on originating summons.

Upon what person such summons to be served.

8. The summons under either of the two last preceding rules shall be served upon the persons who would be proper defendants under the existing practice if the same relief were sought in a suit.

Plaint and O.S. alone to be filed.

9. An originating summons shall be in Form No. 3 of Appendix B and shall specify the relief sought. The person entitled to apply shall present with it to the Judge sitting in Chambers a plaint without a prayer, setting forth concisely the facts upon which the relief sought by the summons is founded, and the Judge, if satisfied that the facts as alleged are sufficient and the case is a proper one to be dealt with on an originating summons, shall sign the summons.

Plaint how to be marked.

10. The plaint, when accepted, shall be filed and numbered as an ordinary suit and entered in the register of suits, but after the serial number the letters "O.S." shall be placed to distinguish it from plaints filed in the ordinary suits.

Returnable date of O.S.

11. Originating summonses shall, in ordinary cases, be made returnable in eight days after service; but the Judge granting a summons may fix such longer period as to him may seem proper. No written statement or affidavit shall in the first instance be made in answer to the plaint.

When evidence may be given at hearing.

12. On the hearing of the summons, if the parties thereto do not agree to the correctness of the facts set forth in the plaint, the Judge may order the summons to be supported by such evidence as he may think necessary; and may give such directions as he may think just for the trial of any questions arising thereout. The Judge may make such amendments in the plaint and summons as may seem to him to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties.

What may be done on hearing originating summons.

13. The Judge hearing an originating summons may, if he thinks fit, adjourn the same into court for hearing an argument, and if it appears to him that the matters in respect of which relief is sought cannot be disposed of in a summary manner, may refuse to pass any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course; and in such case may make such order as to the costs already incurred as may seem to him to be just.

When costs of originating summons may be allowed as in a long cause.

14. If an originating summons be adjourned into court, the Judge may, if he thinks the question to be determined is of sufficient importance, order the costs to be taxed on the same scale as a long cause. In all other cases the cost of one advocate will be allowed to the plaintiff, and to each person or set of persons, having divergent interests.

ORDER XI

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Parties to appear on day fixed in summons for defendant to appear and answer.

1.—(1) On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective advocates, and the suit shall then be called on and if the summons is for the disposal of the suit it shall be heard unless the hearing is adjourned to a future day fixed by the court.

(2) If the summons is not for the disposal of the suit the court shall give such directions or take such other steps as the circumstances of the case may require.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears, suit to be dismissed.

3. Where neither party appears when the suit is called on for hearing, the court may make an order that the suit be dismissed.

Plaintiff may bring fresh suit or court may restore suit to file:

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

5.—(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the court by the officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the court may make an order that the suit be dismissed as against such defendant.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure when only plaintiff appears.

6.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

When summons duly served. 234 of 1945, r.7.

(*a*) if it is proved that the summons was duly served, the court may, subject to the provisions of rule 7, proceed *ex parte*;

When summons not duly served.

(*b*) if it is not proved that the summons was duly served, the court shall direct a second summons to be issued and served on the defendant;

When summons served but not in due time.

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the court shall postpone the hearing of the suit to a future day to be fixed by the court, and shall direct notice of such day to be given to the defendant.

Costs.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure when defendant in moneylender's suit does not appear. 234 of 1945, r.8.

7.—(1) Where in suits brought by a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to such money the plaintiff appears and the defendant does not appear when the suit is called for hearing and it is proved that the summons was duly served, the plaintiff may apply for leave to proceed *ex parte* by notice served on the defendant in the form and manner hereinafter provided.

(2) Such notice shall not be issued until the day fixed for the appearance of the defendant in answer to the summons has expired and a proper affidavit of service of such summons has been filed.

(3) Such notice shall be returnable on a day which shall allow the defendant sufficient time to enable him to appear and answer on such day and shall in any event be not less than two clear days after the issue of such notice.

(4) The notice shall be in accordance with Form No. 15 of Appendix B with such variations as circumstances may require, and may be served personally or by registered post addressed to the defendant at his last known place of address.

(5) No application under this rule to proceed *ex parte* shall be granted by the court unless it is proved to the satisfaction of the court that the notice was served upon the defendant in sufficient time (being in any event not less than two clear days after the service of such notice) to enable the defendant to appear and answer on the date fixed for hearing the application to proceed *ex parte*.

(6) At the hearing of the application to proceed *ex parte*, whether the defendant appears or not, the court—

Cap. 166.

(*a*) may exercise the powers of the court under sections 15 and 16 of the Moneylenders Decree, (which deal with the powers of the court to re-open certain transactions and to grant relief and the powers of the court regarding certain other transactions); and

(*b*) if satisfied by affidavit or otherwise that the notice has been duly served, may pass judgment for the whole or part of the claim; and

(*c*) as regards any part of the claim as to which judgment is refused, may give any such directions or make any such order as might have been given or made, if the defendant had appeared to answer the claim, upon such terms as to notice to the defendant or otherwise as may be thought just.

(7) Nothing in this rule shall be deemed to affect the provisions of rule 6 (1) (*c*).

(8) In this rule "moneylender" shall have the meaning assigned to it in the Moneylenders Decree.

Cap. 166.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

8. Where the court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant only appears. 234 of 1945, r.9.

9.—(1) Where the defendant appears and the plaintiff does not appear when the suit is called for hearing, the court shall make an order that the suit shall be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall, unless it sees sufficient cause to the contrary, pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

(2) Where for sufficient cause the court sees fit not to pass a decree against the defendant upon his admission it shall give such directions or make such order as to the further hearing of the suit upon such terms as to notice to the plaintiff or otherwise as may be thought just.

Decree against plaintiff by default bars fresh suit.

10.—(1) Where a suit is wholly or partly dismissed under rule 9, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

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

Procedure in case of non-attendance of one or more of several plaintiffs.

11. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or *more of* several defendants.

12. Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

13. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all the provisions of the foregoing Rules applicable to plaintiffs and defendants, respectively, who do not appear.

SETTING ASIDE DECREES EX PARTE

Setting aside decree *ex parte* against defendant.

14. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

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

15. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER XII

EXAMINATION OF PARTIES BY THE COURT

Ascertainment whether allegations in pleadings are admitted or denied.

1. At the first hearing of the suit the court shall ascertain from each party or his advocate whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court shall record such admissions and denials.

Oral examination of party or companion of party.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in court, or any person able to answer any material questions relating to the suit by whom such party or his advocate is accompanied, may be examined orally by the court; and the court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written in certain cases. 134 of 1940, r.2.

3. Save in cases before a subordinate court (other than a Kathi's Court) in which no appeal lies without leave of the appellate court, the substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of inability or refusal of advocate to answer.

4.—(1) Where the advocate of any party who appears by an advocate or any such person accompanying an advocate as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XIII

DISCOVERY AND INSPECTION

Discovery by interrogatories.

1. In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court. In deciding upon such application, the court shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

Costs of interrogatories.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of interrogatories.

4. Interrogatories shall be in Form No. 2 of Appendix C, with such variations as circumstances may require.

Corporations.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Objections to interrogatories by answer.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Setting aside and striking out interrogatories.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Affidavit in answer, filing.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

Form of affidavit in answer.

9. An affidavit in answer to interrogatories shall be in Form No. 3 of Appendix C, with such variations as circumstances may require.

No exception to be taken.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

Order to answer or answer further.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the court may direct.

Application for discovery of documents.

12. Any party may, without filing any affidavit, apply to the court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Affidavit of documents.

13. The affidavit to be made by a party against whom such order as is mentioned in rule 12 has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 of Appendix C, with such variations as circumstances may require.

Production of documents.

14. It shall be lawful for the court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the court shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his advocate, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court shall think fit.

Notice to produce.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 of Appendix C, with such variations as circumstances may require.

Time for inspection when notice given.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his advocate or in the case of bankers' books or other books of account or books in constant use for the purposes of

any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 of Appendix C, with such variations as circumstances may require.

Order for inspection.

18.—(1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his advocate, the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that the order shall not be made when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make such order for inspection of such documents when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies.

19.—(1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such applications shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with order for discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly.

Using answers to interrogatories at trial.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always that in such case the court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to apply to minors.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

ORDER XIV

ADMISSIONS

Notice of admission of case.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the court, a saving of expense.

Form of notice.

3. A notice to admit documents shall be in Form No. 9 of Appendix C, with such variations as circumstances may require.

Notice to admit facts.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same

within six days after service of such notice, or within such further time as may be allowed by the court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs:

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

Provided also that the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of admissions.

5. A notice to admit facts shall be in Form No. 10 of Appendix C, and admissions of facts shall be in Form No. 11 of Appendix C, with such variations as circumstances may require.

Judgment on admissions.

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to without waiting for the determination of any other question between the parties: and the court may upon such application make such order, or give such judgment, as the court may think just.

Affidavit of signature.

7. The affidavit of the advocate or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents.

8. Notice to produce documents shall be in Form No. 12 of Appendix C, with such variations as circumstances may require. An affidavit of the advocate, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XV

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Documentary evidence to be produced at first hearing.

1.—(1) The parties or their advocates shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court has ordered to be produced.

(2) The court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs

Effect of non-production of documents.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the court for the non-production thereof; and the court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Indorsements on documents admitted in evidence.

4.—(1) Subject to the provisions of paragraph (2), there shall be indorsed on every document which has been admitted in evidence in the suit the following particulars, namely—

(*a*) the number and title of the suit;

(*b*) the name of the person producing the document;

(*c*) the date on which it was produced; and

(*d*) a statement of its having been so admitted;

and the indorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under rule 5, the particulars aforesaid shall be indorsed on the copy and the indorsement thereon shall be signed or initialled by the Judge.

Indorsements on copies of admitted entries in books, accounts and records. Cap. 6. G.N. 58 of 1955.

5.—(1) Save in so far as is otherwise provided by the Evidence (Bankers' Books) Decree, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished—

(*a*) where the record, book or account is produced on behalf of a party, then by that party; or

(*b*) where the record, book or account is produced in obedience to an order of the court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the court shall, after causing the copy to be examined, compared and certified, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Indorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the court to be inadmissible in evidence, there shall be indorsed thereon the particulars mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (1) of rule 4, together with a statement of its having been rejected, and the indorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7.—(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Court may order any document to be impounded.

8. Notwithstanding anything contained in rule 5 or rule 7, the court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the court, for such period and subject to such conditions as the court thinks fit.

Return of admitted documents.

9.—(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same—

(*a*) where the suit is one in which an appeal is not allowed, when the suit has been disposed of; and

(*b*) where the suit is one in which an appeal is allowed, when the court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other courts.

10.—(1) The court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XVI

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Framing of issues.

1.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (*a*) issues of fact, (*b*) issues of law.

(5) At the first hearing of the suit the court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and may thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

134 of 1940, r.3.

(6) Nothing in this rule requires the court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Issue of law and of fact.

2. Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which issues may be framed.

3. The court may frame the issues from all or any of the following materials—

(*a*) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(*b*) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(*c*) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

4. Where the court is of opinion that the issues cannot be correctly framed without the examination of some person not before the court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Power to amend, and strike out, issues.

5.—(1) The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of such issue—

(*a*) a sum of money specified in the agreement or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(*b*) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(*c*) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the court is satisfied, after making such inquiry as it deems proper—

(*a*) that the agreement was duly executed by the parties;

(*b*) that they have a substantial interest in the decision of such question as aforesaid; and

(*c*) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XVII

Disposal of the Suit at the First Hearing

Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce judgment.

One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at issue.

3.—(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the court as hereinbefore provided, if the court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to produce evidence.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to p oduce the evidence on which he relies, the court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVIII

APPLICATIONS

Notice of application to be in writing.

1. Where in any suit it is intended to make an application to the court and notice of such application has to be given to the opposite party such notice shall be in writing in the prescribed form and shall be prepared by the party intending to apply or his advocate.

Notice of application to be forwarded to proper officer of the court.

2.—(1) When the opposite party is represented by an advocate the notice duly endorsed with an acknowledgment of receipt by or on behalf of such advocate together with any affidavits in support shall be forwarded to the proper officer of the court not less than three clear days before the application is intended to be made.

(2) When the opposite party is not represented by an advocate or notice to him personally is required the notice and any affidavit in support together with a duplicate and the usual fees shall be sent to the proper officer of the court who shall fix a date for the application and shall cause the notice to be served in the same manner as a summons in a suit.

Notice of *ex parte* applications.

3. Where in any suit it is intended to apply to the court *ex parte* notice in writing together with any affidavits in support must be given to the proper officer in time sufficient to enable the necessary papers to be placed before the court. The proper officer may in his discretion dispense with notice in writing.

ORDER XIX

SUMMONING AND ATTENDANCE OF WITNESSES

Summons to attend to give evidence or produce documents.

1. At any time after the suit is instituted, the parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witness to be paid into court on applying for summons.

2.—(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the court in which he is required to attend, and for one day's attendance.

Experts.

(2) In determining the amount payable under this rule, the court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses. 91 of 1953, r.2.

(3) Subject to the other provisions of these Rules, the amounts set out in Appendix J together with reasonable travelling expenses, may be allowed in respect of witnesses (whether summoned or not), who attend to give evidence.

Tender of expenses to witness.

3. The sum so paid into court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid.

4.—(1) Where it appears to the court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses or reasonable remuneration, the court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the court may, from time to time, order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

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

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in court to give evidence or produce document.

7. Any person present in court may be required by the court to give evidence or to produce any document then and there in his possession or power..

Summons, how served.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the Rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons .

10.—(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another court, touching the service or non-service of the summons.

(2) Where the court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12.

If witness appears, attachment may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the court—

(*a*) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and

(*b*) where he has failed to attend at the time and place named in a proclamation issued under rule 10, that he had no notice of such proclamation in time to attend,

the court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

12. The court may, where such person does not appear, or appears but fails so to satisfy the court, impose upon him such fine not exceeding seven hundred and fifty shillings as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into court the costs and fine aforesaid, the court shall order the property to be released from attachment.

Mode of attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment debtor.

Court may of its own accord summon as witnesses strangers to suit.

14. Subject to the provisions of the Decree as to attendance and appearance and to any law for the time being in force, where the court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

16.—(1) A person so summoned and attending shall, unless the court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the court of all necessary expenses (if any), the court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

18. Where any person arrested under a warrant is brought before the court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his g such bail or security, may order him to be detained in the civil pri

No witness to be ordered to attend in person unless resident within certain limits.

19. No one shall be ordered to attend in person to give evidence unless at the time of service of der he is within Zanzibar.

Consequence of refusal of party to give evidence when called on by court.

20. Where any party to a suit present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his possession or power, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Rules as to witnesses to apply to parties summoned.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

ORDER XX

ADJOURNMENTS

Court may grant time and adjourn hearing.

1.—(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment.

(2) In every such case the court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

Procedure if parties fail to appear on day fixed.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order XI or make such other order as it thinks fit.

Court may proceed notwithstanding either party fails to produce evidence, etc.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.

ORDER XXI

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Jurisdiction to be exercised by a Judge of the High Court. 198 of 1953, r.2(*b*).

1.—(1) Subject to any law for the time being in force and to Rules of Court any Judge of the High Court may exercise all or any of the original civil jurisdiction vested in the High Court:

Provided that if it shall appear to any such Judge either on the application of a party or otherwise, that a suit or matter can be more advantageously heard by a bench of two or more such Judges he may report to that effect to the Chief Justice, who shall make such order thereon as he shall think fit.

(2) In the event of two Judges sitting and there being a difference of opinion, the opinion of the Senior Judge shall prevail.

Right to begin.

2. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence.

3.—(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence where several issues.

4. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Suits to be heard in open court. 198 of 1953, r.2(*c*).

5.—(1) Save as hereinafter provided and subject to any other law for the time being in force and to rules of court any disputed question or issue of fact or law arising in any suit within the original civil jurisdiction of any court shall be heard and determined in open court.

(2) Save as aforesaid the powers and duties of any court arising from the exercise of its original civil jurisdiction including the hearing of originating summonses and the execution of decrees may be disposed of in open court or otherwise as may be convenient.

In certain cases suits may be heard otherwise than in open court.

6. The High Court or, subject to the sanction of the Chief Justice, any subordinate court may for reasons to be recorded on the minutes hear and determine otherwise than in open court any disputed issue of fact or of law arising in any civil suit when in the opinion of the court a hearing in open court would be calculated to defeat the ends of justice.

Witnesses to be examined in open court. 197 of 1953, r.2.

7. Save as otherwise provided in this Order, the evidence of the witnesses in attendance shall be taken orally in open court, or, with the consent of all parties, in chambers, in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in civil cases. 134 of 1940, r.4.

8. In all civil cases, save such cases as fall within the provisions of rule 18, the evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, if so required by the witness or by either party, such evidence shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted.

9. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Any particular question and answer may be taken down.

10. The court may, of its own motion or on the application of any party or his advocate, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

Payment of judgments and orders. 65 of 1947, r.2.

11. Where a judgment is given or an order is made by a court under which a sum of money of any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the court may, as it thinks fit, order the money to be paid either—

(*a*) in one sum, whether forthwith or within such period as the court may fix; or

(*b*) by such instalments payable at such times as the court may fix.

New order for payment on application of judgment debtor. 65 of 1947, r.3.

12. Where a judgment has been given or an order made for the payment of any sum by instalments or otherwise, and it appears to the court that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered, the court may, on the application of such person made on notice to the opposite party, order the amount unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the same or smaller instalments, and may from time to time vary such order.

New order for earlier payment on application of judgment creditor. 65 of 1947, r.3.

13. If it appears to the court that the person liable under any judgment or order for payment by instalments is able to pay the sum ordered to be paid either in one sum or by larger instalments than those ordered, the court may, on the application of the person entitled to enforce the judgment or order made on notice to the opposite party, order the amount unpaid to be paid in one sum, or by larger instalments than those previously ordered, and may from time to time vary such order.

Decree for possession and mesne profits.

14.—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree—

(*a*) for the possession of the property;

(*b*) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(*c*) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree holder;

(ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court; or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under sub-paragraph (*b*) or sub-paragraph (*c*) of paragraph (1), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Decree in suits for administration.

15.—(1) Where a suit is for an account of any property and for its due administration under the decree of the court, the court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

Judgment in cases before a subordinate court. 134 of 1940, r.5.

4. In any case before a subordinate court the Judge may pronounce a written judgment and in such case the judgment shall in all respects comply with the requirements of rule 3 in like manner as if it were a judgment pronounced in a case before the High Court.

Oral judgment. 134 of 1940, r.5.

5. In any case before a subordinate court the Judge may pronounce an oral judgment and in such case he shall at the time of pronouncing such judgment record in writing a brief minute thereof specifying clearly the relief granted in, or other determination of, the suit and such minute shall be dated and signed by the Judge forthwith in open court and shall not thereafter be altered or added to save as provided by section 130 of the Decree or on review.

Contents of decree.

6.—(1) The decree shall agree with the judgment or minute of judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also 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.

(3) The court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Date of decree.

7. The decree shall bear the date of the day on which the judgment was pronounced, and, when the Judge or, in the High Court, a Registrar has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure where Judge has vacated office before signing decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the court has ceased to exist, by the Judge of any court to which such court was subordinate.

Decree for recovery of immovable property.

9. Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of movable property.

10. Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

ORDER XXII

AFFIDAVITS

Power to order any point to be proved by affidavit.

1. Any court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the court thinks reasonable:

Provided that where it appears to the court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Power to order attendance of deponent for cross-examination.

2.—(1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in court, unless the deponent is exempted from personal appearance in court, or the court otherwise directs.

Matters to which affidavits shall be confined.

3.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the court otherwise directs) be paid by the party filing the same.

ORDER XXIII

JUDGMENT AND DECREE

Judgment when pronounced.

1. The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

Power to pronounce judgment written by Judge's predecessor.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Judgment in cases before High Court. 134 of 1940, r.5.

3.—(1) In all cases before the High Court the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and shall not thereafter be altered or added to save as provided by section 130 of the Decree or on review.

(2) Every such judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and where issues have been framed the court shall state its finding or decision with the reasons therefor upon each separate issue unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Questions objected to and allowed by court.

11. Where any question put to a witness is objected to by a party or his advocate, and the court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the court thereon.

Remarks on demeanour of witnesses.

12. The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Judge unable to take down evidence to record reasons of his inability.

13.—(1) Where the Judge is unable to take down the evidence as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the evidence to be recorded under his supervision by some other person.

(2) Evidence so recorded shall form part of the record.

Power to deal with evidence taken before another Judge.

14.—(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence taken down under the foregoing Rules as if such evidence had been taken down by him or under his direction under the said Rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of paragraph (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Decree.

Power to examine witness immediately.

15.—(1) Where a witness is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, the court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall and examine witness.

16. The court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit.

Power of court to inspect.

17. The court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Cases in which summary of evidence only need be recorded. 134 of 1940, r.4.

18. Notwithstanding anything contained in rules 8, 9, and 10, in all cases before a subordinate court (other than a Kadhi's Court) in which no appeal lies without leave of the appellate court it shall be sufficient that the Judge shall record in writing, a brief summary of the substance of the evidence taken therein.

(2) In the administration by the court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same Rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this decree.

Decree in pre-emption suit.

16.—(1) Where the court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into court, the decree shall—

(*a*) specify a day on or before which the purchase money shall be so paid; and

(*b*) direct that on payment into court of such purchase money together with the costs (if any) decreed against the plaintiff, on or before the day referred to in sub-paragraph (*a*), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the court has adjudicated upon rival claims to pre-emption, the decree shall direct—

(*a*) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of paragraph (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(*b*) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in suit for dissolutions of partnership.

17. Where a suit is for dissolution of a partnership, or the taking of partnership accounts, the court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for account between principal and agent.

18. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the court shall, before passing its final decree pass a preliminary decree directing such accounts to be taken as it thinks fit.

Special directions as to accounts.

19. The court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of a share therein.

20. Where the court passes a decree for the partition of property or for the separate possession of a share therein, then—

(1) if and in so far as the decree relates to an estate assessed for the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, and may direct such partition or separation to be made by the District Commissioner, or any gazetted subordinate of the District Commissioner deputed by him in this behalf, in accordance with such declaration;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Decree when set-off is allowed.

21.—(1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished. 134 of 1940, r.5.

22. Certified copies of any judgment and any decree shall be furnished to the parties on application to the court, and at their expense.

Registration of decrees, etc., affecting immovable property. Cap. 99.

23. A certified copy of a decree or order of any court (including a certificate of sale) to which the provisions of section 4 of the Registration of Documents Decree (which deal with the decree or orders of court affecting immovable property) shall be forwarded by such court to the Registrar of Documents in accordance with the provisions of the said Decree and thereupon such Registrar shall register such decree or order (including a certificate of sale) by filing the same in the manner provided in sections 25 and 26 of the said Decree.

ORDER XXIV

EXECUTION OF DECREES AND ORDERS BY ATTACHMENT OF PROPERTY

Payment under Decree

Modes of paying money under decree.

1.—(1) All money payable under a decree shall be paid as follows, namely—

(*a*) into the court whose duty it is to execute the decree;

(*b*) out of court to the decree holder; or

(*c*) otherwise as the court which made the decree directs.

(2) Where any payment is made under sub-paragraph (*a*) of paragraph (1), notice of such payment shall be given to the decree holder.

180 of 1951, r.2. Cap. 139.

(3) Where there is reason to apprehend that payment out of court or otherwise as the court making the decree may have directed may be unlawful under the provisions of the Exchange Control Decree, except with the permission of the Financial Secretary, the court whose duty it is to execute the decree shall report the circumstances to the Financial Secretary, and the Financial Secretary shall give such directions in regard thereto as he may think fit and upon receipt of such directions the court shall make such orders as are conformable thereto.

Payment out of court to decree holder.

2.—(1) Where any money payable under a decree of any kind is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgment debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree.

Courts Executing Decrees

Lands situate in more than one jurisdiction. 215 of 1945, r.2.

3. Subject to the provisions of rule 20, where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more courts, any one of such courts may attach and sell the entire estate or tenure.

Procedure where court desires that its own decree shall be executed by another court.

4. Any court sending a decree for execution shall send—

(*a*) a copy of the decree;

(*b*) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(*c*) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, etc., to file same without proof.

5. The court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by court to which it is sent.

6. Where such copies are so filed the decree or order may be executed in the same manner as if it had been passed by such court in the exercise of its ordinary original civil jurisdiction.

Application for Execution

Application for execution.

7. Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another court then to such court or to the proper officer thereof.

Written application. 12 of 1949, r.7.

8.—(1) Every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely—

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree;

(*e*) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(*f*) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(*g*) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(*h*) the amount of the costs (if any) awarded;

(*i*) the name of the person against whom execution of the decree is sought; and

(*j*) the mode in which the assistance of the court is required, whether—

(i) by the delivery of any property specifically decreed;

(ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the appointment of a receiver;

(iv) otherwise, as the nature of the relief granted may require.

(2) The court to which an application is made may require the applicant to produce a certified copy of the decree.

Application for attachment of movable property not in judgment debtor's possession.

9. Where an application is made for the attachment of any movable property belonging to a judgment debtor but not in his possession, the decree holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of immovable property to contain certain particulars.

10. Where an application is made for the attachment of any immovable property belonging to a judgment debtor, it shall contain at the foot—

(*a*) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(*b*) a specification of the judgment debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Application for execution by joint decree holder.

11.—(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application for execution by transferee of decree.

12. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree holder:

Provided that, where the decree, or such interest as aforesaid has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on receiving application for execution of decree. 215 of 1945, r.3.

13.—(1) On receiving an application for the execution of a decree, as provided in rule 8, the court shall ascertain whether the attachment or sale of the property forming the subject matter of the application is prohibited by any law for the time being in force.

(2) If the court is satisfied that the attachment or sale of such property is prohibited by any law for the time being in force, the court shall refuse the application.

(3) If the court is of the opinion that the attachment or sale of such property is not prohibited by any law for the time being in force, it shall ascertain whether such of the requirements of rules 8 to 10 as may be applicable to the case have been complied with; and if they have not been complied with, the court may reject the application, or may allow the defect to be remedied then and there or within a time fixed by it.

(4) Where an application is amended under the provisions of paragraph (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(5) Every amendment made under this rule shall be signed or initialled by the Judge.

Execution in case of cross-decrees.

14.—(1) Where applications are made to a court for the execution of cross decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then—

(*a*) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(*b*) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment debts due by the original assignor as in respect of judgment debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

(*a*) the decree holder in one of the suits in which the decrees have been made is the judgment debtor in the other and each party fills the same character in both suits; and

(*b*) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross decree in relation to a decree passed against him singly in favour of one or more of such persons.

Execution in case of cross claims under same decree.

15. Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then—

(*a*) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(*b*) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross decrees and cross-claims in mortgage suits.

16. The provisions contained in rules 14 and 15 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simultaneous execution, when allowed. 12 of 1949, r.3.

17. Save as provided by Order XXV, execution of a decree at the same time against the person and property of the judgment debtor is prohibited.

Notice to show cause against execution in certain cases.

18.—(1) Where an application for execution is made—

(*a*) more than one year after the date of the decree, or

(*b*) against the legal representative of a party to the decree,

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.

(2) Nothing in paragraph (1) shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Procedure after issue of notice.

19.—(1) Where the person to whom notice is issued under rule 18 does not appear or does not show cause to the satisfaction of the court why the decree should not be executed, the court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the court shall consider such objection and make such order as it thinks fit.

Process for execution. 215 of 1945, r.4.

20.—(1) Save as hereinafter provided, when all the preliminary measures (if any) required by the foregoing rules have been taken, the court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Where application is made to a subordinate court for the attachment and sale of immovable property or the produce of such property and such court is of the opinion that there is no cause why such application should not be granted, such court shall make a provisional order for the attachment and sale of such property and shall, as soon as conveniently may be, forward to the High Court such provisional order and the record of all the proceedings in the suit or a certified copy thereof.

(3) The High Court, after examining such provisional order and proceedings and requiring from the subordinate court any further information or evidence which it thinks necessary, may by order—

(*a*) confirm the provisional order of the subordinate court as to the whole or any part of the property mentioned therein; or

(*b*) set aside the provisional order of the subordinate court as to the whole or any part of the property mentioned therein; or

(*c*) make such other order in the case as appears to it just:

Provided that no provisional order shall be set aside, either in whole or in part, by the High Court except upon the ground that the preliminary measures required by this Order for the issue of process of execution have not been complied with or upon the ground that the attachment or sale of the whole or any part of the property mentioned in such provisional order is prohibited by any law for the time being in force.

(4) The High Court shall certify its decision or order to the court which made the provisional order, and the court to which such decision or order is so certified shall thereupon make such orders as are conformable to the decision or order so certified, and, if necessary, the record of the proceedings shall be amended in accordance therewith.

(5) If the High Court confirms the provisional order in whole or in part, the subordinate court shall, unless it sees cause to the contrary, issue its process for the execution of the decree according to the tenor of the decision of the High Court.

(6) Every process issued under this rule shall bear the date on which it was issued and shall be signed by the Judge or such other officer of the court as the court may appoint in this behalf, and shall be sealed with the seal of the court and delivered to the proper officer to be executed.

(7) In every such process a day shall be specified on or before which it shall be executed.

(8) A provisional order shall direct the proper officer to attach the property mentioned therein in the manner provided by this Order and to keep the same in his custody pending the making of a further order by the subordinate court under the provisions contained in paragraph (4).

(9) In every process issued under this rule a day shall be specified on or before which it shall be executed.

(10) Nothing in this rule shall be deemed to affect the provisions of the Ground Rent Restriction Decree. Cap. 97.

Indorsement on process.

21.—(1) The officer entrusted with the execution of the process shall indorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such indorsement to the court.

(2) Where the indorsement is to the effect that such officer is unable to execute the process, the court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of Execution

When court may stay execution.

22.—(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or appellate court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property of the judgment debtor has been seized under an execution, the court which issued the execution may order the restitution of such property pending the result of the application. 12 of 1949 r.7.

Power to require security from, or impose conditions upon, judgment debtor.

(3) Before making an order to stay execution or for the restitution of property, the court may require such security from, or impose such conditions upon, the judgment debtor as it thinks fit.

Liability of judgment debtor discharged. 12 of 1949, r.7.

23. No order of restitution under rule 22 shall prevent the property of a judgment debtor from being retaken in execution of the decree sent for execution.

Order of court which passed decree or of appellate court to be binding upon court applied to. 12 of 1949, r.7.

24. Any order of the court by which the decree was passed, or of such appellate court as aforesaid, in relation to the execution of such decree, shall be binding upon the court to which the decree was sent for execution.

Stay of execution pending suit between decree holder and judgment debtor.

25. Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Mode of Execution

Decree for payment of money. 12 of 1949, r.4.

26. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief may be executed by the attachment and sale of the property of the judgment debtor.

Decree for specific movable property. 12 of 1949, r.5.

27.—(1) Where a decree is for any specific movable, or for a share in any specific movable, it may be executed, if practicable, by the seizure of the movable or share, and by delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the attachment of the property of the judgment debtor.

(2) Where any attachment under paragraph (1) has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the court may award to the decree holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(3) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

Decree for specific performance, for restitution of conjugal rights, or for an injunction. 12 of 1948, r.7.

28.—(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by the attachment of his property.

(2) Where the party against whom a decree for the specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation.

(3) Where any attachment under paragraph (1) or paragraph (2) has remained in force for one year, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

Order for periodical payments by husband on disobedience to decree for restitution of conjugal rights. 12 of 1949, r.6.

29.—(1) Where on the application of the wife the court makes a decree for the restitution of conjugal rights the court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as a decree for the payment of money.

Payments may be secured by deed.

(2) The court may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife such periodical payment by a proper deed or instrument to be executed by all necessary parties.

Periodical payments by wife.

(3) Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may, if it shall think fit, order a settlement to be made to the satisfaction of the court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or any or either of them; or may order such part as the court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

Power to vary orders.

(4) The court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the court may think just.

Custody, etc., of children.

(5) Subject to the provisions of any law for the time being in force, the court may, at any time before final decree on any application for the restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith, upon any application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as shall appear to it to be just and necessary.

Decree for execution of document, or endorsement of negotiable instrument.

30.—(1) Where a decree is for the execution of a document or for the indorsement of a negotiable instrument and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document or indorsement in accordance with the terms of the decree and deliver the same to the court.

(2) The court shall thereupon cause the draft to be served on the judgment debtor together with a notice requiring his objections (if any) to be made within such time as the court fixes in this behalf.

(3) Where the judgment debtor objects to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree holder shall deliver to the court a copy of the draft with such alterations (if any) as the court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the indorsement of a negotiable instrument under this rule may be in the following form, namely—

"C. D., Judge of the Court of (*or as the case may be*), for A. B., in a suit by E. F. against A. B.,"

and shall have the same effect as the execution of the document or the indorsement of the negotiable instrument by the party ordered to execute or indorse the same.

(6) The court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Decree for immovable property.

31.—(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.

Decree for delivery of immovable property when in occupancy of tenant.

32. Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, or proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Attachment of Property

Examination of judgment debtor as to his property.

33. Where a decree is for the payment of money the decree holder may apply to the court for an order that—

(*a*) the judgment debtor, or

(*b*) in the case of a corporation, any officer thereof, or

(*c*) any other person,

be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what other property or means of satisfying the decree; and the court may make an order for the attendance and examination of such judgment debtor, or officer or other person, and for the production of any books or documents.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined. 215 of 1945, r.5.

34. Subject to the provisions of rule 20, where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment of movable property other than agricultural produce, in possession of judgment debtor.

35. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment of agricultural produce.

36. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(*a*) where such produce is a growing crop, on the land on which such crop has grown; or

(*b*) where such produce has been cut or gathered, on the place for drying cloves or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment debtor ordinarily resides or, with the leave of the court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the court.

Provisions as to agricultural produce under attachment.

37.—(1) Where agricultural produce is attached, the court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the court in this behalf either in the order of attachment or in any subsequent order, the judgment debtor may pick, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment debtor fails to do all or any such acts, the decree holder may, with the permission of the court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree holder shall be recoverable from the judgment debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment of debt, share and other property not in possession of judgment debtor.

38.—(1) In the case of—

(*a*) a debt not secured by a negotiable instrument;

(*b*) a share in the capital of a corporation;

(*c*) other movable property not in the possession of the judgment debtor, except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting—

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(*iii*) in the case of other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under sub-paragraph (i) of paragraph (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of share in movables.

39. Where the property to be attached consists of the share or interest of the judgment debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of salary or allowances of public officer.

40.—(1) Where the property to be attached is the salary or allowances of a public officer, the court, whether the judgment debtor or the disbursing officer is or is not within the local limits of the court's jurisdiction, may order that the amount shall, subject to the provisions of section 46, be withheld from such salary or allowances either in one payment or by monthly instalments as the court may direct; and, upon notice of the order to such officer as the Government may, by notification in the *Gazette*, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of paragraph (2), shall, without further notice or other process, bind the Government, while the judgment debtor is within the local limits to which this decree for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of the Zanzibar Government funds; and the Government shall be liable for any sum paid in contravention of this rule.

Attachment of partnership property.

41.—(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be

coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under paragraph (2) shall be served on the judgment debtor and on his partners or such of them as are within Zanzibar.

(5) Every application made by any partner of the judgment debtor under paragraph (3) shall be served on the decree holder and on the judgment debtor, and on such of the other partners as do not join in the application and as are within Zanzibar.

(6) Service under paragraph (4) or paragraph (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Execution of decree against firm.

42.—(1) Where a decree has been passed against a firm, execution may be granted—

(*a*) against any property of the partnership within the jurisdiction;

(*b*) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXXIV or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c*) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this paragraph shall be deemed to limit or otherwise affect the provisions of section 241 of the Contract Decree (which deals with the liability of minor partners). Cap. 149.

(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in paragraph (1), sub-paragraphs (*b*) and (*c*), as being a partner in the firm, he may apply to the court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under paragraph (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein who was out of the jurisdiction when the writ was issued and who has not appeared or filed a written statement, unless he has been made a party to the action under Order V or has been served within the jurisdiction after the summons in the action was issued.

Attachment of negotiable instruments.

43.—(1) Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.

Attachment of property in custody of court or public officer.

(2) Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree holder and any other person, not being the judgment debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Garnishee Proceedings

Garnishee orders.

44.—(1) A court may, in the case of any debt (not secured by a negotiable instrument), any movable property not in the possession of the judgment debtor, or any negotiable instrument which has been attached under rule 38 or 43, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or to deliver or account for such property, or liable on such negotiable instrument to such judgment debtor, calling upon him to appear before the court and show cause why he should not pay or deliver into court the debt due from or the property deliverable by him to such judgment debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of execution.

Procedure when garnishee does not forthwith pay amount, etc.

(2) If the garnishee does not forthwith pay or deliver into court the amount due from or the property deliverable by him to the judgment debtor, or so much as may be sufficient to satisfy the decree and the cost of execution and does not dispute his liability to pay such debt or deliver such movable property, or if he does not appear in answer to the notice, then the court may order the garnishee to comply with the terms of such notice and on such order execution may issue as though such order were a decree against him.

Procedure when garnishee disputes his liability.

(3) If the garnishee disputes his liability, the court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just.

(4) Whenever in any proceedings under this rule it is suggested, or appears to the court to be probable, that the debt or property attached or sought to be attached belongs to some third person, or that any third person has a lien or charge upon or an interest in it, the court may order such third person to appear and state the nature of his claim (if any) upon such debt or property, and prove the same if necessary. Procedure when debt or property belongs to a third person.

(5) After hearing such third person, or any other person who may be ordered subsequently to appear, or in the case of such third person not appearing when ordered, the court may pass such order as it shall think fit, upon such terms, in all cases with respect to the lien charge, or interest (if any) of such third person or other person as to such court shall seem just and reasonable. Order to be made on hearing such person.

(6) Payment or delivery made by, or execution levied upon the garnishee under any such order as aforesaid, shall be a valid discharge to him as against the judgment debtor, and any other person ordered to appear as aforesaid, for the amount paid, delivered or levied, although such order or the judgment may be set aside or reserved. Payment or delivery under order to be valid discharge.

(7) Debts owing from a firm carrying on business in Zanzibar may be attached under this rule although one or more members of such firm may be resident out of Zanzibar: Attachment of debts owing from a firm.

Provided that any person having the control or management of the partnership business, or any member of the firm in Zanzibar, is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

(8) The costs of an application under this rule and of any proceedings arising therefrom or incidental thereto, and of any order made thereon shall be in the discretion of the court. Costs to be in discretion of court.

Attachment of Decrees

45.—(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made— Attachment of decrees.

(*a*) if the decrees were passed by the same court, then by order of such court; and

(*b*) if the decree sought to be attached was passed by another court, then by the issue to such other court of a notice by the court which passed the decree sought to be executed, requesting such other court to stay the execution of its decree unless and until—

(i) the court which passed the decree sought to be executed cancels the notice; or

(ii) the holder of the decree sought to be executed or his judgment debtor applies to the court receiving such notice to execute its own decree.

(2) Where a court makes an order under sub-paragraph (*a*) of paragraph (1), or receives an application under sub-paragraph (*b*) (ii) of the said paragraph, it shall, on the application of the creditor who has attached the decree or his judgment debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in paragraph (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in paragraph (1), the attachment shall be made, by a notice by the court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other court, also by sending to such other court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the court from which it was sent.

(5) The holder of a decree attached under this rule shall give the court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the court making an order of attachment under this rule shall give notice of such order to the judgment debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment debtor in contravention of such order after receipt of notice thereof, either through the court or otherwise, shall be recognised by any court so long as the attachment remains in force.

Attachment of Immovable Property

Attachment of immovable property.

46.—(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) A copy of the order shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the court-house.

Removal or Determination of Attachment

Removal of attachment after satisfaction of decree.

47. Where—

(*a*) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court;

(*b*) satisfaction of the decree is otherwise made through the court or certified to the court; or

(*c*) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 46.

Order for payment of coin or currency notes to party entitled under decree.

48. Where the property attached is current coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Determination of attachment.

49. Where any property has been attached in execution of a decree but by reason of the decree holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of Claims and Objections

Investigation of claims to, and objections to attachment of, attached property.

50.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale.

(2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant.

51. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment.

52. Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Disallowance of claim to property attached.

53. Where the court is satisfied that the property was, at the time it was attached, in the possession of the judgment debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

54. Where the court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Sale Generally

Power to order property attached to be sold and proceeds to be paid to person entitled. 215 of 1945, r.5.

55. Subject to the provisions of rule 20, any court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Sales by whom conducted and how made.

56. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Proclamation of sales by public auction.

57.—(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(*a*) the property to be sold;

(*b*) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(*c*) any incumbrance to which the property is liable;

(*d*) the amount for the recovery of which the sale is ordered; and

(*e*) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by paragraph (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of making proclamation.

58.—(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by paragraph (2) of rule 46.

(2) Where the court so directs, such proclamation shall also be published in the official *Gazette*, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the court, otherwise be given.

Time of sale.

59. Save in the case of property of the kind described in the proviso to rule 35, no sale hereunder shall, without the consent in writing of the judgment debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Adjournment or stoppage of sale.

60.—(1) The court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the court.

(2) Where a sale is adjourned under paragraph (1) for a longer period than seven days a fresh proclamation under rule 58 shall be made, unless the judgment debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

Saving of certain sales.

61. Nothing in rules 57 to 60 shall be deemed to apply to any case in which a decree has been passed by or transferred for execution to a District Commissioner, or to any case in which a District Commissioner is selling property by order of the High Court, or to any case in which the High Court, for reasons to be recorded, shall order that the aforesaid rules shall not apply. In such cases the sale shall be conducted in such manner as may be most appropriate, having regard to the nature of the property and to the local customs prevailing in the district where the property is situated.

Defaulting purchaser answerable for loss on re-sale.

62. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the court or to the District Commissioner, by the officer or other person holding the sale, and shall, at the instance of either the decree holder or the judgment debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Decree holder not to bid for or buy property without permission.

63.—(1) No holder of a decree in execution of which property is sold shall, without the express permission of the court, bid for or purchase the property.

Where decree holder purchases, amount of decree may be taken as payment.

(2) Where a decree holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 62, be set off against one another, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree holder purchases, by himself or through another person, without such permission, the court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree holder.

Restriction on bidding or purchase by officers.

64. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of Movable Property

Sale of agricultural produce.

65.—(1) Where the property to be sold is agricultural produce, the sale shall be held—

(*a*) if such produce is a growing crop, on or near the land on which such crop has grown; or

(*b*) if such produce has been cut or gathered, at or near the place for drying cloves or the like or fodder-stack on or in which it is deposited:

Provided that the court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale—

(*a*) a fair price, in the estimation of the person holding the sale, is not offered for it; and

(*b*) the owner of the produce or a person authorised to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Sale of growing or perishable crop.

66.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day; and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is picked and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of picking and cutting or gathering it.

Negotiable instruments and shares in corporations.

67. Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Sale by public auction.

68.—(1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue.

69. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of movable property, debts and shares.

70.—(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making

payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

71.—(1) Where the execution of a document or the indorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such indorsement as may be necessary, and such execution or indorsement shall have the same effect as an execution or indorsement by the party.

(2) Such execution or indorsement may be in the following form, namely—

A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to recive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

72. In the case of any movable property not hereinbefore provided for, the court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of Immovable Property

What courts may order sales. 215 of 1945, r.5.

73. Subject to the provisions of rule 20, sales of immovable property in execution of decrees may be ordered by any court.

Postponement of sale to enable judgment debtor to raise amount of decree.

74.—(1) Where an order for the sale of immovable property has been made, if the judgment debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment debtor, the court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the court shall grant a certificate to the judgment debtor authorising him within a period to be mentioned therein, and notwithstanding anything contained in section 49 of the Decree to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment debtor, but, save in so far as a decree holder is entitled to set off such money under the provisions of rule 63, *into court:*

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Deposit by purchaser and re-sale on default.

75.—(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree holder is the purchaser and is entitled to set off the purchase-money under rule 63 the court may dispense with the requirements of this rule.

Time for payment in full of purchase-money.

76. The full amount of purchase-money payable shall be paid by the purchaser into court before the court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 63.

Procedure in default of payment.

77. In default of payment within the period mentioned in rule 76, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification on re-sale.

78. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Bid of co-sharer to have preference.

79. Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Application to set aside sale on deposit.

80.—(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in court—

(*a*) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(*b*) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree holder.

(2) Where a person applies under rule 81 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Application to set aside sale on ground of irregularity or fraud.

81.—(1) Where any immovable property has been sold in execution of a decree, the decree holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

Application by purchaser to set aside sale on ground of judgment debtor having no saleable interest.

82. The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale, on the ground that the judgment debtor had no saleable interest in the property sale.

Sale when to become absolute or to be set aside in High Court proceedings. 215 of 1945, r.6.

83.—(1) Where in proceedings in the High Court no application is made under rule 80, rule 81, or rule 82, or where such application is made and disallowed, the High Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 80, the deposit required by that rule is made within thirty days from the date of sale, the court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

Sale when to become absolute or be set aside in proceedings in sub-ordinate court. 215 of 1945, r.7.

84.—(1) Where in proceedings in a subordinate court an application is made and allowed under rule 80, rule 81, or rule 82, and where in the case of an application under rule 80 the deposit required by that rule is made within thirty days from the date of sale, the court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(2) Where no such application is made or where such application is made and disallowed, the subordinate court shall forward all the proceedings in the suit as soon as conveniently may be to the High Court.

(3) The High Court, after examining such proceedings and requiring from the subordinate court any further information or evidence which it thinks necessary, may—

(*a*) declare the sale to be absolute; or

(*b*) set aside the sale; or

(*c*) make such order as shall appear to it just or expedient:

Provided that no order setting aside the sale shall be made except upon one of the grounds mentioned in rule 80, rule 81, or rule 82 or upon the ground that the sale is prohibited by some law for the time being in force.

(4) If the High Court declares the sale to be absolute, it shall send to the court which ordered the sale the certificate referred to in rule 96.

(5) If the High Court does not delcare such sale to be absolute, it shall certify its decision or order to the court which ordered the sale, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

(6) Nothing in this rule shall be deemed to affect the provisions of the Ground Rent Restriction Decree. Cap. 97.

Return of purchase-money in certain cases.

85. Where a sale of immovable property is set aside under rule 83, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid.

Certificate to purchaser.

86.—(1) Where a sale of immovable property has become absolute, the High Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall be dated the day on which the sale became absolute.

(2) A certified copy of the certificate of sale of any immovable property to which the provisions of section 4 of the Registration of Documents Decree apply shall be forwarded by such court to the Registrar of Documents for registration in accordance with the provisions of the said Decree, and the Registrar shall thereupon register such certificate of sale by filing the same in the manner provided by sections 25 and 26 of the said Decree. Cap. 99.

Delivery of property in occupancy of judgment debtor.

87. Where the immovable property sold is in the occupancy of the judgment debtor or of some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 86, the court shall, on the application of the

purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant.

88. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 86, the court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment debtor has been transferred to the purchaser.

Resistance to Delivery of Possession to Decree Holder or Purchaser

Resistance or obstruction to possession of immovable property.

89.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by judgment debtor.

90. Where the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment debtor, or any person acting at his instigation, to be detained in the civil prison for a term not exceeding thirty days.

Resistance or obstruction by *bona fide* claimant.

91. Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment debtor, the court shall make an order dismissing the application.

Dispossession by decree holder or purchaser.

92.—(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Bona fide claimant to be restored to possession.

93. Where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment debtor, it shall direct that the applicant be put into possession of the property.

Rules not applicable to transferee *pendente lite*.

94. Nothing in rules 91 and 92 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders conclusive subject to regular suit.

95. Any party not being a judgment debtor against whom an order is made under rule 90, rule 91 or rule 93 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

ORDER XXV

EXECUTION OF DECREES AND ORDERS BY IMPRISONMENT

Division into parts.

1. This Order is divided into the following Parts:—

Part I	—Interpretation	Rule 2
Part II	—Rules of general application	Rule 3
Part III	—Execution of money decree under section 38 (3)	Rule 8
Part IV	—Execution of money decree under section 38 (4)	Rule 35
Part V	—Personal attachment in execution of a decree other than a money decree	Rule 45
Part VI	—Revisional powers of High Court	Rule 60

PART I

Interpretation

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"certified copy" means a copy of a document with a certificate at the foot of such copy that it is a true copy of such document or part thereof (as the case may be), which has been dated and subscribed by a public officer, who by the ordinary course of his official duties is authorised to deliver such copies, with his name and official title and has also been sealed, whenever such officer is authorised by law to make use of a seal;

"court of the judgment debtor" means a court within the local limits of the jurisdiction of which a judgment debtor actually and voluntarily resides, or carries on business, or personally works for gain;

"decree for specific performance" means a decree of a court directing the actual performance by the person, against whom such decree is passed, of an agreement (other than an agreement for the payment of money) according to the terms and conditions thereof;

"foreign court" means a court to which a process issued under this Order is sent by another court;

"home court" means the court from which any process under this Order is originally issued;

"judgment creditor" means any person who is entitled under the provisions of the Decree or any other law to enforce a decree or order of a court;

"judgment debtor" means any person against whom a decree has been passed or an order capable of execution has been made and includes a director or other officer or member of a corporation against whom any decree may be enforced by personal attachment;

"judgment summons" means a summons issued on the application of a judgment creditor requiring that a judgment debtor shall be examined on oath as to his means;

"money decree" means a decree or order which directs the payment by one person to another person of a sum of money (including an order for payment of costs) and includes any part of any decree or order which directs any such payment;

"personal attachment" means the enforcement of a decree or order (other than a money decree) by the detention in a civil prison of a judgment debtor.

(2) Unless the context otherwise requires, words and expressions in this Order shall have the meanings respectively assigned to them by the Decree.

PART II

Rules of General Application

Rules of general application.

3. The provisions of rules 1 to 7 (both inclusive), 11, 12, 14, 15, 18 and 19 of Order XXIV shall apply in the case of an application under this Order in the same manner as they apply to an application for the execution of a decree against the property of a judgment debtor.

Liability of person for contempt of court.

4. Nothing in this Order shall be deemed to affect the power of any court to punish any person under any law for the time being in force for contempt of such court or of any other court:

Provided that no such person shall be liable to be punished twice for the same offence.

Adjournments.

5.—(1) The court may, if sufficient cause is shown, at any stage of any proceedings under this Order from time to time adjourn the hearing thereof.

(2) In every such case the court shall fix a day for the further hearing of such proceedings and may make such order as it thinks fit with respect to the costs occasioned by such adjournment.

(3) At the time of such adjournment the court may, in its discretion, suffer the judgment debtor to go at large with or without requiring him to furnish security, to the satisfaction of such court, for his appearance when required by the court and may direct that in default of furnishing any such security he shall be detained in the civil prison or in such other custody as the court may direct.

(4) Rules 2 and 3 of Order XX shall apply in the case of every adjournment under this rule.

Subsistence allowance when and by whom payable.

6.—(1) Save as provided in rule 7, no judgment debtor shall be committed to the civil prison under this Order unless and until the decree holder pays into court such sum as the Judge thinks sufficient for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the court.

(2) Where a judgment debtor is committed to the civil prison in execution of a decree, the court shall fix for his subsistence such weekly allowance as he may be entitled to according to the scales fixed under section 43 of the Decree or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) Except as provided in rule 7, the monthly allowance fixed by the court shall be supplied by the party on whose application the judgment debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the court for such portion of the current month as remains unexpired before the judgment debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree holder for the subsistence of the judgment debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Subsistence money in suits *in forma pauperis*.

7.—(1) Notwithstanding anything contained in rule 6, the court may, in any case where it is satisfied that on account of poverty the decree holder is unable to pay any sum or allowance referred to in this rule, dispense with or remit the payment of any such sum or allowance in whole or in part.

(2) Any sum or allowance, or part thereof, so remitted shall be a charge upon and payable out of the public revenue of the Protectorate, but shall be recoverable from the judgment debtor in the manner hereinafter provided.

(3) When any such sum or allowance, or part thereof, has been so remitted by the court the Registrar or such other officer of the court as the Chief Justice may from time to time direct shall advance such sum or allowance, or part thereof, out of the public revenue of the

Protectorate for and on behalf of the decree holder for the subsistence of the judgment debtor and the provisions of paragraphs (1), (3) and (4) of rule 6 hereof shall apply to such Registrar or other officer in the same manner as they apply to a decree holder.

(4) Such sum or allowance, or part thereof, so remitted by the court shall be deemed to be costs in the suit and shall be paid into court by the judgment debtor and, if not so paid, the Registrar or such other officer of the court as the Chief Justice may from time to time direct, may apply to the court and may obtain execution to the extent of such sum or allowance, or part thereof, in the same manner as if he were the decree holder:

Provided that the judgment debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed by such Registrar or other officer of the court.

PART III

Execution of a Money Decree under section 38 (3)

Application for judgment summons.

8.—(1) A judgment creditor seeking to enforce the execution of a money decree may apply in writing for the issue of a judgment summons requiring the judgment debtor, or where there are two or more judgment debtors, requiring any one or more of them, to appear and be examined on oath as to his or their means.

(2) The application may be made—

(*a*) where the money decree is against one person only, or where the application is for the issue of a judgment summons against only one of two or more persons jointly liable under the judgment or order, in the court of the judgment debtor; or

(*b*) where the application is for the issue of a judgment summons against two or more persons jointly liable under the judgment or order, in the court of any one of the judgment debtors.

(3) Subject to the provisions of rules 9 and 10 a judgment summons shall be issued after the filing of such application.

Where judgment against firm.

9.—(1) Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges to be liable under the money decree he shall file with his application an affidavit, together with a copy thereof, containing the particulars hereinafter mentioned.

(2) In such affidavit the deponent shall state as concisely as possible the grounds upon which it is alleged that the person named therein is liable under such judgment or order.

(3) A copy of the said affidavit shall be served on the judgment debtor together with the judgment summons.

(4) If the person alleged to be liable does not appear on the day fixed for the hearing, the court may presume that he admits his liability to pay the amount due; but if he appears and denies his liability the court may determine the question of liability on the evidence then before it or may order the issue of liability to be tried in such manner as it thinks fit.

Expenses of judgment debtor to be deposited on applying for judgment summons.

10.—(1) Before any judgment summons is issued and within a period to be fixed by the court, the judgment creditor shall pay into court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the judgment debtor in passing to and from the court at which he is required to attend, and for one day's attendance.

(2) Where the court is subordinate to the High Court regard shall be had in fixing the scale of expenses to any rules made in that behalf.

Personal service required.

11. A judgment summons shall be served on every judgment debtor personally and the sum paid into court under rule 10 shall be paid or tendered to him at the time of such service.

Time for service.

12.—(1) A judgment summons shall in all cases be made a sufficient time before the time specified in such summons for the attendance of the judgment debtor and shall allow him reasonable time for preparation and for travelling to the place at which attendance is required and shall in any case be served not less than five clear days before the day fixed for the hearing.

(2) Where a judgment summons is required to be served in the local limits of the jurisdiction of a foreign court, the proper officer of the foreign court shall, not less than three clear days before the day fixed for the hearing, return the copy of the summons and any unserved summons to the proper officer of the home court.

(3) Where a judgment summons has not been served in due time, the proper officer of the court in which the judgment summons was issued shall give notice thereof to the judgment creditor.

Successive judgment summonses.

13.—(1) Where a judgment summons has not been served in due time, a successive judgment summons shall, if the judgment creditor so requests, be issued at any time within three months of the date of the original judgment summons.

(2) A successive judgment summons may, unless the court otherwise directs, be issued notwithstanding that the judgment debtor has ceased to reside or carry on business or personally to work for gain within the local limits of the jurisdiction of the court since the issue of the original judgment summons.

Witnesses to prove means.

14. Witnesses may be summoned to prove the means of a debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a suit.

Debtor as witness.

15.—(1) A judgment summons shall be deemed to be a summons to a witness within the meaning of section 23 of the Decree:

Provided that at the time of service thereof there is paid or tendered to the judgment debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court.

(2) The provisions of rules 4, 5 and 10 to 21 (both inclusive) of Order XIX shall apply to a person served under this rule with a judgment summons in the same manner as they apply to any other witness.

Expenses paid to debtor.

16.—(1) Where the judgment debtor does not appear at the hearing, or pays into court the amount in payment of which he has made default, travelling expenses paid to him with the judgment summons, or with a summons to appear as a witness, may, if the court so directs, be allowed as expenses of a witness.

(2) Where the judgment debtor appears at the hearing, travelling expenses paid to him may, if the court so directs and subject to rule 31, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under these Rules, but if the judgment debtor appears at the hearing and an order of commitment is not made, the court may allow to the judgment debtor, by way of set-off or otherwise, his proper costs (including compensation for loss of time) as upon attendance by a defendant at a trial in court.

Ground of commitment.

17. Where an order of commitment is made, a note shall be entered in the minutes of the proceedings showing the grounds upon which the order is made.

Evidence by affidavit.

18.—(1) Where the judgment creditor does not reside or carry on business within the local limits of the jurisdiction of the court from which the judgment summons issued, evidence by affidavit shall be admissible on his behalf.

(2) If the judgment creditor does not appear at the hearing of the judgment summons, but the court has received from him an affidavit which is admissible in evidence under this rule, he shall be deemed to have appeared at the hearing and to have tendered the evidence in the affidavit.

(3) The provisions of Order XXII shall apply in every case in which evidence by affidavit is admitted under this rule.

Judgment summons after issue or execution against property.

19.—(1) Where a judgment creditor who has issued a process of execution against the property of a judgment debtor applies for the issue of a judgment summons against him, all proceedings in execution against such property shall be stayed and the stay shall not be removed except by leave of the court.

(2) Where the process mentioned in paragraph (1) has been sent to a court other than the court in which the application for the issue of a judgment summons is made, the court in which the application for a

judgment summons is made shall notify the court in whose hands such process is outstanding that a judgment summons has been applied for and thereupon the last-mentioned court shall send the process to the court from whom the notification was received together with a note of any fees or expenses incurred in the execution of such process.

(3) Save as hereinafter provided, the judgment summons shall not be issued until the judgment creditor has paid to the proper officer of the court in which the judgment summons has been applied for any fees or expenses incurred in the execution of the process against the property of the judgment debtor.

(4) Notwithstanding anything contained in paragraph (3) the court may, in any case in which it thinks fit on account of the poverty of the judgment creditor, or for any other reason to be recorded in the minutes of the proceedings, dispense with or remit the payment of any such fees or expenses as are mentioned in paragraph (3) either in whole or in part, or may direct that the judgment summons shall issue notwithstanding that such fees and expenses have not been paid by the judgment creditor.

Transfer of proceedings for judgment summons.

20.—(1) Where a judgment creditor desires to issue a judgment summons in a court other than the court which passed the decree, he may make an *ex parte* application in writing to the court which passed the decree for the transfer of the proceedings to a court having jurisdiction to issue the judgment summons and to be named in the application.

(2) On receipt of such application the provisions of rules 4, 5 and 6 of Order XXIV shall apply.

(3) If after the making of an order of transfer a payment is made into the court which passed the decree, such court or the proper officer thereof shall give notice of the payment to the judgment creditor and forward the amount of the payment to the court to which the proceedings have been transferred.

(4) If the judgment creditor subsequently desires to issue a judgment summons in another court, he may make an application to the court to which the proceedings have been transferred and the provisions of paragraphs (2) and (3) shall apply with the necessary modifications.

Insolvency of debtor provable.

21. Where on the hearing of a judgment summons the debtor satisfies the court that a receiving order or an order of adjudication in insolvency has been made against him, and that the debt was provable in the insolvency, no order of commitment shall be made.

Commitment not to be enforced where receiving order.

22.—(1) If after an order of commitment has been made, the judgment debtor proves by affidavit to the satisfaction of the court, in which the order of commitment was made, that a receiving order or an order of adjudication in insolvency has been made against him, the order of commitment shall not be issued or if issued and not executed shall be recalled, and the proper officer of the court shall give notice to the judgment creditor of the filing of the affidavit.

(2) No order of commitment shall be stayed or recalled under this rule unless a certified copy of the receiving order or order of adjudication in insolvency is annexed to the affidavit hereinbefore referred to.

(3) Where the order of commitment has been sent to a foreign court, the proper officer of the home court shall give notice of the filing of such affidavit to the foreign court and shall recall the order of commitment.

(4) Where the debtor is arrested, he may file the affidavit mentioned in paragraph (1) in the court in the local limits of the jurisdiction of which he is in custody, and thereupon he shall be discharged out of the custody upon the certificate of the proper officer of that court, who shall give notice of his discharge to the judgment creditor.

Order on judgment summons.

23.—(1) On the hearing of a judgment summons the court, if it is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a new order for payment of the amount remaining unpaid, either at a specified time or by instalments.

(2) If an order of commitment is made, the court may direct execution of the order to be suspended to enable the judgment debtor to pay the amount due at such time or by such instalments as it shall direct and a note of such direction shall be entered in the minutes of the proceedings.

(3) Subject to the provisions of rules 26 and 29, all payments under a new order or under an order of commitment shall be made into court.

Suspension of instalment order.

24.—(1) If it is made to appear to the satisfaction of the court that there is reason to believe that the judgment debtor is unable to pay any sum ordered to be paid at the time or by the instalments ordered under rule 23, the court may suspend the order of commitment upon such terms and conditions (if any), as it shall think just, so as to enable the judgment debtor to apply under rule 12 of Order XXIII to vary any previous order for the payment of any money remaining unpaid by him.

(2) Unless the court shall, for reasons to be recorded in the proceedings, otherwise direct, no application for suspension of an order of commitment shall be granted without notice to the judgment creditor.

(3) Where an order for such suspension has been granted *ex parte*, notice thereof shall be served upon the judgment creditor, who within four days after receiving such notice may apply to have such order set aside.

(4) Where the judgment debtor makes oral application in court in the presence of the judgment creditor for the variation of any previous order for the payment of any amount remaining due and the judgment creditor consents, the application to vary any previous order for payment may be dealt forthwith upon its merits and without any formal application or notice as prescribed in rule 12 of Order XXIII.

(5) In dealing with any application for the variation of an order for payment of any money by instalments or otherwise, the court may direct that the order of commitment shall be suspended so as to enable the judgment debtor to pay the amount due at such time or by such instalments as it shall direct and a note of such direction shall be made in the proceedings.

(6) Any order of suspension made under this rule shall cease to operate if the court at any subsequent time so orders, or if the judgment creditor withdraws or abandons the order of commitment.

Requirements for issue of order of commitment.

25.—(1) Where an order of commitment has been suspended and any of the terms of the order of suspension have not been complied with, the judgment creditor may file an application in writing for an order of commitment to be issued.

(2) Where two or more judgment debtors are ordered to be committed in respect of the same judgment or order, a separate order of commitment shall be issued in respect of each judgment debtor.

(3) An order of commitment shall, on whatever day it may be issued, bear the date on which it was made, and shall, if unexecuted, remain in force for one year only from and exclusive of that date, unless extended.

(4) The court may, before the expiration of the year, extend the time within which the order may be executed, for a period not exceeding one year from the date on which but for the extension the order would have ceased to be in force.

(5) An order of extension may be made either before or after the order of commitment is issued, and shall be entered on the order of commitment.

(6) The fee payable on the application for extension may be allowed as costs of the order of commitment and, if allowed, shall be entered thereon.

Payment on arrest.

26. When an order of commitment is issued, the judgment debtor may, at any time before he is lodged in the civil prison, pay to the officer executing such order the amount entered on the order as that on payment of which the debtor is to be discharged, and on receiving that amount such officer shall discharge the debtor.

Part payment after issue of order of commitment.

27.—(1) If at any time after the issue of an order of commitment and before the debtor is lodged in prison, any money is paid into court but the amount paid is less than that entered on the order of commitment as that on payment of which the debtor is to be discharged, the court receiving such money shall cause notice of such payment to be given to the officer entrusted with the execution of the order.

(2) The officer charged with execution of the order of commitment, on receiving any payment, or notice thereof, shall deduct the amount of the payment from the amount entered on the order as that on payment of which the judgment debtor is to be discharged, and the order of commitment shall thenceforth operate as an order of commitment for non-payment of the balance only.

Payment after debtor lodged in prison.

28. Where after the judgment debtor has been lodged in the civil prison payment is made of the amount entered on the order of commitment as that on payment of which he is to be discharged, the following provisions shall apply:—

(*a*) where payment is made into the court for the area in which the order was executed, the proper officer of such court shall sign a certificate thereof and send it forthwith to the officer in charge of the civil prison in which the judgment debtor is detained and on receipt of such certificate the judgment debtor shall be discharged;

(*b*) where payment is made to the officer in charge of the prison of the amount entered on the order of commitment, together with the cost (if any) of transmitting the money, he shall sign a certificate of the payment and transmit the amount forthwith to the court which made the order and shall discharge the judgment debtor.

Part payment after debtor lodged in prison.

29.—(1) Where after a debtor has been lodged in the civil prison money is paid into court, but the amount paid is less than that entered on the order of commitment as that on payment of which the debtor is to be discharged, the court shall send notice of such payment to the officer in charge of the civil prison in which the judgment debtor is detained.

(2) Such officer, on receiving notice of any payment, shall deduct the amount of the payment from the amount entered on the order as that on payment of which the debtor is to be discharged.

(3) Where the officer in charge of the prison has received notice of a payment under paragraph (1) and subsequently receives the balance of the amount entered on the order of commitment as that on payment of which the debtor is to be discharged, together with the cost (if any) of transmitting the money, he shall sign a certificate of the payment and transmit the amount forthwith to the court which made the order and shall discharge the judgment debtor.

Discharge of debtor on request of judgment creditor.

30. Upon the judgment creditor lodging with the court a written request that the debtor may be discharged from custody, the court shall make an order for the discharge of the debtor in respect of the order of commitment, and send a certificate thereof to the officer in charge of the prison in which the judgment debtor is confined.

Where no costs allowed on new order.

31. On the hearing of a judgment summons no costs shall be allowed to the judgment creditor unless the court is satisfied that the judgment debtor has or has had, since the date of the original judgment or order, the means to pay the sum in payment of which he has made default, and that he has refused or neglected, or refuses or neglects to pay the said sum, and a note thereof is entered in the minutes of the proceedings.

New order after debtor imprisoned.

32.—(1) Where a new order for payment of the amount remaining unpaid is made either on the hearing of a judgment summons or under rule 11, 12, or 13 of Order XXIII, there shall be included in the amount payable under that order for the purpose of any proceedings, otherwise than by judgment summons, the amount in respect of which an order of commitment has been made and the judgment debtor imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of the last-mentioned amount.

(2) No judgment summons under the new order shall include any amount in respect of which the judgment debtor was imprisoned before the new order was made, and any amount paid subsequently to the new order shall be appropriated in the first instance to the amount due under the new order.

Costs of abortive execution.

33. Costs incurred on an execution by attachment of the judgment debtor's property, but not recovered thereunder, shall not be included in a judgment summons or in a new order, nor shall money paid into court be appropriated to such costs until the debt and costs, other than such costs, have been paid.

Costs on judgment summons.

34. The charge of an advocate for attending the hearing of a judgment summons shall not be allowed unless the party for whom he appears does not reside or carry on business or personally work for gain within the district of the court in which the summons is heard, in which case the court may allow such charge as it thinks fit.

PART IV

Execution of a Money Decree under Section 38(4)

Imprisonment for non-payment of money decree without proof of means, when allowed.

35. A money decree may be enforced by the High Court by the detention in prison of the judgment debtor, in the manner hereinafter provided and without the proof of means referred to in Part III, in the following cases, namely:—

(*a*) default by a trustee or person acting in a fiduciary capacity in payment of any sum in his possession or control which he has been ordered by the court to pay; or

(*b*) default by an advocate or vakil in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court; or

(*c*) default by an insolvent in payment for the benefit of creditors of any portion of his salary or other income in respect of which the court is authorised to make an order.

Institution of proceedings under Part IV.

36. Proceedings for the enforcement of a decree by the detention in prison of a judgment debtor upon any of the grounds set forth in rule 35, shall be commenced by an application for an order to show cause why the decree should not be enforced in that manner.

Simultaneous execution.

37. Proceedings under this Part may be taken at the same time as proceedings in aid of execution against the property of the judgment debtor, but the court may in its discretion refuse execution at the same time against the person and the property of the judgment debtor.

Notice of application to be given.

38.—(1) No order to show cause shall be made under this Part without previous notice to the judgment debtor:

Provided that, where it is satisfactorily proved by evidence, by affidavit or otherwise upon oath that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, the court or a judge may issue *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the court or judge may think just, a warrant directing that the judgment debtor shall be arrested and brought before the court or a judge to show cause why he should not be detained in prison upon one of the grounds set forth in rule 35.

(2) Where an order has been made under this rule for his arrest, the judgment debtor may move to set it aside.

Contents of notice or warrant.

39.—(1) Every notice and every warrant of arrest issued under rule 38 shall state in general terms the grounds upon which the application for the arrest or imprisonment of the judgment debtor has been made.

(2) Where any such notice or warrant of arrest is founded upon evidence by affidavit, a copy of any affidavit intended to be used shall be served on the judgment debtor at the time of service of the notice or at the time of his arrest (as the case may be).

Length of notice.

40. Unless the court or a judge give special leave to the contrary, there must be at least four clear days between the service of the notice and the day named in the notice for hearing the application.

Warrant of arrest in default of appearance.

41. Where the judgment debtor does not appear in obedience to the notice, the court or judge may, on the application of the judgment creditor, issue a warrant for his arrest or may proceed forthwith to hear the application *ex parte*.

Adjournment of hearing.

42.—(1) The hearing of any application under this Part for the detention in prison of a judgment debtor may from time to time be adjourned upon such terms (if any) as the court or judge shall think fit.

(2) When the judgment debtor has been brought before the court under a warrant for his arrest, the court or judge may order that during such adjournment the judgment debtor shall be detained in the civil prison, or shall be left in the custody of an officer of the court, or shall be released on his furnishing security, to the satisfaction of such court or judge, for his appearance when required by the court or judge.

Discretion of court or judge as to making order for imprisonment under this Part.

43.—(1) The court or a judge may in any proceedings under this Part inquire into the case and may grant or refuse, either absolutely or upon terms, any application or other process, issued under this part for the arrest or imprisonment of the judgment debtor, and any application to stay the operation of any process or order issued under this Part, or for discharge from arrest or imprisonment thereunder.

(2) If an order of commitment is made, the court or judge may direct execution of such order to be suspended so as to enable the judgment debtor to pay the amount due at such time or by such instalments as the court or judge shall direct.

Requirements for issue of order of commitment.

44. Where under rule 43 an order of commitment has been suspended and any of the terms of the order of suspension have not been complied with, the judgment creditor may apply for an order of commitment to be issued and in such case the provisions of rule 25 shall apply to such order of commitment.

PART V

Personal Attachment in Execution of a Decree other than a Money Decree

Decree which may be enforced by personal attachment.

45. A decree may be enforced by personal attachment of the judgment debtor in each of the following cases, namely:

(*a*) where the decree is for any specific movable, or for a share in any specific movable; or

(*b*) where the decree is for the specific performance of a contract and the party against whom such decree has been passed, has had an opportunity of obeying it and has wilfully failed to obey it; or

(*c*) where the decree is for an injunction and the party, against whom such decree has been passed, has had an opportunity of obeying it and has wilfully failed to obey it; or

(*d*) where the court has granted a temporary injunction under the provisions of Order XLIV and the defendant has had an opportunity of obeying it and has disobeyed it or been guilty of a breach of any of the terms thereof; or

(*e*) where the decree (not being a money decree) is one of a nature which is declared by any law for the time being in force to be enforceable by the personal attachment of the judgment debtor.

Simultaneous execution.

46. Save as otherwise provided by any law for the time being in force, execution of any of the decrees referred to in rule 45 may be by personal attachment of the judgment debtor, or by attachment of his property, or by both:

Provided that the court may, in its discretion refuse execution at he same time against the person and the property of the judgment debtor.

Personal attachment of directors and officers of corporation.

47.—(1) Where the party against whom a decree for the specific performance or for an injunction has been passed is a corporation, such decree may, by leave of the court, be enforced by the detention in the civil prison of the directors or other principal officers thereof as well as by the attachment of the property of the corporation.

(2) Where under the provisions of Order XLIV the court has granted a temporary injunction directed to a corporation, such injunction shall be binding not only on the corporation itself, but also on all members and officers of such corporation whose personal action it seeks to restrain and in lieu of or in addition to any other order which it is empowered to make in respect of any disobedience or breach of the terms of such injunction, the court may order the personal attachment of any such member or officer, who is guilty of such disobedience or breach.

Application for attachment in case of decree for an injunction or delivery of a specific movable.

48.—(1) When a decree enforceable by personal attachment has been made for the benefit of one party (in this rule called "the applicant") against another party (in this rule called "the respondent"), the court shall, if the order is for the delivery of goods without the option of paying their value or is in the nature of an injunction, at the time when the order is drawn up, and in any other case, on the application of the applicant, issue or cause to be issued a copy of the order indorsed in the manner hereinafter provided and the copy so indorsed shall be served on the respondent personally.

(2) The indorsement referred to in paragraph (1) shall be in the following words or words to the like effect:—

"To.....of....., the within-named defendant.

Take notice that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this.....day of....., 19.....

.....Judge."

(3) If the respondent fails to obey the order, the court on the application of the applicant shall issue a notice to the respondent to show cause why an order for his personal attachment should not be made.

(4) Such notice shall not issue less than two clear days after service of the indorsed copy of the decree, unless the court gives leave for the notice to be issued sooner, and such notice shall be served on the respondent personally.

(5) On the day named in the notice, the court on being satisfied that the respondent has failed to obey the order and, if the respondent does not appear, that the indorsed copy of the order and the notice have been served upon him, may order a warrant of personal attachment to issue.

Application for personal attachment

49. In any case, in which the decree has not been indorsed in the manner provided by rule 48, proceedings under this Part for the personal attachment of a judgment debtor may be commenced by an application for a notice to show cause why the decree should not be enforced in that manner.

Notice of application to be given.

50.—(1) Every notice to show cause shall be served upon the judgment debtor personally:

Provided that, where it is satisfactorily proved by evidence by affidavit or otherwise upon oath that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, the court may issue *ex parte*, upon such terms as to costs or otherwise and subject to such undertaking (if any) as it thinks fit, a warrant directing that the judgment debtor shall be arrested and brought before it to show cause why the decree should not be executed by his personal attachment.

(2) Where an order has been made under this rule for his arrest, the judgment debtor may move to set it aside.

Contents of notice or warrant.

51.—(1) Every notice to show cause and every warrant of arrest issued under rule 50 shall state in general terms the grounds upon which the application for the arrest or personal attachment of the judgment debtor has been made.

(2) Where any such notice or warrant of arrest is founded upon evidence by affidavit, a copy of any affidavit intended to be used shall be served on the judgment debtor at the time of service of the notice or at the time of his arrest as the case may be.

Length of notice.

52. Unless the court gives special leave to the contrary, there must be at least two clear days between the service of the notice and the day named in the notice for the hearing of the application.

Warrant of arrest in default of appearance.

53. Where the judgment debtor does not appear in obedience to a notice issued under this Part, the court may, on the application of the judgment creditor, issue a warrant for his arrest or may proceed to hear the application for personal attachment *ex parte*.

Adjournment of application.

54.—(1) The hearing of any application under this Part for the personal attachment of any judgment debtor may from time to time be adjourned upon such terms (if any) as the court shall think fit.

(2) When the judgment debtor has been brought before the court under a warrant of arrest, the court may order that during such adjournment the judgment debtor shall be detained in the civil prison, or shall be left in the custody of an officer of the court, or shall be released on his furnishing security, to the satisfaction of the court, for his appearance when required by the court.

Discretion of court.

55.—(1) In any proceedings under this Part the court shall inquire into the case and may grant or refuse, either absolutely or upon terms, an order for the personal attachment of the judgment debtor.

(2) If an order for personal attachment is made, the court may direct execution of such order to be suspended for such period as it may think fit so as to enable the judgment debtor to comply with the terms of the decree in respect of which the application for such personal attachment has been made.

Suspended order of personal attachment.

56. Where under rule 55, an order for personal attachment has been suspended and it is proved to the satisfaction of the court that any of the terms of the order have not been complied with, the order for personal attachment may be issued.

Contents of order of personal attachment.

57. An order of personal attachment shall be addressed to the proper officer of the court or other person or persons charged with the execution thereof and shall direct that the judgment debtor shall be forthwith apprehended and conveyed to the civil prison and there detained for such period (not exceeding six months) as shall be mentioned in the order.

Discharge of person in custody.

58.—(1) Where any person in custody under an order of personal attachment desires to apply for his discharge, he shall file an affidavit showing that he has purged or is desirous of purging his contempt.

(2) Notice of intention to make such application for discharge, together with a copy of the affidavit, shall be served upon the party (if any) at whose instance the order for personal attachment was issued not less than one clear day before the date fixed for the hearing of such application.

How application for discharge may be dealt with.

59.—(1) At the hearing of any application by the judgment debtor for his discharge from custody on an order of personal attachment, the court may in its discretion:—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order of discharge for a specified time, or

(*c*) grant an order of discharge subject to the fulfilment by the judgment debtor of any condition which the court thinks fit to impose.

(2) The court may make it a condition of the discharge of the judgment debtor that he shall pay to any person any costs which he may be liable to pay to such person in respect of any proceedings in which the order of personal attachment has been made.

(3) Where the order of discharge is refused, or suspended, or granted subject to a condition, the judgment debtor shall not be detained in prison for any longer period than six months from the date on which he was originally received into prison under the order of personal attachment.

(4) Where the operation of the order of discharge is suspended for a specified time, the court shall notify the officer in charge of the prison, in which the judgment debtor is detained as to the period for which the operation of the order is suspended.

(5) Where the order of discharge is made upon condition that the judgment debtor shall pay the costs to any person, the amount of such costs shall be named in such order and the provisions of rules 28 and 29 shall apply in the same manner as they apply in the case of an order of commitment to prison on a judgment summons.

(6) Where the order of discharge is made upon a condition other than one for payment of costs and evidence to the satisfaction of the court is given that such condition has been fulfilled, the court shall send an order to the officer in charge of the prison directing the release of the judgment debtor.

PART VI

Revisional Powers of High Court

Commitment order and proceedings to be forwarded to the High Court.

60.—(1) When a subordinate court makes a peremptory order of commitment of a judgment debtor to prison, it shall, as soon as conveniently may be, forward to the High Court a copy of such order and the record of all proceedings in the suit or a certified copy thereof.

(2) For the purposes of this rule "peremptory order of commitment" means an order committing a judgment debtor to prison forthwith and includes any such order when made on non-payment of an instalment ordered to be paid by the judgment debtor or on non-fulfilment by the judgment debtor of a condition upon which an order of commitment has been suspended.

Revisional powers of High Court.

61. If, after examination of the order of commitment and the proceedings in the suit and requiring from the subordinate court any further information or evidence which it may deem necessary, the High Court is of the opinion that the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

ORDER XXVI

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

No abatement by party's death, if right to sue survives.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3.—(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under paragraph (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Procedure in case of death of one of several defendants or of sole defendant.

4.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under paragraph (1), the suit shall abate as against the deceased defendant.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing rules whether the cause of action survives or not, there shall be no abatement, by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Suit not abated by marriage of female party.

7.—(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

When plaintiff's insolvency bars suit.

8.—(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the court otherwise directs) to give security for the costs thereof within such time as the court may direct.

Procedure where assignee fails to continue suit or give security.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

9.—(1) Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) An application under paragraph (2) may be admitted after the period of limitation prescribed therefor, when the applicant satisfies the court that he had sufficient cause for not making the application within such period.

Procedure in case of assignment before final order in suit.

10.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of paragraph (1).

Application of Order to appeals.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to proceedings.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXVII

WITHDRAWAL AND ADJUSTMENT OF SUITS

Withdrawal of suit or abandonment of part of claim.

1.—(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the court is satisfied—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim;

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in paragraph (2), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suit.

2. In any fresh suit instituted on permission granted under rule 1 the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise of suit.

3. Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Proceedings in execution of decrees not affected.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXVIII

PAYMENT INTO AND OUT OF COURT

Deposit by defendant of amount in satisfaction of claim.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

2. Notice of the deposit shall be given through the court by the defendant to the plaintiff, and the amount of the deposit shall (unless the court otherwise directs), be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Procedure where plaintiff accepts deposit as satisfaction in part.

4.—(1) Where the plaintiff accepts such amounts as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the court a statement to that effect, and such statement shall be filed and the court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the court shall consider which of the parties is most to blame for the litigation.

Applications must be supported by affidavits.

5. All applications for payment of money out of court must be supported by affidavit, and notice should be given to all parties except as provided by rule 6.

Ex parte applications.

6. Applications may be made *ex parte* and without affidavit when—

(*a*) the application is made with the consent of all the parties concerned, such consent to be in writing and attached to the application;

(*b*) the application is made for the payment out of money which a party charged with the payment thereof has in the absence of any specific direction by the court as to the manner of payment elected to pay into court under this order;

(*c*) the application is made for the payment out of money which has been recovered under an order of the court for payment by instalments; or

(*d*) the application is made by a decree holder for the payment out of money realised under execution proceedings.

ORDER XXIX

SECURITY FOR COSTS

When security for costs may be required from plaintiff.

1.—(1) Where, at any stage of a suit, it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of Zanzibar, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Zanzibar other than the property in suit, the court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves Zanzibar under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of Zanzibar within the meaning of paragraph (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within Zanzibar.

Effect of failure to furnish security.

2.—(1) In the event of such security not being furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXX

PART I.—LOCAL COMMISSIONS

Commissions to Examine Witnesses

Cases in which court may issue commission to examine witness.

1. Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under the Decree from attending the court or who is from sickness or infirmity unable to attend it.

Order for commission.

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

Where witness resides within court's jurisdiction.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing the same may be issued to any person whom the court thinks fit to execute it.

Persons for whose examination commission may issue.

4.—(1) Any court may in any suit issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) any person who is about to leave such limits before the date on which he is required to be examined in court; and

(*c*) any civil or military officer of the Government who cannot, in the opinion of the court, attend without detriment to the public service.

(2) Such commission may be issued to any court within the local limits of whose jurisdiction such person resides, or to any advocate or other person whom the court issuing the commission may appoint.

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

Court to examine witness pursuant to commission.

5. Every court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Return of commission with depositions of witnesses.

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

When depositions may be read in evidence.

7. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(*a*) the person who gave the evidence is beyond the jurisdiction of the court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in court, or is a civil or military officer of the Government who cannot, in the opinion of the court, attend without detriment to the public service, or

(*b*) the court in its discretion dispenses with the proof of any of the circumstances mentioned in paragraph (*a*), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for Local Investigations

Commissions to make local investigations.

8. In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

Procedure of Commissioner.

9.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the court.

Report and depositions to be evidence in suit.

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

Commissioner may be examined in person.

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

Commissions to Examine Accounts

Commission to examine or adjust accounts.

10. In any suit in which an examination or adjustment of accounts is necessary, the court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give Commissioner necessary instructions.

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

Proceedings and report to be evidence. Court may direct further inquiry.

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

Commissions to make Partitions

Commissions to make partition of immovable property.

12. Where a preliminary decree for partition has been passed, the court may issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Procedure of Commissioner.

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

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

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

General Provisions

Expenses of commission to be paid into court.

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

Powers of Commissioners.

15. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment—

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of inquiry;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance and examination of witnesses before Commissioner.

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

(2) A Commissioner may apply to any court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner.

17.—(1) Where a commission is issued under this Order, the court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or advocates.

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

PART II.—COMMISSIONS AND LETTERS OF REQUEST SENT BEYOND ZANZIBAR

List of questions and translations to go with commission or Letter of Request.

18. In every civil or commercial case in which a Commission Rogatoire or Letter of Request is sent to a foreign country the Commission Rogatoire or Letter of Request shall be accompanied by a list of questions to be put to the witnesses, together with a translation, both of the Commission Rogatoire or Letter of Request itself and of the said list of questions, into the language of such foreign country.

Forms.

19.—(1) Such a Letter of Request shall be in Form No. 10 of Appendix I and such a Commission Rogatoire shall be in the same form, except that words conferring authority shall be substituted for the words preferring the request and such other variations shall be made as circumstances require.

(2) This rule shall apply also to Letters of Request and commissions issued for execution in any British Colony or Protectorate or in India or in Pakistan.

PART III.—EXECUTION OF COMMISSIONS AND LETTERS OF REQUEST FROM FOREIGN COUNTRIES OR BRITISH COURTS OUTSIDE ZANZIBAR

The court may make order to execute Commission or Letter of Request. Cap. 16.

20.—(1) Where under the Foreign Tribunals Evidence Act, 1856, or the Fugitive Criminals Surrender Decree any civil or commercial matter or any criminal matter, is pending before a court or tribunal of a foreign country and it is made to appear to the court or a Judge, by Commission Rogatoire, or Letter of Request, or other evidence as hereinafter provided, that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within Zanzibar, the court or a Judge may on the *ex parte* application of any person shown to be duly authorised to make the application on behalf of such foreign court or tribunal, and on production of the Commission Rogatoire, or Letter of Request, or of a certificate signed in the manner and to the effect hereinafter mentioned or such other evidence as the court or a Judge may require, may—

(*a*) order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order of such witness or witnesses accordingly;

(*b*) by the same or any subsequent order to command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order; and

(*c*) to give all such directions as to the time, place and manner of such application, as may appear reasonable or just.

(2) Any such order may be enforced in like manner as an order made by such court or Judge in a cause depending in such court or before such Judge.

(3) A certificate under the hand of the ambassador, minister or other diplomatic agent of any foreign power received by Her Majesty, or in case there be no such diplomatic agent, then of the consul-general or consul of any such foreign power at London, received or admitted as such by Her Majesty, that any matter in relation to which an application is made under the enactments above mentioned is a civil or commercial cause or matter or a criminal matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified.

(4) Where no such certificate is produced, other evidence to that effect shall be admissible.

Form of order.

21. An order made under rule 20 shall be in Form No. 11 of Appendix I with such variations as circumstances may require.

Who may conduct the examination.

22. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before such other qualified person as to the court or a Judge may seem fit.

Commissioner to forward evidence to Registrar, who is to forward it with certificate and the commission to British Resident.

23. Unless otherwise provided in the order for examination, the Commissioner before whom the examination is taken shall, on its completion, forward the same to the Registrar of the High Court, and on receipt thereof the Registrar shall append thereto a certificate, in Form No. 12 of Appendix I with such variations as circumstances may require, duly sealed with the seal of the High Court for use out of the jurisdiction, and shall forward the depositions so certified, and the Commission Rogatoire or Letter of Request, if any, to the British Resident, for transmission through the diplomatic channel to the foreign court or tribunal requiring the same:

Proviso.

Provided always that in cases where the Commission Rogatoire or the Letter of Request has been received in Zanzibar, otherwise than through the diplomatic channel, the depositions and the Commission Rogatoire or Letter of Request shall be returned through the same channel as that through which the Commission Rogatoire or Letter of Request was received.

Manner of conducting the examination.

24. An order made under rule 20 may, if the court or a Judge shall think fit, direct the said examination to be taken in such manner as may be requested by the Commission Rogatoire or Letter of Request from the foreign court, or therein signified to be in accordance with the practice or requirements of such court or tribunal, or which may, for the same reason, be requested by the applicant for such order. But in the absence of any such special directions being given in the order for examination the same shall be taken in the manner prescribed in Part I of this Order.

Applications under the *Evidence by* Commission Act, 1859.

25.—(1) Rules 20 to 24 shall apply, as far as may be, to applications under the Evidence by Commission Act, 1859 (22 Vict. c. 20), for the purpose of giving effect to any commission or Letter of Request from any British tribunal out of the jurisdiction.

197 of 1953, r.2.

(2) In such cases the depositions certified as above provided and Letter of Request, if any, shall be forwarded by the Registrar to the British Resident for transmission to one of Her Majesty's Secretaries of State:

Provided always that in cases where the Letter of Request has been received in Zanzibar without transmission through any of the said Secretaries of State, the depositions and the Letter of Request may be returned by the British Resident through the same channel as that through which the Letter of Request was received.

Applications by the Attorney-General.

26. Where a Commission Rogatoire or Letter of Request, as mentioned in rule 20, is transmitted to the High Court by the British Resident with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the court by the agents in Zanzibar of any of the parties to the action or matter in the foreign country, the Registrar shall transmit the same to the Attorney-General, who may thereupon, with the consent of the British Resident, make such applications and take such steps as may be necessary to give effect to such Commission Rogatoire or Letter of Request in accordance with rules 20 to 24.

ORDER XXXI

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

Suits by or against Government.

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

Persons authorised to act for Government.

2. Persons being *ex officio* or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, acts and applications under the Decree may be made or done on behalf of the Government.

Plaints in suits by or against Government.

3. In suits by or against the Zanzibar Government, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The British Resident".

Agent for Government to receive process.

4. The Attorney-General in any court, or such other person as the British Resident may appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Zanzibar Government issued by such court.

Fixing of day for appearance on behalf of Government.

5. The court, in fixing the day for the Zanzibar Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Attorney-General to appear and answer on behalf of the Government, and may extend the time at its discretion.

Attendance of person able to answer.

6. The court may also, in any case in which the Attorney-General is not accompanied by any person on the part of the Zanzibar Government, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Extension of time to enable public officer to make reference to Government.

7.—(1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

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

Procedure in suits against public officer.

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

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

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

ORDER XXXII

SUITS BY OR AGAINST MILITARY MEN

Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.

1.—(1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

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

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

(4) In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

Person so authorised may act personally or appoint advocate.

2. Any person authorised by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint an advocate to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorised, or on his advocate to be good service.

3. Processes served upon any person authorised by an officer or a soldier under rule 1 or upon any advocate appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXXIII

SUITS BY OR AGAINST CORPORATIONS

Subscription and verification of pleading.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or agent of the corporation who is able to depose to the facts of the case.

Service on corporation.

2.—(1) Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other agent of the corporation; or

(*b*) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

(2) Any process or notice required to be served on an oversea company shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar of Companies under the provisions of Part IX of the Companies Decree and left at or sent by post to the address which has been so delivered.

Cap. 153.

(3) Where any oversea company makes default in delivering to the said Registrar the name and address of a person in the Protectorate who is authorised to accept on behalf of the company service of process or notices, or if at any time all the persons whose names and address have been so delivered are dead or have ceased to reside, or refuse to accept service on behalf of the company, or for any other reason cannot be served, a document may be served on such company by leaving it at or sending it by post to any place of business establishment by the company in the Protectorate.

(4) In this rule "oversea company" means a company incorporated outside the Protectorate which has established and continues to have a place of business within the Protectorate.

Power to require personal attendance of officer of corporation.

3. The court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other agent of the corporation who may be able to answer material questions relating to the suit.

ORDER XXXIV

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

Suing of partners in name of firm.

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

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

Disclosure of partners' names.

2.—(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their advocate shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

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

G.N. 58 of 1955. Cap. 168.

(3) Subject to the provisions of section 11 of the Registration of Business Names Decree (which relate to the disability of persons failing to comply with the provisions of the said Decree), where the names of the partners are declared in the manner referred to in paragraph (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

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

Service.

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

(*a*) upon any one or more of the partners, or

(*b*) at the principal place at which the partnership business is carried on within Zanzibar upon any person having, at the time of service, the control or management of the partnership business there,

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

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

Right of suit on death of partner. Cap. 149.

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

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

(*a*) to apply to be made a party to the suit; or

(*b*) to enforce any claim against the survivor or survivors.

Notice in what capacity served.

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

Appearance of partners.

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

No appearance except by partners.

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

Appearance under protest.

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

Attachment of debts owing from a firm.

9. Where a debt is owing by a firm carrying on business within the jurisdiction and a prohibitory order is served in the manner provided by paragraph (1) of rule 38 of Order XXIV upon any person having the control or management of the partnership business or on any partner of the firm within the jurisdiction, such debt may be attached under the provisions of the said rule, notwithstanding that the one or more partners of such firm may be resident abroad.

Suits between co-partners.

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

Suit against person carrying on business in name other than own.

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

ORDER XXXV

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Representation of beneficiaries in suits concerning property vested in trustees, etc.

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

Joinder of trustees, executors and administrators.

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

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

Husband of married executrix not to join.

3. Unless the court directs otherwise, the husband of a married trustee administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER XXXVI

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

Minor to sue by next friend.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Where suit is instituted without next friend, plaint to be taken off the file.

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

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

Guardian for the suit to be appointed by court for minor defendant.

3.—(1) Where the defendant is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

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

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

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

Who may act as next friend or be appointed guardian for the suit.

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

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

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

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

(4) Where there is no other person fit and willing to act as guardian for the suit, the court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Representation of minor by next friend or guardian for the suit.

5.—(1) Every application to the court on behalf of a minor (other than an application under paragraph (2) of rule 10) shall be made by his next friend or by his guardian to the suit.

(2) Every order made in a suit or on any application, before the court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit,

as the case may be, may be discharged, and, where the advocate of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such advocate.

Receipt by next friend or guardian for the suit of property under decree for minor.

6.—(1) A next friend or guardian for the suit shall not, without the leave of the court, receive any money or other movable property on behalf of a minor either—

(*a*) by way of compromise before decree or order; or

(*b*) under a decree or order in favour of the minor.

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

Agreement or compromise by next friend or guardian for the suit.

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

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

Retirement of next friend.

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

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

Removal of next friend.

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

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

Stay of proceedings on removal, etc., of next friend.

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

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

Retirement, removal or death of guardian for the suit.

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

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

Course to be followed by minor plaintiff or applicant on attaining majority.

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

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

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

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

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

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

Where minor co-plaintiff attaining majority desires to repudiate suit.

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

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

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

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

Unreasonable or improper suit.

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

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

Application of Rules to persons of unsound mind.

15. Save as otherwise provided by rule 16, the provisions contained in rules 1 to 14 (both inclusive), so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Suits by or against person in respect of whom a management order has been made.

16.—(1) Where a management order has been made in respect of a patient's estate, the provisions of this Order shall apply in relation to suits by or against such patient subject to the exceptions and modifications following, that is to say:—

(*a*) Unless the High Court otherwise directs, a suit by a patient shall be instituted in his name by the manager of his estate as next friend of the patient.

(*b*) No suit shall be instituted by the manager or any other person as such next friend without the leave of the High Court.

(*c*) Such leave may be granted generally or specially for a particular suit or class of suits.

(*d*) Where a suit has been instituted in the name of a patient by any person (other than the manager) without such leave as aforesaid, such manager may at any stage of the proceedings apply to the court before which such suit is pending for all further proceedings to be stayed for such reasonable time as will enable such manager to report the matter to the High Court for its directions.

(*e*) Where the manager of an estate is of the opinion that it is desirable to make application to the court for an order under the provisions of Order XL, XLI or XLII or any other order of an interlocutory nature and that the delay caused by making application to the High Court for leave to institute such suit might lead to a failure of justice, he may institute such suit without such leave as aforesaid but in such case shall, as soon as conveniently may be, report the matter to the High Court for its instructions.

(*f*) Where a suit is instituted in the name of a patient by a person claiming to be the manager of such patient's estate as next friend of such patient, the court may presume that leave to institute such suit has been granted under this rule or may call for further proof of the fact.

(*g*) The fact that a manager has instituted a suit in the name of a patient as his next friend without such leave as aforesaid shall not be a ground for ordering the plaint to be taken off the file.

(*h*) Where it is proved to the satisfaction of the court before which any such suit is pending that the same has been instituted by a manager without such leave as aforesaid, the court may stay all further proceedings upon such terms as to costs, as it thinks fit, and until such time as satisfactory evidence is produced before it that the leave has been given by the High Court to continue the prosecution of such suit, but no such order shall be made without notice of the application for such order to the manager and until after hearing his objections (if any).

(*i*) Where the patient is a defendant to a suit the court before which such suit is pending, shall appoint the manager of his estate to be his guardian for the suit:

Provided that, if the interest of the manager in the matters in controversy in such suit is or may be adverse to that of the patient, such court may appoint some other person as such guardian.

(*j*) Where a suit has been instituted against a patient without a guardian, or some person other than the manager has been appointed as guardian of such patient, the manager may apply to the court before which such suit is pending to have himself substituted as such guardian and that the costs of his application and of all prior proceedings in the suit may be provided for.

(2) In this rule—

(*a*) "management" order means an order made under section 45 of the Mental Patients Decree; Cap. 72.

(*b*) "manager" means a person appointed to be manager of a patient's estate under the provisions of the Mental Patients Decree, and also includes a receiver;

(*c*) "patient" means a person who is or is alleged to be of unsound mind;

(*d*) "receiver" means a receiver appointed under rule 6 of the Management of Patients Estates Rules; and,

(*e*) unless the context otherwise requires, words and expressions used in this rule shall have meanings respectively assigned to them by the Mental Patients Decree.

ORDER XXXVII

SUITS BY POOR PERSONS

Application by way of petition. 134 of 1940, r.6.

1. Every application for leave to sue or to defend as a poor person in the High Court or in a subordinate court other than a Kathi's Court shall be made to the court by way of petition.

Contents of petition. 65 of 1947, r.4.

2.—(1) The petition shall contain a brief statement of the cause of action or ground for defence and of the evidence which may be adduced in support thereof.

(2) The petition shall also contain an averment that the applicant by reason of poverty is unable to pay the prescribed court fees and shall further state whether or not the petitioner has been a party to any previous litigation relating to the same subject matter.

Document to be annexed to petition. 65 of 1947, r.5. 26 of 1952 r.4.

3.—(1) The petition shall be supported—

(*a*) by a certificate signed by a District Commissioner, District Officer, Welfare Officer or Mudir in Form No. 14 of Appendix I; or

(*b*) by an affidavit by some person of repute sufficient to satisfy the court as to the means of the applicant.

(2) Before issuing a certificate under this rule, a District Commissioner, District Officer, Welfare Officer or Mudir may require any person claiming such certificate to make an affidavit as to any facts upon which a claim for a certificate is based and such affidavit or a certified copy thereof shall be annexed to the petition.

(3) In addition to any certificate or affidavit hereinbefore referred to in this rule the court may require that the petitioner shall make an affidavit as to any facts upon which the claim for a certificate is based.

Investigation 115 of 1950, r.4.

4. Upon perusing the petition and the certificate or affidavit in support thereof the court, if satisfied that the applicant by reason of poverty is unable to pay the prescribed court fees, may refer the petition to such officer of the court as the court may from time to time direct and such officer shall make such investigation as may be necessary to determine whether *prima facie* there are reasonable grounds for belief that the petitioner is able to establish his claim or defence and such officer shall thereupon report to the court.

Applications in Kathi's Court.

5. Applications for leave to sue or defend as a poor person in a Kathi's Court shall be made personally or in writing to the Kathi in whose Court the suit is to be heard and the Kathi shall himself make due investigation as to the poverty of the applicant and as to the reasonableness of his claim or ground of defence.

Granting of leave.

6. In any case the court, if satisfied as to the poverty of the applicant and that the applicant has a reasonable cause of action or ground of defence, may grant leave to sue or to defend as a poor person and may thereupon remit the payment of court fees in whole or in part subject to the recovery of such fees in the manner hereinafter provided and such remission, save where the court may otherwise direct, shall include all fees which ordinarily would be payable at any stage of the suit and in the execution of any decree which may be passed in favour of the applicant.

Cancellation of order.

7. If at any stage of a suit in which such leave has been granted the court is of the opinion that the party admitted to sue or defend as a poor person—

(*a*) is able to pay the prescribed court fees; or

(*b*) is not prosecuting the suit or conducting the defence in a proper manner or with due diligence; or

(*c*) has entered into an agreement with reference to the subject matter of the suit under which any person has obtained an interest in the subject matter; or

65 of 1947, r.6.

(*d*) has made a compromise or settlement with the other party to the suit without having first obtained leave in the manner prescribed in rule 11; or

(*e*) has intentionally omitted to disclose in his petition any of the matters required to be disclosed by rule 2;

the court may cancel any order made under rule 6 and—

(i) in the case of a plaintiff, defendant counter-claiming or decree holder, may stay the proceedings unless and until the prescribed fees are paid, and may make an order for the plaintiff to pay such fees as he would have paid if the suit had proceeded in the ordinary way and may enforce such order in the same manner as if it were a decree in such suit; and

(ii) in the case of a defendant, may make an order for him to pay such fees as he would have paid if the suit had proceeded in the ordinary way and may enforce such order in the same manner as if it were a decree in such suit.

Recovery of fees, etc.

8.—(1) When any decree is passed in favour of a party admitted to sue or defend as a poor person the amount of the fees and such other costs as would be allowed on taxation if the suit had proceeded in the ordinary way may be included in such decree and when so included shall be recoverable from the other party.

(2) Such fees and costs shall be paid into court by the party from whom they are recoverable and if not so paid the Registrar or such other officer of the court as the Chief Justice may from time to time direct may apply to the court and may obtain execution to the extent of such fees and costs in the same manner as if he were the decree holder.

(3) Unless otherwise ordered by the court, costs awarded under this rule shall include any out-of-pocket expenses paid by the poor person under paragraph (5) of rule 10. 65 of 1947, r.7.

9. No advocate or vakil shall appear on behalf of a party who has been admitted to sue or defend as a poor person, unless he has been requested by the court so to do. Appearance of advocate or vakil.

10.—(1) In any case in which a party has been admitted to sue or defend as a poor person the court may if it deems fit request an advocate or vakil to appear on behalf of such party and to represent him in the proceedings up to the date of final judgment and decree. Court may assign advocate.

(2) For the purposes of this rule the court shall select the advocate or vakil in such manner and subject to such directions as the Chief Justice may from time to time direct.

(3) Except as provided by this Order, no advocate or vakil shall take or agree to take, or seek to obtain any payment, fee, profit, or reward for the conduct of proceedings or for out-of-pocket or office expenses and any advocate or vakil so doing shall be guilty of contempt of court. Advocate not to take fees without leave. 65 of 1947, r.8.

(4) If any such payment, fee, profit, or reward shall be made, given or promised the court may cancel the order made under rule 6 and in such case the party therein referred to shall not afterwards be admitted in the same proceedings as a poor person unless otherwise ordered.

(5) The court may from time to time allow such payments of money to be made by the poor person to the advocate or vakil assigned to him under this rule in respect of out-of-pocket expenses (not including office expenses) as it may consider just.

11.—(1) Neither any poor person nor any advocate or vakil nominated to conduct the proceedings for him, shall enter into any settlement or compromise, whether before or after commencement of the proceedings, nor discontinue the proceedings, without leave. No compromise of suit without leave. 65 of 1947, r.9.

(2) No poor person shall discharge any such advocate or vakil without leave.

(3) No advocate or vakil acting for a poor person shall be at liberty to discontinue his assistance without leave.

(4) Where under this rule leave is required for doing any act, such leave may be granted—

(*a*) in any case in which proceedings have been commenced, by the court before which such proceedings have been commenced or the High Court, or

(*b*) in any case in which proceedings have not yet been commenced, by the High Court.

Payment of fees to advocate. 65 of 1947, r.10.

12. When an advocate or vakil has appeared and conducted a suit at the request of the court such fees as are prescribed or as would be allowed on taxation (unless the court shall otherwise direct) shall be included in any decree passed in favour of the party on behalf of whom such advocate or vakil has appeared and shall be payable by the other party and recoverable in the same manner as the fees and costs referred to in rule 8 and upon recovery shall be paid out to such advocate or vakil.

Costs of advocate of poor person. 65 of 1947, r.12.

13.—(1) When an advocate or vakil has been assigned to a poor person under rule 10, the court may order to be paid to such advocate or vakil out of any money recovered by the poor person, or may charge in favour of such advocate or vakil upon any movable or immovable property recovered by such poor person such sum in respect of costs as would have been allowed to such advocate or vakil on taxation between party and party if he had been retained by his client in the ordinary manner, or such other sum in respect of costs as to the court may seem fit, provided that the amount so to be paid for such costs, or so charged upon the said property for such costs, shall not in either case exceed one fourth of the amount or value recovered and remaining after the deduction therefrom of all proper disbursements made by such advocate or vakil.

(2) In this rule—

"money recovered" includes money recovered by virtue of a settlement or compromise;

"property recovered" includes property recovered by virtue of a settlement or compromise.

Waiver of fees.

14. Notwithstanding anything contained in the foregoing rules the court may, in any case if it thinks fit on account of poverty of a party, or, for any other reason to be recorded in the minutes of the proceedings, dispense with or remit the payment of any fee in whole or in part.

Subsequent acquisition of means by poor person. 65 of 1947, r.13.

15.—(1) If and whenever a poor person becomes possessed of means beyond those stated in any certificate or affidavit referred to in rule 3, such poor person shall forthwith and from time to time report the matter to the conducting advocate or vakil (if any), or, if there be no such advocate or vakil, to the court to which the petition has been presented.

(2) When the matter comes to the notice of the conducting advocate or vakil whether by means of such report or otherwise, he shall forthwith report it in writing to the court which nominated him.

ORDER XXXVIII

G.N. 330 of 1945.

PERPETUATION OF TESTIMONY

Interpretation.

1. In this Order "Crown" means Her Majesty the Queen in reference to Her Majesty's Courts and means His Highness the Sultan in reference to the Courts of His Highness.

Suit to perpetuate testimony regarding property in possession of party.

2. Any person in possession of any immovable or movable property in the Protectorate may apply to the High Court to commence a suit to perpetuate any testimony which may be material for establishing his interest in, right, title or claim to such property.

Suit to perpetuate testimony regarding property, etc., to which party is entitled in expectation or on a contingency.

3. Any person who would under circumstances alleged by him to exist become entitled on the happening of any future event to any honour, title, dignity or office, or to any estate or interest in any immovable or movable property in the Protectorate, the right to claim which cannot be brought by him before the happening of such event, may apply to the High Court to commence a suit to perpetuate any testimony which may be material for establishing such right or claim.

Examination of witnesses to perpetuate testimony.

4. Witnesses shall not be examined to perpetuate testimony unless a suit has been commenced for the purpose.

Proceedings to be commenced by petition.

5. Proceedings under this Order shall be commenced by a petition setting forth as concisely as possible the grounds upon which the application is made.

Service of petition.

6.—(1) On the presentation of any petition under this Order such persons shall subject to the provisions of the Decree or of any Rules made thereunder be cited to see proceedings or otherwise summoned as the High Court shall think fit, and any such person may be permitted to become a party to the suit and to oppose the application to perpetuate testimony.

(2) A copy of the petition and of any affidavit accompanying the petition shall be served on every person so cited or made a party to the suit.

(3) Such service shall be effected in the manner prescribed for the service of a summons on a defendant in a civil suit.

When Attorney-General should be made defendant to a suit to perpetuate testimony.

7. In all suits to perpetuate testimony touching any honour, title, dignity or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant and in all proceedings, in which the depositions taken in any suit in which the Attorney-General is so made a defendant may be offered in evidence, such depositions shall be admissible notwithstanding any objections to such depositions on the ground that the Crown was not a party to the suit in which such depositions were taken.

Manner of taking evidence.

8. All evidence taken under this Order to perpetuate testimony shall be taken in the manner prescribed for the taking of the evidence of a witness in a civil suit.

Relevancy of evidence taken under this Order in subsequent proceedings.

9. Evidence taken under the provisions of this Order shall be relevant for the purpose of proving in a subsequent judicial proceeding the truth of the facts which it states, when the witness—

(*a*) is dead or cannot be found, or

(*b*) is incapable of giving evidence, or

(*c*) is kept out of the way by the adverse party, or

(*d*) if his presence cannot be obtained without an amount of delay or expense, which, under the circumstances of the case, the court considers unreasonable:

Provided that—

(i) the proceedings under this Order were between the same parties or their representatives in interest;

(ii) the adverse party in the proceedings under this Order had the right and opportunity to cross-examine; and

(iii) the questions in issue were substantially the same in proceedings under this Order as in such subsequent proceedings.

Presumption as to record of proceedings under this Order.

10. Whenever any document is produced before any court, purporting to be a record or memorandum of evidence, or any part of evidence, given by a witness in proceedings under this Order, the court shall presume, unless and until any of the undermentioned facts are disproved, that—

(*a*) the document is genuine;

(*b*) any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(*c*) such evidence was duly taken.

Rules of general application.

11. The provisions of the Decree and of any Rules made thereunder shall so far as applicable, extend to all proceedings under this Order.

Saving of judgments and decrees.

12. No proceedings under this Order shall effect any final judgment already pronounced or made by a court of competent jurisdiction.

ORDER XXXIX

SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

Parties to suits for foreclosure, sale and redemption:

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

Provided that—

(*a*) a puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and

(*b*) a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage,

Preliminary decree in foreclosure suit.

2. In a suit for foreclosure, if the plaintiff succeeds, the court shall pass a decree—

(*a*) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to; or

(*b*) declaring the amount so due at the date of such decree,

and directing—

(*c*) that if the defendant pays into court the amount so due on a day within six months from the date of declaring in court the amount so due to be fixed by the court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or where the plaintiff claims by derived title, by those under whom he claims and shall also, if necessary, put the defendant in possession of the property, but

(*d*) that, if such payment is not made on or before the day to be fixed by the court, the defendant shall be debarred from all right to redeem the property.

Final decree in foreclosure suit.

3.—(1) Where, on or before the day fixed, the defendant pays into court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the court shall pass a decree—

(*a*) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required—

(*b*) ordering him to re-transfer the mortgaged property as directed in the said decree,

and, also, if necessary—

(*c*) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property:

Power to enlarge time.

Provided that the court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment.

Discharge of debt.

(3) On the passing of a decree under paragraph (2) the debt secured by the mortgage shall be deemed to be discharged.

Preliminary decree in suit for sale.

4.—(1) In a suit for sale, if the plaintiff succeeds, the court shall pass a decree to the effect mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure suit.

(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in court of a reasonable sum, fixed by the court, to meet the expenses of sale and to secure the performance of the terms.

Final decree in suit for sale.

5.—(1) Where on or before the day fixed the defendant pays into court the amount declared due as aforesaid together with such subsequent costs as are mentioned in rule 10, the court shall pass a decree—

(*a*) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required—

(*b*) ordering him to re-transfer the mortgaged property as directed in the said decree,

and, also, if necessary—

(*c*) ordering him to put the defendant in possession of the property

(2) Where such payment is not so made, the court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

Recovery of balance due on mortgage.

6. Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the court may pass a decree for such amount.

Preliminary decree in redemption suit.

7. In a suit for redemption, if the plaintiff succeeds, the court shall pass a decree—

(*a*) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(*b*) declaring the amount so due at the date of such decree,

and directing—

(*c*) that, if the plaintiff pays into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the court, the defendant shall deliver up

to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims; and shall, if necessary, put the plaintiff in possession of the property, but

(*d*) that, if such payment is not made on or before the day to be fixed by the court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

Final decree in redemption suit.

8.—(1) Where, on or before the day fixed, the plaintiff pays into court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the court shall pass a decree—

(*a*) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required—

(*b*) ordering him to re-transfer the mortgaged property as directed in the said decree,

and also, if necessary—

(*c*) ordering him to put the plaintiff in possession of the property.

(2) Where such payment is not so made, and the mortgage is not simple or usufructuary, the court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property, and also if necessary ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under paragraph (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same:

Power to enlarge time.

Provided that the court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

Decree where nothing is found due or where mortgage has been overpaid.

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

Costs of mortgagee subsequent to decree.

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

Sale of property subject to prior mortgage.

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

Application of proceeds.

12. Such proceeds shall be brought into court and applied as follows—

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

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

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

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

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

Provision by court for incumbrance and sale free therefrom.

13.—(1) Notwithstanding anything contained in rules 11 and 12, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court of the amount sufficient to cover any incumbrance and any interest due thereon.

(2) There shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency (except depreciation of investments) not exceeding one tenth part of the original amount to be paid in, unless the court for a special reason (which it shall record) thinks fit to require a larger additional amount.

(3) Thereafter the court may, if it thinks fit, and after notice to the incumbrancer, declare the property to be freed from the in umbrance and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court:

Provided that the court may, for reasons to be recorded in writing, dispense with such notice as aforesaid to the incumbrancer.

(4) After service of notice upon the persons interested in or entitled to the money in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions regarding the application or distribution of the capital or income thereof.

(5) An appeal shall lie from any declaration, order or direction under this rule as if the same were a decree.

Suit for sale necessary for bringing mortgaged property to sale.

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

Charges.

15.—(1) The provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge.

(2) For the purposes of this rule "property subject to a charge" means immovable property of one person which by the act of the parties or operation of law has been made security for the payment of another, such transaction not amounting to a mortgage, but does not include a charge by a trustee on the trust property for expenses properly incurred in the execution of his trust.

Saving. G.N. 58 of 1955. Cap. 99. Cap. 94. Cap. 97.

16. Nothing in this Order shall be deemed to affect the provisions of the Registration of Documents Decree, the Land Alienation Decree, or the Ground Rent Restriction Decree.

ORDER XL

INTERPLEADER

Plaint in interpleader suit.

1. In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state—

(*a*) that the plaintiff claims no interest in the subject matter in dispute other than for charges or costs;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into court.

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

Procedure where defendant is suing plaintiff.

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

Procedure at first hearing.

4.—(1) At the first hearing the court may—

(*a*) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs and dismiss him from the suit; or

(*b*) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

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

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

(*a*) that an issue or issues between the parties be framed and tried; and

(*b*) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and tenants may not institute interpleader suits.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Charge for plaintiff's costs.

6. Where the suit is properly instituted the court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XLI

SPECIAL CASE

Power to state case for court's opinion.

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

(*a*) a sum of money fixed by the parties or to be determined by the court shall be paid by one of the parties to the other of them;

(*b*) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

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

Where value of subject matter must be stated.

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

Agreement to be filed and registered as suit.

3.—(1) The agreement, if framed in accordance with rules 1 and 2, may be filed in the court which would have jurisdiction to entertain a suit, the amount or value of the subject matter of which is the same as the amount or value of the subject matter of the agreement.

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

Parties to be subject to court's jurisdiction.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the court and shall be bound by the statements contained therein.

Hearing and disposal of case.

5.—(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of the Decree shall apply to such suit so far as the same are applicable.

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

(*a*) that the agreement was duly executed by them;

(*b*) that they have a *bona fide* interest in the question stated therein; and

(*c*) that the same is fit to be decided,

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

ORDER XLII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

Application of Order. 66 of 1949, r.2.

1. This Order shall apply only to the High Court.

Institution of summary suits upon bills of exchange, etc.

2.—(1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 5 of Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith:

234 of 1945, r.10.

Provided that in suits by a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to such money, the plaintiff shall not be entitled to a decree unless the leave of the court or Judge has been obtained in accordance with the provisions of rule 8.

234 of 1945, r.10.

(3) When the bill of exchange, hundi, or promissory note has been given in respect of money lent by a moneylender, the plaint shall state the following in addition to any other particulars—

(*a*) the date on which the loan was made;

(*b*) the amount actually lent to the borrower;

(*c*) the rate per centum per annum of interest charged;

(*d*) the date when the contract for the repayment was made;

(*e*) the fact that a note or memorandum of the contract was made and was signed by the borrower;

(*f*) the date when a copy of the note or memorandum was delivered or sent to the borrower;

(*g*) the amount repaid;

(*h*) the amount due but unpaid;

(*i*) the date upon which such unpaid sum or sums became due;

(*j*) the amount of interest accrued due and unpaid on every such sum.

Defendant showing defence on merits to have leave to appear.

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

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

Power to set aside decree.

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

Power to order bill, etc., to be deposited with officer of court.

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

Recovery of cost of noting non-acceptance of dishonoured bill or note.

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

Procedure in suits.

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

Suits by money-lenders. 234 of 1945, r.11.

8.—(1) In actions brought by a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to any such money, an application for leave to enter final judgment in default of defence may be made by notice returnable on a day which shall allow the defendant sufficient time to appear and answer on such day and in any event not less than two clear days after service.

(2) Such notice shall not be issued until the last day fixed for the defendant to obtain leave to appear and defend the suit has expired and a proper affidavit of service of the summons has been filed.

(3) Such notice shall be returnable on a day which shall allow the defendant sufficient time to enable him to appear and answer on such day and shall in any event be not less than two clear days after the issue of such notice.

(4) The notice shall be in accordance with Form 15 of Appendix B, with such variations as circumstances may require, and may be served personally or by registered post addressed to the defendant at his last known place of residence.

(5) No application under this rule to enter final judgment shall be granted by the court unless it is proved that the notice was served upon the defendant in sufficient time (being in any event not less than two clear days after the serving of such notice) to enable the defendant to appear and answer on the date fixed for the hearing of the application to enter final judgment.

(6) At the hearing of the application to enter final judgment, whether the defendant appears or not, the court may—

(*a*) exercise the powers of the court under sections 15 and 16 of the Moneylenders Decree (which deal with the powers of the court to re-open certain transactions and to grant relief and the powers of the court regarding certain other transactions); and

Cap. 166.

(*b*) if satisfied by affidavit or otherwise that the notice has been duly served, may pass judgment for the whole or part of the claim; and

(*c*) as regards any part of the claim as to which judgment is refused, may give any such directions or make any such order as might have been given or made, if the defendant had appeared to answer the claim, upon such terms as to notice to the defendant or otherwise as may be thought just.

(7) If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to obtain leave to appear and defend the suit, the court shall postpone the hearing of the application to enter final judgment to a future day to be fixed by the court, and shall direct notice of such day to be given to the defendant.

Limitation.

9. Subject to the provisions contained in sections 91 to 108 of the Decree (both inclusive) every suit which is instituted under the summary procedure prescribed by this Order after the period of one year from the time when the debt or liquidated demand become payable, shall be dismissed although limitation has not been set up as a defence.

"Moneylender" defined. Cap. 166.

10. In this Order "moneylender" shall have the meaning assigned to it in the Moneylenders Decree.

ORDER XLIII

ARREST AND ATTACHMENT BEFORE JUDGMENT

Where defendant may be called upon to furnish security for his appearance. 12 of 1949, r.9.

1. Where at any stage of a suit, the court is satisfied by affidavit or otherwise, that—

(*a*) the plaintiff has good cause of action against the defendant to the amount of two hundred shillings or upwards; and

(*b*) there is probable cause for believing that the defendant is about to quit the Protectorate unless he be apprehended; and

(*c*) the absence of the defendant will materially prejudice the plaintiff in the prosecution of his suit,

the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance or be committed to the civil prison in default of furnishing such security:

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

Security.

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

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

Procedure on application by surety to be discharged.

3.—(1) A surety for the appearance of a defendant may at any time apply to the court in which he became such surety to be discharged from his obligation.

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

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

Procedure where defendant fails to furnish security. 12 of 1949, r.10.

4. Where the defendant fails to comply with any order under rule 2 or rule 3 the court may commit him to civil prison until the decision of the suit:

Provided that no person shall be detained in prison under this rule after he has complied with such order, or in default of any such compliance for any longer period than six months.

Attachment before Judgment

Where defendant may be called upon to furnish security for production of property.

5.—(1) Where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him—

(*a*) is about to dispose of the whole or any part of his property, or

(*b*) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court,

the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

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

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

215 of 1945, r.9.

(4) Where under this rule a subordinate court directs the provisional attachment of immovable property or the produce of such property, such court shall, as soon as conveniently may be, forward to the High Court such provisional order and the record of all the proceedings in the suit or a certified copy thereof.

(5) After examining such provisional order and proceedings and requiring from the subordinate court any further information or evidence which it thinks necessary, the High Court may by order—

(*a*) confirm the provisional order of the subordinate court as to the whole or any part of the property mentioned therein; or

(*b*) set aside the provisional order of the subordinate court as to the whole or any part of the property mentioned therein; or

(*c*) make such other order in the case as appears to it just:

Provided that no provisional order shall be set aside, either in whole or in part, by the High Court except upon the ground that the preliminary measures required by this Order for the issue of process of attachment have not been complied with or upon the ground that the attachment or sale of the whole or any part of the property mentioned in such provisional order is prohibited by any law for the time being in force.

(6) The High Court shall certify its decision or order to the court which made the provisional order, and the court to which such decision or order is certified shall make such orders as are conformable to the decision or order so certified, and, if necessary, the record of the proceedings shall be amended in accordance therewith.

Attachment where cause not shown or security not furnished.

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

215 of 1945, r.15.

(2) Where under this rule a subordinate court orders the attachment of immovable property or of the produce of such property, such court shall make a provisional order for the attachment of such property and thereafter the provisions of paragraphs (4), (5) and (6) of rule 5 shall apply to such attachment in the same manner as they apply to a provisional attachment under that rule.

Withdrawal of attachment.

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

Mode of making attachment.

8. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claim to property attached before judgment.

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

Removal of attachment when security furnished or suit dismissed.

10. Where an order is made for attachment before judgment, the court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment before judgment not to affect rights of strangers nor bar decree holder from applying for sale.

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

Property attached before judgment not to be re-attached in execution of decree.

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

Property exempt from attachment under this Order. 215 of 1945, r.11.

13. Nothing in this Order shall be deemed to authorise the plaintiff to apply for, or to empower the court to order, the attachment or production of—

(*a*) any property, the attachment whereof in execution of a decree is prohibited by any law for the time being in force, or

(*b*) any agricultural produce in the possession of an agriculturist.

ORDER XLIV

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary Injunctions

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(*b*) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

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

Injunction to restrain repetition or continuance of breach.

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

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

(3) In case of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached.

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

Before granting injunction court to direct notice to opposite party.

3. The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Order for injunction may be discharged, varied or set aside.

4. Any order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order.

Injunction to corporation binding on its officers.

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

Interlocutory Orders

Power to order interim sale.

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

Detention, preservation, inspection, etc., of subject matter of suit.

7.—(1) The court may, on the application of any party to a suit, and on such terms as it thinks fit—

(*a*) make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein;

(*b*) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(*c*) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

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

Application for such orders to be after notice.

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

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

When party may be put in immediate possession of land the subject matter of suit.

9.—(1) Where land paying revenue to Government, or a tenure liable to sale, is the subject matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the court), be put in immediate possession of the land or tenure.

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

Deposit of money, etc., in court.

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

ORDER XLV

APPOINTMENT OF RECEIVERS

Appointment of receivers.

1.—(1) Where it appears to the court to be just and convenient, the court may by order—

(*a*) appoint a receiver of any property, whether before or after decree;

(*b*) remove any person from the possession or custody of the property;

(*c*) commit the same to the possession, custody or management of the receiver; and

(*d*) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.

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

Remuneration.

2. The court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties.

3. Every receiver so appointed shall—

(*a*) furnish such security (if any) as the court thinks fit, duly to account for what he shall receive in respect of the property;

(*b*) submit his accounts at such periods and in such form as the court directs;

(*c*) pay the amount due from him as the court directs; and

(*d*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receiver's duties.

4. Where a receiver—

(*a*) fails to submit his accounts at such periods and in such form as the court directs;

(*b*) fails to pay the amount due from him as the court directs; or

(*c*) occasions loss to the property by his wilful default or gross negligence,

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

When District Commissioner may be appointed receiver.

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the court considers that the interests of those concerned will be promoted by the management of the District Commissioner, the court may, with the consent of the District Commissioner, appoint him to be receiver of such property.

ORDER XLVI

APPEALS FROM ORIGINAL DECREES

Form of Appeal. 285 of 1946, r.2.

1.—(1) Every appeal shall be instituted in the form of a memorandum signed by the appellant or his advocate and shall be presented to the appellate court or to such officer as it appoints in this behalf.

(*c*) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the court may in each case allow, no arbitrator, or no umpire is appointed, as the case may be, the court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses and default.

7.—(1) The court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine, as the court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the court.

Evidence. Cap. 5.

8. The provisions of the Evidence Decree shall not apply to proceedings before an arbitrator.

Extension of time for making award.

9. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators.

10. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) if they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

11. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Statement of special case by arbitrators or umpire.

12. Upon any reference by an order of the court, the arbitrator or umpire may, with the leave of the court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the court, and the court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

13. The court may, by order, modify or correct an award—

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred;

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(*c*) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to costs of arbitration.

14. The court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

15. The court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit—

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;

(*b*) where the award is so indefinite as to be incapable of execution;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

16.—(1) An award remitted under paragraph 15 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely—

(*a*) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Judgment to be according to award.

17.—(1) Where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the

court has refused such application, the court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

ORDER OF REFERENCE ON AGREEMENTS TO REFER

Application to file in court agreement to refer to arbitration.

18.—(1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

19. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the court to stay the suit; and the court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 18.

20. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 18 shall be applicable to all proceedings under the order of reference made by the court under that paragraph, and to the award and to the decree following thereon.

Forms.

21. The Forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

APPENDIX

No. 1

APPLICATION FOR AN ORDER OF REFERENCE

(Title of suit)

1. This suit is instituted for [*state nature of claim*].

2. The matter in difference between the parties is [*state matter of difference*].

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference.

.....A. B.

.....C. D.

Dated the.....day of.....19.....

Note.—If the parties are agreed as to the arbitrator or arbitrators, it should be so stated, and a written statement signed by the arbitrator or arbitrators to the effect that he or they are willing to act must be filed.

No. 2

ORDER OF REFERENCE

(Title of suit)

Upon reading the application presented on the.....day of.....19....., it is ordered that the following matter in difference arising in this suit, namely—

be referred for determination to X., and Y., or in case of their not agreeing then to the determination of Z., who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the.....day of.....19....., and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within.....months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

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

.....

Judge

No. 3

ORDER FOR APPOINTMENT OF NEW ARBITRATOR

(*Title of suit*)

WHEREAS by an order, dated the.....day of.....19....., [*state order of reference and death, refusal, etc., of arbitrator*], it is by consent ordered that Z., be appointed in the place of X. [deceased, *or as the case may be*] to act as arbitrator with Y., the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the.....day of.....19.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 4

SPECIAL CASE

(*Title of suit*)

In the matter of an arbitration between A. B., of.....and C. D., of....., the following special case is stated for the opinion of the court—

[*Here state the facts concisely in numbered paragraphs.*]

The questions of law for the opinion of the court are—

First, whether.....;

Secondly, whether.....

.....X.

.....Y.

Dated the.....day of.....19.....

No. 5

AWARD

(*Title of suit*)

In the matter of an arbitration between A. B., of.....and C. D., of.....—

WHEREAS in pursuance of an order of reference made by the court of .....and dated the.....day of.....19....., the following matter in difference between A. B., and C. D., namely—
has been referred to us for determination:

Now we, having duly considered the matter referred to us, do hereby make our award as follows—

We award—

(1) that.....

(2) that.....

Dated the.....day of.....19.....

.....X.

.....Y.

[Subsidiary]

Under Article 40 of the Zanzibar Order in Council, 1924, section 24 of Courts Decree, Cap. 3 and section 110 of the Decree

THE ARBITRATION (APPLICATIONS IN SUITS) RULES

G.N. 112 of 1923. 84 of 1926.

1. These Rules may be cited as the Arbitration (Applications in Suits) Rules.*

Powers of Registrar.

2.—(1) A Registrar may exercise the powers and duties of a Judge or of a Magistrate and make orders and transact the business of the High Court or of the court of a Magistrate in any of the matters referred to in paragraphs 1 to 8 in the Third Schedule to the Civil Procedure Decree.

(2) Any person who is dissatisfied with an order of the Registrar made under sub-paragraph (1) hereof may apply by summons supported by affidavit to a Judge or Magistrate [as the case may require], who may, if he thinks fit set aside the order of the Registrar and make such other order as he shall deem just.

G.N. 72 of 1951.

(3) Every such application shall be made in thirty days after the order of the Registrar unless such time shall be extended by the High Court or Judge or Magistrate [as the case may be].

G.N. 72 of 1951.

(4) Such application shall not operate as a stay of any proceedings unless the Registrar or the High Court or the Judge or a Magistrate [as the case may be] shall otherwise order.

(5) Where the Registrar is of opinion that any matter which is within his powers under sub-paragraph (1) hereof can be more conveniently dealt with by a Judge or Magistrate he shall refer it to such Judge or Magistrate as the case may require.

Powers of District Registrar.

3. The District Registrar shall have with respect to any suits entered in his Registry the same powers as those which may be exercised by a Registrar.

Formal steps in District Registry.

4. In suits entered in the District Registry all formal and preliminary steps shall be taken and all interlocutory applications made before the District Registrar, who may make thereon such orders as may be necessary.

Judge may set aside order of District Registrar. G.N. 90 of 1953.

5.—(1) A Judge of the High Court shall have power on the application of the person affected thereby to set aside any order made of the District Registrar and to make such other order as may be just.

(2) Application in that behalf shall be made within thirty days of the making of such order or such further time as the Judge may allow.

* Originally printed in Vol. IV, as Rules of Court, 1922 to 1934, rr 6, 22, 23 and 24.

Under Section 110

THE PEMBA DISTRICT REGISTRY RULES

G.N. 112 of 1923.

Title.

1. These Rules may be cited as the Pemba District Registry Rules.

District Registry established.

2. There shall be a District Registry and District Registrar of the High Court for the Island of Pemba.

What suits to be entered in the Registry.

3. Any civil suit triable by the High Court which, if it were within the jurisdiction of a First Class Subordinate Court would be triable in Pemba may be entered in the Pemba District Registry. Such suits shall be intituled as in the Pemba District Registry and shall be serially numbered in that Registry.

Suits referred to in rule 3 not to be instituted elsewhere without leave.

31 of 1947, r.2.

4.—(1) No suit, which under the preceding rule may be instituted in the Pemba District Registry, shall be instituted elsewhere than in such Registry without the leave of the High Court.

(2) Every application under this rule for leave to institute a suit elsewhere than in the Pemba District Registry shall be supported by an affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing the place in which the defendant resides and the grounds on which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for trial elsewhere than in Pemba.

(3) Where leave is asked for under this rule to institute a suit elsewhere than in the Pemba District Registry the court shall have regard to the comparative cost and convenience of proceedings elsewhere than in the Pemba District Registry or in the place where the defendant resides.

(4) An order under this rule granting such leave as aforesaid may be made *ex parte*, but the defendant may apply for such order to be set aside for sufficient cause.

(5) Any such application to set aside any such order shall be supported by an affidavit or such other evidence as the court may direct setting forth the grounds upon which such application is made and no order shall be made upon any such application unless the plaintiff shall have had an opportunity of being heard.

Lodging of appeals.

136 of 1940, r.4

5. Appeals and applications for revision to the High Court from all subordinate courts in Pemba may be lodged, together with all prescribed documents and fees, at the District Registry. Such proceedings shall be instituted as in the Pemba District Registry and shall be serially numbered therein and the District Registrar shall have and exercise in such proceedings all the powers and functions of the Registrar of the High Court.

[Subsidiary]

G.N. 221 of 1931. 125 of 1939. 144 of 1941. 216 of 1945. 287 of 1946. 103 of 1947. 126 of 1953. 105 of 1955. 114 of 1955.

Under Article 40 of the Zanzibar Order in Council, 1924 and section 24 of the Courts Decree

THE PRESCRIBED FEES (CIVIL PROCEEDINGS) RULES

1. These Rules may be cited as the Prescribed Fees (Civil Proceedings) Rules.

2. Save as otherwise provided by any law for the time being in force, the fees specified in the Schedule shall be leviable in the High Court and in all courts subordinate thereto (other than Mudirial Courts) in respect of the matters and proceedings mentioned therein.

SCHEDULE

Note.—No fee shall be payable in respect of any process issued or order made in respect of any complaint made under Part VII of the Labour Decree (Cap. 61).

FEES LEVIABLE IN ALL COURTS (OTHER THAN MUDIRIAL COURTS)

I. IN ORIGINAL CIVIL MATTERS

SUMMONS FEES

	Shs.	*Cts.*
1. Where the value of the subject matter—		
(*a*) (i) Does not exceed Shs. 25	1	00
(ii) Exceeds Shs. 25 but does not exceed Shs. 50	2	00
(iii) Exceeds Shs. 50 but does not exceed Shs. 100	3	00
(*b*) Exceeds Shs. 100 but does not exceed Shs. 15,000	3 per cent. on each Shs. 100 or part thereof.	
(*c*) Exceeds Shs. 15,000	1½ per cent. on each Shs. 100 or part thereof in excess of Shs. 15,000.	

Provided that the maximum fee payable shall not exceed Shs. 1,500.

Note.—No additional fee shall be charged in respect of any interest which may accrue due after the institution of the suit.

	Shs.	*Cts.*
2. For taking particulars of plaint, application for summons, or any other necessary document ..	1	00
3. On any matrimonial suit—		
(*a*) In the High Court	75	00
(*b*) In any other court	10	00
(*c*) In any suit for future maintenance— On twelve times the amount of monthly maintenance claimed	3 per cent. on each Shs. 100 or part thereof.	

Provided that when there is an alternative claim for divorce or other matrimonial relief the higher of the fees under 3(*a*) and (*b*) or 3(*c*) shall be payable.

4. In any suit where it is not possible to estimate the subject matter at a money value—	*Shs.*	*Cts.*
(*a*) In the High Court	75	00
(*b*) In any other court	25	00

Provided that in every case where, by reason of any finding or order of the court, a declaration of ownership of any money or property is made, an *ad valorem* fee at the same rate as in Fee No. 1 shall at once become payable, less the fee already paid.

5. On an originating summons	a fee of Shs. 50 per each question contained in the summons provided that the fee levied does not exceed one-half of the fee leviable under item 1 on the value of the subject matter involved in the question subject to a minimum fee of Shs. 15.

Note.—In the event of it becoming necessary to try in court any question arising out of the originating summons, the ordinary summons fee as laid down in item 1 shall be payable in respect of the question to be tried.

6. In a suit for arrears of rent by a landlord against a tenant where an order of possession of the property is prayed	An *ad valorem* fee of 5 per cent. on the total yearly rent of the property in addition to the fee leviable for recovery of rent under Fee No. 1.
7. In a similar suit, where no rent is claimed, but only an order for possession	An *ad valorem* fee of 5 per cent. on the total yearly rent of the property.

8. Upon filing an award under the Arbitration Decree (Cap. 25) or an application under the Third Schedule to the Civil Procedure Decree (Cap. 8)—	*Shs.*	*Cts.*
In the High Court	75	00
In the Subordinate Court	25	00
9. On the issue of every witness summons, notice (not particularly charged) in addition to the appropriate service fee	1	00

SERVICE FEES

10. For service of summons petition answer motion paper notice warrant decree order or other document on a party witness assessor or other person—		
(*a*) Within the township of the court of issue ..	2	00
(*b*) Without the township of the court of issue ..	4	00

Provided that an additional fee of Shs. 2 for service within the township of the court of issue, or Shs. 4 for service without the township of the court of issue, as the case may be, shall be charged for any such service at the request of a party made within four days of the date on which such process is returnable.

	Shs.	Cts.
11. For service of any summons process or any instrument as above within the jurisdiction at the request of a court or party without the jurisdiction ..	10	00

APPLICATIONS AND FILINGS

12. On application for order for arrest or attachment before judgment	10	00
(*Other fees consequent upon such application at usual scale.*)		
13. On application for every interlocutory injunction—		
(*a*) In the High Court	25	00
(*b*) In any other court	10	00
14. On application for a mandamus or final prohibitory injunction—		
(*a*) In the High Court	75	00
(*b*) In any other court	25	00
15. On every application or motion (not particularly charged) to include order made thereon	8	00

Provided that no fee shall be payable in respect of an application by a decree holder for the payment out of monies paid into court by a judgment debtor in satisfaction of a decree, or realised under execution proceedings:

Provided also that no fee shall be payable in respect of an application for the return of an exhibit.

16. On every application or motion (not particularly charged) accompanied by consent to include filing and order made thereon	4	00
17. On filing or exhibiting any document book other instrument or article (except bonds and recognisances)—		
(*a*) In the High Court	3	00
(*b*) In any other court	1	50
18. For taking and filing security when ordered in any civil proceeding—		
(*a*) In the High Court	7	50
(*b*) In any other court	3	00

SPECIAL CASE

19. On submission of special case to include hearing	75	00

DECREE OR ORDER

	Shs.	Cts.
20. For drawing and engrossing decree or order (not particularly charged)—		
(*a*) Where the amount of the decree or order does not exceed Shs. 100	1	50
(*b*) Where the amount of the decree or order exceeds Shs. 100	3	00
(*c*) Where the decree or order is not capable of being assessed at a monetary value	3	00
21. On perusal signing and sealing any decree or order drawn by a party to the suit or his advocate or agent (not particularly charged)		
Like fees as in (*a*), (*b*) and (*c*) Fee No. 20.		

EXECUTION

AGAINST THE PERSON

	Shs.	Cts.
22. On every application for execution, to include filing and order, where the value of the subject matter—		
(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs 50 but does not exceed Shs. 100 ..	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	8	00
23. (*a*) On issue and execution of warrant of arrest (apart from travelling, food and other costs) ..	3	00
(*b*) Upon every warrant of committal	4	00
Where the value of the subject matter does not exceed Shs. 100	2	00

AGAINST PROPERTY

24. On every application for execution against property to include order, as in Fee No. 22.		
25. (*a*) On every application by mortgagee for an order under section 52(1) (*b*) of the Civil Procedure Decree (Cap. 8)	8	00
(*b*) Upon an order made under section 52(1) (*b*) of the Civil Procedure Decree (Cap. 8)	Same fee as in Fee No. 1 based on the amount realised under the mortgage.	

These fees shall also be payable on applications and orders under rule 12 of Order XXXIX of the Civil Procedure Rules.

	Shs.	*Cts.*
26. On the issue of every warrant of execution against property—		
(*a*) For any sum not exceeding Shs. 150	2	00
(*b*) For any sum exceeding Shs. 150 and not exceeding Shs. 750	4	00
(*c*) For any sum exceeding Shs. 750 and not exceeding Shs. 1,500	8	00
(*d*) For any sum exceeding Shs. 1,500	12	00
27. Service fee for posting of warrant upon each property attached	As in Fee No. 10.	

BROKERS' FEES

On Attachment of Movable Property

28. Where warrant is executed by a broker under instructions of the court the following fees shall be payable—

(1) When the amount certified by the warrant to be due is tendered to the broker before or at the time of or within half an hour after the time of attachment—

	Shs.	*Cts.*
(*a*) when the amount certified by the warrant to be due does not exceed Shs. 50	5	00
(*b*) when it exceeds Shs. 50 but does not exceed Shs. 500	7	50
(*c*) when it exceeds Shs. 500	10	00

(2) In any other case, to include charges for keeping possession of the attached property up to 30 days—

(*a*) when the estimated value of the property does not exceed Shs. 100	10	00
(*b*) when it exceeds Shs. 100 but does not exceed Shs. 200	15	00
(*c*) when it exceeds Shs. 200 but does not exceed Shs. 500	20	00
(*d*) when it exceeds Shs. 500, 4 per cent. on the estimated value.		
(*e*) For keeping possession for each day in excess of 30 days a fee calculated at the rate of cents fifty per cent. on the estimated value of the property in the custody of the broker:		

Provided that the daily fee to be charged shall not be less than 50 cents and more than Shs. 10:

Provided further that the Registrar shall have power to reduce the fees to be payable hereunder:

Provided further that if the property attached is not kept in the actual possession or custody of the broker a fee as provided in Fee No. 28(1) shall be payable.

Note.—In addition to the fees payable under Fee No. 28(1) and (2) such out of pocket expenses borne by the broker as are certified correct by the Registrar shall be payable.

BROKERS' FEES ON SALE OF MOVABLE PROPERTY

29.—(1) On sale of any property excepting cloves, clove stems, coconuts and copra—

(*a*) where the value of the property does not exceed Shs. 750 a fee at the rate of 5 per cent. The minimum fee is Shs. 5.

(*b*) where the value of the property exceeds— Shs. 750 a fee at the rate of 5 per cent. for the first Shs. 750 and for each Shs. 100 in excess of Shs. 750 at the rate of 2½ per cent.

(2) On sale of cloves, clove stems, coconuts and copra .. .. 2 per cent.

Provided that if the property is offered for sale by public auction and is not sold for any cause other than the default of the broker a fee of 1 per cent. based upon the value of the property (minimum fee Shs. 5) shall be payable to the broker and the out of pocket expenses attendant upon such offering for sale by public auction shall be paid; such expenses to be certified correct by the Registrar.

BROKERS' FEES ON SALE OF IMMOVABLE PROPERTY

30. When the value of the property sold does not exceed Shs. 100 at the rate of .. .. 6 per cent.

Note.—The minimum fee is Shs. 5.

When the value of the property sold exceeds Shs. 100 then at the following rates:—

On first Shs. 100 at the rate of .. .. .. 6 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 100 up to Shs. 3,000 at the rate of .. .. .. 3 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 3,000 up to Shs. 9,000 at the rate of .. .. 2 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 9,000 up to Shs. 15,000 at the rate of .. .. 1½ per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 15,000 at the rate of .. .. 1 per cent.

Provided that if the property when offered for sale by public auction is not sold for any cause other than the default of the broker himself the broker shall be entitled to half the fees at the above rate based upon the value of the property with a minimum fee of Shs. 5.

To enable the value of the property to be assessed the decree holder and the broker shall mutually agree to the value thereof before offering for sale and in case of dispute the value of the property shall be assessed by the Registrar.

The half fees shall be payable upon the value of such agreement or assessment.

In the case of an abortive sale the costs of advertising the property for sale and reasonable out of pocket expenses incurred by the broker, such to be certified by the Registrar, shall be paid forthwith by the decree holder.

31. Upon issue of notice to settle Proclamation—
Service fees only to be charged as in Fee No. 10.

32. Upon every warrant of sale, where the value of the subject matter:—	*Shs.*	*Cts.*
(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs. 50 but does not exceed Shs. 100 ..	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	5	00

33. Upon drawing proclamation for sale and Schedule of property, where the value of the subject matter—		
(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs. 50 but does not exceed Shs. 100	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	5	00
For each property in addition to the first	1	00

Provided that the fee payable herein shall not exceed Shs. 10.

34. For attendance at a sale at the request either of parties interested or local authority—		
If absent from court not more than two hours ..	45	00

For each additional hour or fraction thereof exceeding two hours an additional fee of Shs. 10 with a maximum fee of Shs. 90 per diem.

SALE CERTIFICATE

	Shs.	*Cts.*
35. For supplying certificate confirming sale of immovable property sold by order of court—		
(*a*) Where purchase money does not exceed Shs. 750	5	00
(*b*) where purchase money exceeds Shs. 750 but does not exceed Shs. 1,500	7	50
(*c*) where purchase money exceeds Shs. 1,500 ..	15	00

MISCELLANEOUS

36. Upon taking or passing an account by the Registrar or other officer of the court deputed for the purpose—		
(*a*) If engaged not more than one hour	15	00
(*b*) For each succeeding hour or part thereof ..	4	00
37. Upon taking an account and declaring the amount due upon the date fixed for redemption of a mortgage	7	50
Where an "agreed" account is filed, signed by the parties or their advocates	4	00
38. Upon order for adjournment of hearing when rendered necessary by default of either party to be paid by the defaulting party	Such sum as the court may order not exceeding Shs. 15.	
39. Attending to view; in addition to all travelling expenses—	*Shs.*	*Cts.*
(*a*) In a case before the High Court	45	00
(*b*) In a case before any other court	10	00
40. Upon taxation of any Bill of Costs for each 10 folios	10	00
41. Upon deposit of any document	20	00
42. Upon evidence taken upon Commission for every day or part of a day; to be retained by the officer taking the evidence	75	00
43. On the examination of any witness *be bene esse*, unless the Judge otherwise orders—		
(*a*) In the High Court	20	00
(*b*) In any other court	7	50
44. Upon taking an affidavit—		
For each person sworn or affirmed	3	00
45. For every exhibit to an affidavit	1	00

46. For attending to administer an oath or affirmation, or to take a declaration beyond the offices of the court, in addition to the ordinary fee thereon ..	Shs. 7/50 for each hour or part thereof.
Suitable transport where necessary to be provided by the deponent if certified necessary by the Registrar.	
47. For superintending and taking an inventory where directed by the court	A fee of 2½ per cent. on the value of the property. Such fee not to exceed Shs. 100.
48. On deposit of any money or valuables in court.	
49. On payment of money into court	10 cents for each Shs. 10 or part thereof, with a minimum of 25 cents and a maximum of Shs. 35.

Provided that no fee shall be paid in respect of any sum of money lodged for the gaol subsistence of a civil prisoner.

	Shs.	*Cts.*
50. For certifying signature under seal	6	00
51. For attesting signature upon a document ..	3	00
52. Upon reference to court archives	3	00
53. Upon search in court archives a proportionate charge at the rate of Shs. 4 per hour with minimum charge of Shs. 3.		
54. Upon communication with another Tribunal—		
(*a*) Without the jurisdiction of the High Court ..	10	00
(*b*) Within the jurisdiction of the High Court, where value of subject matter exceeds Shs. 100	2	00
55. For certificate that no execution has been levied	3	00
56. Upon every warrant not particularly charged..	5	00

CERTIFIED COPIES AND TRANSLATIONS

57. For certified copy of any book, document or proceedings in archives—		
(*a*) For the first folio of 100 words or part thereof	3	00
(*b*) For every subsequent folio	1	00
Provided that in every group of figures three shall count as one word.		
58. For uncertified copy of book, document or proceedings in archives—		
(*a*) For the first folio of 100 words or part thereof	2	00
(*b*) For every subsequent folio or part thereof ..	0	50

	Shs.	Cts.
59. For an official certified translation of any document—		
(*a*) For first folio of 100 words	15	00
(*b*) For each subsequent folio	7	50

60. (*a*) For certifying as correct a translation tendered by a party—

Half fee as in Fee No. 59.

(*b*) For certifying copy of any document tendered by a party—

Same fee as in Fee No. 58.

II.—IN CIVIL APPEAL ETC.

61. Memorandum of Appeal or Cross Appeal—

(*a*) Where the monetary value of the subject matter of the appeal is ascertainable—

An *ad valorem* fee of Shs. 2 per cent. on the value of every claim which forms part of the subject matter of the appeal, with a minimum fee of Shs. 5 and a maximum fee of Shs. 75.

(*b*) Where the monetary value of the subject matter of the appeal is unascertainable Shs. 15 subject to the same proviso as appears in Fee No. 4.

62. Hearing fee—

A like fee to that paid on filing Memorandum of Appeal and to be refunded if appeal is summarily dismissed.

63. On application for Reference, Review or Revision	15	00
64. On drawing signing and sealing decree or order	6	00

III.—ADMINISTRATION OF MINORS' ESTATES

65. On the annual net income accuring for the benefit of minors from monies invested or from property held in trust for them, by an officer or practitioner of the court appointed by the the court .. 5 per cent.

CONVENTIONS REGARDING LEGAL PROCEEDINGS EXTENDED TO THE ZANZIBAR PROTECTORATE

(The undermentioned Conventions are those referred to in the Civil Procedure Rules, O. V, r. 35, which deals with service of documents issued in a civil or commercial matter pending before a court or tribunal in a foreign country. Copies of these Conventions may be seen at the Secretariat, Zanzibar, during office hours.)

AUSTRIA

G.N. 48 of 1955.

A Convention between the United Kingdom and Austria regarding Legal Proceedings in Civil and Commercial Matters, which was signed at London, on the 31st March, 1931, was extended to Zanzibar, with effect from the 1st April, 1932: but, the aid Convention lapsed on the 4th July, 1938:

By virtue of an exchange of notes between the Government of the United Kingdom and the Austrian Government made at Vienna on the 28th June, 1951, it was agreed that the said Convention should be revived and should continue in force, with effect from the said 28th June, 1951, and that the said Convention should also apply to the countries and territories therein named which territories include the Zanzibar Protectorate; and it has accordingly been notified for general information that the said Convention continues in force in regard to Zanzibar, with effect from the said 28th June, 1951.

BELGIUM

G.N. 202 of 1925. 66 of 1935.

It has been notified that the Convention between the United Kingdom and Belgium respecting Legal Proceedings in Civil and Commercial Matters has been applied to the Zanzibar Protectorate, with effect from the 23rd August, 1925.

It has been notified for general information that a Supplementary Convention between the United Kingdom and Belgium to facilitate the conduct of Legal Proceedings, signed at Brussels on the 4th November 1932, has been extended to Zanzibar as from the 27th of June, 1935.

CZECHOSLOVAK REPUBLIC

G.N. 111 of 1927.

It has been notified that the Convention between the United Kingdom and the Czechoslovak Republic, of 11th November, 1924, respecting Legal Proceedings in Civil and Commercial Matters has been applied to the Zanzibar Protectorate, with effect from the 17th of February, 1927.

General Notice No. 549 of 1937.

It is hereby notified for general information that a Supplementary Convention between the United Kingdom and the Czechoslovak Republic signed at Prague on the 15th of February, 1935, respecting the conduct of Legal Proceedings, has been extended to Zanzibar, as from the 5th of January, 1937.

DENMARK

G.N. 50 of 1934.

It has been notified for general information that a Convention between the United Kingdom and Denmark regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 29th of November, 1932, has been extended to Zanzibar, as from the 27th of March, 1934.

FINLAND

G.N. 72 of 1935.

It has been notified for general information that a Convention between the United Kingdom and Finland regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 11th of August, 1933, has been extended to Zanzibar, as from the 4th of June, 1935.

FRANCE

It has been notified for general information that a Convention between the United Kingdom and France regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 2nd of February, 1922, has been extended to Zanzibar, as from the 27th of January, 1924. G.N. 37 of 1937.

It has further been notified that a Supplementary Convention between the United Kingdom and France to facilitate the conduct of Legal Proceedings, signed at Paris, on the 15th April, 1936, has been extended to Zanzibar, as from the 22nd September, 1947. General Notice 797 of 1948.

GREECE

It has been notified for general information that a Convention between the United Kingdom and Greece regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 27th February, 1936, has been extended to Zanzibar, as from the 19th January, 1939. G.N. 21 of 1939.

HUNGARY

It is hereby notified for general information that a Convention between the United Kingdom and Hungary, regarding Legal Proceedings in Civil and Commercial Matters, signed at Budapest on the 25th of September, 1935, has been extended to Zanzibar, as from the 25th of June, 1937. G.N. 54 of 1937.

IRAQ

It has been notified for general information that a Convention between the United Kingdom and Iraq regarding Legal Proceedings in Civil and Commercial Matters signed at Baghdad, on the 25th July, 1935, has been extended to Zanzibar, as from the 26th March, 1938. G.N. 53 of 1939.

ITALY

It has been notified for general information that a Convention between the United Kingdom and Italy, signed at London, on the 17th December, 1930, respecting Legal Proceedings in Civil and Commercial Matters, has been extended to Zanzibar, as from the 25th August, 1932. G.N. 106 of 1933.

THE NETHERLANDS

It has been notified for general information that a Convention between the United Kingdom and the Netherlands, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 31st of May, 1932, has been extended to Zanzibar, as from the 23rd of May, 1934. G.N. 49 of 1934.

NORWAY

It has been notified for general information that a Convention between the United Kingdom and Norway, signed at London, on the 30th of January, 1931, respecting Legal Proceedings in Civil and Criminal Matters has been extended to Zanzibar, as from the 14th of November, 1931. G.N. 9 of 1932.

POLAND

G.N. 60 of 1933. It has been notified for general information that a Convention between the United Kingdom and Poland, regarding Legal Proceedings in Civil and Commercial Matters, signed at Warsaw, on the 26th of August, 1931, has been extended to Zanzibar, as from the 3rd of May, 1933.

PORTUGAL

G.N. 64 of 1933. It has been notified for general information that a Convention between the United Kingdom and Portugal, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 9th of July, 1931, has been extended to Zanzibar, as from the 30th of April, 1933.

SPAIN

G.N. 193 of 1931. It has been notified for general information that a Convention between the United Kingdom and Spain respecting Legal Proceedings in Civil and Commercial Matters, signed at London, on the 27th of June, 1929, for the purpose of regulating procedure in connection with the preparation and transmission of judicial and extra-judicial documents and "commissions rogatoires," has been extended to Zanzibar, as from the 23rd of February, 1931.

SWEDEN

G.N. 230 of 1931. It has been notified for general information that a Convention between the United Kingdom and Sweden, signed at London, on the 28th of August, 1930, respecting Legal Proceedings in Civil and Criminal Matters, has been extended to Zanzibar, as from the 3rd of September, 1931.

SWITZERLAND

G.N. 913 of 1940. It has been notified for general information that a Convention between the United Kingdom and Switzerland, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 3rd December, 1937, has been extended to Zanzibar, as from the 17th May, 1940.

TURKEY

G.N. 18 of 1934. It has been notified for general information that a Convention between the United Kingdom and Turkey, regarding Legal Proceedings in Civil and Commercial Matters, signed at Angora, on the 28th of November, 1931, has been extended to Zanzibar, as from the 14th of December, 1933.

The Civil Procedure (Government Agents) Order

(Made under the Civil Procedure Rules, O. XXXI, r.1) G.N. 16 of 1940.

1. This Order may be cited as the Civil Procedure (Government Agents) Order.

2. In any suit by or against the Zanzibar Government the plaint or written statement shall be signed by the officer mentioned in the Schedule whose duty it is to act for the Government in such suit or whose department or office is concerned therein.

SCHEDULE

The Director of Public Works and Land Survey.

The Comptroller of Customs.

The Director of Agriculture.

The Land Officer.

The Town Clerk.

The Postmaster.

The District Commissioner, Pemba.

The District Agricultural Officer, Pemba.

The District Engineer, Pemba.

The Director of Medical Services.

The District Commissioner, Rural District, Zanzibar.

The District Commissioner, Urban District, Zanzibar.

The District Medical Officer, Pemba.

The Director of Education.

[Subsidiary]

General Notice 110 of 1940. 358 of 1957.

Persons Authorised to act for Government under the Decree

(Made under the Civil Procedure Rules, O. XXXI, r.2)

1. In any suit by or against the Zanzibar Government appearances, acts and applications under the Decree may be made or done by such of the following officers whose department or office is concerned in such suit:—

The Director of Public Works and Land Survey.

The Comptroller of Customs.

The Director of Agriculture.

The Land Officer.

The Town Clerk.

The Postmaster.

The District Commissioner, Pemba.

The District Agricultural Officer, Pemba.

The District Engineer, Pemba.

The Director of Medical Services.

The District Commissioner, Urban District, Zanzibar.

The District Commissioner, Rural District, Zanzibar.

The District Medical Officer, Pemba.

The Director of Education.

2. In suits by Government for the recovery of rent, rates, taxes, or other charges not exceeding four hundred and fifty shillings, appearances, acts and applications under the Decree may be made or done on behalf of the Government by the persons respectively who for the time being are performing the duties assigned to the following officers whose department or office is concerned in such suit:—

PUBLIC WORKS AND LAND SURVEY:

Cashier.

Water Rates Clerk.

Ledger Clerk.

AGRICULTURE DEPARTMENT:

Clerk-in-Charge, Zanzibar

Clerk-in-Charge, Pemba.

MUNICIPAL AND LAND OFFICES:

Office Superintendent.

Rent and Rate Clerk.

Revenue Inspector.

Property Inspector.

DISTRICT COMMISSIONERS, URBAN AND RURAL DISTRICTS OF ZANZIBAR:

District Cashier.

DISTRICT COMMISSIONER, PEMBA:

District Clerk, Wete.

Accounts Assistant, Wete.

Clerk-in-Charge, Chake Chake.

Clerk-in-Charge, Mkoani.

ASSISTANT ENGINEER, PEMBA:

Cashier.

Clerk IV Grade.

HEALTH DEPARTMENT:

Office Superintendent, Zanzibar.

Accounts Assistant, Zanzibar.

Office Assistant, H. K. J. Hospital, Zanzibar.

Clerk, Wete, Pemba.

Appointment of an Officer of the Court under the Civil Procedure Decree to sign and grant certain Processes

General Notice 960 of 1933.

(Made under O. V., r.1(3), O. XIX, r.1, and O. XXIV, r.20(6) of the Civil Procedure Rules)

The person holding the office of the Head Clerk of the Court of the Resident Magistrate, in Pemba, is appointed as an officer of the court with power, in respect of suits and proceedings instituted in the Resident Magistrate's Court for Pemba, to do the following acts and things under the Civil Procedure Rules:—

(*a*) to sign summonses under Order V, rule 1(3);

(*b*) to grant witness summonses under Order XIX, rule 1; and

(*c*) to sign processes for execution of decrees under Order XXIV, rule 20 (6).

Scale of Subsistence for Judgment Debtors

G.N. 161 of 1948.

(Section 43)

	Shs.	*Cts.*	
Europeans at the rate of	3	75	per day
Asiatics (including Arabs) at the rate of ..	1	50	per day
Africans at the rate of	1	20	per day

[Subsidiary]

G.N. 62 of 1930.

Language of the Courts

(Section 117)

The British Resident has been pleased to declare that the language of each of the several courts named in the first column of the Schedule appended hereto shall be that entered in the second column of the said Schedule opposite to the said court.

SCHEDULE

The High Court	English.
First Class Subordinate Court	English or Swahili.
Second Class Subordinate Court	English or Swahili.
Third Class Subordinate Court	English or Swahili.
Kathi's Court	Arabic or Swahili.

N.B.—In this declaration the words High Court shall be deemed to be Her Britannic Majesty's Court.

(2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree appealed against without argument or narrative, and such grounds shall be numbered consecutively. The memorandum shall be accompanied (unless the appellate court otherwise directs) by a copy of the decree and written judgment (if any) from which it is desired to appeal:

Provided that in the case of an appeal from a Kathi's Court it shall not be necessary to annex a copy of the written judgment (if any) to the memorandum of appeal at the time of presenting such memorandum.

(3) The memorandum of appeal shall be in duplicate and shall state whether the whole or part only of the decree is objected to, and in the latter case shall specify such part. The memorandum of appeal shall also state the nature of the relief which is sought.

(4) Upon the filing of a memorandum of appeal or any application relating to such appeal, the Registrar shall, when the decree is not accompanied by a copy of a written statement given by the court, which passed the decree, of the grounds of such decree, and in any other case when directed by the appellate court so to do, request the court which passed the decree to furnish him with a copy of the written judgment (if any) and a report in writing, giving his opinion upon the case generally or upon any point thereof. In making such request the Registrar shall send to the court which passed the decree a copy of the memorandum of appeal or the application and any other document or information, which the appellate court at any time shall direct him to send, or with which the court, which passed the decree may request to be furnished by the Registrar, so as to enable such court to deal with the case generally or with any point arising therefrom.

(5) The copy of the written judgment (if any) and the report shall be sent by the court which passed the decree to the appellate court:

Provided that in any case in which the court which passed the decree has pronounced a written judgment in the first instance it shall be sufficient that such court makes reference thereto.

(6) Every party to the appeal shall be entitled to copies of the written judgment (if any) and of the report of the court, which passed the decree, free of charge.

(7) On receipt of copies of such written judgment (if any) and report any party to an appeal shall be at liberty to apply to the appellate court for leave to amend his memorandum of appeal upon such terms as may appear just. Such power to allow amendment of the memorandum of appeal shall be deemed to be in addition to and not in substitution for, any other power of amendment allowed by any other law for the time being in force.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the appellate court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule

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

Rejection or amendment of memorandum. 285 of 1946, r.3.

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

(2) Where the appellant is not represented by an advocate, the court, instead of rejecting the memorandum, or returning it to the appellant for the purpose of being amended, may, with the consent of the appellant, amend, or direct an officer of the court to amend, the memorandum in the manner hereinbefore prescribed and for this purpose may substitute, or direct such officer to substitute, a memorandum drawn up in the manner hereinbefore prescribed for the memorandum presented by the appellant.

(3) In every case in which a memorandum is rejected or substituted under this rule, the court shall record the reasons for such rejection or substitution.

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

(5) Where under this rule a memorandum of appeal is substituted for a previous memorandum of appeal, a note of the order for such substitution shall be indorsed on the memorandum so substituted and the memorandum of appeal shall be treated for the purposes of all proceedings in connection therewith as having been filed in the substituted form.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the appellate court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of Proceedings and of Execution

Stay by appellate court.

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

Stay by court which passed the decree.

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

(3) No order for stay of execution shall be made under paragraph (1) or paragraph (2) unless the court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made;

(*b*) that the application has been made without unreasonable delay; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

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

Security in case of order for execution of decree appealed from.

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

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

No security to be required from the Government or a public officer in certain cases.

7. No such security as is mentioned in rules 5 and 6 shall be required from a Secretary of State or from the British Resident or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Exercise of powers in appeal from order made in execution of decree.

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

PROCEDURE ON ADMISSION OF APPEAL

Registry of memorandum of appeal.

9.—(1) Where a memorandum of appeal is admitted, the appellate court or the proper officer of that court shall indorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.

(2) Such book shall be called the Register of Appeals.

Appellate court may require appellant to furnish security for costs.

10.—(1) The appellate court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of Zanzibar.

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

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

Power to dismiss appeal without sending notice to lower court.

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

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

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

Day for hearing appeal.

12.—(1) Unless the appellate court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

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

Appellate court to give notice to court whose decree appealed from. 134 of 1940, r.7.

13.—(1) Where the appeal is not dismissed under rule 11, the appellate court shall send notice of the day fixed for the hearing of the appeal to the court from whose decree the appeal is preferred.

Transmission of papers to appellate court.

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

Copies of exhibits in court whose decree appealed from.

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

Publication and service of notice of day for hearing appeal.

14.—(1) Notice of the day fixed under rule 12 shall be affixed in the appellate court-house, and a like notice shall be sent by the appellate court to the court from whose decree the appeal is preferred, for service on the appellant and on the respondent or on their respective advocates in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate court may itself cause notice to be served.

(2) Instead of sending the notice to the court from whose decree the appeal is preferred, the appellate court may itself cause the notice to be served on the appellant and respondent or on their respective advocates under the provisions above referred to.

Contents of notice.

15. The notice to the respondent shall declare that, if he does not appear in the appellate court on the day so fixed, the appeal will be heard *ex parte*.

PROCEDURE ON HEARING

Right to begin.

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

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

Dismissal of appeal for appellant's default.

17.—(1). Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.

Hearing appeal *ex parte*.

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

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

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

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

Re-admission of appeal dismissed for default. 285 of 1946, r.5.

19. Where an appeal is dismissed under paragraph (2) of rule 11, or rule 17, or rule 18, the appellant may apply to the appellate court for the re-admission of the appeal, and where it is proved to the satisfaction of the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall re-admit the appeal on such terms as to costs or otherwise as it thinks just.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

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

Rehearing on application of respondent against whom *ex parte* decree made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the appellate court to rehear the appeal; and if he satisfies the court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

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

Form of objection and provisions applicable thereto.

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

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

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

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

Remand of case by appellate court.

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

Where evidence on record sufficient, appellate court may determine case finally.

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

Where appellate court may frame issues and refer them for trial to court whose decree appealed from.

25.—(1) Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required.

(2) Such court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record. Objections to finding.

26.—(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the appellate court, present a memorandum of objections to any finding.

Determination of appeal.

(2) After the expiration of the period so fixed for presenting such memorandum the appellate court shall proceed to determine the appeal.

Production of additional evidence in appellate court.

27.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(*a*) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(*b*) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced, or witness to be examined.

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

Mode of taking additional evidence.

28. Wherever additional evidence is allowed to be produced, the appellate court may either take such evidence, or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court.

Points to be defined and recorded.

29. Where additional evidence is directed or allowed to be taken, the appellate court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

JUDGMENT IN APPEAL

Judgment when and where pronounced.

30. The appellate court, after hearing the parties or their advocates and referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open court, either at once or on some future day of which notice shall be given to the parties or their advocates.

Contents, date and signature of judgment.

31. The judgment of the appellate court shall be in writing and shall state—

(*a*) the points for determination;

(*b*) the decision thereon;

(*c*) the reasons for the decision; and

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

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

What judgment may direct.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the appellate court may pass a decree or make an order accordingly.

Powers of appellate court.

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

Dissent to be recorded.

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

DECREE IN APPEAL

Date and contents of decree.

35.—(1) The decree of the appellate court shall bear the date of the day on which the judgment was pronounced.

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

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

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

Judge dissenting from judgment need not sign decree.

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

Copies of judgment and decree to be furnished to parties.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the appellate court and at their expense.

Certified copy of decree to be sent to court whose decree appealed from.

37. A copy of the judgment and of the decree, certified by the appellate court or such officer as it appoints in this behalf, shall be sent to the court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate court shall be made in the register of civil suits.

ORDER XLVII

APPEALS FROM ORDERS

Appeals from orders.

1. An appeal shall lie from the following orders under the provisions of section 81 of the Decree, namely,—

(*a*) an order under rule 11 of Order VII returning a plaint to be presented to the proper court;

(*b*) an order under rule 10 of Order VIII pronouncing judgment against a party for failure to present a written statement;

(*c*) an order under rule 10 of Order XI rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(*d*) an order under rule 14 of Order XI rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;

(*e*) an order under rule 4 of Order XII pronouncing judgment against a party for refusal to answer a material question;

(*f*) an order under rule 21 of Order XIII striking out a defence for non-compliance with an order for discovery;

(*g*) an order under rule 10 of Order XIX for the attachment of the property of a witness;

(*h*) an order under rule 20 of Order XIX pronouncing judgment against a party for refusal to give evidence when called by the court;

(*i*) an order under rule 30 of Order XXIV on an objection to the draft of a document or of an indorsement;

(*j*) an order under rule 52 or rule 53 of Order XXIV releasing property from attachment or disallowing a claim to property under attachment;

(*k*) an order under rule 55 or rule 83 of Order XXIV setting aside or refusing to set aside a sale;

(*l*) an order under rule 9 of Order XXVI refusing to set aside the abatement or dismissal of a suit;

(*m*) an order under rule 10 of Order XXVI giving or refusing to give leave to continue suit;

(*n*) an order under rule 3 of Order XXVII recording or refusing to record an agreement, compromise or satisfaction;

(*o*) an order under rule 2 of Order XXIX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit on failure to furnish security for costs;

(*p*) an order under rule 3 or rule 8 of Order XXXIX refusing to extend the time for the payment of mortgage-money;

(*q*) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XL;

(*r*) an order under rule 2, rule 3 or rule 6 of Order XLIII, directing a defendant to furnish security or fresh security, or directing the attachment of a defendant's property on default in furnishing such security;

(*s*) an order under rule 1, rule 2, rule 4 or rule 10 of Order XLIV, granting a temporary injunction, or discharging, varying or setting aside any such injunction, or directing the deposit of money or other property in court or the delivery thereof to any other party;

(*t*) an order under rule 1 or rule 4 of Order XLV appointing a receiver;

(*u*) an order of refusal under rule 19 of Order XLVI to re-admit, or under rule 21 of Order XLVI to rehear, an appeal;

(*v*) an order under rule 23 of Order XLVI remanding a case, where an appeal would lie from the decree of the appellate court;

(*w*) an order under rule 4 of Order L granting an application for review.

Procedure.

2. The rules of Order XLVI shall apply, so far as may be, to appeals from orders.

ORDER XLVIII

APPEALS BY POOR PERSONS

Application. 285 of 1946, r.6.

1. Any person, who is entitled to prefer an appeal or is the respondent to an appeal which has been presented to the appellate court, and is unable by reason of poverty to pay the prescribed court fees, may present a petition for leave to prosecute or defend such appeal without payment of such fees.

How made 26 of 1952, r.6.

2. Every such application as is referred to in rule 1 shall be by way of petition to the appellate court which shall contain a statement of the grounds of objection to the decree from which it is desired to appeal, and shall be accompanied by such evidence as to the means of the applicant as is required by Order XXXVII.

Remission of fees.

3. If the appellate court is satisfied as to the poverty of the applicant and that he has a reasonable ground for prosecuting or defending the appeal, such court may grant leave to prosecute or defend such appeal as a poor person and may thereupon remit the payment of court fees in whole or in part, subject in all matters to the provisions of Order XXXVII in so far as those provisions are applicable.

Assignment of advocate.

4.—(1) If the appellate court is satisfied as to the poverty of the appellant or respondent in any appeal and is of opinion that it is desirable in the interests of justice that such appellant or respondent should have legal aid, such court may request an advocate to appear on behalf of such appellant or respondent.

(2) Such advocate shall be selected in the manner provided by rule 10 of Order XXXVII and shall be requested to appear on behalf of such party and to represent him up to the date of the final judgment on appeal.

65 of 1947, r.14.

(3) The provisions of rules 9, 11, 12 and 13 of Order XXXVII shall apply in the case of every person admitted to prosecute or defend an appeal as a poor person.

Appeal by person admitted to sue or defend in lower court as a poor person.

5.—(1) There shall be no appeal as a poor person to any appellate court by anyone admitted under the provisions of rule 6 of Order XXXVII to sue or to defend as a poor person in any legal proceedings without leave of the court or Judge before whom the matter is heard or of such appellate court.

65 of 1947, r.15.

(2) Where any such poor person is a party to an appeal to an appellate court either as respondent, or subject to the provisions of paragraph (1) of this rule, as appellant, the provisions of rules 1, 3 and 4 shall apply in so far as is practicable, but no further evidence as to the poverty of such poor person shall be necessary unless the appellate court shall otherwise direct.

Payment of certain fees on appeal may be dispensed with.

6. Notwithstanding anything contained in the foregoing rules the appellate court may, in any case in which it thinks fit on account of the poverty of a party to an appeal or for any other reason to be recorded in the minutes of the proceedings, dispense with or remit the payment of any fee in whole or in part.

ORDER XLIX

REFERENCE

Reference of question to High Court.

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

Court may pass decree contingent upon decision of High Court.

2.—(1) The court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred.

(2) No decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

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

Costs of reference to High Court.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Power to alter, etc., decree of court making reference.

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

Power to refer to High Court questions as to jurisdiction.

6.—(1) Where at any time before judgment a subordinate court in which a suit has been instituted doubts whether the suit is cognisable by such court, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

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

ORDER L

REVIEW

Application for review of judgment.

1.—(1) Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is allowed; or

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

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

To whom applications for review may be made.

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

Form of application for review. 134 of 1940, r.16.

3. Every application for review shall be in writing and shall be supported by an affidavit setting out the ground upon which the applicant considers himself aggrieved, and where an application rests on an alleged error in a judgment or other matter necessitating reference to the judgment it shall be accompanied by a copy of such judgment if a judgment has been recorded.

Application where rejected.

4.—(1) Where it appears to the court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.

(2) Where the court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(*a*) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Application for review in court consisting of two or more Judges.

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

Application where rejected.

6.—(1) Where the application for a review is heard by more than one Judge and the court is equally divided, the application shall be rejected.

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

Order of rejection not appealable.

Objections to order granting application.

7.—(1) An order of the court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(*a*) in contravention of the provisions of rule 2;

(*b*) in contravention of the provisions of rule 4; or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

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

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

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

Registry of application granted, and order for rehearing.

8. When an application for review is granted, a note thereof shall be made in the register and the court may at once rehear the case or make such order in regard to the rehearing as it thinks fit.

Bar of certain applications.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER LI

POWERS OF A REGISTRAR AND DISTRICT REGISTRARS

Powers of Registrar.

1.—(1) A Registrar may exercise the powers and duties of a Judge or of a magistrate and may pronounce judgments, pass and sign decrees and make orders and transact the business of the High Court or the court of a magistrate in the cases referred to in the following Orders and Rules:—

(*a*) Order	IV	Institution of suits;
(*b*) Order	V	Issue and Service of summons (except rules 26 to 32);
(*c*) Order	VI	Pleadings generally (except rules 16 and 17);
(*d*) Order	VII	Plaint;
(*e*) Order	VIII	Written Statement and set off;
(*f*) Order	XI	Appearance and non-appearance of parties (with respect to suits involving no disputed issues of fact or law);
(*g*) Order	XV	Rule 9 - Return of admitted documents;
(*h*) Order	XVII	Rules 1 and 2 - Disposal of the suit at the first hearing;
(*i*) Order	XIX	Rules 1, 2, 3 and 4 - Summoning and attendance of witnesses;
(*j*) Order	XX	Adjournments;
(*k*) Order	XXIII	Rules 11, 12 and 13 - Applications relating to payment of a decree by instalmets;
(*l*) Order	XXIV	Execution;
(*m*) Order	XXVI	Rules 1, 2, 3 and 4 - Death of parties;
(*n*) Order	XXVII	Rule 3 - Withdrawal and adjustment of suits;
(*o*) Order	XXVIII	Payment into and out of court.

(2) Any person who is dissatisfied with any order of a Registrar (other than pronouncing judgment or passing a decree) made under this rule may apply by summons supported by affidavit to a Judge or magistrate as the case may require who may if he thinks fit set aside the order of the Registrar and make such other order as he may deem just.

(3) Every such application shall be made within thirty days after the order of the Registrar unless such time shall be extended by the High Court or a Judge or magistrate, as the case may be;

(4) Such application shall not operate as a stay of any proceedings or of execution of any decree unless the Registrar or the High Court or Judge or magistrate (as the case may be) shall otherwise order.

(5) Where the Registrar is of opinion that any matter which is within his powers under this rule can be more conveniently dealt with by a Judge or magistrate he shall refer it to such Judge or magistrate as the case may require.

Formal steps before District Registrar.

2. The District Registrar shall have with respect to suits entered in his Registry the same powers as those which may be exercised by the Registrar of the High Court:

Provided that he shall not pass a decree in any suit unless the proceedings are *ex parte* or unless the defendant consents.

Powers of District Registrar.

3.—(1) In suits entered in the District Registry, all formal and preliminary steps shall be taken and all interlocutory applications made before the District Registrar who may make thereon such orders as may be necessary.

(2) Application for the transfer of a suit entered in the District Registry for hearing in Zanzibar must be made to a Judge.

Judge may set aside order of District Registrar.

4. A Judge of the High Court shall have power on the application of any person affected thereby to set aside any decree or order passed or made by the District Registrar and to pass or make such other decree or order as may be just:

Provided application in that behalf be made within thirty days of the passing or making of such decree or order or such further time as the Judge may allow.

ORDER LII

MISCELLANEOUS

Process to be served at expense of party issuing.

1.—(1) Every process issued under the Decree shall be served at the expense of the party on whose behalf it is issued, unless the court otherwise directs.

Costs of service.

(2) The court fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served.

2. All orders, notices and other documents required by the Decree to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of Forms in Appendices.

3. The Forms given in the Appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

APPENDIX A

PLEADINGS

(1) TITLES OF SUITS

IN THE COURT OF.....

A. B. (*add description and residence*) .. ... *Plaintiff*,

against

C. D. (*add description and residence*) .. .. *Defendant.*

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES

The British Resident.

The Attorney-General.

The Administrator-General.

The A. B. Company, Limited, having its registered office at.....

A. B., a public officer of the C. D. Company.

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D., late of (*add description and residence*).

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the.....Company, Limited.

The Official Assignee.

A. B., a minor (*add description and residence*) by C.D., his next friend.

A. B. (*add description and residence*), a person of unsound mind [*or* of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at.....

A. B. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*).

A. B. (*add description and residence*), executor of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

(3) PLAINTS

No. 1.

MONEY LENT

(Title)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., he lent the defendant .....shillings repayable on the .....day of.....

2. The defendant has not paid the same, except.....shillings paid on the.....day of.....19.....

[*If the plaintiff claims exemption from any law of limitation, say*—]

3. The plaintiff was a minor [*or* insane] from the.....day of..... till the.....day of.....19.....

4. [*Facts showing when the cause of action arose and that the court has jurisdiction.*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is.....shillings and for the purpose of court fees is.....shillings.

6. The plaintiff claims.....shillings, with interest at..... per cent. from the.....day of.....19.....

No. 2

MONEY OVERPAID

(Title)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff agreed to buy and the defendant agreed to sell.....bars of silver at.....cents per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by E. F., who was paid by the defendant for such assay, and E.F. declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant.....shillings.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., E. F. sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the Schedule hereto annexed, *or* sundry goods].

2. The defendant promised to pay.....shillings for the said goods on delivery [*or* on the.....day of....., *some days before the plaint was filed.*]

3. He has not paid the same.

4. E. F. died on the.....day of.....19..... By his last will he appointed his brother, the plaintiff, his executor.

[*As in paras.* 4 *and* 5 *of Form No.* 1.]

5. The plaintiff as executor of E. F. claims [*relief claimed*].

No. 4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., plaintiff sold and delivered to the defendant [*sundry articles of house furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth.....shillings.

3. The defendant has not paid the money.

[*As in paras.* 4 *and* 5 *of Form No.* 1, *and relief claimed.*]

No. 5

GOODS MADE AT DEFENDANT'S REQUEST AND NOT ACCEPTED

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., E. F. agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that E. F., should pay for the goods on delivery.....shillings.

2. The plaintiff made the goods, and on the.....day of..... 19....., offered to deliver them to E. F., and has ever since been ready and willing so to do.

3. E. F. has not accepted the goods or paid for them.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 6

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of.....shillings.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. On the.....day of.....19....., the plaintiff re-sold the [*crate of crockery*] on account of the defendant, by public auction, for.....shillings.

6. The expenses attendant upon such re-sale amounted to..... shillings.

7. The defendant has not paid the deficiency thus arising, amounting to.....shillings.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 7

SERVICES AT A REASONABLE RATE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. Between the.....day of.....19....., and the..... day of.....19....., at....., plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth.....shillings.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 8

SERVICES AND MATERIALS AT A REASONABLE COST

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., at.....the plaintiff built a house [known as No....., in.....], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth .....shillings.

3. The defendant has not paid the money.

[*As in paras.* 4 *and* 5 *of Form No.* 1, *and relief claimed.*]

No. 9

USE AND OCCUPATION

(*Title*)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows—

1. That the defendant occupied the [house No....., ... Street], by permission of the said X. Y., from the.....day of..... 19....., until the.....day of.....19....., and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth.....shillings.

3. The defendant has not paid the money.

[*As in paras.* 4 *and* 5 *of Form No.* 1.]

6. The plaintiff as executor of X. Y., claims [*relief claimed*].

No. 10

ON AN AWARD

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten drums of oils which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F., and G. H., and the original document is annexed hereto.

2. On the.....day of.....19....., the arbitrators awarded that the defendant should [pay the plaintiff.....shillings].

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 11

ON A FOREIGN JUDGMENT

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., at....., in the State [*or* Kingdom] of....., the.....Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff .....shillings, with interest from the said date.

2. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 12

AGAINST SURETY FOR PAYMENT OF RENT

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., E. F. hired from the plaintiff for the term of.....years, the [house No....., ...Street], at the annual rent of.....shillings, payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.

3. The rent for the month of.....19....., amounting to..... shillings, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add*—]

4. On the.....day of.....19....., the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 13

BREACH OF AGREEMENT TO PURCHASE LAND

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

[*Or*, on the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff the shamba of.....at.....containing 100 clove trees for..... shillings].

2. On the.....day of.....19....., the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or*, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 14

NOT DELIVERING GOODS SOLD

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the.....day of.....19....., and that the plaintiff should pay therefor.....shillings on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 15

WRONGFUL DISMISSAL

(Title)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or in the capacity of* foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services.....shillings [monthly].

2. On the.....day of.....19....., the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always had notice.

3. On the.....day of.....19....., the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 16

BREACH OF CONTRACT TO SERVE

(Title)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of.....shillings, and that the defendant should serve the plaintiff as [a clerk] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the.....day of.....19....., offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the.....day of..... 19....., he refused to serve the plaintiff as aforesaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 17

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

(Title)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [*Or state the tenor of the contract.*]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 18

ON A BOND FOR THE FIDELITY OF A CLERK

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff took E. F. into his employment as a clerk.

2. In consideration thereof, on the.....day of.....19....., the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding..... shillings.

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of..... shillings, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the.....day of.....19....., and the..... day of.....19....., E. F. received money and other property, amounting to the value of.....shillings, for the use of the plaintiff, for which sum he has not accounted to him and the same still remains due and unpaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 19

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant, by a registered instrument, let to the plaintiff [the house No....., ...Street] for the term of.....years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the.....day of.....19....., during the said *term*, E. F., who was the lawful owner of the said house, unlawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend.....shillings in moving, and lost the custom of G. H. and I. J. by such removal].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 20

ON AN AGREEMENT OF INDEMNITY

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant, being partners in trade under the style of A. B. and C. D., dissolved the partnership and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and *indemnify* the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the.....day of.....19....., [a judgment was recovered against the plaintiff and defendant by E. F., in the High Court, upon a debt due from the firm to E. F., and on the.....day of.....19.....,] the plaintiff paid.....shillings [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 21

PROCURING PROPERTY BY FRAUD

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth..... shillings over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of.....shillings.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered*:] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended.....shillings.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 22

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant represented to the plaintiff that E. F. was solvent and in good credit, and worth .....shillings over all his liabilities [*or* that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to E. F. [rice] of the value of.....shillings [on.....months' credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or* to deceive and injure the plaintiff].

4. E. F. [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 23

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND

(Title)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called.....and situate in.....and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the.....day of.....19....., the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 24

CARRYING ON A NOXIOUS MANUFACTURE

(Title)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is, and at all times hereinafter mentioned was, possessed of certain lands called....., situate in.....

2. Ever since the.....day of.....19....., the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and goats as he otherwise might have done, and was obliged to remove his cattle, goats and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 25

OBSTRUCTING A RIGHT OF WAY

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of.....].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, *or* on foot] at all times of the year.

3. On the.....day of.....19....., defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or* on foot, *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (*State special damage, if any.*)

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 26

OBSTRUCTING A HIGHWAY

(*Title*)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from.....to.....so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 27

DIVERTING A WATER-COURSE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the....., in the village of ....., district of.....

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the.....day of.....19....., the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than .....sacks per day, whereas, before the said diversion of water, he was able to grind.....sacks per day.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 28

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the.....day of.....19....., the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 29

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendants were common carriers of passengers by railway between.....and .....

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at.....[*or* near the station of .....*or* between the stations of.....and.....], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

[*Or thus:*—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para.* 3.]

No. 30

INJURIES CAUSED BY NEGLIGENT DRIVING

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is a shoemaker, carrying on business at..... The defendant is a merchant of.....

2. On the.....day of.....19....., the plaintiff was walking in Ngambo and Zanzibar, at about 3 o'clock in the afternoon. He was obliged to cross the main road. While he was crossing this road, and just before he could reach the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Mnazimoja road, in Ngambo. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 31

FOR MALICIOUS PROSECUTION

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant obtained a warrant of arrest from.....[a magistrate, *or as the case may be*] on a charge of....., and the plaintiff was arrested thereon, and imprisoned for.....[days *or* hours, and gave bail in the sum of.....shillings to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the.....day of.....19....., the magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F.; *or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and defending himself against the said complaint.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 32

MOVABLES WRONGFULLY DETAINED

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the Schedule hereto annexed [*or describe the goods*], the estimated value of which is.....shillings.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the.....day of.....19....., the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) delivery of the said goods, or.....shillings, in case delivery .....cannot be had;

(2) .....shillings compensation for the detention thereof.

The Schedule

No. 33

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant, C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth.....shillings over all his liabilities].

2. The plaintiff was hereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is.....shillings.

3. The said representations were false, and were then known by C. D. to be so [*or* at the time of making the said representations, C. D. was insolvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [*or* who had notice of the falsity of the representation].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) delivery of the said goods, or.....shillings, in case delivery cannot be had;

(2) .....shillings compensation for the detention thereof.

No. 34

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at....., contained [100 clove trees].

2. The plaintiff was thereby induced to purchase the same at the price of.....shillings in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed. But the land has not been transferred to him.

3. On the.....day of.....19....., the plaintiff paid the defendant.....shillings as part of the purchase money.

4. That the said piece of ground contained in fact only [50 clove trees].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) .....shillings, with interest from the.....day of 19.....;

(2) that the said agreement be delivered up and cancelled.

No. 35

AN INJUNCTION RESTRAINING WASTE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed.*]

No. 36

INJUNCTION RESTRAINING NUISANCE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No....., ...Street, Zanzibar].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street.....].

3. On the.....day of.....19....., the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37

PUBLIC NUISANCE

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. The defendant has wrongly heaped up earth and stones on a public road known as.....Street at.....so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Attorney-General to the institution of this suit.

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully headed up as aforesaid.

No. 38

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE

(*Title*)

A. B., the above-named plaintiff, states as follows—

[*As in Form No. 27.*]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39

RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of a valuable Arab chest with unique carving on the brasswork thereof, and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

2. On the.....day of.....19....., he deposited the same for safe-keeping with the defendant.

3. On the.....day of.....19....., he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, break or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [chest].

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [chest];

(2) that he be compelled to deliver the same to the plaintiff.

No. 40

INTERPLEADER

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. Before the date of the claims hereinafter mentioned G. H. deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant C. D. claims the same [under an alleged assignment thereof to him from G. H.].

3. The defendant E. F. also claims the same [under an order of G. H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[*As in paras. 4 and 5 of Form No. 1.*]

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claim to the said property;

[(3) that some person be authorised to receive the said property pending such litigation;

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.]

No. 41

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. E. F., late of....., was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of..... [*here insert nature of debt and security, if any*].

2. E. F., died on or about the.....day of..... By his last will, dated the.....day of....., he appointed C. D. his executor [*or* devised his estate in trust, etc., *or* died intestate, *as the case may be*].

3. The will was proved by C. D. [*or* letters of administration were granted, etc.].

4. The defendant has possessed himself of the movable [and immovable, *or* the proceeds of the immovable] property of E. F., and has not paid the plaintiff his debt.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that an account may be taken of the movable [and of immovable] property of E. F., deceased, and that the same may be administered under the decree of the court.

No. 42

ADMINISTRATION BY SPECIFIC LEGATEE

(*Title*)

[*Alter Form No. 41 thus*]—

[*Omit paragraph 1 and commence paragraph 2*] E. F., late of....., died on or about the.....day of..... By his last will, dated the.....day of.....he appointed C. D. his executor, and bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 substitute—

The defendant is in possession of the movable property of E. F., and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, etc.

No. 43

ADMINISTRATION BY PECUNIARY LEGATEE

(*Title*)

[*Alter Form No. 41 thus*]—

[*Omit paragraph 1 and substitute for paragraph 2*] E. F., late of....., died on or about the.....day of..... By his last will, dated the.....day of.....he appointed C. D. his executor, and bequeathed to the plaintiff a legacy of.....shillings.

In paragraph 4 substitute "legacy" *for* "debt."

Another form

(*Title*)

E. F., the above-named plaintiff, states as follows—

1. A. B. of K. in the.....died on the.....day of..... By his last will, dated the.....day of....., he appointed the defendant and M. N. [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the.....day of....., The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property, and got in the movable property; he has sold some part of the immovable property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) to have the movable and immovable property of A. B. administered in this court and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

No. 44

EXECUTION OF TRUSTS

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. He is one of the trustees under an instrument of settlement bearing the date on or about the.....day of.....made upon the marriage of E. F. and G. H., the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of E. F. for the benefit of C. D., the defendant, and the other creditors of E. F.].

2. A. B. has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the movable and immovable property transferred by the said instrument.

3. C. D. claims to be entitled to a beneficial interest under the instrument.

[*As in paras. 4 and 5 of Form No. 8.*]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, *or* of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of, *or* of part of, the said movable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]: and he prays that the court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the court for the benefit of C. D., the defendant, and all other persons who may be interested in such administration, in the presence of C. D. and such other persons so interested as the court may direct, or that C. D. may show good cause to the contrary.

[*N.B.—Where the suit is by a beneficiary, the plaint may be modelled,* mutatis mutandis, *on the plaint by a legatee.*]

No. 45

FORECLOSURE OR SALE

(Title)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage—

(*a*) (date);

(*b*) (names of mortgagor and mortgagee);

(*c*) (sum secured);

(*d*) (rate of interest);

(*e*) (property subject to mortgage);

(*f*) (amount now due);

(*g*) (*if the plaintiff's title is derivative state shortly the transfers or devolution under which he claims*).

(*If the plaintiff is mortgagee in possession, add*)

3. The plaintiff took possession of the mortgaged property on the..... day of.....and is ready to account as mortgagee in possession from that time.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) payment, or in default [sale *or*] foreclosure [and possession];

[*Where Order XXXIX, Rule 6, applies.*]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46

REDEMPTION

(Title)

A. B., the above-named plaintiff, states as follows—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage—

(*a*) (date);

(*b*) (names of mortgagor and mortgagee);

(*c*) (sum secured);

(*d*) (rate of interest);

(*e*) (property subject to mortgage);

(*f*) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the defendant is mortgagee in possession add*)

3. The defendant has taken possession [*or* has received the rents] of the mortgaged property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47

SPECIFIC PERFORMANCE (No. 1)

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. By an agreement dated the.....day of.....and signed by the defendant, he contracted to buy of [*or* sell to] the plaintiff certain immovable property therein described and referred to, for the sum of .....shillings.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims that the court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or* to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48

SPECIFIC PERFORMANCE (No. 2)

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. On the.....day of.....19....., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immovable property described in the agreement.

2. On the.....day of.....19....., the plaintiff tendered .....shillings to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the.....day of.....19....., the plaintiff again demanded such transfer. [*Or*, the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase money of the said property to the defendant.

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*];

(2) .....shillings compensation for withholding the same.

No. 49

PARTNERSHIP

(*Title*)

A. B., the above-named plaintiff, states as follows—

1. He and C. D., the defendant, have been for.....years [*or* months] past carrying on business together under articles of partnership in writing [*or* under a deed, *or* under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [*Or* the defendant has committed the following breaches of the partnership articles—

(1)

(2)

(3)

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) dissolution of the partnership;

(2) that accounts be taken;

(3) that a receiver be appointed.

(*N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.*)

(4) WRITTEN STATEMENTS

General defences

Denial.

The defendant denies that (*set out facts*).

The defendant does not admit that (*set out facts*).

The defendant admits that.....but says that.....

The defendant denies that he is a partner in the defendant firm of.....

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation.

The suit is barred by Article.....or Article.....of the Schedule to the Limitation Decree.

Jurisdiction.

The court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On the.....day of.....a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency.

The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority.

The defendant was a minor at the time of making the alleged contract.

Payment into court.

The defendant as to the whole claim (*or* as to Shs.....part of the money claimed, *or as the case may be*) has paid into court Shs..... and says that this sum is enough to satisfy the plaintiff's claim (*or* the part aforesaid).

Performance remitted.

The performance of the promise alleged was remitted on the..... (*date*).

Rescission.

The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata.

The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel.

The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Ground of defence subsequent to institution of suit.

Since the institution of the suit, that is to say, on the.....day of .....(*set out facts*).

No. 1

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

1. The defendant did not order the goods.

2. The goods were not delivered to the defendant.

3. The price was not Shs.....

[or]

4.
5. Except as to Shs....., same as 1.
6. 2.
3.

7. The defendant [*or* A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [*or* to C. D., the plaintiff's agent] on the.....day of.....19.....

8. The defendant satisfied the claim by payment after suit to the plaintiff on.....day of.....19.....

No. 2

DEFENCE IN SUITS ON BONDS

1. The bond is not the defendant's bond.

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3

DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4

DEFENCE IN ANY SUIT FOR DEBT

1. As to Shs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

		Shs.
1958, January 25th		150
1958, February 1st		50
	Total ..	200

2. As to the whole [*or* as to Shs....., part of the money claimed] the defendant made tender before suit of Shs.....and has paid the same into court.

No. 5

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to.....of .....Street, Zanzibar, livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said.....

2. The defendant does not admit that the said carriage was turned out of the Mnazimoja Road, either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6

DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [*or* matters] complained of.

No. 7

DEFENCE IN SUITS FOR DETENTION OF GOODS

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1958, May 3rd. To carriage of the goods claimed from Wete to Zanzibar—

48 bales of cloves at 25 cents per bale .. Shs. 12.

No. 8

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1. The plaintiff is not the author [*assignee, etc.*].

2. The defendant did not infringe.

No. 9

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

No. 10

DEFENCE IN SUITS RELATING TO NUISANCES

1. The plaintiff's lights are not ancient [*or* deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim; i.e., whether by prescription, grant or what*].

4. The plaintiff has been guilty of laches of which the following are particulars—

1940. Plaintiff's mill began to work.

1941. Plaintiff came into possession.

1953. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated, e.g., limitation as to past damage.*]

No. 11

DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).

3. The suit is barred by Article.....of the Schedule to the Limitation Decree.

4. The following payments have been made, viz.—

	Shs.
(*Insert date*) ....., ...	1,000
(*Insert date*) ....., ...	500

5. The plaintiff took possession on the.....of....., and has received the rents ever since.

6. That plaintiff released the debt on the.....of.....

7. The defendant transferred all his interest to A. B. by a document, dated.....

No. 12

DEFENCE TO SUIT FOR REDEMPTION

1. The plaintiff's right to redeem is barred by Article.....of the Schedule to the Limitation Decree.

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant, by a document dated the.....day of..... transferred all his interest in the mortgage-debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.*)

No. 13

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions—(*Conditions*).

4. The defendant did not—(*alleged acts of part performance*).

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*State why*).

6. The agreement is uncertain in the following respects—(*State them*).

7. (*or*) The plaintiff has been guilty of delay.

8. (*or*) The plaintiff has been guilty of fraud (*or* misrepresentation).

9. (*or*) The agreement is unfair.

10. (*or*) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).

12. The agreement was rescinded under Conditions of Sale, No. 11 (*or* by matual agreement).

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Limitation Decree, accord and satisfaction, release, fraud, etc.*)

No. 14

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Shs....., and the testator had some movable property which the defendant got in, and which produced the net sum of Shs.....

2. The defendant applied for the whole of the said sums and the sum of Shs.....which the defendant received from the rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the.....day of.....19....., and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15

PARTICULARS (O.VI, r.5)

Title of suit

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the.....of.....

(*Here set out the particulars ordered in paragraphs if necessary.*)

APPENDIX B

PROCESS

No. 1

SUMMONS FOR DISPOSAL OF SUIT (O.V, rr.1, 5)

(*Title*)

To .....

[*Name, description and place of residence.*]

WHEREAS.....has instituted a suit against you for..... you are hereby summoned to appear in this court in person or by an advocate duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions on the.....day of.....19....., at .....o'clock in the.....noon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

NOTICE—

(1) Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the court and on depositing the necessary expenses.

(2) If you admit the claim, you should pay the money into court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 2

SUMMONS FOR DIRECTIONS (O.V, rr.1, 5)

(*Title*)

To .....

WHEREAS.....has instituted a suit against you for..... you are hereby summoned to appear in this court in person, or by an advocate duly instructed, and able to answer all material questions

relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the.....day of.....19....., at .....o'clock in the.....noon, to answer the claim; should you appear and dispute the claim the court will proceed to give directions for the disposal of the suit but in default of your appearance on the day before mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Registrar

No. 3

ORIGINATING SUMMONS (O.X, r.9)

(*Title*)

Upon reading the plaint herein and upon hearing.....advocate for the plaintiff, I do order that the defendant above-named, do attend before the Judge, in Chambers, on the.....day of.....19....., at.....o'clock in the forenoon for the determination of the following questions:—

(Here set out the questions which the plaintiff desires to have determined.)

Dated this.....day of.....19.....

(Signed).....

Judge

NOTE.—If the defendant does not appear at the time and place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

No. 4

SUMMONS TO APPEAR IN PERSON (O.V, r.3)

(*Title*)

To .....

[*Name, description and place of residence.*]

WHEREAS.....has instituted a suit against you for..... you are hereby summoned to appear in this court in person on the..... day of.....19....., at.....o'clock in the.....noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

No. 5

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT (O.XLII, r.2)

(Title)

To .....

[*Name, description and place of residence.*]

WHEREAS.....has instituted a suit against you under Order XLII of the Civil Procedure Rules, for Shs....., balance of principal and interest due to him as the.....of a.....of which a copy is hereto annexed.

You are hereby summoned to obtain leave from the court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Shs.....and the sum of Shs.....for costs.

Leave to appear may be obtained on an application to the court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 6

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF (O.I, r.10)

(Title)

To.....

[*Name, description and place of residence.*]

WHEREAS.....has instituted the above suit against..... for.....and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved.

Take notice that you should on or before the.....day of..... 19....., signify to this court whether you consent to be so added.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

No. 7

THIRD PARTY NOTICE CLAIMING INDEMNITY OR CONTRIBUTION OR OTHER RELIEF OR REMEDY (O.IX, r.2)

(*Title*)

Issued pursuant to the order of Court dated the.....day of ....., 19.....

To .....

Take notice that this suit has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state concisely the nature of the plaintiff's claim*] as appears by the indorsement on the summons [*or statement of claim*] a copy whereof is delivered herewith.

The defendant claims against you [*here state concisely the nature of the claim against the third party as for instance*] to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of [*one half*] of the plaintiff's claim or the following relief or remedy namely.....on the grounds that [*state concisely the grounds of the claim against the third party*].

And further take notice that you are hereby summoned to appear in this court in person or by an advocate duly instructed, and able to answer all material questions relating to the said claim or who shall be accompanied by some person able to answer all such questions on the .....day of....., 19....., at.....o'clock in the.....noon;

In default of your appearance on the day before mentioned you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [*indemnify the defendant or to contribute to the extent claimed or to.....stating the relief or remedy sought*] and the validity of any judgment that may be given in the suit and you will be bound by such judgment and such judgment may be enforced against you pursuant to Order IX of the Civil Procedure Rules.

GIVEN under my hand and the seal of the court, this.....day of....., 19.....

.....

Judge

No. 8

THIRD PARTY NOTICE WHEN QUESTION OR ISSUE TO BE DETERMINED
(O.IX, r.2)

(*Title*)

Issued pursuant to the order of Court dated the.....day of ....., 19.....

To.....

Take notice that this suit has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state concisely the nature of the plaintiff's claim*] as appears by the indorsement on the summons [*or statement of claim*] a copy whereof is delivered herewith.

The defendant claims that the following question or issue, viz., [*here state concisely the question or issue to be determined*] should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And further take notice that you are hereby summoned to appear in this court in person or by an advocate duly instructed, and able to answer all material questions relating to the said claim or who shall be accompanied by some person able to answer all such questions on the .....day of....., 19....., at.....o'clock in the.....noon;

In default of your so doing you will be deemed to admit the validity of and will be bound by any decision or judgment arrived at or given in this suit on the said question or issue and to admit any consequential liability of yourself and judgment may be given against you and enforced pursuant to Order IX of the Civil Procedure Rules.

GIVEN under my hand and the seal of this court, this.....day of....., 19.....

.....
Judge

No. 9

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT
(O.XXVI, r.4)

(*Title*)

To.....

WHEREAS the plaintiff.....instituted a suit in this court on the .....day of.....19....., against the defendant..... who has since deceased, and whereas the said plaintiff has made an application to this court alleging that you are the legal representative of the said ....., deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this court on the..... day of.....19....., at.....A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

No. 10

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER (O.V, r.23)

(*Title*)

To

The Officer in charge of the Prison at.....

UNDER the provisions of Order V, Rule 23, of the Civil Procedure Rules, a summons in duplicate is herewith forwarded for service on the defendant.....who is.....a prisoner in your custody. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this court signed by the said defendant, with a statement of service indorsed thereon by you.

.....

Judge

No. 11

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR MEMBER OF HER MAJESTY'S FORCES (O.V, r.24)

(*Title*)

To.....

UNDER the provisions of Order V, Rule 24, of the Civil Procedure Rules, a summons in duplicate is herewith forwarded for service on the defendant.....who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this court signed by the said defendant, with a statement of service indorsed thereon by you.

.....

Judge

No. 12

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (O.V, r.18)

(Title)

The Affidavit of.....

I..... make oath / affirm and say as follows—

(1) I am a process-server of this Court.

(2) On the.....day of.....19....., I received a summons / notice issued by the Court of.....in Suit No.....of 19....., in the said Court, dated the.....day of.....19....., for service on.....

(3) The said.....was at the time personally known to me, and I served the said summons / notice on him / her on the.....day of.....19....., at about.....o'clock in the.....noon at.....by tendering a copy thereof to him / her and requiring his / her signature to the original summons / notice.

(*a*) .....

(*b*) .....

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.

(*b*) Signature or mark of process-server.

or,

(3) The said.....not being personally known to me.....accompanied me to.....and pointed out to me a person whom he stated to be the said.....and I served the said summons / notice on him / her on the.....day of.....19....., at about.....o'clock in the.....noon at.....by tendering a copy thereof to him / her

and requiring $\frac{\text{his}}{\text{her}}$ signature to the original $\frac{\text{summons}}{\text{notice}}$.

(*a*) .....

(*b*) .....

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.

(*b*) Signature or mark of process-server.

or,

(3) The said.....and the house in which he ordinarily resides being personally known to me, I went to the said house, in.....and there on the.....day of.....19....., at about..... o'clock in the.....noon, I did not find the said.....

(*a*) .....

(*b*) .....

(*a*) Enter fully and exactly the manner in which the process was served, with special reference to Order V, rr. 15 and 17.

(*b*) Signature or mark of process-server.

or,

(3) One.....accompanied me to.....and there pointed out to me.....which he said was the house in which..... ordinarily resides. I did not find the said.....there.

(*a*) .....

(*b*) .....

(*a*) Enter fully and exactly the manner in which the process was served, with special reference to Order V, rr. 15 and 17.

(*b*) Signature or mark of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn
$\frac{\text{Sworn}}{\text{Affirmed}}$ by the said.....before me this.....day of.....19.....

Empowered to administer the oath to deponents.

No. 13

CERTIFICATE OF SERVICE OF FOREIGN PROCESS (O. V, r.34 (6)).

I,....., Registrar of the High Court, Zanzibar, hereby certify that the documents annexed hereto are as follows—

(1) The original letter of request for service of process received from the court or tribunal at.....in the.....of..... in the matter of.....*versus*.....,

(2) The process received with such letter of request; and

(3) The evidence of service upon.....the person named in such letter of request, together with the verification of a Notary Public.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the High Court, Zanzibar, regulating the service of Zanzibar legal process in Zanzibar, and the proof thereof.

And I certify that the cost of effecting such service, as duly certified by me as Taxing Master of the High Court, Zanzibar, amounts to the sum of Shs....., or £.....

Dated this.....day of.....19.....

No. 14

NOTICE TO DEFENDANT .(O. XI. r. 6)

(*Title*)

To .....

[*Name, description and place of residence*]

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this court and you did not so appear, but from the return of the process-server it has been proved to the satisfaction of the court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons:

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the.....day of.....19....., is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 15

NOTICE IN MONEYLENDERS SUIT (O. XI, r.7)

(*Title*)

To.....

[*Name, description and place of residence*]

Take notice of an application on the part of the Plaintiff to the Court at..... on.....the.....day of.....19....., at.....o'clock in the forenoon, that he be at liberty to enter final judgment against the Defendant..... for....., the amount claimed and costs, the said Defendant having failed to appear to the summons served on the..... day of .....19....., [*or* to deliver a written statement within the time prescribed or as the case may be].

Dated this.....day of.....19.....

This Notice was taken out by.....of..... Advocate for the Plaintiff.

NOTICE TO DEFENDANT

Take notice that you may attend either personally or by your Advocate at the above-mentioned time and place, and in default of your so doing judgment may be given in your absence for the full amount of the Plaintiff's Claim and Costs.

No. 16

SUMMONS TO WITNESS (O.XIX, rr.1, 5)

(*Title*)

To .....

WHEREAS your attendance is required to.....on behalf of the .....in the above suit, you are hereby required [personally] to appear before this court on the.....day of.....19....., at..... o'clock in the forenoon, and to bring with you [*or* to send to this..... court].

A sum of Shs....., being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 12 of Order XIX of the Civil Procedure Rules.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

NOTICE—

(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid a sum of Shs..... will be tendered to you for each day's attendance beyond the day specified.

No. 17

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS (O. XIX, r.10)

(Title)

To .....

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under Rule 10 of Order XIX of the Civil Procedure Rules, issued requiring the attendance of the witness in this court on the..... day of.....19....., at.....o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 18

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS (O.XIX, r.10)

(Title)

To .....

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under Rule 10 of Order XIX of the Civil Procedure Rules, issued, requiring the attendance of the witness in this court on the.....

day of.....19....., at.....o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 19

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS (O. XIX, r.10)

(*Title*)

To

The Bailiff of the court.

WHEREAS the witness.....cited by.....has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in court: You are hereby directed to hold under attachment.....property belonging to the said witness to the value of.....and to submit a return, accompanied with an inventory thereof, within.....days.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 20

WARRANT OF ARREST OF WITNESS (O.XIX, r.10)

(*Title*)

To

The Bailiff of the court.

WHEREAS.....has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]: You are hereby ordered to arrest and bring the said.....before the court.

You are further ordered to return this warrant on or before the..... *day of.....19..... with an indorsement certifying the day on and the* manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 21

WARRANT OF COMMITTAL (O.XIX, r.16)

(*Title*)

To

The Officer in charge of the Prison at.....

WHEREAS the plaintiff [*or* defendant] in the above-named suit has made application to this court that security be taken for the appearance of.....to give evidence [*or* to produce a document], on the..... day of.....19.....; and whereas the court has called upon the said .....to furnish such security, which he has failed to do: This is to require you to receive the said.....into your custody in the civil prison and to produce him before this court at.....on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 22

WARRANT OF COMMITTAL (O.XIX, r.18)

(*Title*)

To

The Officer in charge of the Prison at.....

WHEREAS....., whose attendance is required before this court in the above-named case to give evidence [*or* to produce a document], has been arrested and brought before the court in custody; and whereas owing to the absence of the plaintiff [*or* defendant], the said..... cannot give such evidence [*or* produce such document]; and whereas the court has called upon the said.....to give security for his appearance on the.....day of.....19....., at.....which he has failed to do: This is to require you to receive the said.....into your custody in the civil prison and to produce him before this court at.....on the.....day of.....19.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

No. 1

ORDER FOR DELIVERY OF INTERROGATORIES (O.XIII, r.1)

In the court of.....
Civil Suit No.....of.....19.....

A. B. .. .. *Plaintiff.*

against

C. D., E. F. and G. H .. .. *Defendants.*

Upon hearing.....and upon reading the affidavit of..... filed the.....day of.....19.....: It is ordered that the..... be at liberty to deliver to the.....interrogatories in writing, and that the said.....do answer the interrogatories as prescribed by Order XIII, Rule 8, and that the costs of this application be.....

No. 2

INTERROGATORIES (O.XIII, r.4)

(*Title as in No. 1, supra*)

Interrogatories on behalf of the above-named [*plaintiff or defendant C. D.*] for the examination of the above-named [*defendants E. F. and G. H. or plaintiff*].

1. Did not, etc.

2. Has not, etc.

etc., etc., etc.,

[*The defendant E. F. is required to answer the interrogatories numbered.....*]

[*The defendant G. H. is required to answer the interrogatories numbered.....*]

No. 3

ANSWER TO INTERROGATORIES (O.XIII, r.9)

(*Title as in No. 1, supra*)

The answer of the above-named defendant E. F., to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows—

1. } Enter answers to interrogatories in paragraphs numbered
2. } consecutively.

3. I object to answer the interrogatories numbered.....on the ground that [*state grounds of objection*].

No. 4

ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O.XIII, r.12)

(Title as in No. 1, supra)

Upon hearing.....: It is ordered that the.....do within .....days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be.....

No. 5

AFFIDAVIT AS TO DOCUMENTS (O.XIII, r.13)

(Title as in No. 1, supra)

I, the above-named defendant C. D., make oath and say as follows—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my advocate or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

FIRST SCHEDULE

FIRST PART

(List of documents in possession or power of deponent, which he does not object to produce)

SECOND PART

(List of documents in possession or power of deponent, which he objects to produce)

SECOND SCHEDULE

(*List of documents no longer in possession, custody, or power of deponent*)

No. 6

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION (O.XIII, r.14)

(*Title as in No. 1, supra*)

Upon hearing.....and upon reading the affidavit of..... filed the.....day of.....19.....: It is ordered that the..... do, at all reasonable times, on reasonable notice, produce at....., situate at....., the following documents, namely, ..., and that the.....be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be.....

No. 7

NOTICE TO PRODUCE DOCUMENTS (O.XIII, r.16)

(*Title as in No. 1, supra*)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [plaint *or* written statement *or* affidavit dated the.....day of.....19.....

[*Describe documents required.*]

.....*X. Y., advocate for*.....

To Z, advocate for.....

No. 8

NOTICE TO INSPECT DOCUMENTS (O.XIII, r.17)

(*Title as in No. 1, supra*)

Take notice that you can inspect the documents mentioned in your notice of the.....day of.....19.....[*except the documents numbered.....in that notice*] at [*insert place of inspection*] on Thursday next, the.....instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the.....day of.....19....., on the ground that [*state the ground*].

No. 9

NOTICE TO ADMIT DOCUMENTS (O.XIV, r.3)

(*Title as in No. 1, supra*)

Take notice that the plaintiff [*or* defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], his advocate or agent, at.....on.....between the hours of.....; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., advocate [or agent] for plaintiff [or defendant].

To E. F. advocate [or agent] for defendant [or plaintiff].

[*Here describe the documents and specify as to each document whether it is original or a copy.*]

No. 10

NOTICE TO ADMIT FACTS (O.XIV, r.5)

(*Title as in No. 1, supra*)

Take notice that the plaintiff [*or* defendant] in this suit requires the defendant [*or* plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., advocate [or agent] for plaintiff [or defendant].

To E. F., advocate [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1950.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1956.
5. That O. was never married.

No. 11

ADMISSION OF FACTS PURSUANT TO NOTICE (O.XIV, r.5)

(Title as in No. 1, supra)

The defendant [*or* plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion or by any one other than the plaintiff [*or* defendant, *or* party requiring the admission].

E. F., advocate [or agent] for defendant [or plaintiff].

G. H., advocate [or agent] for plaintiff [or defendant].

To

Facts admitted	Qualifications or limitations, if any, subject to which they are admitted
1. That M. died on 1st January, 1950	1.
2. That he died intestate	2.
3. That N. was his lawful son ..	3. But not that he was his only lawful son.
4. That O. died	4. But not that he died on the 1st April, 1956.
5. That O. was never married ..	5.

No. 12

NOTICE TO PRODUCE (GENERAL FORM) (O.XIV, r.8)

(Title as in No. 1, supra)

Take notice that you are hereby required to produce and show to the court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly.....

G. H., advocate [or agent] for plaintiff [or defendant].

To E. F., advocate [or agent] for defendant [or plaintiff].

APPENDIX D

DECREES

No. 1

DECREE IN ORIGINAL SUIT (O.XXIII, rr.6, 7)

(*Title*)

Claim for.....

THIS suit coming on this day for final disposal before.....in the presence of.....for the plaintiff and of.....for the defendant it is ordered and decreed that.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 2

SIMPLE MONEY DECREE (Section 26)

(*Title*)

Claim for.....

THIS suit coming on this day for final disposal before.....in the presence of.....for the plaintiff and of.....for the defendant, it is ordered that the.....do pay to the.....the sum of Shs.....with interest thereon at the rate of.....per cent. per annum from.....to the date of realisation of the said sum and do also pay Shs....., the costs of this suit, with interest thereon at the rate of.....per cent. per annum from this date to the date of realisation.

	Shs.	cts.
Principal		
Interest		
Court costs		
Advocate's costs		
Cost of Decree		
Total		

GIVEN under my hand and the seal of the court, this.....day of.....19.....

.....

Judge

No. 3

PRELIMINARY DECREE FOR FORECLOSURE (O.XXXIX, r.2)

(*Title*)

THIS suit coming on this day, etc.: It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the.....day of.....19....., is Shs. .....:

And it is decreed as follows—

(1) That if the defendant pays into court the amount so declared due on or before the said.....day of.....19....., the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add *or by those under whom he claims.*] [Where the plaintiff is in possession add *and shall put the defendant in possession of the property.*]

(2) That if such payment is not made on or before the said.....day of.....19....., the defendant shall be debarred from all right to redeem the property.

Schedule

Description of the mortgaged property

No. 4

PRELIMINARY DECREE FOR SALE (O.XXXIX, r.4)

(*Title*)

THIS suit coming on this day, etc.: It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the.....day of.....19....., is Shs.....and that such amount shall carry interest at the rate of.....per cent. per annum until realisation; and it is decreed as follows—

(1) That if the defendant pays into court the amount so declared due on or before the said.....day of.....19....., the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add *or by those under whom he claims.*] [Where the plaintiff is in possession add *and shall put the defendant in possession of the property.*]

(2) That if such payment is not made on or before the said.....day of.....19....., *the mortgaged property or a sufficient part thereof be* sold and that the proceeds of the sale [after defraying thereout the expenses of the sale] be paid into court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That if the net proceeds of the sale are insufficient to pay such amount and *such subsequent interest and costs in full*, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

Schedule

Description of the mortgaged property

No. 5

PRELIMINARY DECREE FOR REDEMPTION (O.XXXIX, r. 7)

(*Title*)

THIS suit coming on this day, etc.: It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the.....day of.....19....., is Shs.....:

And it is decreed as follows—

(1) That if the plaintiff pays into court the amount so declared due on or before the said.....day of.....19....., the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title add *or by those under whom he claims.*] [Where the defendant is in possession add *and shall put the plaintiff in possession of the property.*]

(2) That if such payment is not made on or before the said.....day of.....19....., the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary, substitute *the property shall be sold.*]

Schedule

Description of the mortgaged property

No. 6

DECREE FOR FORECLOSURE.—FIRST MORTGAGEE v. SECOND MORTGAGEE AND MORTGAGOR.—SUCCESSIVE PERIODS FOR REDEMPTION

(*Title*)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the.....day of..... 19....., (*a*) is Shs..... (*b*), and that on the.....day of.....19....., (*c*) there will be due to the plaintiff for interest the further sum of Shs.....(*d*) making in all Shs.....(*e*); and it is further declared that on the .....day of.....19.....,(*b*) there will be due to the first defendant on account of principal, interest and costs Shs.....(*f*)

And it is decreed as follows—

(1) That if the first defendant pays into court the said sum of..... on or before the said.....day of.....19....., (*a*) the plaintiff shall deliver up, etc., (*as in Form No. 3*).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and if the second defendant pays into court the said sum of Shs.....(*e*) on or before the.....day of..... 19....., (*b*) the plaintiff shall deliver up, etc., (*as in Form No. 3*).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into court the said sums of Shs....., (*e*) and Shs....., (*f*) on or before the ..... day of..... 19....., (*b*) the first shall deliver up, etc., (*as in Form No. 3*).

(6) That in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem property. [*Where the second defendant is in possession* add and shall put the first defendant in possession of the property.]

(*a*) Insert a day within six months from the date of decree.

(*b*) Insert amount due to plaintiff on account of principal, interest and costs as at date given at (*a*).

(*c*) Insert a day within three months from the date mentioned in (*a*).

(*d*) Insert amount due to plaintiff for further interest.

(*e*) Insert total of (*a*) and (*b*).

(*f*) Insert amount due to first defendant for principal, interest and costs.

No. 7

DECREE FOR SALE.—FIRST MORTGAGEE v. SECOND MORTGAGEE AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION

(*Title*)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the.....day of .....19....., is Shs.....(*a*) and that on the said day there will be due to the first defendant on account of principal, interest and costs Shs.....(*b*).

And it is decreed as follows—

(1) That if the defendants or either of them pay into court the said sum of Shs.....(*a*) on or before the said.....day of.....19....., the plaintiff shall deliver up, etc., [*as in Form No. 4*].

(2) That if payment of the said sum is not made on or before the .....day of.....19....., the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale [after defraying thereout the expenses of the sale] be paid into court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Shs.....(*a*) and such subsequent interest and costs as may be allowed by the court; secondly, in payment to the first defendant of the said sum of Shs.....(*b*) and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(3) That in case the defendants or either of them shall pay the sum of Shs.....(*b*) as aforesaid he or they shall be at liberty to apply to the court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That if the net proceeds of the sale are insufficient to pay the said sum of Shs.....(*a*) and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 8

DECREE FOR SALE.—SECOND MORTGAGEE v. FIRST MORTGAGOR.—ONE PERIOD FOR REDEMPTION

(*Title*)

[*Insert declarations of the amounts due to the plaintiff Shs.....(a) and to the first defendant Shs.....(b)* [*as in Form No. 7*].

(*a*) Insert amount due to plaintiff for principal, interest and costs.

(*b*) Insert amount due to first defendant for principal, interest and costs.

And it is decreed as follows—

(1) That if the plaintiff or the second defendant pays into court the said sum of Shs.....(*b*) on or before the said.....day of..... 19....., the first defendant shall deliver up, etc., [*as in Form No. 4*].

(2) That if payment of the said sum is not made on or before the..... day of.....19....., the first defendant shall be at liberty to apply that the suit be dismissed or for the sale of the mortgaged property; and in case he shall apply for a sale the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale [after defraying thereout the expenses of the sale] shall be paid into court and applied, first, in payment to the first defendant of the said sum of Shs.....(*b*) and such subsequent interest and costs as may be allowed by the court; secondly, in payment to the plaintiff of the said sum of Shs.....(*a*) and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of Shs.....into court on or before the.....day of.....19....., the second defendant shall be at liberty to pay into court the said sum of Shs.....on or *before the.....day of.....19....., and thereupon the plaintiff shall* deliver, etc., [*as in Form No. 4*].

(4) That if the plaintiff shall pay the said sum as aforesaid but the second defendant shall fail to pay the said sums as aforesaid, the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale [after defraying thereout the expenses of the sale] shall be applied in payment to the plaintiff of the said sums of Shs..... (*b*) and Shs.....(*a*) and such subsequent interest and costs as may be allowed by the court, and that the balance, if any, be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the said sums, interests and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 9.

DECREE FOR SALE.—SUB-MORTGAGEE v. MORTGAGEE AND MORTGAGOR, THE AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE SUB-MORTGAGE

(*Title*)

[*Insert declarations of the amounts due to the plaintiff Shs.....(c) and to the first defendant Shs.....(d)* [*as in Form No. 7*].

(*a*) Insert amount due to plaintiff for principal, interest and costs.
(*b*) Insert amount due to first defendant for principal, interest and costs.
(*c*) Insert amount due to first defendant.
(*d*) Insert amount declared due to plaintiff.

And it is decreed as follows—

(1) The first defendant and the second defendant shall be at liberty to pay into court the said sums of Shs.....(*b*) and Shs.....(*a*) respectively on or before the.....day of.....19....., and upon either of the said payments being made the plaintiff shall deliver up, etc., [*as in Form No 4*], and thereupon the sum of Shs.....(*a*) shall be paid to the plaintiff.

(2) In the event of payment by the second defendant as aforesaid the first defendant shall also deliver up, etc., [*as in Form No. 4*], and thereupon the residue [after payment to the plaintiff as aforesaid] shall be paid to the first defendant.

(3) In default of payment by the first and second defendants as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale [after deducting thereout the expenses of the sale] shall be paid into court and applied, first, in payment to the plaintiff of the said sum of Shs.....(*a*) and such subsequent interest and costs as may be allowed by the court [but so that the aggregate amount of principal and interest shall not exceed the amount of principal and interest due to the first defendant]; secondly, in payment to the first defendant of the excess of Shs.....(*b*) over Shs.....(*a*) and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(4) In the event of payment by the first defendant and in default of payment by the second defendant as aforesaid, the first defendant shall be at liberty to apply for the sale of the mortgaged property, and thereupon the same or a sufficient part thereof shall be sold, and the net sale proceeds shall be applied in payment to the first defendant of the said sum of Shs.....(*b*) and such further interest and costs as may be allowed by the court, and the balance, if any, shall be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs, the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

(*a*) Insert amount declared due to plaintiff.

(*b*) Insert amount due to first defendant.

No. 10

FINAL DECREE FOR FORECLOSURE (O.XXXIX, r.3)

(*Title*)

Upon reading the decree passed in the above suit on the.....day of .....19....., and the application of the plaintiff dated the..... day of.....19....., and after hearing.....advocate for the plaintiff and.....advocate for the defendant, and it appearing that the payment directed by the said decree has not been made:

It is hereby decreed as follows—

That the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property set out and described in the Schedule hereunto annexed. [Where the defendant is in possession add *and shall put the plaintiff in possession of the said property.*]

Schedule

Description of the mortgaged property

No. 11

DECREE AGAINST MORTGAGOR PERSONALLY (O.XXXIX, r.6)

(*Title*)

WHEREAS the net proceeds of the sale held under the final decree for sale passed in this suit on the.....day of.....19....., and now in court to the credit of this suit, amount to Shs.....(*a*) and there is now due to the plaintiff the sum of Shs.....(*b*) mentioned in the said decree together with the further sum of Shs.....interest thereon at the rate of 6 per cent. per annum from the.....day of.....19....., to this day, and also the sum of Shs.....for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Shs.....(*c*): AND whereas it appears to this court that the defendant is personally liable for the said balance:

It is hereby decreed as follows—

(1) That the said sum of Shs.....(*a*) to be paid out of court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of Shs..... (*c*) with interest thereon at the rate of six per cent. per annum from this day to the date of realisation of the said sum.

(*a*) Insert amount of proceeds of sale in court.

(*b*) Insert amount due to plaintiff as set out in final decree.

(*c*) Insert amount of balance due to plaintiff.

No. 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

It is hereby declared that the....., dated the.....day of .....19....., does not truly express the intention of the parties to such.....

And it is decreed that the said.....be rectified by.....

No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

It is hereby declared that the....., dated the.....day of .....19....., and made between.....and:....., is void as against the plaintiff and all other the creditors, if any, of the defendant.

No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

Let the defendant....., his agents, servants and workmen, be perpetually restrained from.....on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

(The Decree shall be indorsed as follows):

To the defendant A. B.

Take notice that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this.....day of.....19.....

.....

Judge

No. 15

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

Let the defendant....., his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in.....any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

[*The Decree shall be indorsed as follows*]:

To the defendant A. B.

Take notice that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this.....day of.....19.....

.....

Judge

No. 16

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

Let the defendant....., his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at....., the soil of which belongs to the plaintiff, as a carriageway for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

[*The Decree shall be indorsed as follows*]:

To the defendant A. B.

Take notice that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this.....day of.....19.....

.....

Judge

No. 17

PRELIMINARY DECREE IN AN ADMINISTRATION SUIT

(Title)

It is ordered that the following accounts and inquiries be taken and made; that is to say—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[*After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.*]

4. An account of the funeral and testamentary expenses.

5. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part [if any] of the movable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the .....day of.....next, pay into the court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the.....(*a*) shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, that the same be sold accordingly, and the proceeds paid into court.

9. And that Mr. E. F. be receiver in the suit [*or* proceeding] and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the..... (*a*) [and shall give security be bond for the due performance of his duties to the amount of.....shillings].

(*a*) Here insert name of proper officer.

10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

(*a*) an inquiry as to what immovable property the deceased was seized of or entitled to at the time of his death;

(*b*) an inquiry as to what are the incumbrances [if any] affecting the immovable property of the deceased or any part thereof;

(*c*) an account, so far as possible, of what is due to the several incumbrancers, in addition to a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances [if any] of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the.....(*a*) and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the.....(*a*) shall advertise in the newspapers according to the practice of the court, or shall make such inquiries in any other way which shall appear to the.....(*a*) to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the.....day of.....and that he.....(*a*) do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

15. And, lastly, it is ordered that this suit [*or* proceeding] stand adjourned for making final decree to the.....day of.....

[Such part only of this decree is to be used as is applicable to the particular case.]

(*a*) Here insert name of proper officer.

No. 18

FINAL DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE

(*Title*)

1. It is ordered that the defendant.....do, on or before the .....day of....., pay into court the sum of Shs....., the balance by the said certificate found to be due from the said defendant on account of the estate of....., the testator, and also the sum of Shs.....for interest, at the rate of Shs.....per cent. per annum, from the.....day of.....to the.....day of ....., amounting together to the sum of Shs.....

2. Let the.....(*a*) of the said court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Shs.....ordered to be paid into court as aforesaid, as follows—

(*a*) The costs of the plaintiff to Mr....., his attorney [*or* advocate] *or* and the costs of the defendant to Mr....., his attorney [*or* advocate].

(*b*) And [*if any debts are due*] with the residue of the said sum of Shs.....after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the.....Schedule to the certificate, of the.....(*a*), together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the.....Schedule, together with subsequent interest [to be verified as aforesaid], be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19

PRELIMINARY DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES

(*Title*)

1. It is declared that the defendant is personally liable to pay the legacy of Shs.....bequeathed to the plaintiff.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within.....weeks after the date of the certificate of the.....(*a*), pay to the plaintiff the amount of what the.....(*a*) shall certify to be due for principal and interest.

(*a*) Here insert name of proper officer.

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No. 20

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN

(*Title*)

1. Let the.....(*a*) of the said court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Shs....., the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said..... (*a*), and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Shs..... after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows—

(*a*) Let the defendant, within one week after the taxation of the said costs by the.....(*a*) as aforesaid, pay one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the next-of-kin of the said E. F., the intestate.

(*b*) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E. F., the intestate.

(*c*) And let the defendant, within one week after the taxation of the said costs by the.....(*a*) as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS

(*Title*)

It is declared that the proportionate shares of the parties in the partnership are as follows—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the.....day of....., and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette*, etc.

(*a*) Here insert name of proper officer.

And it is ordered that.....be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken—

(1) an account of the credits, property and effects now belonging to the said partnership;

(2) an account of the debts and liabilities of the said partnership;

(3) an account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the.....(*a*) may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the.....day of .....and that the.....(*a*) do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the.....day of.....

No. 22

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS

(*Title*)

It is ordered that the fund now in court, amounting to the sum of Shs....., be applied as follows—

1. In payment of the debts due by the partnership set forth in the certificate of the.....(*a*) amounting in the whole to Shs.....

2. In payment of the costs of all parties in this suit, amounting to Shs.....

(*a*) Here insert name of proper officer.

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Shs.....to the plaintiff as his share of the partnership-assets, of the sum of Shs....., being the residue of the said sum of Shs.....now in court, to the defendant as his share of the partnership-assets.

[*Or*, And that the remainder of the said sum of Shs.....be paid to the said plaintiff [*or* defendant] in part payment of the sum of Shs..... certified to be due to him in respect of the partnership accounts.]

4. And that the defendant [*or* plaintiff] do on or before the.....day of.....pay to the plaintiff [*or* defendant] the sum of Shs..... being the balance of the said sum of Shs.....due to him, which will then remain due.

No. 23

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS

(*Title*)

It is hereby decreed as follows—

1. That the defendant do put the plaintiff in possession of the property specified in the Schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Shs..... with interest thereon at the rate of.....per cent. per annum to the date of realisation on account of mesne profits which have accrued due prior to the institution of the suit.

Or

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree holder] [the relinquishment of possession by the judgment debtor with notice to the decree holder through the court] [the expiration of three years from the date of the decree].

Schedule

(a) Here insert name of proper officer.

APPENDIX E

EXECUTION OF DECREES AND ORDERS (OTHERWISE THAN BY IMPRISONMENT)

No. 1

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED (O. XXIV, r.2)

(Title)

To.....

WHEREAS in execution of the decree in the above-named suit..... has applied to this court that the sum of Shs.....recoverable under the decree has been *paid* / *adjusted* and should be recorded as certified, this is to give you notice that you are to appear before this court on the.....day of.....19....., to show cause why the *payment* / *adjustment* aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

No. 2

PRECEPT (Section 34)

(Title)

Upon hearing the decree holder it is ordered that this precept be sent to the court of.....at.....under section 34 of the Civil Procedure Decree with directions to attach the property specified in the annexed Schedule and to hold the same pending any application which may be made by the decree holder for execution of the decree.

Schedule

Dated the.....day of.....19.....

.....
Judge

No. 3

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT (O. XXIV, r.4)

(Title)

WHEREAS the decree holder in the above suit has applied to this court for a certificate to be sent to the court of.....at.....for execution

of the decree in the above suit by the said court, alleging that the judgment debtor resides or has property within the local limits of the jurisdiction of the said court, and it is deemed necessary and proper to send a certificate to the said court under Order XXIV, rule 4, of the Civil Procedure Rules,

It is Ordered:

That a copy of this order be sent to.....with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the.....day of.....19.....

.....

Judge

No. 4

CERTIFICATE OF NON-SATISFACTION OF DECREE (O. XXIV, r.4)

(Title)

Certified that no (*a*) satisfaction of the decree of this court in Suit No. .....of 19....., a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this court.

Dated the.....day of.....19.....

.....

Judge

(*a*) *If partial, strike out "no" and state to what extent.*

No. 5

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT (O. XXIV, r.4)

(Title)

Number of suit and the court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realised.	How the case is disposed of.	Remarks.
1	2	3	4	5	6	7	8	9

.....

Signature of Judge

No. 6

APPLICATION FOR EXECUTION OF DECREE (O. XXIV, r.8)

In the court of.....

I....., decree holder, hereby apply for execution of the decree herein below set forth—

No. of suit.	Names of parties.	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Amount of costs, if any, awarded.	Against whom to be executed.	Mode in which the assistance of the court is required.
1	2	3	4	5	6	7	8	9	10
100 of 1952	A. B.—Plaintiff .. .. .. C. D.—Defendant	11th October, 1952.	No.	None.	Shs. 72/25 recorded on application, dated the 4th March, 1953.	Shs. 314/85 principal [interest at 6 per cent. per annum, from date of decree till payment.]	*Shs. Cts.* As awarded in the decree .. 47 75 Subsequently incurred .. .. 8 25 Total .. 56 00	Against the defendant C. D.	[*When attachment and sale of movable property is sought*]. I pray that the total mount of Shs..... [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realised by attachment and sale of defendant's movable property as per annexed list and paid to me. [*When attachment and sale of immovable property is sought.*] I pray that the total amount of Shs..... [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realised by the attachment and sale of defendants' immovable property specified at the foot of this application and paid to me.

I.....declare that what is stated herein is true to the best of my knowledge and belief.

Signed..... *decree holder*

Dated the.....*day of*.....19.....

[*When attachment and sale of immovable property is sought.*]

Description and Specification of Property

The undivided one-third share of the judgment debtor in a house situated in the village of....., value Shs. 40, and bounded as follows—

East by G.'s house; west by H.'s house; south by public road; north by private lane and J.'s house.

I.....declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed....., decree holder.

No. 7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE
(O. XXIV, r. 18)

(*Title*)

To.....

WHEREAS.....has made application to this court for execution of decree in Suit No.....of 19....., on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this court.....on the.....day of .....19....., to show cause why execution should not be granted.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 8

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O. XXIV, r.26)

(*Title*)

To

The Bailiff of the court.

WHEREAS.....was ordered by decree of this court passed on the .....day of.....19....., in Suit No.....of..... 19....., to pay to the plaintiff the sum of Shs.....as noted in the margin; and whereas the said sum of Shs..... has not been paid: These are to command you to attach the said movable property to the said.....as set forth in the Schedule hereunto annexed, or which shall be pointed out to you by the said....., and unless the said .....shall pay to you the said sum of Shs.....together with Shs....., the costs of this attachment, to hold the same until further orders from this court.

DECREE	Shs.	Cts.
Principal		
Interest		
Costs		
Costs of execution ..		
Further interest ..		
Total ..		

You are further commanded to return this warrant on or before the .....day of.....19....., with an indorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Schedule

.....

Judge

No. 9

WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY ADJUDGED BY DECREE. (O. XXIV, r.27)

(*Title*)

To

The Bailiff of the court.

WHEREAS.....was ordered by decree of this court passed on the .....day of.....19....., in Suit No.....of 19....., to deliver to the plaintiff the movable property [*or* a.....share in the

movable property] specified in the Schedule hereunto annexed, and whereas the said property [*or* share] has not been delivered:

These are to command you to seize the said movable property [*or* a .....share of the said movable property] and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Schedule

.....

Judge

No. 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O. XXIV, r.30)

(*Title*)

To.....

TAKE notice that on the.....day of.....19....., ...the decree holder in the above suit presented an application to this court that the court may execute on your behalf a deed of....., whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the .....day of.....19....., is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of Property

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. XXIV, r.31)

(*Title*)

To

The Bailiff of the court.

WHEREAS the undermentioned property in the occupancy of.....has been decreed to....., the plaintiff in this suit: You are hereby directed to put the said.....in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Schedule

.....

Judge

No. 12

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF (O. XXIV, r.38)

(*Title*)

To .....

WHEREAS.....has failed to satisfy a decree passed against..... on the.....day of.....19....., in Suit No.....of 19....., in favour of .....for Shs.....: It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this court, from receiving from.....the following property in the possession of the said....., that is to say,.....to which the defendant is entitled, subject to any claim of the said....., and the said.....is hereby prohibited and restrained, until the further order of this court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 13

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS (O. XXIV, r.38)

(*Title*)

To.....

WHEREAS.....has failed to satisfy a decree passed against..... on the.....day of.....19....., in Suit No.....of 19....., in favour of.....for Shs.....: It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,.....and that you, the said....., be, and you are hereby, prohibited and restrained, until the further order of this court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this court.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 14

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION (O.XXIV, r.38)

(*Title*)

To.....Defendant and to.....Secretary of.....Corporation.

WHEREAS.....has failed to satisfy a decree passed against.....on the.....day of.....19....., in Suit No.....of 19....., in favour of....., for Shs.....: It is ordered that you, the defendant, be and you are hereby, prohibited and restrained, until the further order of this court, from making any transfer of.....shares in the aforesaid Corporation, namely,....., or from receiving payment of any dividends thereon; and you,....., the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 15

ORDER TO ATTACH SALARY OF PUBLIC OFFICER (O.XXIV, r.40)

(*Title*)

To.....

WHEREAS.....judgment debtor in the above-named case, is a [*describe office of judgment debtor*] receiving his salary [*or* allowances] at your hands; and whereas....., decree holder in the said case, has applied in this court for the attachment of the salary [*or* allowances] of the said .....to the extent of.....due to him under the decree: You are hereby required to withhold the said sum of.....from the salary of the said.....in monthly instalments of.....and to remit the said sum [*or* monthly instalments] to this court.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 16

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT (O. XXIV, r.43)

(*Title*)

To

The Bailiff of the court.

WHEREAS an order has been passed by this court on the.....day of 19....., for the attachment of.....: You are hereby directed to seize the said.....and bring the same into court.

GIVEN under my hand and the seal of the court, this.....day of .....19..... .

.....

Judge

No. 17

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT (O. XXIV, r.43)

(*Title*)

To.....

SIR,

The plaintiff having applied under rule 43 of Order XXIV of the Civil Procedure Rules for an attachment of certain money now in your hands [*here state how the money is supposed to be in the hands of the person addressed, on what account, etc.*], I request that you will hold the said money subject to the further order of this court.

I have the honour to be,
Sir,
Your most obedient servant,

.....

Judge

Dated the.....day of.....19.....

No. 18

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT (O. XXIV, r.45)

(*Title*)

To

The Judge of the court of.....

Sir,

I have the honour to inform you that the decree obtained in your court on the.....day of.....19....., by.....in Suit No..... of 19....., in which he was.....and.....was.....has been

attached by this court on the application of....., the..... in the suit specified above. You are therefore requested to stay the execution of the decree of your court until you receive an intimation from this court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment debtor.

I have the honour, etc..

.....

Dated the.....day of.....19..... *Judge*

No. 19

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE (O. XXIV, r.45)

(*Title*)

To.....

WHEREAS an application has been made in this court by the decree holder in the above suit for the attachment of a decree obtained by you on the.....day of.....19....., in the court of.....in Suit No. .....of 19....., in which.....was.....and..... was.....: It is ordered that you, the said....., be, and you are hereby, prohibited and restrained, until the further order of this court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 20

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY (O. XXIV, r.46)

(*Title*)

To.....Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the .....day of.....19....., in Suit No.....of 19....., in favour of.....for Shs.....: It is ordered that you, the said ....., be, and you are hereby, prohibited and restrained, until the further order of this court, from transferring or charging the property specified in the Schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are, hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Schedule .....

Judge

No. 21

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY (O. XXIV, r.48)

(*Title*)

To.....

WHEREAS the following property.....has been attached in execution of a decree in Suit No.....of.....19....., passed on the .....day of.....19....., in favour of.....for Shs.....: It is ordered that the property so attached, consisting of Shs.....in money and Shs.....in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said....., to.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

No. 22

NOTICE TO ATTACHING CREDITOR (O. XXIV, r.50)

(*Title*)

WHEREAS.....has made application to this court for the removal of attachment on.....placed at your instance in execution of the decree in Suit No.....of 19....., this is to give you notice to appear before this court on....., the.....day of.....19....., either in person or by an advocate of the court duly instructed to support your claim as an attaching creditor.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

No. 23

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O. XXIV, r.57)

(*Title*)

To

The Bailiff of the court.

These are to command you to sell by auction, after giving.....days' previous notice, by affixing the same in this court-house, and after making due proclamation, the.....property attached under a

warrant from this court, dated the.....day of.....19....., in execution of a decree in favour of.....in Suit No.....of 19....., or so much of the said property as shall realise the sum of Shs....., being the.....of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the .....day of.....19....., with an indorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the court, this.....day of.....19.....

.....

Judge

No. 24

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION
(O. XXIV, r.57)

(*Title*)

To.....Judgment Debtor.

WHEREAS in the above-named suit....., the decree holder, has applied for the sale of.....: You are hereby informed that the.....day of.....19....., has been fixed for settling the terms of the proclamation of sale.

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

.....

Judge

No. 25

PROCLAMATION OF SALE (O. XXIV, r.57)

(*Title*)

Notice is hereby given that under rule 55 of Order XXIV of the Civil Procedure Rules, an order has been passed by this court for the sale of the attached property mentioned in the annexed Schedule, in satisfaction of the claim of the decree holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of.....

(1) Suit No.....of 19....., decided by the..... .....of.....in which .....was plaintiff and.....was defendant

The sale will be by public auction, and the property will be put up for sale in the lots specified in the Schedule. The sale will be of the property of the judgment debtors above-named as mentioned in the Schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the Schedule against each lot.

In the absence of any order of postponement, the sale will be held by .....at the sale commencing at..... o'clock on the..... at..... In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the court previously given. The following are the further.

Conditions of Sale

1. The particulars specified in the Schedule below have been stated to the best of the information of the court, but the court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 60 of Order XXIV of the Civil Procedure Rules.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and resold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and resold.

7. The full amount of the purchase-money shall be paid by the purchaser before the court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be resold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the

sale, may, if the court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the sale of the court, this.....day of .....19.....

.....

Judge

SCHEDULE OF PROPERTY

Number of lot	Description of property to be sold, with the name of each owner where there are more judgment debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government	Detail of any incumbrances to which the property is liable	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value

No. 26

ORDER TO THE BAILIFF FOR CAUSING SERVICE OF PROCLAMATION OF SALE
(O. XXIV, r.57)

(*Title*)

To

The Bailiff of the court.

WHEREAS an order has been made for the sale of the property of the judgment debtor specified in the Schedule hereunder annexed, and whereas the.....day of..... .....19....., has been fixed for the sale of the said property, ...copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by fixing a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the court-house, and then to submit to this court a report showing the dates on which the proclamations have been published.

Dated the.....day of.....19.....

Schedule

.....

Judge

No. 27

CERTIFICATE BY OFFICERS HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RESALE OF PROPERTY BY REASON OF THE PURCHASERS'S DEFAULT (O. XXIV, r.62)

(Title)

Certified that at the resale of the property in execution of the decree in the above-named suit, in consequence of default on the part of....., purchaser, there was a deficiency in the price of the said property amounting to Shs....., and that the expenses attending such resale amounted to Shs....., making a total of Shs....., which sum is recoverable from the defaulter.

Dated the.....day of.....19.....

.....

Officer holding the sale

No. 28

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION *(O. XXIV, r.70)*

(Title)

To .....

WHEREAS.....has become the purchaser at a public sale in execution of the decree in the above suit of.....now in your possession, you are hereby prohibited from delivering possession of the said .....to any person except the said.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 29

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER (O. XXIV, r.70)

(Title)

To.....and to.....

WHEREAS.....has become the purchaser at a public sale in execution of the decree in the above suit of.....being debts due from you .....to you.....: It is ordered that you.....be, and you are hereby, prohibited from receiving, and you.....from making payment of, the said debt to any person or persons except the said.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 30

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION (O. XXIV, r.70)

(*Title*)

To.....and....., Secretary of.....Corporation.

WHEREAS..... has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of.....standing in the name of you .....: It is ordered that you.....be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said....., the purchaser aforesaid, or from receiving any dividends thereon; and you.....Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said....., the purchaser aforesaid.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 31

CERTIFICATE TO JUDGMENT DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE OR SELL PROPERTY (O. XXIV, r.74)

(*Title*)

WHEREAS in execution of the decree passed in the above-named suit an order was made on the.....day of.....19....., for the sale of the under mentioned property of the judgment debtor....., and whereas the court has, on the application of the said judgment debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

THIS is to certify that the court doth hereby authorise the said judgment debtor to make the proposed mortgage, lease or sale within a period of .....from the date of this certificate: provided that all monies payable under such mortgage, lease or sale shall be paid into this court and not to the said judgment debtor.

Description of Property

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 32

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE
(O. XXIV, rr.81, 83)
(*Title*)

To.....

WHEREAS the under-mentioned property was sold on the.....day of.....19....., in execution of the decree passed in the above-named suit, and whereas....., the decree holder [*or* judgment debtor], has applied to this court to set aside the sale of the said property on the ground of a material irregularity [*or* fraud] in publishing [*or* conducting] the sale, namely, that.....

TAKE NOTICE that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this court on the.....day of.....19....., when the said application will be heard and determined.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Description of Property

.....

Judge

No. 33

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE
(O. XXIV, rr.82, 83)
(*Title*)

To.....

WHEREAS....., the purchaser of the under-mentioned property sold on the.....day of.....19....., in execution of the decree passed in the above-named suit, has applied to this court to set aside the sale of the said property on the ground that....., the judgment debtor, had no saleable interest therein:

TAKE NOTICE that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this court on the.....day of.....19....., when the said application will be heard and determined.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

Description of Property

.....

Judge

No. 34

CERTIFICATE OF SALE OF LAND (O. XXIV, r.86)

(*Title*)

THIS is to certify that.....has been declared the purchaser at a sale by public auction on the.....day of.....19....., of..... in execution of decree in this suit, and that the said sale has been duly confirmed by this court.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 35

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION (O.XXIV, r.87)

(*Title*)

To

The Bailiff of the court.

WHEREAS.....has become the certified purchaser of.....at a sale in execution of decree in suit No.....of 19.....: You are hereby ordered to put the said....., the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 36

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE (O.XXIV, r.89)

(*Title*)

To.....

WHEREAS....., the decree holder in the above-named suit, has complained to this court that you have resisted [*or* obstructed] the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this court on the.....day of.....19....., at.....A.M., to answer the said complaint.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 37

WARRANT OF COMMITTAL (O.XXIV, r.90)

(Title)

To

The Officer in charge of the Prison at.....

WHEREAS the undermentioned property has been decreed to....., the plaintiff in this suit, and whereas the court is satisfied that..... without any just cause resisted [*or* obstructed] and is still resisting [*or* obstructing] the said.....in obtaining possession of the property, and whereas the said.....has made application to this court that the said.....be committed to the civil prison.

You are hereby commanded and required to take and receive the said .....into the civil prison and to keep him imprisoned therein for the period of..... .....days.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

APPENDIX F

EXECUTION OF DECREES AND ORDERS BY IMPRISONMENT

No. 1

APPLICATION FOR JUDGMENT SUMMONS

(*Title*)

I,....., decree holder in the above-named suit hereby apply for execution of the decree particulars of which are set forth below:

1. Name of parties: Plaintiffs .....
.....
Defendants .....
.....
2. Date of decree .....
3. Whether any appeal preferred from decree.....
4. Payment or adjustment made [if any].....
.....
5. Previous application [if any] with date and result .....
.....

			Shs.	*cts.*
6. Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Principal			
	Interest at.....			
	Costs, as in the decree ..			
	Costs, subsequently incurred			
	Total			
	Less amount of Cross Decree, if any, or subsequent payment			
7. Amount of costs, if any, awarded.	Balance Shs.			

8. Against whom to be executed .....

I apply for the issue of a judgment summons against the above-named defendant [*name the defendant, or if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him*] in respect of a judgment [*or* an order] of this court.

I am aware that, if I do not prove to the satisfaction of the court at the hearing that the defendant has, or has had since the date of the judgment [*or* order], the means to pay the sum in respect of which he has made default, and that he has refused or neglected, or refuses or neglects to pay the said sum, I may have to pay the costs of this summons.

I, ..., declare that what is stated herein is true to the best of my knowledge and belief.

Date.....

.....
Decree holder

No. 2

JUDGMENT SUMMONS

(*Title*)

To.....

of.....

WHEREAS ..... has made application to this court for execution of decree in the above suit, you are hereby required to appear personally before this court on the.....day of..... 19....., at.....o'clock in the forenoon to be examined on oath touching the means you have or have had since the date of judgment [*or* order] to satisfy the sum payable in pursuance of the said judgment [*or* order] and also to show cause why you should not be committed to prison for default of payment of the sum payable in pursuance of the said judgment [*or* order].

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

	Shs.	*cts.*
Amount due on date of decree		
Cost subsequently incurred		
Total		
Less amount, if any, paid		
Total amount due to date		

.....
Judge

Notice to Defendant

To the above-named defendant.

In default of your appearance you will be liable to forfeit a fine of shillings seven hundred and fifty if there was paid or tendered to you at the time of service of this summons a sum reasonably sufficient to cover your expenses of travelling to and from the court.

Sum to be paid or tendered Shs.....

.....

Judge

No. 3

AFFIDAVIT FOR LEAVE TO ISSUE JUDGMENT SUMMONS ON JUDGMENT OR ORDER AGAINST A FIRM, OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN HIS OWN

(*Title*)

I,....., of....., in the.....of .....of the above-named plaintiff [*or*.....] make oath and say as follows:—

1. On the.....day of..... 19....., I [*or* the plaintiff] obtained judgment [*or* an order] in this action in this court [*or* in the .....court].....[*or as case may be*].....against the defendants [*state firm name in which defendants were sued*] for the sum of Shs.....for debt [*or* damages] and costs and there is now due and payable under the said judgment [*or* order] the sum of Shs.....

2. I allege that [*state name, residence and occupation*] is liable as a partner in the said firm [*or* as the person carrying on business in the said firm name] to pay the sum payable under the said judgment [*or* order], and I make this allegation on the following grounds:—

(*a*) That the said.....has admitted before the court in the proceedings in which the said judgment [*or* order] was obtained that he was a partner in the said firm [*or* the person carrying on business in the said firm name] at the time when the cause of action arose [*or* has been adjudged in the proceedings in which the said judgment [*or* order] was obtained to be liable as a partner in the said firm [*or* as the person carrying on business in the said firm name]]:

or (*b*) That the said.....was individually served as a partner in the said firm [*or* as the person carrying on business in the said firm name] with the summons in the action in which the said judgment [*or* order] was obtained, and failed to appear at the trial:

or (*c*) [*State any other grounds on which the person named is alleged to be liable, with the deponent's sources of information and grounds of belief.*]

3. [*Add where the plaintiff does not make the affidavit* That I am duly authorised by the plaintiff to make this affidavit on his behalf.]

No. 4

INDORSEMENT OF SERVICE ON JUDGMENT SUMMONS

The summons of which this is a true copy [*add*, if so, to which a notice of *which a true copy is hereto annexed [add in a proper case* (together with a copy affidavit of which a true copy is annexed hereto)] was served by me on.....the defendant personally at.....on the.....day of..... 19....., when I at the same time paid [*or* tendered] to the defendant the sum of Shs.....for his expenses in travelling to and from the court.

.....

No. 5

AFFIDAVIT OF SERVICE OF JUDGMENT SUMMONS

I,....., of....., make oath and state as follows:—

(1) That I am a Process server of the High Court, Zanzibar [*or as may be*].

(2) That on the.....day of.....19....., I received the attached judgment summons *together with a notice/affidavit of which a copy is annexed hereto* for service on.....

(3) That I have duly served the said judgment summons *and notice/affidavit* on the said.....at.....on the .....day of..... 19....., by delivering a copy [*or* copies] thereof to.....and *requiring*.....signature on the original copy of the.....

(4) That the said defendant is personally known to me [*or* was pointed out to me by.....of....., who to the best of my knowledge, information and belief personally knew the defendant].

*(5) That I paid [*or* tendered] to the said defendant at the same time and place the sum of Shs.....for his travelling expenses.*

[*The words between asterisks should be omitted, if not applicable.*]

.....

No. 6

AFFIDAVIT THAT RECEIVING ORDER OR ORDER OF ADJUDICATION IN BANKRUPTCY MADE AGAINST JUDGMENT DEBTOR

I,....., of....., make oath and say as follows:—

(1) That under section 38(3) of the Civil Procedure Decree, an order for my commitment was made in this action on the.....day of ..... 19.....

(2) That on the.....day of..... 19....., I was adjudicated a bankrupt by an order of the [*court making this order*] [*or* that on the.....day of..... 19....., a receiving order was made for the protection of my estate by the [*court making the order*]], and an office copy of the said order marked "A" is hereto annexed.

(3) That the debt in respect of which the above judgment [*or* order] was given [*or* made], is provable in the bankruptcy.

.....

No. 7

NOTICE TO DEBTOR WHERE ORDER OF COMMITMENT MADE, BUT DIRECTED TO BE SUSPENDED

Take notice that an order of commitment for your imprisonment for .....days was this day made by the Judge of this court.

The order will not be put into force if the sum stated below be paid into court on the.....day of..... 19....., or by instalments of Shs.....for every..... the first payment to be made on the.....day of..... 19.....

In default of payment within the time above-mentioned or of any instalment the order may be issued without further notice and you may be imprisoned for the period above-mentioned, unless you shall sooner pay the whole amount remaining due under the said order, and the fee for the issue of the order.

Dated this.....day of..... 19.....

.....

Judge

Amount payable under the order Shs.....

To the Judgment Debtor.....

[*Note.*—Where there are more judgment debtors than one, notice in this form must be sent to every judgment debtor committed.]

No. 8

ORDER OF COMMITMENT ON A JUDGMENT SUMMONS

(*Title*)

To (1) .....

(2) The Officer in charge of the Prison at.....

WHEREAS.....was adjudged by a decree of this court in the above Suit dated the.....day of..... 19....., to pay to the

decree holder the sum of Shs.....being the amount due on the aforesaid

	Shs.	*cts.*
Principal		
Interest		
Cost awarded in the decree		
Amount due on date of decree		
Costs subsequently incurred		
Total ..		
Less amount, if any, paid ..		
Total amount due to date ..		

date of decree and whereas the sum of Shs.....being the total amount due to date, as noted in the margin, has not been paid to the said decree holder in satisfaction of the said decree and whereas it has been proved to the satisfaction of this court that the said .....has [*or* has had since the date of the said decree] the means to pay the said sum and refuses or neglects [*or* has refused or neglected] to pay the said sum these are to command you to arrest..... .....the judgment debtor herein and unless the said judgment debtor shall pay to you the said sum of Shs.....together with Shs.....for the costs of executing this process, and Shs..... the court's commission making the total sum of Shs.....safely to convey and deliver the said judgment debtor to the Officer in charge of the Prison at.....and you, the said Officer in charge are authorised to detain the said judgment debtor in the civil prison for the period of.....days from the arrest under this order or until he shall be sooner discharged by due course of law.

GIVEN under my hand and the seal of this court, this.....day of ..... 19.....

.....

Note.—The said judgment debtor is to be released on cash payment of Shs.....

This order remains in force for one year only, unless such time is extended under rule 25 of Order XXV of the Civil Procedure Rules.

[*Add when so ordered*]

The time during which this order is to remain in force was on the..... day of..... 19....., extended by order of the court to the..... day of..... 19.....

.....

Judge

No. 9

ORDER OF COMMITMENT ON A JUDGMENT SUMMONS OR ORDER AGAINST A FIRM OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN HIS OWN

(Title)

To (1) .....

(2) The Officer in charge of the Prison at.....

WHEREAS.....was adjudged by a decree of this court in the above suit dated the.....day of.....19....., to pay to the decree holder the sum of Shs.....being the amount due on the aforesaid date of decree and whereas it has been proved to the satisfaction of this court that.....of.....[hereinafter called the judgment debtor] is a partner in the said firm of..... [*or* is carrying on business in the said firm name of..... *or as may be*] and is a person liable to pay any amount remaining due under the said decree and whereas the sum of Shs....., being the total amount due to date, has not been paid to the said decree holder in satisfaction of the said decree these are to command you to arrest the judgment debtor herein and unless the said judgment debtor shall pay to you the said sum of Shs.....together with Shs.....for the costs of executing this process, and Shs.....the court's commission making the total sum of Shs.....safely to convey and deliver the said judgment debtor to the Officer in charge of the Prison at..... and you, the said Officer in charge are authorised to detain the said judgment debtor in the civil prison for the period of.....days from the arrest under this order or until he shall be sooner discharged by due course of law.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Note.—The said judgment debtor is to be released on cash payment of Shs.....

This order remains in force for one year only, unless such time is extended under Rule 25 of Order XXV of the Civil Procedure Rules.

[*Add when so ordered*]

The time during which this order is to remain in force was on the .....day of.....19....., extended by order of the court to the.....day of.....19.....

.....

Judge

No. 10

CERTIFICATE BY REGISTRAR FOR DISCHARGE OF JUDGMENT DEBTOR

(*Title*)

I hereby certify that the defendant, who was committed to your custody by virtue of an order of commitment made by this court bearing date the.....day of..... 19....., has filed an affidavit in this court, stating that [*here insert statement in the affidavit*] and that this court has ordered that the defendant be forthwith discharged out of your custody in respect of such order of commitment.

Dated this.....day of.....19.....

.....

Registrar

To the Officer in charge of the Prison at.....

No. 11

CERTIFICATE OF PAYMENT BY PRISONER

(*Title*)

[*Seal if issued by Registrar*]

I hereby certify that the defendant, who was committed to my [*or* your] custody by virtue of an order of commitment made by this court bearing date the.....day of.....19....., has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; [*add where the certificate is sent by the court* and that the defendant may in respect of such order, be forthwith discharged out of your custody].

Dated this.....day of.....19.....

.....

[*Officer in charge of the Prison* [*or Registrar*]

at .....

To the Officer in charge of the Prison (*or* Registrar)

at.....

No. 12

CERTIFICATE FOR DISCHARGE OF PRISONER AT REQUEST OF CREDITOR

(*Title*)

(*Seal*)

I hereby certify that this court has ordered that..... who was committed to your custody by virtue of an order of commitment made by this court [*or* by the.....court] bearing date the..... day of....., 19....., be forthwith discharged out of your custody in respect of such order of commitment.

Dated this.....day of..... 19.....

.....

Registrar

To the Officer in charge of the Prison at.....

No. 13

NOTICE TO SHOW CAUSE IN PROCEEDINGS UNDER SECTION 38(4)

(Title)

To.....of.....

WHEREAS.....has made application to this court for an order for your committal to prison on the ground that you being a trustee of the Will of....., dated the.....[*or an advocate* of the court ordered to pay as costs the sum hereinafter mentioned *or* an insolvent ordered to pay the sum hereinafter mentioned for the benefit of your creditors [*or as may be*]] were by an order of this court dated the.....ordered to pay the sum of Shs.....

AND WHEREAS you have made default in payment of the said sum.

YOU are hereby required to appear before this court on the.....day of ..... 19....., at.....o'clock in the forenoon to show cause why you should not be committed to prison.

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

	Shs.	*cts.*
Amount due on date of decree ..		
Cost subsequently incurred		
Total ..		
Less amount, if any, paid		
Total amount due to date		

.....

No. 14

AFFIDAVIT OF SERVICE OF NOTICE TO SHOW CAUSE

I,....., make oath and state as follows:—

(1) That I am a process server of the High Court, Zanzibar [*or as may be*].

(2) That on the.....day of..... 19....., I received the attached notice together with a copy of the affidavit of which a copy is annexed hereto for service on.....

(3) That I have duly served the said.....on the said .....on the.....day of....., 19....., by delivering a copy of the said notice and affidavit to..... and requiring.....signature on the original copy of the.....

(4) That the said defendant is personally known to me [*or* was pointed out to me by.....of.....who to the best of my knowledge, information and belief personally knows the defendant].

.....

Process server

No. 15

WARRANT TO ARREST JUDGMENT DEBTOR UNDER SECTION 38 (4) AND BRING HIM BEFORE THE COURT

(*Title*)

To.....

WHEREAS....., the plaintiff in the above suit, claims the sum of Shs.....as noted in the margin and has proved to the satisfaction of the court that there is probable cause for believing that the defendant ..... is about to ....

	Shs.	*cts.*
Principal		
Interest		
Costs		
Total ..		

These are to command you to demand and receive from the said..... the sum of Shs..... as sufficient to satisfy the plaintiff's claim, and unless the said sum of Shs.....is forthwith delivered to you by or on behalf of the said.....to take the said..... into custody, and to bring him before this court, in order that he may show cause why he should not be committed to prison in default of payment of the amount of Shs.....

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

.....

No. 16

WARRANT OF COMMITMENT ON REMAND

(*Title*)

To the Officer in charge of the Prison at.....

WHEREAS.....of.....has this day been brought before me and it has been made to appear to me the undersigned that the said.....has [*here set out briefly grounds of application for the arrest and imprisonment of the judgment debtor*] and whereas the said.....has been remanded until the.....day of ..... 19....., this is to authorise and command you to receive the said.....into your custody in the prison together with this warrant and produce him in this court at.....o'clock in the.....noon of the day named.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

No. 17

ORDER OF COMMITMENT IN PROCEEDINGS UNDER SECTION 38 (4)

(*Title*)

To (1) .....

(2) The Officer in charge of the Prison at .....

WHEREAS.....was adjudged by a decree of this court in the above suit dated the.....day of....., 19....., to pay to the decree holder the sum of Shs.....being the amount due by him on the aforesaid date of decree as trustee of the Will of..... ..... [*or* as an officer of this court *or* as an insolvent in respect of his salary *or as may be*] and whereas the sum of Shs..... being the total amount due to date, as noted in the margin, has not been paid to the said decree holder in satisfaction of the said decree, these are to command you to arrest.....the judgment debtor herein and unless the said judgment debtor shall pay to you the said sum of Shs.....together with Shs.....for the costs of executing this process, and Shs.....the court's commission making the total sum of Shs.....safely to convey and deliver the said judgment debtor to the Officer in charge of the Prison at..... You, the said Officer in charge are authorised to detain the said judgment debtor in the civil prison for the period of.....from the arrest under this order or until he shall sooner be discharged by due course of law.

	Shs.	*cts.*
Principal		
Interest		
Cost awarded in the decree		
Amount due on date of decree		
Costs subsequently incurred		
Total ..		
Less amount, if any, paid ..		
Total amount due to date..		

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

.....

N.B.—The said judgment debtor is to be released on cash payment of Shs.. .....

No. 18

NOTICE TO SHOW CAUSE AGAINST PERSONAL ATTACHMENT

(*Title*)

To .....

.....

WHEREAS.....has made an application to this court for an order for your committal to prison for having disobeyed the order of this court made on the.....day of..... 19....., commanding you that [*here set out the terms of the order disobeyed*].....

.....

.....

you are hereby required to appear before this court on the.....day of .....19....., at.....o'clock in the forenoon to show cause why an order for your committal to prison should not be made.

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

.....

No. 19

WARRANT FOR APPREHENSION OF JUDGMENT DEBTOR FOR CONTEMPT OF COURT

(*Title*)

To .....

of.....

WHEREAS it has been made to appear to me, the undersigned, that .....of.....has disobeyed the order of this court dated the.....day of.....19....., commanding the said.....to [*here set out terms of the order disobeyed*]

.....

.....

THEREFORE you are hereby commanded forthwith to apprehend the said .....and to bring him before this court to show cause why he should not be committed to prison for such disobedience as aforesaid.

GIVEN under my hand and the seal of the court, this.....day of ..... 19.....

.....

Magistrate

No. 20

ORDER OF PERSONAL ATTACHMENT

(Title)

To .....

and

The Officer in charge of the Prison at.....

WHEREAS by an order bearing date the.....day of..... 19....., it was ordered that.....of.....should stand committed to prison for a contempt of this court for a period of.....

THESE are therefore to require you forthwith to arrest the said..... and safely to convey and deliver him/her to the Officer in charge of the Prison at.....and this is to authorise and require you the said Officer in charge to receive the said.....into your custody in the said prison together with this order and keep him/her safely in the said prison for the period of.....or until you shall sooner receive the further order of this court.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Magistrate

No. 21

ORDER OF DISCHARGE FROM CUSTODY UNDER WARRANT OF ATTACHMENT

(Title)

Upon application made this.....day of.....19....., by ....., on behalf of.....who was committed to prison for contempt, by order of this court, dated the.....day of..... 19....., and upon reading the affidavit of the said.....sworn the.....day of.....19....., showing that he is desirous of purging his contempt, and upon hearing..... on behalf of the..... [*or if no one appears for*.....], and upon being satisfied that the notice of this application has been duly served upon.....].

It is ordered that the said.....be discharged out of the custody of the Officer in charge of the Prison at.....as to the said contempt.

[*Add, if so ordered,* and it is ordered that the said..... do pay the costs of.....such costs to be taxed and paid by the said.....within fourteen days after taxation.]

APPENDIX G

G.N. 12 of 1949, Schd. V.

SUPPLEMENTAL PROCEEDINGS

No. 1

WARRANT OF ARREST BEFORE JUDGMENT (O.XLIII, r.1)

(*Title*)

To

The Bailiff of the court.

WHEREAS....., the plaintiff in the above suit, claims the sum of Shs.....as noted in the margin, and has proved to the satisfaction of the court that there is probable cause for believing that the defendant..... is about to..... These are to command you to demand and receive from the said.....the sum of Shs..... as sufficient to satisfy the plaintiff's claim, and unless the said sum of Shs.....is forthwith delivered to you by or on behalf of the said....., to take the said .....into custody, and to bring him before this court, in order that he may show cause why he should not furnish security to the amount of Shs.....for his personal appearance before the court, until such time as the said suit shall be fully and finally disposed of.

	Shs.	*cts.*
Principal ..		
Interest ..		
Costs.. ..		
Total ..		

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 2

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT (O.XLIII, r.2)

(*Title*)

To .....

WHEREAS at the instance of....., the plaintiff in the above suit, ...the defendant, has been arrested and brought before the court:

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the court has ordered him to furnish such security:

G.N. 12 of 1949, Schd. V.

THEREFORE I.....have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said court, that the said defendant shall appear at any time when called upon while the suit is pending and in default of such appearance I bind myself, my heirs

and executors, to pay to the said court, at its order, any sum of money, the sum of Shs.....or such sum not exceeding the said sum as the said court may adjudge.

WITNESS my hand at.....this.....day of.....19.....

.....
(*Signed*)

Witnesses—

(1) .....

(2) .....

No. 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE (OXLIII, r.3)

(*Title*)

To .....

WHEREAS....., who became surety on the.....day of .....19....., for your appearance in the above suit, has applied to this court to be discharged from his obligation:

You are hereby summoned to appear in this court in person on the .....day of.....19....., at.....A.M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

No. 4

ORDER FOR COMMITTAL (O.XLIII, r.4)

(*Title*)

To .....

WHEREAS....., plaintiff in this suit, has made application to the court that security be taken for the appearance of....., the defendant before the said court; and whereas the court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant .....be committed to the civil prison for a period of..... or until the decision of the suit, whichever shall be the less period. G.N. 12 of 1949, Schd. V.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

No. 5

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE (O.XLIII, r.5)

(Title)

To

The Bailiff of the court.

WHEREAS.....has proved to the satisfaction of the court that the defendant in the above suit.....:

These are to command you to call upon the said defendant.....on or before the.....day of.....19....., either to furnish security for the sum of Shs.....to produce and place at the disposal of this court when required.....or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said.....and keep the same under safe and secure custody until the further order of the court; and you are further commanded to return this warrant on or before the.....day of.....19....., with an indorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 6

SECURITY FOR THE PRODUCTION OF PROPERTY (O.XLIII, r.5) .

(Title)

WHEREAS at the instance of....., the plaintiff in the above suit, ...the defendant has been directed by the court to furnish security in the sum of Shs.....to produce and place at the disposal of the court the property specified in the schedule hereunto annexed:

THEREFORE I.....have voluntarily become surety and do hereby bind myself my heirs and executors, to the said court, that the said defendant shall produce and place at the disposal of the court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said court, at its order, the said sum of Shs.....or such sum not exceeding the said sum as the said court may adjudge.

Schedule

WITNESS my hand at.....this.....day of.....19.....

.....

Witnesses— *(Signed)*

(1) .....

(2) .....

No. 7

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY (O.XLIII, r.6)

(*Title*)

To

The Bailiff of the court.

WHEREAS....., the plaintiff in this suit, has applied to the court to call upon....., the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the court has called upon the said.....to furnish such security, which he has failed to do: These are to command you to attach....., the property of the said....., and keep the same under safe and secure custody until the further order of the court; and you are further commanded to return this warrant on or before the.....day of..... 19....., with an indorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 8

TEMPORARY INJUNCTIONS (O.XLIV, r.1)

(*Title*)

Upon motion made unto this court by....., advocate of the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this suit on the..... day of....., *or* the written statement of the said plaintiff filed on the.....day of.....] and upon hearing the evidence of..... and.....in support thereof [*if after notice and defendant not appearing*: *add*, and also the evidence of.....as to service of notice of this motion upon the defendant C.D.]: This court doth order that an injunction do issue to restrain the defendant C.D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned], being ....., and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this court.

Dated this.....day of.....19.....

.....

Judge

[*Where the injunction is sought to restrain the negotiation of a note or bill the ordering part of the order may run thus*—].....
.....to restrain the defendants.....and.....from parting with out of the custody of them or any of them or indorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question, dated on or about the....., etc., mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion, until the hearing of this suit, or until the further order of this court.

[*In Copyright cases*].....to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called.....or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*].....to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint, [*or* petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled.....and also that part which is entitled .....[*or* which is contained in page.....to page.....both inclusive] until....., etc.

[*In Patent cases*].....to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [*or as the case may be*] upon the principle of the inventions in the plaintiff's plaint [*or* petition, etc., or written statement, etc.] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trade Marks*].....to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[*To restrain a partner from in any way interfering in the business*].....
to restrain the defendant C. D., his agents and servants, from entering into any contract and from accepting, drawing, indorsing or negotiating any bill of exchange, note or written security in the name of the partner-

ship-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 9

APPOINTMENT OF A RECEIVER (O.XIV, r.1)

(*Title*)

To .....

WHEREAS.....has been attached in execution of a decree passed in the above suit on the.....day of.....19....., in favour of .....: You are hereby [subject to your giving security to the satisfaction of the court] appointed receiver of the said property under Order XLV of the Civil Procedure Rules with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on.....
You will be entitled to remuneration at the rate of.....per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 10

BOND TO BE GIVEN BY RECEIVER (O. XLV, r. 3)

(*Title*)

KNOW all men by these presents, that we,.....and.....
and....., are jointly and severally bound to.....of the court of.....in Shs.....to be paid to the said.....
or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this.....day of.....19.....

WHEREAS a plaint has been filed in this court by.....against .....for the purpose of [*here insert the object of suit*]:

AND WHEREAS the said.....has been appointed, by order of the above-mentioned court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of.....*in* the said plaint named:

NOW the condition of this obligation is such, that if the above-bounden .....shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property, of the said.....at such periods as the said court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of.....

Note.—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX H

APPEAL REFERENCE AND REVIEW

No. 1

MEMORANDUM OF APPEAL (O. XLVI, r.1)

(*Title*)

The.....above-named appeals to the court at..... from the decree of.....in Suit No.....of 19....., dated the.....day of.....19....., and sets forth the following grounds of objection to the decree appealed from namely.....

No. 2

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE (O. XLVI, r.5)

(*Title*)

To.....

This security bond on stay of execution of decree executed by..... witnesseth—

That....., the plaintiff in Suit No.....of 19....., having sued ....., the defendant, in this court and a decree having been passed on the.....day of.....19.....in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the..... court, the said appeal is still pending.

Now the plaintiff decree holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Shs....., mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this..... day of.....19.....

Schedule

.....

Witnessed by— (*Signed*)

1.....

2.....

No. 3

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL
(O. XLVI, r. 6)

(*Title*)

To.....

This security bond on stay of execution of decree executed by..... witnesseth—

That....., the plaintiff in Suit No.....of 19....., having sued....., the defendant, in this court and a decree having been passed on the.....day of.....19....., in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the .....court, the said appeal is still pending.

Now the plaintiff decree holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Shs..... mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this.....day of.....19.....

Schedule

.....

Witnessed by— (*Signed*)

1.....

2.....

No. 4

SECURITY FOR COSTS OF APPEAL (O.XLVI, r.10)

(*Title*)

To.....

This security bond for costs of appeal executed by.....witnesseth—

This appellant has preferred an appeal from the decree in Suit No..... of 19....., against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be

realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this.....day of .....19.....

Schedule .....

Witnessed by— (*Signed*)

1.....

2.....

No. 5

NOTICE TO LOWER COURT OF DAY OF HEARING (O. XLVI, r.13)

(*Title*)

Take notice that the hearing of the appeal herein has been fixed for the.....day of.....19.....

You are requested to send with all practicable despatch all material papers in the suit.

Dated the.....day of.....19.....

.....

Registrar

To.....

No. 6

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL (O. XLVI, r.14)

(*Title*)

Appeal from the.....of the court of.....dated the..... day of.....19.....

To.....

.....

Respondent

Take notice that an appeal from the decree of.....in this case has been presented by.....and registered in this court, and that the .....day of.....19....., has been fixed by this court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

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

Judge

[*Note.*—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 7

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT (O. XLVI, r.20)

(*Title*)

To.....

WHEREAS you were a party to Suit No.....of 19....., in the court of....., and whereas the.....has preferred an appeal to this court from the decree passed against him in the said suit and it appears to this court that you are interested in the result of the said appeal:

This is to give you notice that this court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the .....day of.....19....., at.....A.M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 8

MEMORANDUM OF CROSS OBJECTION (O. XLVI, r.22)

(*Title*)

Whereas the.....has preferred an appeal to the.....court at.....from the decree of.....in Suit No.....of 19....., dated the.....day of.....19....., and whereas notice of the day fixed for hearing the appeal was served on the.....on the..... day of.....19....., the.....files this memorandum of cross objection under Rule 22 of Order XLVI of the Civil Procedure Rules and sets forth the following grounds of objection to the decree appealed from, namely—

No. 9

DECREE IN APPEAL (O. XLVI, r.35)

(*Title*)

Appeal No.....of 19....., from the decree of the court of..... dated the.....day of.....19.....

Memorandum of Appeal

.....

Plaintiff

.....

Defendant

The.....above-named appeals to the.....court at..... from the decree of.....in the above suit, dated the.....day of.....19....., for the following reasons, namely—

This appeal coming on for hearing on the.....day of.....19....., before....., in the presence of.....for the appellant and of .....for the respondent, it is ordered—

The costs of this appeal, amounting to Shs....., are to be paid by..... The costs of the original suit are to be paid by.....

GIVEN under my hand this.....day of..... 19.....

.....

Judge

No. 10

APPLICATION TO APPEAL IN FORMA PAUPERIS (O. XLVIII, r.1)

(*Title*)

I,.....the.....above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof.

Dated the.....day of.....19.....

.....

(*Signed*)

[*Note.*—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the court of first instance as a pauper.]

No. 11

NOTICE OF APPEAL IN FORMA PAUPERIS (O. XLVIII, r.1)

(*Title*)

WHEREAS the above-named.....has applied to be allowed to appeal as a pauper from the decree in the above suit dated the.....day of.....19....., and whereas the.....day of.....19....., has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the aforementioned date.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 12

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED
(O. L, r.4)

(*Title*)

To.....

Take notice that.....has applied to this court for a review of its decree passed on the.....day of.....19....., in the above case. The.....day of.....19....., is fixed for you to show cause why the court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....
Judge

APPENDIX I

MISCELLANEOUS

No. 1

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED (O. XIV, r.6)

(*Title*)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or* of law] to be decided between us and the point at issue between us is whether a claim founded on a bond dated the.....day of..... 19....., and filed as Exhibit.....in the said suit, is or is not barred by the Limitation Decree [*or state the point at issue whatever it may be*].

We, therefore severally bind ourselves that, upon the finding of the court in the negative [*or* affirmative] of such issue, ...will pay to the said .....the sum of Shs.....[*or* such sum as the court shall hold to be due thereon], and I, the said....., will accept the said sum of Shs.....[*or* such sum as the court shall hold to be due] in full satisfaction of my claim on the bond aforesaid [*or* that upon such finding I, the said.....will do or abstain from doing, etc., etc.]

.....*Plaintiff*

.....*Defendant*

Witnesses—

1.....

2.....

DATED the.....day of.....19...

No. 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL (SECTION 18)

In the court of.....No.....of 19.....

To.....

WHEREAS an application, dated the.....day of.....19....., has been made to this court by.....the.....in Suit No..... of 19....., now pending in the court of the.....at....., in which .....is plaintiff and.....is defendant, for the transfer of the suit for trial to the court of the.....at.....

You are hereby informed that the.....day of.....19....., has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 3

NOTICE OF PAYMENT INTO COURT (O. XXVIII, r.2)

(*Title*)

Take notice that the defendant has paid into court Shs.....and says that that sum is sufficient to satisfy the plaintiff's claim in full.

.....

X. Y., *advocate for the defendant*

.....

To *Z.*, *advocate for the plaintiff*

No. 4

NOTICE TO SHOW CAUSE (GENERAL FORM)

(*Title*)

To.....

WHEREAS the above-named.....has made application to this court that.....:

You are hereby warned to appear in this court in person or by an advocate duly instructed on the.....day of.....19...., at..... o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 5

LIST OF DOCUMENTS PRODUCED BY $\frac{\text{PLAINTIFF}}{\text{DEFENDANT}}$ (O. XV, r.1)

(*Title*)

No.	Description of document.	Date, if any, which the document bears.	Signature of party or advocate.
1	2	3	4

No. 6

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION (O. XXI, r. 15)

(*Title*)

To.....*plaintiff* [or *defendant*].

WHEREAS in the above suit application has been made to the court by .....that the examination of....., a witness required by the said....., in the said suit may be taken immediately: and it has been shown to the court's satisfaction that the said witness is about to leave the court's jurisdiction [*or any other good and sufficient cause to be stated*]:

Take notice that the examination of the said witness.....will be taken by the court on the.....day of.....19.....

DATED the.....day of.....19.....

.....

Judge

No. 7

COMMISSION TO EXAMINE ABSENT WITNESS (O. XXX, r. 4, 17)

(*Title*)

To.....

WHEREAS the evidence of.....is required by the.....in the above suit; and whereas.....; you are requested to take the evidence on interrogatories [*or viva voce*] of such witness....., and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any court having jurisdiction on your application.

A sum of Shs....., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 8

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS (O. XXX, rr.8, 10)

(Title)

To.....

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for.....should be issued: You are hereby appointed Commissioner for the purpose of.....

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any court having jurisdiction on your application.

A sum of Shs....., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 9

COMMISSION TO MAKE A PARTITION. (O. XXX, r. 12)

(Title)

To.....

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this court, dated the.....day of.....19.....: You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalising the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any court having jurisdiction on your application.

A sum of Shs....., being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the court, this.....day of .....19.....,

.....

Judge

No. 10

LETTER OF REQUEST (O. XXX, r. 19)

(*Title*)

(Heading—To the President and Judges of, etc., etc., *or as the case may be*).

WHEREAS a suit is now pending in the.....in which A. B., is plaintiff and C. D., is defendant: And in the said suit the plaintiff claims:—

(*Abstract of claim*)

AND whereas it has been represented to the said court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say—

E. F., of.....;

G. H., of.....; and

I. J., of.....

AND it appearing that such witnesses are resident within the jurisdiction of your honourable court:

Now I....., as the.....of the said court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said court, you, as the President and Judges of the said.....or some one or more of you, will be pleased to summon the said witness [and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon] to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request [*or viva voce*] touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

AND I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said court.

[*Note.*—If the request is directed to a foreign court, the words "through Her Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the last line of this Form.]

No. 11

ORDER UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856, OR UNDER THE FUGITIVE CRIMINAL SURRENDER DECREE (O. XXX, r.20)

In the matter of Foreign Tribunals Evidence Act, 1856 [19 and 20 Vict. c. 113], [*or* In the matter of the Fugitive Criminal Surrender Decree].

And in the matter of a (Civil or Commercial or Criminal) proceeding now pending (*a*).....*intituled as follows*—

Between

.....*Plaintiff*,

and

.....*Defendant*.

Upon reading the affidavit (if any) of.....*filed the*..... day of.....19....., and the certificate of (*b*).....that proceedings are pending in the (*a*).....in (*c*).....and that such court is desirous of obtaining the testimony of (*d*).....

It is ordered that the said witness.....do attend before (*e*)..... who is hereby appointed Commissioner herein, at (*f*).....on the .....day of.....19....., at.....o'clock, or such other day and time as the said Commissioner may appoint, and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce (*g*).....

And it is further ordered that the said Commissioner do take down in writing the evidence of the said witness, or witnesses, according to the rules and practice of the High Court, Zanzibar, pertaining to the examination and cross-examination of witnesses [or as may be otherwise directed]; and do cause each and every such witness to sign his or her depositions in his, the said Commissioner's, presence; and do sign the depositions taken in pursuance of this order, and when so completed, do transmit the same, together with this order, to the Registrar of the High Court, Zanzibar, for transmission to the President of the said Tribunal desiring the evidence of such witness or witnesses.

Dated this.....day of.....19.....

(*a*) Description of Foreign Tribunal.
(*b*) Name and description of the Ambassador, Minister, Diplomatic Agent, or Consul of the foreign country.
(*c*) Name of foreign country.
(*d*) Names of witnesses.
(*e*) Name and address of Commissioner.
(*f*) Place appointed for examination.
(*g*) Description of documents, if any, required to be produced.

No. 12

CERTIFICATE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856
(O. XXX, r.23)

I,.....Registrar of the High Court, Zanzibar, hereby certify that the documents annexed hereto are (1) the original order of the High Court, Zanzibar, dated the.....day of.....19....., made in the matter of.....pending in the.....at.....in the..... of.....directing the examination of certain witnesses to be taken before.....; and (2) the examination and depositions taken by the said.....pursuant to the said order, and duly signed and completed by him on the.....day of.....19.....

Dated this.....day of.....19.....

.....

No. 13

NOTICE TO MINOR DEFENDANT AND GUARDIAN (O. XXXVI, r.3)
(*Title*)

To.....

.....*Minor Defendant.*

.....*Natural Guardian.*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (*a*).....are, hereby required to take notice that unless within.....days from the service upon you of this notice, an application is made to this court for the appointment of you (*a*).....or of some friend of you, the minor, to act as guardian for the suit, the court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 14

CERTIFICATE OF MEANS (O. XXXVII, r.3)
(*Title*)

I.....of.....do hereby certify that I have investigated with due dilegence the means and circumstances of ....., the applicant for leave to sue (*or* defend *or* appeal) as a poor person referred to in the annexed petition and to the best of my knowledge, information and belief—

(1) [excluding wearing apparel, tools of trade, and the subject matter referred to in the annexed petition] the said..... possesses the following property, namely.....of the value of.....;

(*a*) Here insert name of guardian.

(2) that the said.....is by occupation a .....[*state profession or calling*] and that his usual income from all sources amounts to.....shillings per mensem;

(3) that the family of the said.....consists of [*state names of wives and children with ages of children*].....

Dated this.....day of.....19.....

[Signed] .....

[Designation].....

No. 15

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE (Section 123)

(*Title*)

To.....

WHEREAS you.....did on.....become liable as surety for the performance of any decree which might be passed against the said.....defendant in the above suit; and whereas a decree was passed on the.....day of.....19....., against the said defendant for the payment of....., and whereas application has been made for execution of the said decree against you:

TAKE NOTICE that you are hereby required on or before the.....day of .....19....., to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 16

ACKNOWLEDGEMENT BY WOMAN OF POWER OF ATTORNEY APPOINTING RECOGNISED AGENT (O. III, r.7)

This power of attorney marked A (or as may be) was produced before me the undersigned on the.....day of.....19....., and acknowledged by [*name of woman*] therein named to be her act and deed, previous to which acknowledgment the said..... was questioned by me, apart from any person except..... who acted as interpreter, touching her understanding of the contents of the said power and her consent thereto, and she declared the same to be freely and voluntarily executed by her.

Dated this.....day of.....19.....

[Signed] .....

[*Seal*]

.....

[*Official designation*]

APPENDIX J

G.N. 76 of 1957.

ALLOWANCES TO WITNESSES (O. XIX, r.2 (3))

The scale given below shall be exclusive of travelling expenses but inclusive of hotel or subsistence expenses. The travelling expenses shall be allowed according to sums reasonable and actually paid.

The allowance shall be for the number of days a witness was necessarily absent from home for the purposes of the trial in going, remaining and returning.

A person attending to give evidence as an expert may, in addition to the allowance set out below, be allowed reasonable remuneration for work of an expert character necessary for the case and performed by him.

	If resident in town where the cause tried per diem	*If resident at a distance of seven or more miles from the place of trial per diem*
	Shs. cts.	*Shs. cts.* *Shs. cts.*
Peasants, labourers, journeymen, etc. ..	5 00	5 00 to 10 00
Retail traders and persons of similar position	10 00	10 00 to 15 00
Artisans and handicraftsmen	10 00	10 00 to 15 00
General traders and commission agents ..	20 00	20 00 to 30 00
Professional men in practice, Bank Managers, etc.	40 00	40 00 to 50 00
Others not included in foregoing classes from	10 00 to	
(to be fixed by the Taxing Officer)	20 00	20 00 to 25 00
Public officers and public servants an allowance on basis of salary.		
Females according to station in life, up to ..	10 00	10 00 to 15 00

(*a*) If a witness is summoned on behalf of a party suing, or defending, as a poor person an allowance not exceeding Shs. 10 as may be fixed by the Taxing Officer.

(*b*) If a witness has attended in more than one cause on the same day he will be entitled to a proportionate part in each cause only.

THIRD SCHEDULE

(Section 66)

ARBITRATION

PROVISIONS RELATING TO ARBITRATION IN SUITS

Parties to suit may apply for order of reference.

1.—(1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred, and shall contain a statement signed by the arbitrator or arbitrators that he or they are willing to act.

Appointment of arbitrator.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of reference.

3.—(1) The court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the court shall not, save in the manner and to the extent provided in this Schedule, deal with such matter in the same suit.

Where reference is to two or more, order to provide for difference of opinion.

4.—(1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(*a*) by the appointment of an umpire;

(*b*) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail;

(*c*) by empowering the arbitrators to appoint an umpire; or

(*d*) otherwise as may be agreed between the parties or, if they cannot agree, as the court may determine.

(2) Where an umpire is appointed, the court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of court to appoint arbitrator in certain cases.

5.—(1) In any of the following cases, namely—

(*a*) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person, appointed refuses to accept the office of arbitrator;

(*b*) where an arbitrator or umpire—

(i) dies,

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves Zanzibar in circumstances showing that he will probably not return at an early date;

(*c*) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the court may in each case allow, no arbitrator, or no umpire is appointed, as the case may be, the court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses and default.

7.—(1) The court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine, as the court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the court.

Evidence. Cap. 5.

8. The provisions of the Evidence Decree shall not apply to proceedings before an arbitrator.

Extension of time for making award.

9. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators.

10. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) if they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

11. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Statement of special case by arbitrators or umpire.

12. Upon any reference by an order of the court, the arbitrator or umpire may, with the leave of the court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the court, and the court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

13. The court may, by order, modify or correct an award—

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred;

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(*c*) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to costs of arbitration.

14. The court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

15. The court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit—

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;

(*b*) where the award is so indefinite as to be incapable of execution;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

16.—(1) An award remitted under paragraph 15 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely—

(*a*) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Judgment to be according to award.

17.—(1) Where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the

court has refused such application, the court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

ORDER OF REFERENCE ON AGREEMENTS TO REFER

Application to file in court agreement to refer to arbitration.

18.—(1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

19. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the court to stay the suit; and the court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 18.

20. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 18 shall be applicable to all proceedings under the order of reference made by the court under that paragraph, and to the award and to the decree following thereon.

Forms.

21. The Forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

APPENDIX

No. 1

APPLICATION FOR AN ORDER OF REFERENCE

(Title of suit)

1. This suit is instituted for [*state nature of claim*].

2. The matter in difference between the parties is [*state matter of difference*].

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference.

.....A. B.

.....C. D.

Dated the.....day of.....19.....

Note.—If the parties are agreed as to the arbitrator or arbitrators, it should be so stated, and a written statement signed by the arbitrator or arbitrators to the effect that he or they are willing to act must be filed.

No. 2

ORDER OF REFERENCE

(Title of suit)

Upon reading the application presented on the.....day of.....19....., it is ordered that the following matter in difference arising in this suit, namely—

be referred for determination to X., and Y., or in case of their not agreeing then to the determination of Z., who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the.....day of.....19....., and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within.....months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

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

.....

Judge

No. 3

ORDER FOR APPOINTMENT OF NEW ARBITRATOR

(*Title of suit*)

WHEREAS by an order, dated the.....day of.....19....., [*state order of reference and death, refusal, etc., of arbitrator*], it is by consent ordered that Z., be appointed in the place of X. [deceased, *or as the case may be*] to act as arbitrator with Y., the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the.....day of.....19.....

GIVEN under my hand and the seal of the court, this.....day of .....19.....

.....

Judge

No. 4

SPECIAL CASE

(*Title of suit*)

In the matter of an arbitration between A. B., of.....and C. D., of....., the following special case is stated for the opinion of the court—

[*Here state the facts concisely in numbered paragraphs.*]

The questions of law for the opinion of the court are—

First, whether.....;

Secondly, whether.....

.....X.

.....Y.

Dated the.....day of.....19.....

No. 5

AWARD

(*Title of suit*)

In the matter of an arbitration between A. B., of.....and C. D., of.....—

WHEREAS in pursuance of an order of reference made by the court of .....and dated the.....day of.....19....., the following matter in difference between A. B., and C. D., namely—
has been referred to us for determination:

Now we, having duly considered the matter referred to us, do hereby make our award as follows—

We award—

(1) that.....

(2) that.....

Dated the.....day of.....19.....

.....X.

.....Y.

Under Article 40 of the Zanzibar Order in Council, 1924, section 24 of Courts Decree, Cap. 3 and section 110 of the Decree

G.N. 112 of 1923. 84 of 1926.

THE ARBITRATION (APPLICATIONS IN SUITS) RULES

1. These Rules may be cited as the Arbitration (Applications in Suits) Rules.*

Powers of Registrar.

2.—(1) A Registrar may exercise the powers and duties of a Judge or of a Magistrate and make orders and transact the business of the High Court or of the court of a Magistrate in any of the matters referred to in paragraphs 1 to 8 in the Third Schedule to the Civil Procedure Decree.

(2) Any person who is dissatisfied with an order of the Registrar made under sub-paragraph (1) hereof may apply by summons supported by affidavit to a Judge or Magistrate [as the case may require], who may, if he thinks fit set aside the order of the Registrar and make such other order as he shall deem just.

G.N. 72 of 1951.

(3) Every such application shall be made in thirty days after the order of the Registrar unless such time shall be extended by the High Court or Judge or Magistrate [as the case may be].

G.N. 72 of 1951.

(4) Such application shall not operate as a stay of any proceedings unless the Registrar or the High Court or the Judge or a Magistrate [as the case may be] shall otherwise order.

(5) Where the Registrar is of opinion that any matter which is within his powers under sub-paragraph (1) hereof can be more conveniently dealt with by a Judge or Magistrate he shall refer it to such Judge or Magistrate as the case may require.

Powers of District Registrar.

3. The District Registrar shall have with respect to any suits entered in his Registry the same powers as those which may be exercised by a Registrar.

Formal steps in District Registry.

4. In suits entered in the District Registry all formal and preliminary steps shall be taken and all interlocutory applications made before the District Registrar, who may make thereon such orders as may be necessary.

Judge may set aside order of District Registrar. G.N. 90 of 1953.

5.—(1) A Judge of the High Court shall have power on the application of the person affected thereby to set aside any order made of the District Registrar and to make such other order as may be just.

(2) Application in that behalf shall be made within thirty days of the making of such order or such further time as the Judge may allow.

* Originally printed in Vol. IV, as Rules of Court, 1922 to 1934, rr 6, 22, 23 and 24.

Under Section 110

THE PEMBA DISTRICT REGISTRY RULES

G.N. 112 of 1923.

1. These Rules may be cited as the Pemba District Registry Rules. Title.

2. There shall be a District Registry and District Registrar of the High Court for the Island of Pemba. District Registry established.

3. Any civil suit triable by the High Court which, if it were within the jurisdiction of a First Class Subordinate Court would be triable in Pemba may be entered in the Pemba District Registry. Such suits shall be intituled as in the Pemba District Registry and shall be serially numbered in that Registry. What suits to be entered in the Registry.

4.—(1) No suit, which under the preceding rule may be instituted in the Pemba District Registry, shall be instituted elsewhere than in such Registry without the leave of the High Court. Suits referred to in rule 3 not to be instituted elsewhere without leave. 31 of 1947, r.2.

(2) Every application under this rule for leave to institute a suit elsewhere than in the Pemba District Registry shall be supported by an affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing the place in which the defendant resides and the grounds on which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for trial elsewhere than in Pemba.

(3) Where leave is asked for under this rule to institute a suit elsewhere than in the Pemba District Registry the court shall have regard to the comparative cost and convenience of proceedings elsewhere than in the Pemba District Registry or in the place where the defendant resides.

(4) An order under this rule granting such leave as aforesaid may be made *ex parte*, but the defendant may apply for such order to be set aside for sufficient cause.

(5) Any such application to set aside any such order shall be supported by an affidavit or such other evidence as the court may direct setting forth the grounds upon which such application is made and no order shall be made upon any such application unless the plaintiff shall have had an opportunity of being heard.

5. Appeals and applications for revision to the High Court from all subordinate courts in Pemba may be lodged, together with all prescribed documents and fees, at the District Registry. Such proceedings shall be instituted as in the Pemba District Registry and shall be serially numbered therein and the District Registrar shall have and exercise in such proceedings all the powers and functions of the Registrar of the High Court. Lodging of appeals. 136 of 1940, r.4

G.N. 221 of 1931. 125 of 1939. 144 of 1941. 216 of 1945. 287 of 1946. 103 of 1947. 126 of 1953. 105 of 1955. 114 of 1955.

Under Article 40 of the Zanzibar Order in Council, 1924 and section 24 of the Courts Decree

THE PRESCRIBED FEES (CIVIL PROCEEDINGS) RULES

1. These Rules may be cited as the Prescribed Fees (Civil Proceedings) Rules.

2. Save as otherwise provided by any law for the time being in force, the fees specified in the Schedule shall be leviable in the High Court and in all courts subordinate thereto (other than Mudirial Courts) in respect of the matters and proceedings mentioned therein.

SCHEDULE

Note.—No fee shall be payable in respect of any process issued or order made in respect of any complaint made under Part VII of the Labour Decree (Cap. 61).

FEES LEVIABLE IN ALL COURTS (OTHER THAN MUDIRIAL COURTS)

I. IN ORIGINAL CIVIL MATTERS

SUMMONS FEES

	Shs.	*Cts.*
1. Where the value of the subject matter—		
(*a*) (i) Does not exceed Shs. 25	1	00
(ii) Exceeds Shs. 25 but does not exceed Shs. 50	2	00
(iii) Exceeds Shs. 50 but does not exceed Shs. 100	3	00
(*b*) Exceeds Shs. 100 but does not exceed Shs. 15,000	3 per cent. on each Shs. 100 or part thereof.	
(*c*) Exceeds Shs. 15,000	1½ per cent. on each Shs. 100 or part thereof in excess of Shs. 15,000.	

Provided that the maximum fee payable shall not exceed Shs. 1,500.

Note.—No additional fee shall be charged in respect of any interest which may accrue due after the institution of the suit.

	Shs.	*Cts.*
2. For taking particulars of plaint, application for summons, or any other necessary document ..	1	00
3. On any matrimonial suit—		
(*a*) In the High Court	75	00
(*b*) In any other court	10	00
(*c*) In any suit for future maintenance— On twelve times the amount of monthly maintenance claimed	3 per cent. on each Shs. 100 or part thereof.	

Provided that when there is an alternative claim for divorce or other matrimonial relief the higher of the fees under 3(*a*) and (*b*) or 3(*c*) shall be payable.

4. In any suit where it is not possible to estimate the subject matter at a money value—	*Shs.*	*Cts.*
(*a*) In the High Court	75	00
(*b*) In any other court	25	00
Provided that in every case where, by reason of any finding or order of the court, a declaration of ownership of any money or property is made, an *ad valorem* fee at the same rate as in Fee No. 1 shall at once become payable, less the fee already paid.		
5. On an originating summons	a fee of Shs. 50 per each question contained in the summons provided that the fee levied does not exceed one-half of the fee leviable under item 1 on the value of the subject matter involved in the question subject to a minimum fee of Shs. 15.	
Note.—In the event of it becoming necessary to try in court any question arising out of the originating summons, the ordinary summons fee as laid down in item 1 shall be payable in respect of the question to be tried.		
6. In a suit for arrears of rent by a landlord against a tenant where an order of possession of the property is prayed	An *ad valorem* fee of 5 per cent. on the total yearly rent of the property in addition to the fee leviable for recovery of rent under Fee No. 1.	
7. In a similar suit, where no rent is claimed, but only an order for possession	An *ad valorem* fee of 5 per cent. on the total yearly rent of the property.	
8. Upon filing an award under the Arbitration Decree (Cap. 25) or an application under the Third Schedule to the Civil Procedure Decree (Cap. 8)—	*Shs.*	*Cts.*
In the High Court	75	00
In the Subordinate Court	25	00
9. On the issue of every witness summons, notice (not particularly charged) in addition to the appropriate service fee	1	00

SERVICE FEES

10. For service of summons petition answer motion paper notice warrant decree order or other document on a party witness assessor or other person—		
(*a*) Within the township of the court of issue ..	2	00
(*b*) Without the township of the court of issue ..	4	00

Provided that an additional fee of Shs. 2 for service within the township of the court of issue, or Shs. 4 for service without the township of the court of issue, as the case may be, shall be charged for any such service at the request of a party made within four days of the date on which such process is returnable.

	Shs.	Cts.
11. For service of any summons process or any instrument as above within the jurisdiction at the request of a court or party without the jurisdiction ..	10	00

APPLICATIONS AND FILINGS

12. On application for order for arrest or attachment before judgment	10	00
(*Other fees consequent upon such application at usual scale.*)		
13. On application for every interlocutory injunction—		
(*a*) In the High Court	25	00
(*b*) In any other court	10	00
14. On application for a mandamus or final prohibitory injunction—		
(*a*) In the High Court	75	00
(*b*) In any other court	25	00
15. On every application or motion (not particularly charged) to include order made thereon	8	00

Provided that no fee shall be payable in respect of an application by a decree holder for the payment out of monies paid into court by a judgment debtor in satisfaction of a decree, or realised under execution proceedings:

Provided also that no fee shall be payable in respect of an application for the return of an exhibit.

16. On every application or motion (not particularly charged) accompanied by consent to include filing and order made thereon	4	00
17. On filing or exhibiting any document book other instrument or article (except bonds and recognisances)—		
(*a*) In the High Court	3	00
(*b*) In any other court	1	50
18. For taking and filing security when ordered in any civil proceeding—		
(*a*) In the High Court	7	50
(*b*) In any other court	3	00

SPECIAL CASE

19. On submission of special case to include hearing	75	00

DECREE OR ORDER

	Shs.	Cts.
20. For drawing and engrossing decree or order (not particularly charged)—		
(*a*) Where the amount of the decree or order does not exceed Shs. 100	1	50
(*b*) Where the amount of the decree or order exceeds Shs. 100	3	00
(*c*) Where the decree or order is not capable of being assessed at a monetary value	3	00
21. On perusal signing and sealing any decree or order drawn by a party to the suit or his advocate or agent (not particularly charged)		
Like fees as in (*a*), (*b*) and (*c*) Fee No. 20.		

EXECUTION

AGAINST THE PERSON

	Shs.	Cts.
22. On every application for execution, to include filing and order, where the value of the subject matter—		
(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs 50 but does not exceed Shs. 100 ..	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	8	00
23. (*a*) On issue and execution of warrant of arrest (apart from travelling, food and other costs) ..	3	00
(*b*) Upon every warrant of committal	4	00
Where the value of the subject matter does not exceed Shs. 100	2	00

AGAINST PROPERTY

24. On every application for execution against property to include order, as in Fee No. 22.		
25. (*a*) On every application by mortgagee for an order under section 52(1) (*b*) of the Civil Procedure Decree (Cap. 8)	8	00
(*b*) Upon an order made under section 52(1) (*b*) of the Civil Procedure Decree (Cap. 8)	Same fee as in Fee No. 1 based on the amount realised under the mortgage.	

These fees shall also be payable on applications and orders under rule 12 of Order XXXIX of the Civil Procedure Rules.

	Shs.	*Cts.*
26. On the issue of every warrant of execution against property—		
(*a*) For any sum not exceeding Shs. 150	2	00
(*b*) For any sum exceeding Shs. 150 and not exceeding Shs. 750	4	00
(*c*) For any sum exceeding Shs. 750 and not exceeding Shs. 1,500	8	00
(*d*) For any sum exceeding Shs. 1,500	12	00
27. Service fee for posting of warrant upon each property attached	As in Fee No. 10.	

BROKERS' FEES

On Attachment of Movable Property

28. Where warrant is executed by a broker under instructions of the court the following fees shall be payable—

(1) When the amount certified by the warrant to be due is tendered to the broker before or at the time of or within half an hour after the time of attachment—

	Shs.	*Cts.*
(*a*) when the amount certified by the warrant to be due does not exceed Shs. 50	5	00
(*b*) when it exceeds Shs. 50 but does not exceed Shs. 500	7	50
(*c*) when it exceeds Shs. 500	10	00

(2) In any other case, to include charges for keeping possession of the attached property up to 30 days—

(*a*) when the estimated value of the property does not exceed Shs. 100	10	00
(*b*) when it exceeds Shs. 100 but does not exceed Shs. 200	15	00
(*c*) when it exceeds Shs. 200 but does not exceed Shs. 500	20	00
(*d*) when it exceeds Shs. 500, 4 per cent. on the estimated value.		
(*e*) For keeping possession for each day in excess of 30 days a fee calculated at the rate of cents fifty per cent. on the estimated value of the property in the custody of the broker:		

Provided that the daily fee to be charged shall not be less than 50 cents and more than Shs. 10:

Provided further that the Registrar shall have power to reduce the fees to be payable hereunder:

Provided further that if the property attached is not kept in the actual possession or custody of the broker a fee as provided in Fee No. 28(1) shall be payable.

Note.—In addition to the fees payable under Fee No. 28(1) and (2) such out of pocket expenses borne by the broker as are certified correct by the Registrar shall be payable.

BROKERS' FEES ON SALE OF MOVABLE PROPERTY

29.—(1) On sale of any property excepting cloves, clove stems, coconuts and copra—

(*a*) where the value of the property does not exceed Shs. 750 a fee at the rate of 5 per cent. The minimum fee is Shs. 5.

(*b*) where the value of the property exceeds— Shs. 750 a fee at the rate of 5 per cent. for the first Shs. 750 and for each Shs. 100 in excess of Shs. 750 at the rate of 2¼ per cent.

(2) On sale of cloves, clove stems, coconuts and copra .. .. 2 per cent.

Provided that if the property is offered for sale by public auction and is not sold for any cause other than the default of the broker a fee of 1 per cent. based upon the value of the property (minimum fee Shs. 5) shall be payable to the broker and the out of pocket expenses attendant upon such offering for sale by public auction shall be paid; such expenses to be certified correct by the Registrar.

BROKERS' FEES ON SALE OF IMMOVABLE PROPERTY

30. When the value of the property sold does not exceed Shs. 100 at the rate of .. .. 6 per cent.

Note.—The minimum fee is Shs. 5.

When the value of the property sold exceeds Shs. 100 then at the following rates:—

On first Shs. 100 at the rate of .. .. .. 6 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 100 up to Shs. 3,000 at the rate of .. .. .. 3 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 3,000 up to Shs. 9,000 at the rate of .. .. 2 per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 9,000 up to Shs. 15,000 at the rate of .. .. 1½ per cent.

On every Shs. 100 or part of Shs. 100 over Shs. 15,000 at the rate of .. .. 1 per cent.

Provided that if the property when offered for sale by public auction is not sold for any cause other than the default of the broker himself the broker shall be entitled to half the fees at the above rate based upon the value of the property with a minimum fee of Shs. 5.

To enable the value of the property to be assessed the decree holder and the broker shall mutually agree to the value thereof before offering for sale and in case of dispute the value of the property shall be assessed by the Registrar.

The half fees shall be payable upon the value of such agreement or assessment.

In the case of an abortive sale the costs of advertising the property for sale and reasonable out of pocket expenses incurred by the broker, such to be certified by the Registrar, shall be paid forthwith by the decree holder.

31. Upon issue of notice to settle Proclamation—
Service fees only to be charged as in Fee No. 10.

32. Upon every warrant of sale, where the value of the subject matter:—

	Shs.	*Cts.*
(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs. 50 but does not exceed Shs. 100 ..	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	5	00

33. Upon drawing proclamation for sale and Schedule of property, where the value of the subject matter—

(*a*) Does not exceed Shs. 25	1	00
(*b*) Exceeds Shs. 25 but does not exceed Shs. 50 ..	2	00
(*c*) Exceeds Shs. 50 but does not exceed Shs. 100	3	00
(*d*) Exceeds Shs. 100 but does not exceed Shs. 150	4	00
(*e*) Exceeds Shs. 150	5	00
For each property in addition to the first	1	00

Provided that the fee payable herein shall not exceed Shs. 10.

34. For attendance at a sale at the request either of parties interested or local authority—

If absent from court not more than two hours ..	45	00

For each additional hour or fraction thereof exceeding two hours an additional fee of Shs. 10 with a maximum fee of Shs. 90 per diem.

SALE CERTIFICATE

	Shs. Cts.
35. For supplying certificate confirming sale of immovable property sold by order of court—	
(*a*) Where purchase money does not exceed Shs. 750	5 00
(*b*) where purchase money exceeds Shs. 750 but does not exceed Shs. 1,500	7 50
(*c*) where purchase money exceeds Shs. 1,500 ..	15 00

MISCELLANEOUS

36. Upon taking or passing an account by the Registrar or other officer of the court deputed for the purpose—	
(*a*) If engaged not more than one hour	15 00
(*b*) For each succeeding hour or part thereof ..	4 00
37. Upon taking an account and declaring the amount due upon the date fixed for redemption of a mortgage	7 50
Where an "agreed" account is filed, signed by the parties or their advocates	4 00
38. Upon order for adjournment of hearing when rendered necessary by default of either party to be paid by the defaulting party	Such sum as the court may order not exceeding Shs. 15.

	Shs. Cts.
39. Attending to view; in addition to all travelling expenses—	
(*a*) In a case before the High Court	45 00
(*b*) In a case before any other court	10 00
40. Upon taxation of any Bill of Costs for each 10 folios	10 00
41. Upon deposit of any document	20 00
42. Upon evidence taken upon Commission for every day or part of a day; to be retained by the officer taking the evidence	75 00
43. On the examination of any witness *be bene esse*, unless the Judge otherwise orders—	
(*a*) In the High Court	20 00
(*b*) In any other court	7 50
44. Upon taking an affidavit—	
For each person sworn or affirmed	3 00
45. For every exhibit to an affidavit	1 00

46. For attending to administer an oath or affirmation, or to take a declaration beyond the offices of the court, in addition to the ordinary fee thereon ..	Shs. 7/50 for each hour or part thereof.
Suitable transport where necessary to be provided by the deponent if certified necessary by the Registrar.	
47. For superintending and taking an inventory where directed by the court	A fee of 2½ per cent. on the value of the property. Such fee not to exceed Shs. 100.
48. On deposit of any money or valuables in court.	
49. On payment of money into court	10 cents for each Shs. 10 or part thereof, with a minimum of 25 cents and a maximum of Shs. 35.

Provided that no fee shall be paid in respect of any sum of money lodged for the gaol subsistence of a civil prisoner.

	Shs.	*Cts.*
50. For certifying signature under seal	6	00
51. For attesting signature upon a document ..	3	00
52. Upon reference to court archives	3	00
53. Upon search in court archives a proportionate charge at the rate of Shs. 4 per hour with minimum charge of Shs. 3.		
54. Upon communication with another Tribunal—		
(*a*) Without the jurisdiction of the High Court ..	10	00
(*b*) Within the jurisdiction of the High Court, where value of subject matter exceeds Shs. 100	2	00
55. For certificate that no execution has been levied	3	00
56. Upon every warrant not particularly charged..	5	00

CERTIFIED COPIES AND TRANSLATIONS

57. For certified copy of any book, document or proceedings in archives—		
(*a*) For the first folio of 100 words or part thereof	3	00
(*b*) For every subsequent folio	1	00
Provided that in every group of figures three shall count as one word.		
58. For uncertified copy of book, document or proceedings in archives—		
(*a*) For the first folio of 100 words or part thereof	2	00
(*b*) For every subsequent folio or part thereof ..	0	50

	Shs.	Cts.
59. For an official certified translation of any document—		
(*a*) For first folio of 100 words	15	00
(*b*) For each subsequent folio	7	50

60. (*a*) For certifying as correct a translation tendered by a party—

Half fee as in Fee No. 59.

(*b*) For certifying copy of any document tendered by a party—

Same fee as in Fee No. 58.

II.—IN CIVIL APPEAL ETC.

61. Memorandum of Appeal or Cross Appeal—

(*a*) Where the monetary value of the subject matter of the appeal is ascertainable—

An *ad valorem* fee of Shs. 2 per cent. on the value of every claim which forms part of the subject matter of the appeal, with a minimum fee of Shs. 5 and a maximum fee of Shs. 75.

(*b*) Where the monetary value of the subject matter of the appeal is unascertainable Shs. 15 subject to the same proviso as appears in Fee No. 4.

62. Hearing fee—

A like fee to that paid on filing Memorandum of Appeal and to be refunded if appeal is summarily dismissed.

63. On application for Reference, Review or Revision	15	00
64. On drawing signing and sealing decree or order	6	00

III.—ADMINISTRATION OF MINORS' ESTATES

65. On the annual net income accuring for the benefit of minors from monies invested or from property held in trust for them, by an officer or practitioner of the court appointed by the the court .. 5 per cent.

CONVENTIONS REGARDING LEGAL PROCEEDINGS EXTENDED TO THE ZANZIBAR PROTECTORATE

(The undermentioned Conventions are those referred to in the Civil Procedure Rules, O. V, r. 35, which deals with service of documents issued in a civil or commercial matter pending before a court or tribunal in a foreign country. Copies of these Conventions may be seen at the Secretariat, Zanzibar, during office hours.)

AUSTRIA

G.N. 48 of 1955. A Convention between the United Kingdom and Austria regarding Legal Proceedings in Civil and Commercial Matters, which was signed at London, on the 31st March, 1931, was extended to Zanzibar, with effect from the 1st April, 1932: but, the aid Convention lapsed on the 4th July, 1938:

By virtue of an exchange of notes between the Government of the United Kingdom and the Austrian Government made at Vienna on the 28th June, 1951, it was agreed that the said Convention should be revived and should continue in force, with effect from the said 28th June, 1951, and that the said Convention should also apply to the countries and territories therein named which territories include the Zanzibar Protectorate; and it has accordingly been notified for general information that the said Convention continues in force in regard to Zanzibar, with effect from the said 28th June, 1951.

BELGIUM

G.N. 202 of 1925. 66 of 1935. It has been notified that the Convention between the United Kingdom and Belgium respecting Legal Proceedings in Civil and Commercial Matters has been applied to the Zanzibar Protectorate, with effect from the 23rd August, 1925.

It has been notified for general information that a Supplementary Convention between the United Kingdom and Belgium to facilitate the conduct of Legal Proceedings, signed at Brussels on the 4th November 1932, has been extended to Zanzibar as from the 27th of June, 1935.

CZECHOSLOVAK REPUBLIC

G.N. 111 of 1927. It has been notified that the Convention between the United Kingdom and the Czechoslovak Republic, of 11th November, 1924, respecting Legal Proceedings in Civil and Commercial Matters has been applied to the Zanzibar Protectorate, with effect from the 17th of February, 1927.

General Notice No. 549 of 1937. It is hereby notified for general information that a Supplementary Convention between the United Kingdom and the Czechoslovak Republic signed at Prague on the 15th of February, 1935, respecting the conduct of Legal Proceedings, has been extended to Zanzibar, as from the 5th of January, 1937.

DENMARK

G.N. 50 of 1934. It has been notified for general information that a Convention between the United Kingdom and Denmark regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 29th of November, 1932, has been extended to Zanzibar, as from the 27th of March, 1934.

FINLAND

G.N. 72 of 1935. It has been notified for general information that a Convention between the United Kingdom and Finland regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 11th of August, 1933, has been extended to Zanzibar, as from the 4th of June, 1935.

FRANCE

It has been notified for general information that a Convention between the United Kingdom and France regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 2nd of February, 1922, has been extended to Zanzibar, as from the 27th of January, 1924. G.N. 37 of 1937.

It has further been notified that a Supplementary Convention between the United Kingdom and France to facilitate the conduct of Legal Proceedings, signed at Paris, on the 15th April, 1936, has been extended to Zanzibar, as from the 22nd September, 1947. General Notice 797 of 1948.

GREECE

It has been notified for general information that a Convention between the United Kingdom and Greece regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 27th February, 1936, has been extended to Zanzibar, as from the 19th January, 1939. G.N. 21 of 1939.

HUNGARY

It is hereby notified for general information that a Convention between the United Kingdom and Hungary, regarding Legal Proceedings in Civil and Commercial Matters, signed at Budapest on the 25th of September, 1935, has been extended to Zanzibar, as from the 25th of June, 1937. G.N. 54 of 1937.

IRAQ

It has been notified for general information that a Convention between the United Kingdom and Iraq regarding Legal Proceedings in Civil and Commercial Matters signed at Baghdad, on the 25th July, 1935, has been extended to Zanzibar, as from the 26th March, 1938. G.N. 53 of 1939.

ITALY

It has been notified for general information that a Convention between the United Kingdom and Italy, signed at London, on the 17th December, 1930, respecting Legal Proceedings in Civil and Commercial Matters, has been extended to Zanzibar, as from the 25th August, 1932. G.N. 106 of 1933.

THE NETHERLANDS

It has been notified for general information that a Convention between the United Kingdom and the Netherlands, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 31st of May, 1932, has been extended to Zanzibar, as from the 23rd of May, 1934. G.N. 49 of 1934.

NORWAY

It has been notified for general information that a Convention between the United Kingdom and Norway, signed at London, on the 30th of January, 1931, respecting Legal Proceedings in Civil and Criminal Matters has been extended to Zanzibar, as from the 14th of November, 1931. G.N. 9 of 1932.

POLAND

G.N. 60 of 1933. It has been notified for general information that a Convention between the United Kingdom and Poland, regarding Legal Proceedings in Civil and Commercial Matters, signed at Warsaw, on the 26th of August, 1931, has been extended to Zanzibar, as from the 3rd of May, 1933.

PORTUGAL

G.N. 64 of 1933. It has been notified for general information that a Convention between the United Kingdom and Portugal, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 9th of July, 1931, has been extended to Zanzibar, as from the 30th of April, 1933.

SPAIN

G.N. 193 of 1931. It has been notified for general information that a Convention between the United Kingdom and Spain respecting Legal Proceedings in Civil and Commercial Matters, signed at London, on the 27th of June, 1929, for the purpose of regulating procedure in connection with the preparation and transmission of judicial and extra-judicial documents and "commissions rogatoires," has been extended to Zanzibar, as from the 23rd of February, 1931.

SWEDEN

G.N. 230 of 1931. It has been notified for general information that a Convention between the United Kingdom and Sweden, signed at London, on the 28th of August, 1930, respecting Legal Proceedings in Civil and Criminal Matters, has been extended to Zanzibar, as from the 3rd of September, 1931.

SWITZERLAND

G.N. 913 of 1940. It has been notified for general information that a Convention between the United Kingdom and Switzerland, regarding Legal Proceedings in Civil and Commercial Matters, signed at London, on the 3rd December, 1937, has been extended to Zanzibar, as from the 17th May, 1940.

TURKEY

G.N. 18 of 1934. It has been notified for general information that a Convention between the United Kingdom and Turkey, regarding Legal Proceedings in Civil and Commercial Matters, signed at Angora, on the 28th of November, 1931, has been extended to Zanzibar, as from the 14th of December, 1933.

The Civil Procedure (Government Agents) Order

(Made under the Civil Procedure Rules, O. XXXI, r.J) G.N. 16 of 1940.

1. This Order may be cited as the Civil Procedure (Government Agents) Order.

2. In any suit by or against the Zanzibar Government the plaint or written statement shall be signed by the officer mentioned in the Schedule whose duty it is to act for the Government in such suit or whose department or office is concerned therein.

SCHEDULE

The Director of Public Works and Land Survey.

The Comptroller of Customs.

The Director of Agriculture.

The Land Officer.

The Town Clerk.

The Postmaster.

The District Commissioner, Pemba.

The District Agricultural Officer, Pemba.

The District Engineer, Pemba.

The Director of Medical Services.

The District Commissioner, Rural District, Zanzibar.

The District Commissioner, Urban District, Zanzibar.

The District Medical Officer, Pemba.

The Director of Education.

General Notice 110 of 1940. 358 of 1957.

Persons Authorised to act for Government under the Decree

(Made under the Civil Procedure Rules, O. XXXI, r.2)

1. In any suit by or against the Zanzibar Government appearances, acts and applications under the Decree may be made or done by such of the following officers whose department or office is concerned in such suit:—

The Director of Public Works and Land Survey.
The Comptroller of Customs.
The Director of Agriculture.
The Land Officer.
The Town Clerk.
The Postmaster.
The District Commissioner, Pemba.
The District Agricultural Officer, Pemba.
The District Engineer, Pemba.
The Director of Medical Services.
The District Commissioner, Urban District, Zanzibar.
The District Commissioner, Rural District, Zanzibar.
The District Medical Officer, Pemba.
The Director of Education.

2. In suits by Government for the recovery of rent, rates, taxes, or other charges not exceeding four hundred and fifty shillings, appearances, acts and applications under the Decree may be made or done on behalf of the Government by the persons respectively who for the time being are performing the duties assigned to the following officers whose department or office is concerned in such suit:—

PUBLIC WORKS AND LAND SURVEY:
Cashier.
Water Rates Clerk.
Ledger Clerk.

AGRICULTURE DEPARTMENT:
Clerk-in-Charge, Zanzibar
Clerk-in-Charge, Pemba.

MUNICIPAL AND LAND OFFICES:
Office Superintendent.
Rent and Rate Clerk.
Revenue Inspector.
Property Inspector.

DISTRICT COMMISSIONERS, URBAN AND RURAL DISTRICTS OF ZANZIBAR:

District Cashier.

DISTRICT COMMISSIONER, PEMBA:

District Clerk, Wete.

Accounts Assistant, Wete.

Clerk-in-Charge, Chake Chake.

Clerk-in-Charge, Mkoani.

ASSISTANT ENGINEER, PEMBA:

Cashier.

Clerk IV Grade.

HEALTH DEPARTMENT:

Office Superintendent, Zanzibar.

Accounts Assistant, Zanzibar.

Office Assistant, H. K. J. Hospital, Zanzibar.

Clerk, Wete, Pemba.

Appointment of an Officer of the Court under the Civil Procedure Decree to sign and grant certain Processes

General Notice 960 of 1933.

(Made under O. V., r.1(3), O. XIX, r.1, and O. XXIV, r.20(6) of the Civil Procedure Rules)

The person holding the office of the Head Clerk of the Court of the Resident Magistrate, in Pemba, is appointed as an officer of the court with power, in respect of suits and proceedings instituted in the Resident Magistrate's Court for Pemba, to do the following acts and things under the Civil Procedure Rules:—

(*a*) to sign summonses under Order V, rule 1(3);

(*b*) to grant witness summonses under Order XIX, rule 1; and

(*c*) to sign processes for execution of decrees under Order XXIV, rule 20 (6).

Scale of Subsistence for Judgment Debtors

G.N. 161 of 1948.

(Section 43)

	Shs.	*Cts.*	
Europeans at the rate of	3	75	per day
Asiatics (including Arabs) at the rate of ..	1	50	per day
Africans at the rate of	1	20	per day

G.N. 62 of 1930.

Language of the Courts

(Section 117)

The British Resident has been pleased to declare that the language of each of the several courts named in the first column of the Schedule appended hereto shall be that entered in the second column of the said Schedule opposite to the said court.

SCHEDULE

The High Court	English.
First Class Subordinate Court	English or Swahili.
Second Class Subordinate Court	English or Swahili.
Third Class Subordinate Court	English or Swahili.
Kathi's Court	Arabic or Swahili.

N.B.—In this declaration the words High Court shall be deemed to be Her Britannic Majesty's Court.