THE NEW

PROCEDURE OF THE CIVIL COURTS
OF

BRITISH INDIA,

NOT ESTABLISHED BY ROYAL CHARTER.

BEING

THE FOURTH EDITION OF THE 'PROCEDURE OF THE CIVIL COURTS,' &c.

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1860.
TO

THE RIGHT HONORABLE

SIR LAWRENCE PEEL,

LATE CHIEF JUSTICE OF THE SUPREME COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL,

This Treatise

IS RESPECTFULLY DEDICATED.
PREFACE.

The design of the Treatise on the Procedure of the Civil Courts (which in its former editions was intended specially for the Presidency of Bengal) was, first, to state the positive rules which the Courts were bound to follow, and, secondly, to investigate the reasons for those rules, and the general principles of justice without which no rules of procedure can be intelligently applied.

The first of these objects is now in great measure provided for by the new Code of Civil Procedure, Act VIII. of 1859, enacted for all the Presidencies of British India;—which is accordingly printed as part of this fourth edition.* I have omitted so much of the positive law of Procedure, contained in the last edition, as appeared to be superseded by the Code. Entire accuracy on this head was not attainable, in consequence of the omission, from the Code, of any specific repealing clause.

The investigation to which the rest of the Treatise was devoted, is still as necessary as ever.

For instance, the Code forbids the Courts to "take cognizance of any suit brought on a cause of action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim." But it often requires the most

careful consideration to determine whether the cause of action or the parties in the former suit were really and essentially the same, and the Court competent; so as to bar the new suit. So, the Code directs in what manner the depositions of witnesses are to be taken down; but it necessarily leaves the general law of evidence untouched. It provides for the addition of any proper parties who may not have been brought before the Court originally; but it cannot discuss the different classes of rights, and the proper parties to suits for the enforcement of each. It provides for the fixing of issues to be tried, but it tenders no aid towards analysing the conflicting statements out of which the issues are to be selected. It provides that the reasons for the judgment of the Court shall be recorded, but it does not suggest rules for the guidance of the deciding officer, nor warn him by examples of prevailing errors. All this is foreign to the nature and purpose of a code, yet it is highly conducive to the right working of the Code that such subjects should be deliberately studied. That study, the work in its present shape may perhaps tend to facilitate.

The Treatise now forms an introduction or companion to the Code; and it is hoped that, as such, it may be found useful in Madras and Bombay, as well as in Bengal, although the illustrations are drawn chiefly from cases decided in the latter Presidency.

3, Stone Buildings, Lincoln's Inn,
Nov. 1, 1859.
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P. 204, note b, for Sacer read Saka.
ON THE
PROCEDURE OF THE CIVIL COURTS
IN
REGULAR SUITS.

CHAPTER I.
OF THE PERSONS BY WHOM A SUIT MAY BE INSTITUTED.

SECTION I.
ON THE NATURE OF SUITS.

A CIVIL suit is, properly speaking, an application to a Court of Civil Judicature for the enforcement of some right, or for the redress of some wrong, in respect of which the party so applying cannot obtain his rights without the intervention of the Court.

For the enforcement of certain classes of rights, the Legislature has ordained special and summary modes of procedure.

Regular suits are those in which the applicant professes to found his claim upon the general rules of law, and does not seek the benefit of any of these special enactments.

The procedure in regular suits (of which alone I profess to give any systematic account) is governed by the Code of Civil Procedure recently enacted (Act VIII. of 1859), and by those unwritten principles of justice which experience has shown to be essential to the fair conduct of all forensic controversy. And the main object of the present treatise is to show the method prescribed by that Code, and by those principles, for...
the investigation of law and fact, for forming and recording a decision, and for putting men in possession of that which has been adjudged to them.

SECTION II.

THE GOVERNMENT.

Persons of every sort and condition are entitled (with few exceptions) to represent their grievances to the Courts, and to require the Judges to determine, according to law and justice, whether any and what aid shall be granted to them. And the Government itself is in the habit of submitting to its Courts, by applications similar to those which proceed from private individuals, any claims which it may desire to enforce, either on behalf of itself or of others.

Suits on behalf of the Government are instituted by the collector or other officer, within whose department the subject matter of each suit may lie.

They are conducted by the Vakeel of Government, at the public expense, under the direction of the officer by whom they are instituted.

SECTION III.

SOVEREIGN PRINCES OF INDIA.

If a Native Sovereign Prince, whether residing within the British territories or not, desires to enforce a claim, as an individual, to lands or other things, and if the claim is such as might be heard and determined by the Civil Courts if the claimant were a private person, the Governor-General in

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a Reg. III. 1793, Sect. 1.  
b See Code, Chap. 2.
A SUIT MAY BE INSTITUTED.

Council may order a suit to be instituted, for the enforcement of such claim, in the Court which would, according to ordinary rules, be authorized to decide upon the right to the disputed property.

Suits of the nature contemplated by this law are carried on by the collectors of the Land Revenue, with the aid of the Vakeels of Government, and under the directions of the Board of Revenue, which is furnished by the Governor-General in Council with all necessary information and instructions for the conduct of the suit.

The law applies to suits instituted by Native Sovereign Princes as individuals, and not to suits in which they claim land as being part of their dominions, and as being beyond the limits of the British territory. Claims of this kind must be adjusted by negotiation between the Native Prince and the Government of India.

SECTION IV.

SOVEREIGNS NOT INDIAN.

The sovereign power of a foreign State can sue in the Civil Courts of this country if that foreign State has been recognized by the British Government, but not otherwise. The fact of a foreign Government having been recognized or not, is a matter of public notoriety, and the Judges must act officially upon their knowledge of it, without requiring it to be proved before them by the parties to a suit; or in other words, they must take judicial notice of it. But a foreign Government must sue upon such terms as may enable the Court to do justice to all parties, and therefore it must con-

* Reg. IV., 1812, Sect. 2, Cl. 1 ;  
Code, Chap. 2, Sect. 17, Cl. 4.  

* Reg. IV., 1812, Sect. 2, Cl. 1.  

§ 2
form to the rules prescribed for private suitors who are not amenable to the jurisdiction of the Court.\footnote{See infra, Sect. VI.}

SECTION V.

CORPORATIONS.

Generally speaking, all persons on whose behalf any right is sought to be established, ought to come before the Court as plaintiffs. But several companies, consisting of a large number of shareholders, associated for banking or other purposes, have from time to time been invested, by special Act of the Legislature, with the privilege of suing and being sued by their collective or corporate name, or in the name of their secretary or other officer, appointed with that view.

Thus by Act V. of 1838, the Bengal Bonded Warehouse Association, by VI. of 1839, the Bank of Bengal, by XIX. of 1845, the Assam Company, may sue and be sued by their corporate name; and by Act XLIII. of 1850, all Companies which shall be registered in the manner prescribed by the Act, are enabled to sue and to be sued by their registered name, as if they were incorporated. See further upon this subject Acts V. and XIX. of 1857.

Similar rights have been granted by the laws of England, and of other countries, to various associations of men, and such associations may institute suits accordingly in the Courts of this country; but they must be prepared to establish the fact, that the privilege was effectually conferred upon them by the law of the country to which they belong.
SECTION VI

PERSONS RESIDENT BEYOND THE JURISDICTION.

The Courts are open to the complaints even of persons who live beyond the limits of their jurisdiction, unless they are alien enemies, or are resident in the territory of an enemy without a license or authority from the British Government.

In order, however, to prevent the defendant from being defeated of his right to receive the costs of the suit, in case they shold in the end be awarded to him by the Court, plaintiffs residing beyond the jurisdiction are generally required to give security for costs.

SECTION VII

PAUPERS.

Any person resident within the jurisdiction, and not disqualified from suing by any of the circumstances mentioned below, has a right, however poor he may be, to commence proceedings for the enforcement of his claims, without being required to give security for the payment of costs to the opposite party, in case he fails in his suit. But as persons who are very poor cannot bear the ordinary expense of litigation, the law grants to them the indulgence of suing at less cost than others. This subject is fully treated of in the fifth chapter of the Code of Civil Procedure, to which the reader is accordingly referred.

* Code, Chap. 2, Sect. 17, Cl. 1 and 2.
* Code, Chap. 3, Sect. 35.
* Infra, Chap. II.
CHAPTER II.

PERSONS DISQUALIFIED FROM SUING.

An alien, that is, a person not subject to the British Government of India, nor to the British Crown, may generally sue in the Courts of this country for the enforcement of his rights.

But, according to the received opinion on this subject, aliens are not entitled while in a state of enmity to receive the aid of the Civil Courts, either in the institution of a suit, or in carrying on a suit commenced before the state of enmity began. Alien enemies are persons of a nation at war with our Government; or who, though natives of a neutral or friendly state, reside and carry on trade in a hostile country; or who do so, being subjects of our Government, without a license from it.

This disability extends to all cases in which an alien enemy is interested, although his name does not appear in the transaction. The right of an alien to institute a suit relating to a contract is only suspended by war, if the contract was entered into previous to the commencement of the war; and it may be enforced upon the restoration of peace. But it cannot be enforced if it was entered into during the war, unless the alien enemy was a prisoner of the British Government at the time of the contract.

If a subject of a hostile Power resides in the British dominions by permission of the British Government, he is considered a friend, and is under no disability to sue so long as he behaves peaceably.
The Courts do not readily entertain objections on this head, and will not listen to them unless urged by the defendant at the earliest possible stage of a suit.

A person who has been convicted of a crime, and sentenced to imprisonment for life, is not thereby rendered incapable of suing or of being sued.*

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* S. D. Agra, 1853, p. 759.
CHAPTER III.

PERSONS DISQUALIFIED FROM SUING ALONE.

SECTION I.

PERSONS NATURALLY DISQUALIFIED.

In order that justice may be done, it is necessary that suits be conducted with discretion and intelligence; and if the suitor does not possess these qualities, he must be aided by some person who is capable of forming a judgment as to the necessity of applying to the tribunals for protection or redress, and who may be responsible to them that the suit has not been improperly instituted.

The laws and customs of every country have fixed upon particular periods at which persons are presumed to be capable of acting with reason and discretion. Persons who have not attained this age are called minors.

The minority of Hindoo and Mahomedan proprietors of estates paying revenue to Government, and of proprietors of joint undivided estates for which the law requires a manager to be appointed by the proprietors, extends to the end of the 18th year, without distinction of sex, whether they be under the guardianship of the Court of Wards or not. The Sudder Court has held this rule to be applicable in the case

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*a* Reg. VIII., 1793, Sect. 23. See Dawes, Civil Procedure of Madras, p. 156.

*b* Reg. XXVI., 1793, Sects. 2, 3;


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S. D. 1857, p. 1339.
of an Armenian female proprietor of the class just mentioned, suing, as such, for arrears of rent.\footnote{S. D. 1856, p. 262.}

And for the purposes of Act XL. of 1858 (an Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal), every person is held\footnote{S. 26.} to be a minor who has not attained the age of eighteen years.

The Madras Regulation V. of 1804, for establishing a Court of Wards (based on Regulation X., 1793, of the Bengal code), likewise fixes eighteen as the age of majority.\footnote{See also Act XIX. of 1841, ("the Curator's Act"), extended to Madras by Act VIII. of 1842.}

The tendency among Eastern nations has been to determine the age of majority in each case, according to the degree of maturity which the individual may have attained. But as this doctrine would lead (especially in cases where minority is pleaded in bar of the law of limitation)\footnote{Infra, Chap. VIII.} to difficult investigations, long after the minority has ceased, it is necessary, under every regular system of law, to fix some age at which a person is to be held civilly responsible for his acts or omissions.

The full age of Hindoos not under the Court of Wards has been stated generally to be sixteen years complete.\footnote{Sel. Rep. v. 5, pp. 114, 276, 280; and see Reg. XXVI., 1793, Reg. VII., 1819. Agra, 1853, p. 169. Dawes, Civil Procedure of Madras, p. 236.}

However, in a late case it was laid down by the Sudder Court of Calcutta, that the majority of a Hindoo who is not the proprietor of an estate paying revenue to Government, must, in Bengal, be calculated from the end of his fifteenth year.\footnote{S. D. 1853, p. 505. See Ibid., p. 782.}

It is stated by Sir William Macnaghten, in his work on Mahomedan law,\footnote{Page 62.} that "all persons, whether male or female, are considered minors until after the expiration of..."
the sixteenth year, unless symptoms of puberty appear at an earlier period."

The futwah of the Mahomedan law officer, to the effect that a male or female is of age after completion of the fifteenth year, was adopted in a recent case by the Sudder Court at Agra.a

It seems to be considered that personal maturity in a Mahomedan of either sex will justify the Civil Courts in regarding the party as major, and in withdrawing the guardian assigned by itself under Regulation I. of 1800.b Male Armenians would probably be considered as of full age at eighteen.

The vicar of the Armenian Church at Calcutta, on being asked by the Sudder Court what was the age of legal majority in females under the Armenian law, and whether a minor wife was considered to be under the tutelage of her husband, repliedc that "the age of majority with females is considered to be the age of marriage; and the age of marriage commences from the twelfth year. The wife, being either a minor of full age, remains under the tutelage of her husband."

Twenty-one is the full age by the laws of England, and Spain, and of the United States of America, and also by the law which now prevails in France, Belgium, and Holland; but in the three countries last mentioned, a minor is emancipated and obtains majority at once by marriage; or, if he has completed his fifteenth year, by a judicial declaration of the father, or, if he be dead, of the mother.

In the absence of any recognized general law of British India, it seems reasonable that persons of European extraction should be governed by the laws of the nation from which they spring.

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a Agra, 1857, p. 21.  
b S. D. 1856, p. 569.  
c 20th April, 1836. See Sel. Rep., v. 7, p. 528.
SECT. I. PERSONS NATURALLY DISQUALIFIED.

It appears, however, that where a person, who may be presumed to have been of English origin, though of the class called East Indians, petitioned to be put in possession of certain property bequeathed to him, on the ground “that he had attained the legal age of majority, viz., eighteen years,” the Sudder Court did not, as might have been expected, negative his pretension to be considered as of full age at eighteen, but rejected his application on the narrower ground, that it was presumable, from the language of the will under which he claimed the property, that the age of twenty-one was contemplated by the testatrix as the period of the petitioner’s majority.

Where the estate of a minor landholder is under the management of the Court of Wards, the guardian or manager acting under the orders of the Court should, in all cases affecting the estate real or personal, institute and conduct such suits as may be necessary, under the instructions which he may receive from the Court of Wards. He has no right to command the aid of the Government pleader.

In the case of a minor whose estate is not under the Court of Wards, the executor of the person under whose will the minor is entitled to the property, or the legal guardian of the minor, must stand in his place, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor. The question, who is the legal guardian, must be determined according to the rules of the community to which the minor belongs.

If the minor be not an European British subject, no person is entitled in the Presidency of Bengal to institute or defend any suit connected with the estate of which he claims the charge in trust for a minor, until he shall have obtained from the Civil Court a certificate of administration under Act XL.

Who sues for minors under Court of Wards.

For minor not under Court of Wards.

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* R. S. C. 14th April, 1842.  
* Reg. X., 1793, Sect. 32, Cl. 1.  
* Agra, 1856, p. 344.
of 1858. But when the property is of small value, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute or defend a suit on his behalf, although a certificate of administration has not been granted to such relative.\textsuperscript{a}

The legal guardian, however, is not the only person who is entitled to sue on behalf of a minor, for it may be doubtful who is the legal guardian, or the guardian himself may be the person who-withholds the right or does the injury, or he may neglect to give needful protection to the minor.

And therefore it has been laid down that any friend of a minor, whether his regular guardian or not, may sue on his behalf to establish his right.\textsuperscript{b}

This liberty, however, does not apply to cases in which a person who is not legal guardian claims to receive money on behalf of a minor.\textsuperscript{c}

In a case where the rights of the minor had been fully brought before the Court, but his elder brother, who sued on behalf of himself and the minor, was considered to have forfeited his own rights by adopting the transaction of which he complained, the Sudder Court of Agra refused to adjudicate upon the claim of the minor, but declared that there would be nothing to prevent him from suing, should he think proper, on coming of age.

The minor was thus put to the expense of a second suit, and to the risk of his evidence perishing in the mean time, and was (supposing his claim a just one) kept out of the enjoyment of his property indefinitely.\textsuperscript{d}

The consent of the minor to the institution of a suit on his behalf is unnecessary.

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\textsuperscript{a} Act XL. of 1858, Sect. 3.
\textsuperscript{b} R. S. C, 17th July, 1847; S. D. 1851, p. 483; S. D. 1853, p. 159; S. D. 1857, p. 181.
\textsuperscript{d} S. D. Agra, 1856, p. 524.
SECT. II. PERSONS DISQUALIFIED BY POSITION. 13

The rights of lunatics, idiots, and other persons disqualified for the management of their own concerns in consequence of natural defects and infirmities, are enforced in the same manner as the rights of infants.

SECTION II.

PERSONS DISQUALIFIED BY POSITION—ENGLISH MARRIED WOMEN.

A Hindoo or Mahomedan married woman is at all times competent to sue as if she were unmarried; even to sue her husband. An Armenian woman may likewise do so.

In the view of the Courts of England, the husband and his wife by marriage become one, and the husband may take possession of the property of his wife. But where it becomes necessary to sue for property belonging to the wife, then, whether the right to the property accrued before or after marriage, the suit must be commenced and carried on in the joint names of husband and wife, in order that the Court may protect the wife, who cannot take care of her own rights, and may cause a reasonable portion of the property (if it be personal or moveable property) to be settled upon her and her children, unless she, being separately examined, chooses to give up the right on behalf of herself and her children, and to acquiesce in the property being given to the husband.

But the wife may sue alone if her husband can be considered as having undergone a civil death; as where he has been transported for life, or where he is an alien, and not present within the limits of the Court's jurisdiction.

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* See Act XXXV. 1858.  
* See Act XXXV. 1858.  
* 1 Sev. 167.  
* S. D. 1851, p. 806.
Wherever the interests of the wife are in opposition to the claims of her husband, she ought to sue—not jointly with her husband (for he being a party complained of, the complaint cannot be made by him), but under the protection of some other person, who exhibits the plaint in her name, and is styled her next friend. The wife's consent is necessary to the institution of the suit.

The friend through whom a married woman asserts her rights against her husband, cannot sue as a pauper.

The law applicable to suits by married females of the class of East Indians of British descent, is not expressly laid down, but apparently the Courts regard the marriage of such females as involving all the civil consequences of English marriage.
CHAPTER IV.

OF THE PERSONS AGAINST WHOM A SUIT MAY BE INSTITUTED.

SECTION I.

A suit may be instituted against all persons and corporate societies whatever, who are in any way interested in the matter in litigation, or who may be likely to be affected by the result of the suit, wheresoever such persons may have been born, and from whatever race or family they may be descended, and wherever such corporate societies may exist.*

With the exception of certain privileged persons, who will be mentioned below, all are subject to the jurisdiction of the Civil Courts.

SECTION II.

THE GOVERNMENT.

The Government, in its own name, or in that of the Board of Revenue or the collector, may be made a defendant in any suit. The different officers of Government may, as such, be made defendants in suits relating to their several departments, under the restrictions prescribed by the Code.

* Code, Chap. I., Sect. 4; Chap. III., Sects. 26, 67.
SECTION III.

SOVEREIGN PRINCES OF INDIA:

If a suit be instituted by any person for the recovery of lands or other things over which, by the general constitution of the country, the Civil Courts possess jurisdiction, but which are in the occupancy of any native prince, whom it would be improper to require to defend the action himself (i.e., any native sovereign prince, whether residing within the British territories or otherwise), the Governor-General in Council has the power to order such suit to be defended by officers of Government. In such suits the defence is conducted in the manner mentioned above.*

Civil claims against independent chiefs, whether by their own subjects or by others, cannot be taken cognizance of by the Courts; but if they have lands within the jurisdiction, and those lands have been made subject to a charge, it ought to be enforced.

The Rajah of Tipperah, a chieftain governing his own territories, subject only to political control, had an estate within the British territories, and he executed an instrument called a zimma namah, whereby he appointed A. B. manager and agent for such estate on a certain salary, and authorised him to borrow or advance money, if necessary, for the purposes of the estate, liquidating "the public revenue, the debts due to the mahajuns or creditors, and the other necessary expenses;" and to take bonds from him, the Rajah, for repayment of the sums so advanced or borrowed, with in-

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* Supra, p. 3 ; Reg. IV. 1812, Sect. 2, Cls. 1, 2, 3; Code, Chap. II. Sect. 17, Cl. 4. As to suits instituted against the Nazim of Bengal, see Act XXVII. of 1854. As to the Nawab of Fur-ruckabad, see Regulation II., 1803, Sect. 8. As to the Rajah of Benares, see Regulations VIII. 1795, and XV. 1795. As to the family and retainers of the late Nabob of the Carnatic, see Act XXXVII. of 1855. See also the Bombay Regulations, e.g. Reg. XXIX. of 1827.
terest; and the manager was to be at liberty to realise the amount due to him, with interest, from the income of the ensuing instalment of rent. Advances were made accordingly, partly for the purposes of the estate, and partly for the personal expenses of the Rajah, and bonds were executed to the agent. The Rajah died, and the agent obtained a personal decree against his successor in the Raj for the amount of the bonds. The Rajah asserted that he had ascended the throne of Tipperah in his own right, and not as heir of the deceased Rajah, and therefore was not liable for the debts of the latter. This plea was held to be futile in the British provinces. The Principal Sudder Ameen had by his decree intimated that execution should be taken only against the estate in the British provinces; and this seems right, as the preceding Rajah had given a lien on that estate, and it was only in respect of that estate and lien that there was jurisdiction, yet the Sudder Court reversed that part, and gave only a personal decree.*

SECTION IV.

CORPORATIONS.

A corporate association is sued in the manner prescribed by the act of incorporation; the manner of suing where internal dissension arises is stated below, Chap. XI.

SECTION V.

PERSONS RESIDENT BEYOND THE JURISDICTION.

A plaint may be filed against a person, alone or jointly with others, although he be resident in a foreign country.

* S. D. 1856, p. 977.
SECTION VI.

DEPENDANTS OF NATIVE CHIEFS.

Of independent Chiefs in general.

In civil claims against servants of independent Chiefs, in general, the complainant, whether a chief or not, is left to seek justice from the legitimate superior of the party against whom his claim is preferred, unless that party be resident or possess property within the territories of the British Government.

If the defendant be resident within the British territory, he is of course amenable to justice like other residents. If he is not so resident, but possesses property within the British territory, he is precisely in the same situation as any other defendant who resides out of the jurisdiction of the Courts, but has property within the jurisdiction.

SECTION VII.

PAUPERS.

Justice may be sought against persons who are wholly without property, in like manner as against the rich. The facilities which are afforded to paupers in making their defence are stated above.

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*a* Cir. Ord., 4th March, 1836.

*b* *Infra*, Chap. XVI. For the special rules as to suits against the Rajah of Benares and his connexions, and as to the appointment of Native Commissioners to determine disputes relating to land and revenue within the hereditary mehals of that Prince, see Reg. VIII., 1795, Sect. 10; Reg. XV., 1795, Sect. 3, Cla. 1 and 2; Reg. VII., 1828; Construction 1224, Western Court, 14th June, Calcutta Court, 12th July, 1839. As to the Nawaub of Furruckabad, see Reg. II., 1805, Sect. 8, Con. No. 843, 162, 785.

*c* Code, Chap. 5.
CHAPTER V.

PERSONS WHO CANNOT DEFEND A SUIT ALONE.

A minor, an idiot, or a lunatic, or any person disqualified for the management of his own concerns in consequence of natural defects and infirmities, may be made defendant to a suit; but land-owners disqualified by minority or otherwise, and having guardians, can only be sued under the protection and joint name of their guardians, who conduct the defence under the instructions of the Court of Wards. In case of a minor whose estate is not under the Court of Wards, the executor or guardian conducts the defence, as already stated; and in the case of an idiot or a lunatic whose estate is not under the Court of Wards, some guardian or manager ought to be joined with him, and to conduct the defence in his stead.

A Hindoo or Mahomedan married female may be made defendant in a suit without joining her husband.

An Armenian female who has separate property may be sued apart from her husband.

According to English law, a wife may be made a defendant without her husband in those cases in which she may be a plaintiff without her husband; but it is not necessary to join any person with her as her guardian or next friend for the defence of the suit, since the plaintiff is the person responsible for the propriety of its institution.

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* Reg. X., 1793, Sect. 32, Cl. 1; Con. No. 335, 2nd February, 1821.
* Supra, p. 11.
* See Act XXXV. of 1858.
An Armenian female whose property is entirely in the possession of her husband, ought to be joined with her husband in an action against her for a wrong done by her, for the husband alone has the means of making good any payment which may be awarded against her.\footnote{S. D. 1847, p. 258.}

By the English law, where a husband and wife are living separate from each other, the husband may obtain permission from the Court to answer separately, and he will not be responsible for a wrongful act of the wife—as if the wife should have forcibly possessed herself of property, and it is sought from her by a civil action:—on the other hand, where a wife lives separate from her husband, or disapproves of the defence which he intends to make, or claims some interest adversely to him, she usually receives permission to answer separately.
CHAPTER VI.

FOR WHAT THINGS SUIT MAY AND MAY NOT BE BROUGHT.

The Civil Courts were established in order that justice might be done between private individuals; that the officers of Government employed in the collection of the revenue, the provision of the East India Company's investment, and all other financial or commercial concerns of the public, might be made answerable for acts done in their official capacity in opposition to the Regulations; that the Government itself, in superintending these various branches of the resources of the State, might be precluded from injuring private property, and, in short, that every man might be enabled "to command at all times the exercise of the judicial power of the State, lodged in the Courts, for the redress of any injury which he may have sustained in his person or property."

The Courts were accordingly empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, caste, claims to damages for injuries, and generally of all suits and complaints of a civil nature. And it is enacted by the new code that the Civil Courts shall take cognizance of all suits of a civil

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a Preamble to Reg. III., 1793.
b Reg. III., 1793, Sect. 8. N.B.—The provisions of this Regulation, by which the procedure of the Civil Courts is mainly governed, were extended to Benares by Reg. VII., 1795, and to the Ceded and Conquered Provinces by Reg. II., 1802. The corresponding Regulations of the Presidency of Madras were passed in 1802. The Bombay Regulations of 1827 prescribe the course to be pursued in the Courts of that Presidency.
c Chap. 1., Sect. 1.
nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, or Bombay respectively, or by any Act of the Governor-General of India in Council.

There is therefore (subject to certain specified exceptions) no description of civil right, for the enforcement of which a remedy may not be afforded by the Civil Courts.

Compacts which are not illegal and do not originate in fraud; all contracts, in short, which competent persons innocently enter into with each other, ought to be strictly observed, and if they be not, the Courts ought to enforce their performance, or award compensation for the breach of them.¹

Where a Regulation or Act of the Legislature requires an act to be done by one man for the benefit of another, or forbids the doing of an act which may be to his injury, though no remedy be given in express terms by the Regulation or Act for the omission or commission, the rule of law is, that the party injured may bring his action: and wherever a legal right of any kind is infringed, the Courts ought to afford redress, however novel in its nature the injury may be.

In all suits against Government or against public officers, the provisions of the Code (see Chap. III., Sect. 67 to 72) must be strictly adhered to.

Under Regulation XIV., 1793, Section 33, a Collector is in his fiscal capacity amenable to the Civil Courts for official acts contrary to that Regulation.²

A Collector or a Deputy-Collector is personally responsible only for his acts done in opposition to the Regulations, or to any order issued by the Court of Wards, or for breach of trust. He is not personally responsible for any act done by him under the orders of the Court of Wards, in the manage-

¹ S. D. Agr., 1852, p. 000; Code, Chap. 3, Sects. 191, 192.
² R. S. C., 15th June, 1847.
ment of a ward's estate. Nor can a succeeding officer be sued in respect of a claim which was only a personal claim upon his predecessor.

If a man is legally entitled to require that certain lands shall be divided and a share allotted to him, and that the Government revenue in respect of his share shall be separately assessed, and if the Collector, by whose agency alone the division can take place, refuses to divide, the Civil Court may order the Collector to make the division. But this aid will not be granted in respect of any interest to which the law does not expressly annex the right to call for a division.

If a Court make an order wholly in excess of its jurisdiction (and not protected by the Act which I am about to cite), and that order is executed, the party aggrieved by the execution may bring an action for damages, and the order of the Court will afford no justification of the acts done under it. But an action does not lie for relief against a Judge's order.

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* S. D. 1850, p. 301.

b See Reg. XIX., 1814, and Reg. IX., 1811.

* S. D. 1852, p. 550.

* S. D. Agra, 1852, p. 347. Persons who hold separate mehals within one village, which mehals are subject to separate sudder jummas, are not entitled to sue for butwara, as there is no joint responsibility for revenue. (S. D. 1855, p. 263; Reg. XIX. of 1814, Sect. 4.) The proper and substantial ground on which a legal right to a division can be based is the common responsibility which the decennial settlement imposes on the joint proprietors of an estate in coparcenary, whereby the co-sharers are liable to lose the whole estate through the default of one of their body; but where no such common responsibility exists, and the liability is distinct and defined, absolving the proprietors from such risks as co-sharers are subject to, the community of interests in other respects, either through joint management of the lands or sharing rateably in the collections, cannot entitle a proprietor so situated to force on the others a separation and division of the lands for the purposes of revenue by the revenue authorities. So where there were joint collections in many of the villages of an estate, the Court held that this circumstance did not constitute a legal ground on which, without the consent of all the proprietors, the suit for butwara could be entertained. (S. D., 1857, p. 1277.) See further on this subject, Act XI. of 1859, designed to improve the law relating to sales of land for arrears of revenue in the lower provinces under the Bengal Presidency.
made in excess of jurisdiction, which order has not been carried into effect.\(^a\)

For the greater protection of Magistrates and others acting judicially, it has been enacted, that \(^b\)

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done, or ordered to be done, by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of, and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

In the practical application of this enactment, it will no doubt be held by the Courts, that the "belief in good faith" which is to exonerate an officer from the consequences of an excess of jurisdiction, must be a reasonable and conscientious belief, a belief which, though erroneous, might be honestly entertained by a man who has reflected on his duty, and endeavoured to inform himself of it.

The Government is not liable to be sued in respect of any error or irregularity, which may occur in any order, proceeding, or decree of a Court of Judicature, or of an officer exercising judicial powers with which he may have been invested for the cognizance of any pleas, suits, complaints, or informations, even although a Revenue Officer or other officer of Government may have been employed in giving effect to such order, proceeding, or decree; nor is any officer liable for any

\(^a\) S. D. 1851, p. 191.  \(^b\) Act XVIII. of 1850.
thing done or suffered to be done in conformity with such
order, proceeding, or decree.\textsuperscript{a}

If any act be done pursuant to a special order originating
with the Governor-General in Council, or the Board of
Revenue, by a Collector of the Revenue, a Salt Agent, a Col-
lector of the Customs, or the Mint or Assay Master, or any
of their Assistants or Native Officers; in such cases if a native,
or any other person, not being a British subject, shall consider
himself aggrieved, the officer by whom the act may have been
done is not liable to be sued for it, but the Government is to
be considered as the defendant.\textsuperscript{b}

A Collector is not personally amenable to the Civil Courts
for acts done by him in his judicial character, under Regula-
tion VIII., 1831.\textsuperscript{c}

Nor can the Civil Courts take cognizance of suits against a
Collector by a bidder at a public sale, who has been fined by
that officer.\textsuperscript{d}

Nor of suits against a Magistrate, or a joint Magistrate, for
official acts, whether legal or illegal, such as, for instance, his
assumption on the part of Government, of the management of
ferries.\textsuperscript{e}

Nor do the Civil Courts entertain claims upon the Govern-
ment or its officers for pensions, the original titles to which
have not been previously recognized and confirmed by the
Revenue Authorities, or by Government: \textsuperscript{f} but when the
pension has once been created, the pensioner may sue for it.

The Courts do not take cognizance of actions for the
recovery of money allowances for worship or other purposes,
granted as charges upon any estate previous to the decennial
settlement.\textsuperscript{g}

\begin{itemize}
\item \textsuperscript{a} Reg. XI., 1822, Sect. 38. S. D.
1855, p. 265.
\item \textsuperscript{b} Reg. III., 1793, Sect. 11.
\item \textsuperscript{c} R. S. C, 15th June, 1847.
\item \textsuperscript{d} Con. 1201, Cal. C. 15th February,
\item \textsuperscript{e} West. C. 8th March, 1839.
\item \textsuperscript{f} Sel. Rep. v. 7, p. 497; S. D. 1853,
p. 929.
\item \textsuperscript{g} Con. 230, 12th January, 1816.
\item \textsuperscript{h} R. S. C. 7th March, 1848.
\end{itemize}
The reason of this last exception is as follows:—

The amount of pensions or allowances, formerly recoverable from the proprietors or farmers of lands, was included, at the decennial settlement, in the revenue of Government; and by the 5th Section of Regulation XXIV., 1798, it was provided that all claims to such pensions or allowances should be preferred to the Collector. Their continuance, or discontinuance, rested with Government, under Sections 2 and 3 of that Regulation. Such claims as were recognized, were acknowledged in grants or sunnuds given by the Government according to Sections 11 and 12; and by Section 17, it was declared, that no claims of the sort were cognizable in any Court of Judicature.

Nor do the Courts entertain suits for the reversal of an order for the confiscation of an estate, passed by the Revenue Authorities, and confirmed by the Executive Government, under the Regulations in force before 1793.\footnote{Sel. Rep. v. 2, p. 235.}

The adjudication of claims to property seized as forfeited, is regulated by Act IX. of 1859.

The Courts have power to entertain a suit for annulling a public sale for arrears of revenue, and recovering the purchase-money, upon the ground of the sale having been made contrary to the provisions of Act XI. of 1859, and that the plaintiff has sustained material injury by reason of the irregularity complained of. In such case, however, he must have previously sought redress from the Commissioner of Revenue, and the Courts cannot entertain any objection to the sale which was not urged before him.\footnote{Act XI. of 1859, Sects. 33-35. See Act I. 1845, Sect. 24; S. D. 1851, pp. 510, 765, 782.}

If a balance exist against an estate after sunset on the latest fixed day of payment, the owner of the estate cannot by the payment of the balance, of right, retain it. It is open,
however, to the Revenue Authorities to receive his balance previous to the sale, and restore to him his full rights. The defaulter therefore retains a valid subsisting interest in the property, until its actual alienation by a legal sale; and he is allowed to sue for the reversal of a sale; for if an illegal sale has taken place, it is of importance to him to obtain its reversal in order that this right or interest may be revived, and that he may be replaced in a position to enable him, through the indulgence of the Revenue Authorities, to recover the actual possession of his estate.

Where a Commissioner of Revenue has annulled a sale for arrears of revenue, on the ground that the provisions of Act XII. of 1841 have not been observed, the Civil Court will not entertain a suit to give the validity to the sale; for the Act is held to invest the Commissioner with authority to decide whether its provisions have been observed.

The Courts have exclusive jurisdiction over the claims of Government to lands included in the decennial settlement. They may entertain suits to set aside the resumption of lak-hiraj or rent-free lands, by the Revenue Authorities (that is to say, the determination of the rent-free tenure of such lands, and their subjection to Government rent, or land-tax), where such resumption took place before the enactment of Regulation II., 1819.

Claims in respect of the assumption or resumption of the management of ferries by the Government through a Magistrate or other officer, are cognizable by the Governor-General in Council, and not by the Courts.

The Civil Courts have no power to entertain a suit for altering the public assessment of lands.

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a S. D. 1836, p. 770; Act I. 1845, Sect. 11.
b S. D. 1850, p. 614.
d Sel. Rep. v. 6, p. 100.
The circumstance that land has been assessed as noabad land, does not prevent a man's preferring a claim for the same as belonging to an independent lakhiraj estate.

Where the Special Commissioner for resumption, appointed under Regulation III, 1828, has decreed certain land to be liable to resumption, the Civil Court cannot entertain an action, the real object of which is to set aside such decree; such as a suit against Government simply to recover possession of the land resumed, even though no express reference be made in the plaint to the order for resumption.

It is the province of the Resumption Courts to determine whether the land be liable to be assessed by the Government. Any decision against the claim of the Government, must proceed upon the ground, that the property forms part of a settled estate. Whether it belongs to the settled estate of A. or to the settled estate of B., is often a question upon which a Resumption Court must pronounce an opinion, but it can seldom be more than a secondary and incidental question. And when the Court has decided, between the Government claiming to assess, and an individual claiming the right to hold the land free from assessment, that the land is free, the decision is conclusive upon the point, that the land is to be held free, but it does not prevent another individual from asserting in the Civil Court a proprietary right to the land, as against the person who has successfully contested its liability to assessment; for it was not the private proprietary right that was brought into discussion before; and any person who appeared *primâ facie* to be the proprietor, might contest the claims of the Government.

Even if both claimants came before the Resumption Court, and the Resumption Court has decided against the Govern-

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*a* S. D. 1857, p. 1639.  
ment, because it considered the land to belong to the settled estate of A. and not to the settled estate of B., and so has necessarily, yet incidentally, and for the purposes of its own duty only, pronounced its opinion in favour of A. and against B., yet B. may sue A. for the lands, for it was not the province of the Resumption Court to decide any questions as between them, and its decree will equally stand good, so far as the resumption is concerned, whether the lands belonged to the estate of A. or to the estate of B.\textsuperscript{a}

But it may happen that an adjudication upon the rights of private individuals is an essential preliminary to the decision of the question of assessment, and forms the very basis of the proceedings of the Resumption Court. In such cases the proprietary right cannot afterwards be contested in the Civil Courts.

Where a decree was passed by the Resumption Court for the resumption of a mehal, which, whatever might be its limits, unquestionably belonged to A., and in the course of proceedings in the same Court for defining the boundaries of the mehal, it was adjudged that certain lands lay within those boundaries and formed part of the mehal, the Civil Courts declined to entertain a suit against A., for the proprietary right to those lands,\textsuperscript{b} grounded on the allegation that the lands did not form part of the resumed mehal. It is obvious that if the Civil Court were to decide in favour of the plaintiff in such a suit, it would declare that land not to be liable to resumption, which the Resumption Court had declared to be liable to resumption.

The doctrines laid down upon this occasion were nearly as follows:—

In the case of a suit to resume a lakhiraj tenure, the Re-


\textsuperscript{b} R. S. C. 17th July, 1847.
sumption Court decides whether the tenure be valid or invalid, but the Civil Court may still decide whether the land, whatever be its tenure, belongs to A. or to B.

If the Resumption Court has declared a certain chunk, or piece of newly-formed alluvial land, to be liable to assessment, but has not specified the estate to which it is attached, the Civil Court may entertain an action between parties contending for the proprietary right, and willing to take the lands at the assessment fixed by Government.

But there are other cases in which the questions of assessment and proprietary right are so much mixed up together, that it is impossible to separate them. In such cases, the Resumption Court, if it declares the land liable to assessment, does in fact decide the question of proprietary right, and the Civil Court, if it decides upon the proprietary right, does in substance decide the question of assessment also.

It may happen that two estates were originally surveyed and measured, and assessed with reference to that measurement: their boundary being formed by a stream running between them. After a lapse of years, the Resumption Officers obtaining intelligence of a considerable accretion to one of the estates, proceed to make the usual inquiries. A., the proprietor on one side of the stream, claims the lands under Clause 2, Section 4, Regulation XI., 1825, as a portion of his estate, separated from it by a change in the course of the stream. B., the proprietor on the other side, claims it under Clause 1 of the same Section, as an increment to his estate. In order to ascertain this point, reference is made to the extent of lands comprised in each estate at the period of the original assessment.

A., the proprietor who claims the land as a portion of his original estate, is found to possess as much land as he did at the time of the assessment. The Resumption Officers declare the land liable to assessment as an increment to the estate of
B., the proprietor on the opposite side of the stream. This is essentially a determination of the proprietary right.

Again, in the case already mentioned, where a lakhiraj tenure is resumed, but disputes occur as to the extent of lands comprised within it, and a specific portion of land is claimed by two parties, one the proprietor of the resumed tenure, the other the proprietor of a neighbouring assessed estate: when the Resumption Officers decide, whether the contested lands are, or are not liable to assessment, they in fact decide the question of proprietary right; that is to say, there is a judicial question to be decided as an essential preliminary to the question of assessment. As the Regulations enacted for the guidance of the Resumption Officers invest them with full power to take all measures necessary for the determination of the liability or non-liability to assessment, such judicial questions may, with propriety, be decided by the Resumption Court, and after being so decided, they are not cognizable by the ordinary Courts of Justice, which cannot interfere directly or indirectly with the Government revenue.*

Even if there has been a violation of the orders of Government, as where, in contravention of the order of the 8th August, 1839, a man has been disturbed in his possession, without having had an opportunity given to him to state his objections to the proceedings of the Resumption Court, the irregularity of the proceedings of that Court will not invest the Courts of Justice with a jurisdiction which they do not otherwise possess, and the person desiring redress must apply to the Resumption Court itself.

Where the Government has resumed rent-free lands, and has subsequently, as a matter of favour and not of right, waived its title to receive revenue from those lands, no action

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can be maintained against the Government, for revenue received by it while the resumption was in force.\(^a\)

In cases not involving any judicial decision of the Resumption Courts, if the Government, after resumption, has made a settlement for land with the wrong party, any person aggrieved may sue to be admitted to settlement instead of the one who has been erroneously received.\(^b\)

In cases unconnected with resumption, a suit will be entertained where its object is merely to determine whether a piece of land belongs to an estate held in lease from the Government, or to a rent-free holding.\(^c\)

The decision of the Government respecting the assessment and apportionment of revenue, on the occasion of a partition of a joint estate, is final, subject only in cases of fraud or error to revision by the same authority within ten years. The Courts of Judicature have no power to set aside the decision of the Government on a question of this nature.\(^d\)

Parties who have once agreed to a formal separation or division of land effected at their request by the Revenue Authorities, cannot apply to the Civil Courts to set aside or supersede such division.\(^e\)

Where a zemindar sues to bring under assessment certain lands which have been held as rent-free, the Civil Courts can adjudicate upon the right to assess, but will leave it to the Revenue Authorities to make the assessment.\(^f\)

It has been held in the Agra Court that a suit cannot be brought by a man in the possession of land merely to obtain the entry of his own name in the Collector's books, and the erasure of the defendant's name, without any declaration of title.\(^g\)

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\(^{b}\) S. D. 1845, p. 166.

\(^{c}\) Agra, 1853, p. 784.

\(^{d}\) S. D. 1848, p. 451; Reg. XI. 1811.

\(^{e}\) Agra, 1856, p. 501.

\(^{f}\) Agra, 1857, p. 9.

\(^{g}\) Agra, 1857, p. 7, 209.
But according to the practice in the Lower Provinces a man who is in possession may sue merely to be registered in the collectorate as the proprietor of a mehal, or a part of it.\(^a\)

It has been enacted\(^b\) that no suit for the recovery of damage alleged to be sustained from the revocation of a licence by a Collector or other officer in the Abkaree mehal, shall be entertained by any Court of Judicature: the power of adjudging compensation in such cases is, by the same enactment, vested in the Board of Revenue.

If an individual, under colour of the law, does an illegal act, or if he abuses the process of the Court to make it an instrument of oppression or extortion, this is a fraud upon the law, by the commission of which liability will be incurred.

The Civil Courts have not jurisdiction to define the boundary between the British territories and the dominions of an independent Prince, or a chieftain governing his own territories, subject only to political control; and they will not assume such jurisdiction even upon consent of the parties. The Courts have no means of enforcing their judgment in such a case. It is for the two Governments mutually to adjust their boundaries.\(^c\)

If indeed A. should sue B. for land, and B. should plead that the land lay beyond the British frontier, and within the dominions of another Government, the Court must incidentally decide this question, in order to enable it to do justice between A. and B., but that decision would not be binding upon any person besides the parties to the suit, nor could it affect any question between the two Governments as to their respective boundaries.

The Civil Courts did not consider themselves competent to

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\(^a\) S. D. 1856, pp. 8, 271.  
\(^b\) Reg. VII. 1824, Sect. 7, Cl. 4; S. D. Agra, 1852, p. 3.  
\(^c\) S. D. 1852, pp. 473, 633.  
entertain an action merely to prove that a document filed in the Collector's office was a forgery.\(^a\)

They have declined to entertain an action, with a view to obtain a declaration of the forgery of a deed which no one has issued nor attempted to enforce.\(^b\)

But it has been held that the Courts will entertain an action to set aside as forged a deed which has been registered in the office of the Register of Deeds, for the registration is a substantial issuing of the document, and the right and advantage created by the law of registry, constitute a sufficient ground for the institution of an action.\(^c\)

And now by Section 15 of the Code it is enacted that no suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right, without granting consequential relief.

A suit cannot, however, be brought by a party in possession of land whose rights have not yet been invaded, but who apprehends disturbance by another party who has not even threatened to disturb him, to restrain that other party from invading his rights.\(^d\)

Not to restrain a widow, who has possession as heiress of her husband's property, from alienating, when she has not by word or deed evinced any intention to alienate.\(^e\)

The Civil Courts are prohibited from interfering in any matter of a criminal nature, which is cognizable by the ordinary criminal tribunals, except in the case of contempt or perjury committed in open Court.\(^f\)

They cannot interfere to stay proceedings in the Criminal Court in the prosecution of a case of forgery at the instance of the Collector.\(^g\)

\(^a\) S. D. 1847, p. 455.  
\(^b\) S. D. 1853, p. 943.  
\(^c\) S. D. 1857, p. 208.  
\(^d\) S. D. 1857, p. 299.  
\(^e\) S. D. 1857, p. 381.  
\(^f\) Reg. III., 1733, Sect. 18.  
\(^g\) R. S. C. 19th November, 1846.
They cannot take cognizance of suits for the recovery of costs incurred in criminal cases.\(^a\)

Nor of suits to contest or to stay the execution of the awards of the Criminal Authorities under Section 6, Regulation VII., 1819.\(^b\)

Nor generally of suits to set aside the acts of Criminal Authorities done under enactments which do not expressly reserve the right of civil action.\(^c\)

Where recourse has been had to the magistrate to abate something complained of as a private nuisance, and the magistrate has passed an order on the subject, not by virtue of any legislative enactment, but in exercise of his general authority, a suit may be brought in the Civil Court for an adjudication of the rights of the parties, notwithstanding the magistrate's order.\(^d\)

The Civil Court may entertain a claim of damages in respect of pecuniary losses alleged to have been sustained by the abduction of the wife of the complainant, notwithstanding that the abductor may have been punished by the Criminal Court: or a claim of damages sustained by reason of the defendant having preferred a false charge against the plaintiff in the Criminal Court. Such a charge may have injured the plaintiff by defaming his character, or by causing his wrongful imprisonment, or in both ways: and it is no bar to a claim of this nature, that the defendant has already been fined by the Criminal Court for his false charge; for although such a sentence of the Criminal Court may tend to clear the character of the plaintiff, yet fines are inflicted solely to vindicate public justice, and afford no compensation for personal injury.\(^f\)

\(^a\) Con. 367, 2nd July, 1824; Sel. Rep. v. 7, p. 40.
\(^b\) Cir. Ord. Cal. C. 21st August; West. C. 13th November, 1838; Con. 1158.
\(^c\) S. D. Agra, 1851, p. 11; ibid. 1854, p. 95; S. D. 1853, p. 929.
\(^d\) Agra, 1856, p. 154.
\(^e\) Con. 1251, 1st November, 1839.
The question in such cases is, whether it can be proved that there was no reasonable ground for the charge; unless this can be shown, neither the presence of a malicious feeling, nor the fact that the charge was dismissed upon investigation, will make the accuser liable.  

An action for damages in the Civil Court will always lie, notwithstanding a prosecution in the Criminal Court, whenever the misdeed complained of is a breach of the public peace, and at the same time involves in its consequences a personal injury.

It is held by the Courts, that every man has a natural and inherent right to the uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation; and they visit with damages the wanton invasion of any of these, though there may have been no loss to the plaintiff either of limbs or of money.

Upon one occasion an action was met with the foolish and insolent defence that, according to Hindoo usages, a sudra would sustain no indignity by being beaten with a Brahmin's shoe. The audacity of this plea was of course strongly noticed by the Court.  

Where the defendants had been punished for assault, it was decided that an action lay against them to recover maintenance for the time during which the plaintiff, whose leg had been amputated, was incapacitated for work through the injuries inflicted by them.  

Where one man has become bail or surety for the appearance of another in a Criminal Court, and the latter fails to appear and the bail is thereby forfeited, the surety is entitled to recover damages from the other in Civil Court in respect of the pecuniary loss which he has sustained.
Where one man has entrusted property to another, and the latter has failed to restore it, but has agreed to pay him the value of it, an action may be maintained upon such engagement, though the depositor may have subsequently taken criminal proceedings against the other in respect of the transaction.\(^a\)

If the act of the defendant amounted to theft or any other heinous offence, properly punishable by the criminal law, public justice must in the first instance be vindicated, and the right of civil action is suspended until the party injured has performed his duty to society by an endeavour to bring the offender to justice;\(^b\) and the Court not only will not enforce, but will regard as highly culpable, an agreement to compromise a prosecution, where the thief promises to restore the value of the thing taken, and the person who has been robbed undertakes not to prosecute the thief.\(^c\)

If arbitrators make an award of land under Regulation IX., 1833, and the Superintendent of Revenue overrules that award, a suit may be brought for the possession of the land claimed, and for reversal of the decision of the Superintendent.\(^d\)

If the revenue officers have concluded a settlement for the revenue of certain land with one who is not the real owner, the latter may sue to amend the settlement record, by inserting his name as the person responsible for the Government rent.\(^e\)

If the decree of a Civil Court be collusively obtained by the parties to an action, for the purpose of defrauding a third person, he may sue in the same Court to have the decree set aside.\(^f\)

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\(^a\) S. D. 1848, p. 94 ; 1849, p. 423.
\(^b\) S. D. Agra, 1852, p. 113.
\(^c\) Con. 318, 7th July, 1820. See Sect. 7, Reg. XII., 1818.
\(^d\) R. S. C. 26th December, 1849.
\(^e\) S. D. Agra, 1852, p. 97.
Suit to correct erroneous decree.

It has been decided that a suit may be brought to supply an evident defect in a former decree. As where a lower Court has adjudged a certain sum to the plaintiff, and a Court of appeal, in confirming the decision, has, through inadvertence, omitted to allow interest upon the sum in question, for the period intervening between the two decisions.* But it seems that the proper course would be to apply to the Court of appeal in the original suit, for the rectification of its own decree. No matter which is capable of adjustment in the proceedings in execution of an original decree, is considered to afford a fresh cause of action.\(^b\)

It was recently laid down that where an order regarding costs has been omitted in any case, the proper course for the party injured by the omission, is either to make a summary application for that order to be added to the decree, or to apply for a review of judgment.\(^c\)

A suit may be brought in the Civil Courts for the recovery of a sum awarded by the judgment of a foreign Court: the decree of the foreign Court being the cause of action.

A man who has realized part of his claim by an action in the Supreme Court, and obtains judgment in the Civil Court for the residue, cannot recover before the latter tribunal the costs which he has incurred in the Supreme Court.\(^d\)

This was decided in a case where the suit in the Civil Court was founded on the original debt; but if a man sues on the judgment of the Supreme Court, founding his suit upon that judgment, he must recover the sum awarded him by the judgment, whether principal or costs.

A suit will lie to recover possession of a religious office of which a man has once been fully in possession or legally installed, or to recover the possession of a Hindoo temple with

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\(^b\) S. D. Agra, 1854, p. 123; \textit{ibid.}  
\(^c\) 1853, p. 324.  
\(^d\) S. D. 1852, p. 661.  
\(^e\) Sel. Rep. v. 3, p. 66.
a garden attached thereto, and to establish the plaintiff's exclusive right to conduct the religious duties of the temple, and to receive the offerings made by any parties who may choose to resort to such temple; and the Court will, in like manner, enforce a right of rotation in such temple and worship; that is, a right to possess, and to perform religious worship, and receive the offerings for periods recurring at certain intervals.

And the Courts will entertain a similar suit regarding an astana, or shrine of a Mahomedan saint; or for the church and personage and estates of a Christian community, such as an organized body of ecclesiastics professing the Roman Catholic faith.

A man may bring a civil suit for a share in the incidents and profits of a Birt tenure, against the party in possession, a member of his own family.

If men engage in a joint undertaking, and one loses more by it than his stipulated share, the Court will, in general, compel the other to come to an account with him, so that each may gain or may lose no more than his share according to the contract.

Where one of two or more co-sharers in a zemindary pays up the whole of the Government revenue which has become due, he may sue the others for contribution, for the law implies a contract upon their part to repay him, each, their quota of the sum so advanced.

In such cases, however, the demand of the advancing co-sharer against his companions is merely personal, and if they are evicted of their shares he cannot recover the amount of

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* S. D. 1857, p. 444.
* S. D. 1856, p. 276.
* S. D. 1850, p. 168.
* S. D. 1853, p. 219.
his advance from the persons who may have obtained possession of their shares.\(^a\)

And one shareholder who has paid his assessment cannot recover from another, damages on account of the latter having failed to pay, whereby the estate has been sold.\(^b\)

If land is charged (whether under the name of dewutter land or otherwise) with the support of certain religious ceremonies, and subject to that charge, the beneficial interest in the land belongs to co-sharers, so that there is a joint obligation upon them to support the worship, so far as the profits of the land will extend; — any one of them who has paid more than his share of the regular expenditure in the joint worship, may sue his co-sharers for a rateable contribution.\(^c\)

But where the tenure of the land is such that each sharer is responsible only for appropriating his own portion of the profits to the performance of the ceremonies, one who has voluntarily paid more than his share cannot recover the excess.\(^d\)

The right to receive payments, which are in their own nature voluntary, arising wholly out of personal preference, cannot be made a subject of suit in the Civil Courts, and for this reason the Courts cannot take cognizance of claims for the perquisites of the office of Chowdhree.\(^e\)

The Courts will not entertain a suit by a purohit or hereditary priest, who has been dismissed, for restoration to office, nor for the recovery of his fees either from the jujmans or persons who require the ceremonies to be performed, or even from any other purohit, who may have received the fees:\(^f\)

Nor any suit, the object of which is to obtain an order,

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\(^{a}\) S. D. 1855, p. 44; see Act XI. of 1859.


\(^{c}\) S. D. 1851, p. 241; S. D. 1855, p. 391.

\(^{d}\) S. D. 1850, p. 168.

\(^{e}\) S. D. 1850, p. 296; S. D. 1852, p. 398; Agra, 1856, pp. 509, 561.
which it would be manifestly absurd or impossible to enforce.

And so where an obligation, though real according to the religion of the parties, is only a matter of conscience, and not such as a Court of Justice can prudently undertake to enforce.

But where a Cazee, who was in the habit of receiving voluntary fees, appointed certain persons, as his deputies, to receive them, and the deputies taking upon themselves the risk of realization, agreed to pay a fixed annual sum to the Cazee; he was held to be entitled to sue his deputies for the money which they had so agreed to pay, because this was a matter of contract between the parties.

Wuqf, or endowed property generally, will be protected by the Courts, so as to preserve it for the purposes to which it has been devoted by the founder.

A person claiming to be the legal trustee or incumbent of a Mahomedan or a Hindoo religious endowment may sue for possession of the office, and where such a person has been removed from office by the revenue authorities or local agents, whose duty it is, under Regulation XIX., 1810, to see to the proper application of the fund, according to the intent of the grantor, the Civil Court is competent to entertain a suit by him for restoration: and it seems that if the local authorities can establish, to the satisfaction of the Court, that he has misappropriated the funds, or is personally disqualified for the office, they may obtain an order for his removal.

If a member of a tribe interrupt and resist the heads of the tribe in the exercise of privileges to which the latter, as such

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1 S. D. 1854, p. 465.
3 S. D. 1853, p. 508.
heads, are entitled, the Court can take cognizance of an action by the heads, for the recovery of damages in respect of the interruption, and for the recognition of their privileges.

If a Hindoo in the district subject to the law of Mithila, alienates ancestral property without the consent of his son, the latter may, it seems, during his father’s life, bring suit merely for the purpose of having the sale declared invalid as against himself, but not for possession of the land and registration in the Collector’s books; for the alienation, though invalid so far as regards the son, is not a forfeiture, but a transfer of the father’s life interest. An action by a party in possession for declaration of his title will lie.

A claim to the personal custody of a woman, on the ground that she is the wife of the complainant, is cognizable by the Civil Court.

A suit may be brought by a man against a woman alleging herself to be his wife, for the purpose of obtaining a declaration that she is not his wife; but it seems that a suit will not lie even then to set aside an order passed by a magistrate under Section 3, Regulation VII., 1819, whereby the man has been required to support the woman as his wife.

A civil action does not lie for abusive language only, but it lies for any defamatory speech or writing (such as a false imputation of misconduct in a public officer), whereby a party is injured.

Where the defamatory speech or writing proceeded from a vaekel or agent, the action for damages lies against the

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*S. D. 1847, p. 290.*


*Con. 148; S. D. 1848, pp. 77, 795; S. D. 1853, p. 312; S. D. Agra, 1854, p. 68.*

*S. D. 1858, p. 48. The parties were Hindoos.*

*S. D. 1852, p. 1135; 1856, p. 356.*

*S. D. 1852, pp. 86, 91; Reg. III., 1793, Sect. 8; S. D. 1853, pp. 313, 467.*
vakeel or agent, and not against his principal, unless the latter suggested or sanctioned the act complained of.

The parties in a cause are authorized to sue their respective pleaders in the Civil Courts for any damages or injury which they may have sustained from any breach of the regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by their pleaders regarding the suit. The Courts have hitherto had power to determine all questions between landlord and tenant, whether the rights which they respectively claim be founded upon written engagements, upon the laws and regulations, or upon usage; all disputes arising between ryots, and those from whom they demand pottahs. But in the Presidency of Bengal this jurisdiction has, for the most part, been transferred to the Revenue Officers by Act X. of 1859.

Where there is a tenure of the kind called agore buttai, under which a division of the crop between the cultivator and the landlord takes place, if the latter sends his servants to cut the tenant's crop and to take his, the landlord's share —this is actionable.

The Courts will not entertain a suit by a zemindar to establish an exclusive right to kill wild fowl in his zemindary. But they recognize exclusive rights of fishery in certain waters.

If land which is subject to certain trusts (as, for instance, land which a husband has settled upon his wife) be sold for

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* S. D. 1852, p. 86; see S. D. 1853, p. 339.
* Reg. XXVII. of 1814, Sect. 12; S. D. 1855, p. 355.
* Reg. VII., 1799, Sect. 15, Cl. 8; Sct. Rep. v. 7, p. 163; S. D. 1853, p. 301.
* Reg. IV., 1794; Benares Reg. LII., 1795; Ced. and Con. Prov. Reg. XXX., 1803.
* S. D. 1851, p. 663.
arrears of revenue, and the surplus of the proceeds, after payment of the arrears, be paid to the late ostensible proprietor of the land, the Courts will entertain a suit for securing this money upon the same trusts on which the land was held before the sale.

An executor or, if he be dead, his representative may be compelled by suit to account for his administration of the testator's estate.

In considering whether any act of a man, whereby another sustains loss or inconvenience, will afford sufficient foundation for a civil suit for compensation, it is necessary to recollect that every one is at liberty to make any use of his own property, which does not amount to a direct and immediate interference with the property of his neighbour; and if the latter sustains a loss thereby, it is regarded by the law as a misfortune only, for which no compensation can be awarded against the party by whose act the loss is caused.

Thus, if two men have fields adjacent to each other, and one of them covers his field with buildings, the windows of which open upon the field of the other, the latter may immediately in like manner build upon his own field, and obstruct the light and air of his neighbour's buildings.

So it has been held that one may lawfully set up a bazaar near another bazaar of the same kind, to the damage of the latter by loss of custom.

Every joint proprietor has a right to forbid anything to be done to the common property without his consent; and with a view to enforce this right a person can sue to restrain his co-sharers or others from building on the common property or to compel the removal of the building. But this suit

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*a* S. D. 1851, p. 200.  
*b* S. D. 1853, p. 921.  
*c* S. D. 1853, p. 275.
should be brought by a party when the infringement of his right is first threatened, or when it is commenced.\footnote{S. D. 1857, p. 765; S. D. 1856, p. 761.}

A man must not use his own property in such a manner as to interfere directly and injuriously with that of another person; or he is liable to an action for damages, whether he intended to commit the injury or not.

Thus a man may be sued for damages, whatever his intention may have been, if he drive his carriage over another man; or if he is building his own house, and a piece of timber falls upon his neighbour's house and injures it; or if by negligence and carelessness in pulling down his house, he occasion damage to, or accelerate the fall of, his neighbour's house; nor does he, by building a house on the extremity of his own land, acquire any right to support his house against the adjoining house or land of his neighbour. So a man is liable if he erects anything offensive so near the house of another as to render it useless and unfit for habitation, or if he erects a building so near the house of his neighbour as to prevent the air and light from coming through his windows, if the neighbour has had his lights there for the time defined by the laws of limitation.\footnote{See S. D. 1847, p. 373; S. D. 1848, p. 410; S. D. 1851, p. 464; infra, 1857, p. 511.}

As a general rule, he who possesses the soil possesses that which stands upon the soil, and all that is above his land, up to the sky.\footnote{Land covered with water, e. g. a tank, is still regarded as land. S. D. 1857, p. 511.}

If a man eject another from land, and afterwards build upon it, the building belongs to the owner of the land upon which it stands.

A man must not erect a building on his own land which may interfere with the due enjoyment of adjoining houses and lands, and occasion damage thereto, either by over-
hanging them, or by the flow of water from the roof and eaves upon them; unless a legal right so to build has been conceded by grant, or may be presumed from long use. Even after award and payment of damages for erecting, it is equally actionable to continue, a building on another man’s land.\(^a\)

A man must not encroach upon the public road any more than upon private property; and if he does, any one may sue him.\(^b\)

He who has a spring on his land, may use it at his pleasure, subject only to the right which the owner of other land may have acquired, by prescription or by grant, to use the water.

Though a party is not to do anything to injure his neighbour’s property,\(^c\) yet he is not restrained from doing any lawful act incident to the enjoyment of his own property, although it might be beneficial to his neighbour if he did not do such act. Where the waters arising from excessive rain and floods flowed over the surface of A.’s high land to B.’s, where they formed different channels by which B. irrigated his lands, A. was held justified in erecting on his own land an embankment, by which the passage of these surface-waters was arrested before reaching the channels on B.’s land; and it was held that the owner of land upon which water falls may deal with it as he pleases, and appropriate it to his own purposes, so long as the water has not arrived at a defined natural watercourse. When the water has once arrived at, and is flowing in some natural channel already formed, he who has a stream so running through his land may use it for the space for which it passes through his land; but he must restore it to its course where it leaves his land, and he must

\(\text{\(^a\) See Agra, 1852, p. 240; 1856, pp. 29, 154, 491.}\)
\(\text{\(^b\) S. D. 1848, p. 202.}\)
\(\text{\(^c\) S. D. 1857, p. 1324.}\)
not abstract from it so much water as to deprive the neighbouring landholders of the supply to which they have become entitled by usage or otherwise.

A natural necessity, or (as has been already observed) a direct grant, or an ancient grant presumable from long enjoyment,* may cause one piece of land to be subject to a burden for the benefit of the owner of another piece of land.

Thus it is obvious that grounds that lie at a lower, are subject to receive the superfluous moisture of those which lie at a higher level; and the owner of the lower ground must not obstruct the escape of such water from the higher ground, nor must the proprietor of the higher ground do anything to increase the inconvenience to the proprietor of the lower.

So, by grant or usage, the owner of one field may have a right of way across another's field, or a right to bring water to his field across another's field; and where a stream passes through the lands of A., and then through those of B., and B. has obtained, by grant or prescription, the use of the water for irrigating his field, B. can sue A. for damages for obstructing the stream, or even for failing to repair and keep clear the water-course, and he can obtain damages for the injury done to his crop by the withdrawal of the water.\(^b\)

Generally speaking, when a right has been invaded, an action for damages will lie, although no damage has been actually sustained; because it is material to the establishment and preservation of the right itself, that its invasion should not pass with impunity: and in these cases, therefore, nominal damages are sufficient, because the recovery of such damages sufficiently vindicates the plaintiff's rights; as, for instance, for trespass, which is maintainable for an entry on the land of another, though there be no real damage, because

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* A grant will not be inferred from eight years' enjoyment; S. D. 1857, p. 1298.
repeated acts of going over the land might be used as evidence of a title to do so, and thereby the right of the plaintiff be injured.

In actions brought in respect of injury sustained, damages where not merely nominal, or given for the purpose of recognizing a right, are of two kinds, exemplary and consequential.

The former are awarded as a punishment to the offender and an example to the community, as well as a compensation to the injured party. The latter are simply the compensation to the party injured for the consequences of such injury. The former may be awarded when the injury has been wantonly or maliciously caused, or is the effect of gross neglect—the latter when the injury is the result of simple neglect or accident. The measure of the former is arbitrary, not being confined to the extent of the injury sustained, but assessed with reference to the spirit by which the wrong-doer was actuated. The measure of the latter is determined by the loss inflicted.\footnote{S. D. 1858, p. 160.}

A suit will lie to enforce the award of arbitrators, even where the claim to which the award relates is such as could not have been received and judicially determined (as, e. g., a claim by one proprietor against others to participate in the fees earned by them), provided there be nothing contrary to morality or public policy in the claim.\footnote{S. D. Agra, 1856, p. 509.}

Private agreements between parties and their vakеels for the remuneration of the latter are to be enforced only by regular suit.\footnote{S. D. 1857, p. 1487.}
CHAPTER VII.

CAUSE PREVIOUSLY HEARD AND DETERMINED.

A matter may be, in its own nature, properly cognizable by a Civil Court, and yet the Court may be precluded by some extraneous circumstance from entertaining a suit regarding it.

The claim may, for instance, have been already adjudicated upon.

A Civil Court cannot take original cognizance of any suit which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the suit claim.\(^*\)

If the former proceedings were had in the miscellaneous department, they will not bar inquiry in a regular suit.\(^b\)

The rule must not be too widely construed, as every cause is entitled to be heard once, and if the Courts refuse to entertain a suit which has not really been heard before, great injustice is committed.\(^c\)

A cause may fairly be considered to have been heard and determined before, if the subject matter of the former suit was the same; the parties, or at least the parties really and effectively interested,\(^d\) the same; the issue the same; if the proceedings were taken for the same purpose; the jurisdiction competent; and if the claim, which is sought to be enforced, has been directly adjudicated upon in a former suit by a

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\(^*\) Code, Chap. 1, Sect. 2.
\(^b\) S. D. 1849, p. 432.
\(^c\) S. D. 1851, p. 532.
decree or order, declaring or recognizing a right, or negativ-
ing it by the dismissal of a plaint.

If it be doubtful whether the second action is brought for
the same cause as the first, it is a proper test to consider
whether the same evidence would sustain both actions, and
what was the particular point or matter determined in the
former action, for a judgment is final only for its own purpose
and object, and as to the subject matter adjudicated upon,
and no further.

Where a Court has by its decree granted some parts, and
been silent as to the other parts of the relief sought by the
plaint, the decree will be a bar to any new suit for the
matter sought by the plaint but omitted from the decree,
unless the omission appear to have been accidental. Where
an application for review of judgment on the ground of such
omission was directly refused, the decree is a bar.\[a\]

If the same matter which is brought forward in the second
suit was alleged, and put in issue in the first suit, and if the
first suit was dismissed as to that matter, merely because the
issue was improperly raised and did not affect the real ques-
tion in dispute between the parties; then such matter may
be brought forward in a second suit.

A decree or order of dismissal is a bar only where the
Court has thereby determined, that the plaintiff had no title
to the relief sought by the plaint, and only so far as such
decree was in its nature final: it is, for instance, no bar if it
dismissed the suit, because the plaintiff was a minor under the
guardianship of the Court of Wards, and the suit was not
brought under the authority of that Court; or if it was pro-
nounced in a suit instituted on behalf of a minor by one not
authorized to act for him;\[b\] or if it was merely a degree of
restitution after forcible dispossession, pronounced under Sec-

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[b] Agra, 1856, p. 502. See S. D. 1857, p. 1581, as to a minor tenant of
ghatwallee land.
tion 3, Regulation XLIX., 1793, and not adjudicating upon the question of property;* or if the former suit was brought merely to set aside the decree of a Collector for a claim of a year's rent upon a cuboolent (which cuboolent the plaintiff failed to prove), and the new suit is brought to enforce the proprietary right to the land.b

The fact that the plaintiff has alleged in the former suit, matters which were not and could not be the subject of the decree, cannot interfere with the founding a new suit upon such matters after the decree.

The question really is, whether the matter now brought forward has been disposed of by the decree in the former suit: not whether it formed the subject of statements to which the former decree did not apply.

In a suit c to ascertain the boundaries between village A. and village B., a map was prepared and was adopted by the decree, which embraced not only the boundaries between village A. and village B., but likewise those between village A. and village C., which were not then in dispute. A suit having been subsequently brought to ascertain the boundaries between village A. and village C., it was decided (although the parties to both suits were the same) that the former decree was binding only as to the immediate point at issue in the former suit, and that as the laying down any boundaries between A. and C. was purely superfluous, it did not preclude a full investigation in the second suit.

The subject matter of the former suit is considered to have been the same, if it was the same in substance, although in the new suit there may be some difference in amount, or some other merely colorable variation.

Where a man, alleging himself to be heir of a person deceased, claims a share of the property of that person, and

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  c S. D. 1848, p. 184.
his suit is dismissed, on the ground that the right of inheritance is in the defendants and not in him, he cannot litigate the same matter again by demanding a larger amount, and suing individuals whom he did not sue before, but who stand upon the title which has been decided to be preferable to his.a

A. as heir of B. sued C. for possession of the lands of B., of which A. had been dispossessed by C.; C. alleged in defence, a deed of gift to himself by B.: the defence was unsuccessful and the land was adjudged to A.

C. then sued A. for the recovery of the same land, on the ground that C. and not A. was the heir of B. But the Court held that as this might have been pleaded by C. in the former suit, he was not entitled to bring a new suit on such ground.b

A widow sued to establish the validity of an unomutter putur executed by her husband, whereby she should be declared to be entitled to adopt a son. This deed having been disallowed, she was held competent in a second suit to claim the property of her husband in her own right as widow, because that question was not properly raised in the first suit.c

A matter which has been directly determined by a competent Court cannot be gainsaid; the sentence is conclusive: but this is to be understood only of the matter directly tried and decided, and not of matters which are only to be inferred from the sentence.

Thus d where A. has died under such circumstances that, if he left no son, his brother would be his heir, and the succession to his estate is contested between a person claiming to be his son, and a person who is undoubtedly his only brother, and the Court decides that the claimant is not his son, and adjudges the inheritance to his brother, its sentence is conclusive against the alleged son.

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b S. D. 1857, p. 1259.  
c S. D. 1855, p. 446.  
But where the brother, alleging that A. was childless, claims and obtains the inheritance in a suit against a stranger, and afterwards a person claiming to be A.'s son institutes a suit against the brother, the former sentence is no bar to this claim: although it may well be inferred from that sentence that the Court was satisfied that A. had left no son. For the son had no opportunity of advancing his claim in that suit.

And if in a suit between mortgagor and mortgagee, the latter obtain a decree for foreclosure, and for the possession of the land, this only places him in the position which the mortgagor occupied, and is no bar to any suit by a person claiming by a title preferable to that which the mortgagor possessed when he executed the mortgage.\textsuperscript{a}

Here it will be observed, that the parties to the former suit, and the object of the former proceedings were different.

And so, although a man may have been acquitted by a Criminal Court, of the charge of having forged certain documents, yet this is no bar to the institution of a suit against him in the Civil Court, founded on the allegation that those documents are forgeries; and where a man has been fined by the magistrate for preferring a false criminal charge, if he be sued in the Civil Court for damages sustained in consequence of the false charge, he may defend himself; and the Civil Court is not bound to follow the opinion of the magistrate.\textsuperscript{b}

Resort to a regular suit is allowed for the purpose of more thorough and sifting investigation than can be had on a summary process. A summary order is therefore, except when expressly declared by the Legislature to be final, no bar to a regular suit for the same matter.\textsuperscript{c}

The cause of action will not be considered to be different, if it arises out of a document which was executed while the

\textsuperscript{a} Sel. Rep. v. 7, p. 439.  
\textsuperscript{c} S. D. 1849, p. 38.
former suit was pending, and which, though relevant to the former suit, was not brought before the Court.\(^a\)

So if it arises out of a supposed right of pre-emption which might have been proved in the former suit.\(^b\)

The subject matter and the persons sued may be the same in the second suit as in the first, if the cause of action is different.\(^c\)

Where it was decided in a former case, that the conduct of one of the parties had not been such as to cause a forfeiture of the property of that party, this does not bar a suit which insists on forfeiture or relinquishment of proprietary rights by new acts since the date of the former decree.\(^d\)

The rule which forbids men to sue again upon a claim already disposed of, may apply, if the former suit was virtually between the same parties as the latter, although they may not have been precisely the same.

The prohibition universally applies as well to persons claiming under the original litigants, as to the original litigants themselves. That which has been decided as between the parties to a suit, stands good as between their descendants and representatives;\(^e\) that is to say, if the decision be a final decision. If it affects the property of the person decided against, and if there is a right of appeal, that right will survive to those upon whom the property of the deceased may devolve. When the period of appeal has been allowed by the representatives to pass away, the decree is considered final as against them.

But since all property comprised in the decennial settlement is considered as perpetually hypothecated to Government for the revenue assessed thereon, a sale for arrears of

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\(^a\) S. D. 1856, p. 1036.
\(^b\) Agra, 1856, pp. 110, 386.
\(^d\) S. D. 1851, p. 218; S. D. 1852, p. 503.
\(^e\) Sel. Rep. v. 7, pp. 54 and 57.
revenue transfers to the purchaser all the property and privileges which the engaging party possessed and exercised at the time of settlement; free, not only from subsequent encumbrances or transfers by the party engaging and those who claim under him, but also from the consequences of his or their omissions.

For this reason the purchaser at a revenue sale does not claim under the person whose estate is sold, and is not barred by a decree against the latter.a

If a former decree, made in a suit between A. and B., has awarded to A. the possession of land, or has recognized his possession of it—in one capacity (such as that of Mokureree-dar)—this award or recognition of possession will not operate as any bar to a subsequent suit between the same parties, where a different interest in the same property is the subject matter of suit.b

A decision pronounced in a suit between A. and B., for a particular estate, does not prevent the institution of a suit between them for another estate, although the points of law and fact, upon which the title depends, are the same in each case.c

A. sued B. for a separation of shares and for the registration of his name as proprietor of a share of the village of D., which he stated to be in his own possession, and obtained a decree accordingly: when the decree came to be executed, B. objected to the Collector including a certain piece of land in the butwara, alleging that it did not belong to the village of D., but to another mouza: it was held that the first suit was

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a Reg. XI. of 1822; Act XII. of 1841; S. D. 1851, pp. 116, 625, 731; S. D. 1852, pp. 824, 1040; S. D. 1853, pp. 442, 835; S. D. 1854, p. 230.—

N.B. In applying the doctrine stated in this and the preceding paragraph regard must be had to the provisions of Act XI. of 1859. ("An Act to improve the Law relating to Sales of Land for arrears of revenue in the Lower Provinces under the Bengal Presidency.")

b S. D. 1849, p. 85.

no bar to a second suit, brought by A. to establish his right to include the land in question in his butwara, as part of the village of D. It was remarked that the issue in the first suit was, whether A. was or was not entitled to a partition of the village of D.; the issue in the second suit, whether certain land formed part of that village or not.  

In order to bar the second suit, it is not enough that in the former suit the same persons were before the Court as parties; but the suit must have been so constituted that they were really in direct contest with each other, and had an opportunity of asserting their rights; for a person may be made a party to a suit, in such a way as to prevent him from effectually bringing his claims into discussion.

A., a childless widow, sued her husband's family for the possession of his share in the patrimonial estate, and she included, among the defendants, another childless widow, B., belonging to the family, and who was likewise entitled to sue for her own husband's share in the estate. The defendants, with the exception of B., alleged in reply the existence of a family custom excluding childless widows from the inheritance, and upon this ground the suit was dismissed. Here B., who was a defendant, was only called upon to answer the plaint, and the law confining her to the subject matter of the plaint, prevented her from replying to the answer of her co-defendants, which attacked her rights; nor was she even permitted to appeal against the decision, as it did not directly take from her anything which she possessed. She was therefore a party to the suit, but in such a way as to prevent her from setting forth the merits of her case.

It was therefore held that this decree constituted no bar to the assertion of a similar claim in a new suit, by the second childless widow, B., for the former contest was not between

* S. D. 1856, p. 397.
the same parties who were before the Court in the second suit.

In a suit between A., claiming to enforce his rights as mortgagee of certain land, on the one hand; and B. the mortgagor, and C. who alleged that he held a prior mortgage of the same land, on the other; A. obtained the decree which he sought. C. afterwards brought a suit against B. to recover money said to have been advanced by him to B., and for which C.'s mortgage was alleged in the former suit to have been given. A majority of the S. D. A. of the North-Western Provinces held that the second suit could not be entertained, because the Court must have decided on the former occasion that C.'s mortgage was not genuine, or it could not have given effect to A.'s mortgage, which was of later date; and that the question as to C.'s security would thus be tried over again if the suit were admitted. But it was well shown by the dissentient Judge, that the former decree decided no question between B. and C. The question now was, whether or not it was determined in the former suit that C. had no claim against B. That question had indeed been incidentally disposed of, so far only as was necessary to enable the Court to do justice to A., yet that was not a legal and final determination of the claim as between B. and C. The point directly in issue in the former suit was, whether A. or C. had the preferable lien on certain mortgaged property; the point directly in issue in the second was, whether B. owed money to C. or not. It is plain that C. might have a good demand against B. for money lent, though his security (if he had one) might not be such as could prevail against the mortgage given to A.

The prohibition applies to causes which have been determined by the Supreme Court, equally with those which have been decided in the Country Courts.

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* S. D. 1847, p. 205.  
Agra, 1851, p. 108.  
The Civil Courts cannot examine the merits of any such former decree, either with reference to the law, or to the facts of the case, nor the propriety or regularity of the execution of the decree: but they will assume all the proceedings to have been right, and will give effect to claims founded upon them."

If the right, title, and interest of A. in any property be sold to B. by the Sheriff of Calcutta, in pursuance of a decree of the Supreme Court, the Civil Courts will consider the sale as having transferred the interest of A. absolutely to B.; and will decree possession to B., if A. resists his claim, and drives B. to institute a suit: and, as against third parties, they will regard B. as standing in the place of A., and will give him such aid as they would have given to A. himself, but no other.

A zemindar having privately sold a dependent talook (i.e. having in exercise of his general right as zemindar, created a lesser and derivative estate in the land), while his zemindary was under an attachment by the Supreme Court, which ended in the public sale of it by authority of that Court, the private sale was held to be invalid as against the purchaser at the public sale, though binding on the zemindar or his successor, in the event of the public sale being set aside as erroneous by the Supreme Court itself.

If a mortgage be foreclosed in the Supreme Court, and if the mortgagee be obliged to sue in the Civil Courts to obtain possession, they will consider the order as perfectly valid and operative to the extent to which it professes to go: that is to

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*a Sel. Rep. v. 4, pp. 137, 146; v. 6, p. 187; v. 7, p. 70; S. D. 1846, p. 211.

*b See the cases last cited.

*c Sel. Rep. v. 1, pp. 172, 195. See Sel. Rep. v. 1, p. 167, not very clearly reported. The Court was entitled to

be satisfied, as a matter of fact, that the estate was under such attachment that any alienation of the estate would have been regarded by the Supreme Court as an interference with its process. See S. D. 1849, p. 385.
say, they will hold that it transferred to the plaintiff all the interest which the defendant had in the land at the date of the order.\(^a\)

In a case\(^b\) in which this principle was acted upon, the foreclosure of the mortgage was contrary to Regulation XVII, 1806, but the mortgagor had voluntarily subjected himself to the jurisdiction of the Supreme Court, and he was therefore considered to have waived his right to rely upon that Regulation. Every man is at liberty to waive the advantage of any law or any stipulation which is intended merely for his benefit.

The previous decree remains unquestioned, to whatever limits it may extend, whether it be absolutely final in its nature, or be only one of the orders passed during the progress of a cause, such as an order to pay money into Court; which precludes any other Court from entertaining a suit for the same money while it remains in the first Court.\(^c\)

Nor will a Civil Court interpret the meaning (except so far as is necessary for the decision of a question properly brought before it in a different suit),\(^d\) or interfere with the execution of, any decree of any other Civil Court or of the Supreme Court.\(^e\)

Nor can it set aside summary orders passed in execution of the decree of another Court having jurisdiction, whether such order regard mesne profits, interest, or any other matter in dispute between the parties in the original suit. Such orders constitute no new cause of action, and if they are erroneous, application ought to be made to the Court by which they were issued.\(^f\)

\(^a\) Supra, p. 38. See S. D. 1849, p. 385; S. D. 1853, p. 859.
\(^d\) S. D. 1852, p. 642.
\(^f\) Con. 1129, Cal. and West. C. 9th February, 1838; Sel. Rep. v. 6, p. 303; S. D. 1853, p. 521.
Where a claim has been partly enforced elsewhere, the rest may be sued for.

Where part of a debt has been realised by means of an action in the Supreme Court, and the action in that Court has been discontinued, the claimant may sue for the remainder of his debt in the Civil Courts.

And a previous action in the Supreme Court on a joint obligation against one of several contractors, such one being alone subject to the jurisdiction of that Court, does not bar an action in the Civil Court against him and his co-contractors for so much as remains unrealized.

So where the guardians and the agent of an infant zemindar borrowed money to pay his arrears of revenue, and gave a bond for the amount in their own names, upon which a decree was obtained against them in the Supreme Court, and one of them was taken in execution, the lenders were permitted to recover the debt from the zemindar by suit in the Civil Court after he attained his full age.

But if from any circumstance, such as fraud, surprise, or mistake, a former judgment is being perverted into an engine of oppression, then the Court will interfere, not with the judgment itself, but with the party who is attempting to abuse it.

If an unfair use has been made of a decree, or of the legitimate process of the Supreme Court, or of any other tribunal, redress for this injury may be sued for in the Civil Court, but the decree or process must not be impugned in such suit.

Thus where a man consents that judgment shall be entered up against him in the Supreme Court, under certain private stipulations, as to the use which is to be made of such judgment: if the transaction is itself a fair and honest one (but not otherwise), a breach of the stipulations affords a legitimate cause of suit.

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*a* Sel. Rep. v. 3, p. 66; *supra*, p. 38.  
*c* Gopeemohun Thakoor and others,  
And in this sense it has been said, that, although the Civil Courts cannot directly question a judgment in the Supreme Court, yet they can, upon collateral grounds, not brought forward there, control the parties who have obtained such judgment, when those parties are subject to their own jurisdiction. In fine, the validity of a decree of a Court of competent jurisdiction upon parties legally before it may be questioned, on the ground that it was pronounced through fraud or contrivance, or not in a real suit; or, if pronounced in a real and substantial suit, between parties who were really not in contest with each other.

Under the Act for the Relief of Insolvent Debtors, XI. Victoria, Chapter 21, a suit cannot be prosecuted in the Civil Court for any claim against a party applying for the benefit of that Act, if in the Schedule required of him he shall have inserted such claim either as admitted, or as being disputed in respect of the amount only. But if it be entered simply as disputed, without any admission of right, the suit is not stopped.*

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* Sect. 49. See S. D. 1849, p. 50.
CHAPTER VIII.

CLAIMS BARRED BY THE LAW OF LIMITATION.

Even where a claim cognizable by the Civil Courts has accrued to a man, and where no legal proceedings have been had in respect of it, it is necessary for him to consider, before he institutes his suit, how long the right of action has existed; as there has been established, with regard to almost all legal remedies, a certain period of limitation, after which they are barred by the mere lapse of time.

Those who have not thought it worth while to assert their own claims with activity and zeal, have the less title to require the aid of the State in enforcing them; and it is extremely hard to dispossess parties who have long been in quiet enjoyment of property, unconscious of any defect of title, and with habits and plans of life influenced by the income which the property produces. There is also, after a great lapse of time, the utmost difficulty in ascertaining the truth of facts, and in confuting fraud and perjury. Documents are lost or destroyed; it is not probable that all which relate to the title will be found safe, and the lost ones may be such as might have explained or done away with the effect of those which remain. The witnesses necessary to make the account of the transaction complete, grow old or die; should they be alive, it may be difficult to find them, and their memories cannot be relied on as to very remote transactions.*

The Hindoo, and perhaps also the Mahomedan system of law, like most other codes, have each their own periods of

* See 2 Knapp P. C. C. 227.
limitation, intended for the peace of the country and for the prevention of fraud.

Those periods, however (which are not very clearly defined), are superseded in the Civil Courts, by the laws which have been enacted by the British Government of India for the guidance of those tribunals.\(^*\)

It is proposed, in the first place, to state the general purport of the enactments which are in force, and will continue in force, in the Presidency of Bengal, with respect to all suits instituted before the 4th May, 1861; next to consider in detail the practical application of those enactments; and finally to state the new law which is to take effect throughout the Presidencies of Bengal, Madras and Bombay, and to apply to all suits instituted after the 4th May, 1861. The new law will of course be more easily understood by reference to the present, which is in its main features very similar in all the Presidencies,\(^b\) although the period of limitation is longer in Bombay than in the other two.

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SECTION I.

THE ENACTMENTS.

The Courts are prohibited from hearing, trying or determining (except in the cases to be mentioned below) the merits of any suit whatever against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it.\(^c\)

The first exception to the twelve years' rule of limitation is where the complainant can show, by clear and positive proof, that he had, within twelve years before the commencement of

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\(^*\) Macnaghten's Mahomedan Law, p. 296; S. D. 1845, p. 70; Reg. II., 1805; S. D. 1851, p. 292; S. D. Agra, 1853, p. 799; 1856, p. 189.

\(^b\) As to Madras, see Dawes, Civ. Proc. p. 294.

\(^c\) Reg. III., 1798, Sect. 14.
the present suit, demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money.

The second exception to the twelve years' rule of limitation is, where the complainant can show that he directly preferred his claim within that period, for the matters in dispute, to a Court of competent jurisdiction to try the demand, in which case he must assign satisfactory reasons to the Court for not having proceeded in such former suit.

The third exception to the twelve years' limitation is, where the complainant can prove that, from minority or other good and sufficient cause, he had been precluded from obtaining redress.

The twelve years' rule of limitation is applicable to all the territories subject to the British Government of India.

It does not, however, apply to every description of suit.

Certain classes of rights may be asserted at any time within sixty years, and others without any limitation as to time.

The sixty years' rule of limitation is applicable to all the British dominions in India, with the exception of certain territories which have come into our possession less than sixty years before the present time.

In territories of the latter class, the Courts are forbidden, by a series of special regulations, to entertain any suit whatever, if the cause of action shall have arisen before the day fixed for each territory by the several regulations.\(^a\)

This utmost period, in the provinces ceded to the British Government by the Nawaub Vizier, dates from the 10th November, 1801.\(^b\)

In the provinces constituting the zillah of Allyghur, the northern and southern divisions of the zillah of Seharunpore, and the zillah of Agra, from the 30th December, 1803.\(^c\)

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\(^a\) Con. 478, 18th April, 1828.  
\(^b\) Reg. II., 1803, Sect. 18, Cl. 1.  
\(^c\) Reg. VIII., 1805, Sect. 6, Cl. 2.
In the territory constituting the zillah of Bundelkund, from the 16th December 1803.\textsuperscript{a}

In the zillah of Cuttack, from the 14th October 1803.\textsuperscript{b}

In the Pergunnahs of Sonk, Sonsa, and Sahar (in the zillah of Agra) from the 17th April 1805.\textsuperscript{c}

In Callinger, from the 19th June 1812.\textsuperscript{d}

In the Deyra Dhoon, from the 15th May 1815.\textsuperscript{e}

In Khundeh and Mahovah, from 1st November 1817.\textsuperscript{f}

In Pergunnah Goberdhun, from the 25th January 1826.\textsuperscript{g}

And where the sixty years' limitation is hereafter spoken of, it is to be understood that it is subject to these exceptions.

The limitation\textsuperscript{a} of twelve years for the commencement of civil suits is not applicable to any suits for the recovery of revenue, or for any public right or claim whatever, which may be instituted, by or on behalf of Government, with the sanction of the Governor General in Council, or by direction of any public officer, who may be duly authorized to prosecute the same on the part of Government.\textsuperscript{h}

All claims\textsuperscript{i} on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force), are to be heard, tried and determined in the Courts of civil justice, if the same be regularly and duly pre-

\textsuperscript{a} Reg. VIII., 1805, Sect. 6, Cl. 2.
\textsuperscript{b} Reg. XIV., 1805, Sect. 5; Reg. XI., 1816, Sect. 4; Sol. Rep. v. 4, p. 39.
\textsuperscript{c} Reg. XII., 1806, Sect. 4.
\textsuperscript{d} Reg. XXII., 1812, Sect. 4.
\textsuperscript{e} Reg. IV., 1817, Sect. 3.
\textsuperscript{f} Reg. II., 1818, Sect. 3, Cl. 2.
\textsuperscript{g} Reg. V., 1826, Sect. 3.
\textsuperscript{h} Prescribed by Reg. III., 1793, Sect. 14; Reg. VII., 1795, Sect. 8; Reg. II., 1803, Sect. 18.
\textsuperscript{i} Reg. II., 1805, Sect. 2, Cl. 1.
\textsuperscript{j} Ibid., Cl. 2. See the Judgment of the Privy Council in the case of the Rajah of Burdwan versus the Government of Bengal, 4 Moore's Ind. App. Ca. 466; Morley's Digest, 2nd Series, p. 231. 8. D. 1855, pp. 499, 501.
ferred at any time within the period of sixty years from the
origin of the cause of action.

The limitation of twelve years is not applicable to any private
claim of right to lands, houses or other permanent immovable
property, if the person or persons who are in possession of
such property, when the claim of right may be preferred, shall
have acquired such possession by violence or fraud, or by
any other unjust, or dishonest means whatsoever; or if such
property shall have been unjustly acquired by any person from
whom the actual occupant may have derived his title; unless
it shall have been subsequently held for twelve years next
before the institution of the suit, under a just and honest title,
such as inheritance, purchase, or any other fair title, which
was believed by the holder to have conveyed to him a right
of possession and property. *

But such violent, fraudulent, unjust or dishonest acquisition
must be established to the satisfaction of the Court.

And, notwithstanding such unjust commencement of the
title, yet if the person against whom the suit is brought,
shall have obtained just and honest possession of the property,
by inheritance, or purchase, or fair donation, or by any other
title which he believed to be just and valid, and which does
not appear to have been contrived by him in collusion with
any other person for the purpose of depriving the plaintiff of
his right;—and if either such occupant himself, or any other
person in his behalf, or from whom the property may have
been obtained under any of the good titles aforesaid, or the
whole in succession, shall have held quiet and unmolested
possession under a title believed by them to be just and valid,
during a period of twelve years, before any claim thereto
was preferred in a competent Court;—then, private claims
to property so circumstanced, are inadmissible after twelve

* Reg. II., 1805, Sect. 3, Cl. 1.  
  
  * Ibid., Cl. 3.
years from the origin of the cause of action, unless they were
cognizable under the exceptions and provisions in force before
1805.

No suit whatever is cognizable in any Court of Justice, if
the cause of action shall have arisen sixty years before the
institution of such suit.

Nor is any plea on the part of the plaintiff for the non-
prosecution of his claim of right, during a period of sixty
years after the origin of his cause of action, nor any original
defect of title on the part of the possessor of the property
claimed after the lapse of such period, to be deemed a suffi-
cient ground for taking judicial cognizance of any suit so
preferred.*

No length of time can establish a prescriptive right of pro-
erty, or bar the cognizance of a suit for the recovery of pro-
erty, in cases of mortgage or deposit of land or money, or
any other property, moveable or immovable, where the occu-
pant has acquired or held possession thereof as mortgagee or
depository only, without any proprietary right."b

Nor in any other case whatever, wherein the possession of
the actual occupant, or of those from whom his occupancy
may have been derived, has not been under a title which was
bona fide believed by him, or them, to have conveyed a right
of property to the possessor.

While there subsists any contract, express or implied,
between the party in possession and those out of possession,
the possession cannot be adverse. But, upon foreclosure, a
mortgagee is considered to acquire an independent proprietary
right.c

For the greater security of possessory titles in the Presi-
dency of Bengal, derived from awards made by the revenue

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* Beg. II., 1805, Sect. 3, Cl. 3. 7th July, 1835.
" Ibid., Cl. 4; Con. 965, West. C. S. D. 1833, p. 546.
authorities under Regulation VII., 1822, Regulation IX., 1825, and Regulation IX., 1833, it has been enacted—

That after the 10th day of June 1848, no suit for contesting the justice of any award, made before the 10th June 1848, by the revenue authorities, under any of the abovementioned regulations, shall be entertained by any Court, where twelve years have elapsed since the date of the final award. That after the 10th June 1851, no suit shall be entertained for contesting the justice of any such award made before the 10th June 1848.

That no suit for contesting the justice of any such award made after the 10th June 1848, shall be entertained after the expiration of three years from the date of the final award.

In accordance with repeated decisions to the effect that the lapse of twelve years from the origin of the cause of action which would ordinarily bind a plaintiff, does not apply to a party who purchases under the revenue sale laws, the limitation laid down in Act XIII. of 1848, is held to operate against a purchaser at a revenue sale, only from the date of his purchase.\(^b\)

It seems to be settled, by the latest decisions, that neither the time during which a suit was pending,\(^c\) nor the period of minority,\(^d\) shall be deducted; and it seems that the final award of the revenue authorities passed upon contest—not the mere revenue record which may have been previously made up to the same effect—marks the date from which the three years are calculated.\(^e\)

A suit to set aside a sale of lands for arrears of revenue,


\(^b\) S. D. 1857, p. 1913.

\(^c\) S. D. 1857, pp. 688, 787.

\(^d\) S. D. 1857, p. 1197.

must be instituted within one year from the day when the
sale became final and conclusive. a

Proceedings, if not instituted before the expiry of the period
fixed by law, cannot be instituted afterwards, even though the
last day may have fallen during the Dusserah or any other
authorized vacation. b

If the Court should be accidentally closed on the last day,
proceedings may be instituted as soon as it is open again.

The law of limitation can be urged only against a plaintiff
suing for possession after the lapse of the period fixed for the
institution of civil actions, not against a defendant actually in
possession of the property sued for. c

SECTION II.

THE CAUSE OF ACTION.

In considering the practical application of the enactments
which have just been stated, it is necessary, in the first place,
to ascertain precisely in each case what is the original cause
of action, from the date of which the period of limitation is to
be computed.

One frequent source of litigation is the possession by one
man of land or other property alleged to belong to another.

Possession is the detention or the enjoyment of a thing, or
of a right, which a man holds, or which he exercises either by
himself, or by another d who holds or exercises it in his name.

When a man is wrongfully ousted from the possession of
that which he previously possessed, the cause of action arises
at the moment when the privation of right occurs. e

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b Agra, 1853, p. 13.
c Agra, 1856, p. 439.
e S. D. 1857, pp. 1274, 1897.
Where A. actually turns out B., the time runs from the ouster, and not from the date of any subsequent order which the magistrate may pronounce.\(^a\)

The inquiry which a magistrate institutes under Act IV. of 1840, is directed to one point, viz., what party was in possession of the subject of dispute when the dispute arose; and it is this party to whom his decision awards possession. The plaintiff who seeks to disturb an award passed under Act IV. of 1840, must, therefore, date his action not from the magistrate's decision, which merely confirms the previous possession of the parties, but from the actual date of dispossessio; and if he alleges this date to be subsequent to that of the decision, he must be prepared with unexceptionable evidence to prove that it is so, for the presumption must necessarily be against him.\(^b\)

Where A. has not turned out B., but the magistrate declares that he has, and then B. takes possession as entitled under the order, time runs from the date of the change of possession, and not from the date of the affirmation of the order.\(^c\)

And so it is held that the order of the special Commissioner in a resumption suit, that the lands (which had been attached) should be restored to A.—and not A.'s actual entry, pursuant to this order—forms the commencement of the twelve years' possession.\(^d\)

Where there are lessor, lessee, and underlessee, and the lessor ousts the underlessee; any cause of action which the lessee may have against the lessor in respect of this event, arises at the time of the dispossessio, and not at the time when the underlessee obtains a decree for damages against the lessee.\(^e\)

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\(^a\) S. D. 1847, p. 424; S. D. 1852, pp. 7, 94; S. D. 1853, p. 773.

\(^b\) S. D. 1857, pp. 134, 389.

\(^c\) S. D. 1847, p. 294.

\(^d\) S. D. 1856, p. 519. See p. 73 infra.

\(^e\) S. D. 1854, p. 228.
When a man who has been in the receipt of rents, finds them withheld from him, the time runs from the day on which the usual payment is first withheld.\textsuperscript{a}

Where property is wrongfully \textsuperscript{b} attached, and sold in execution of a decree, the time runs from the sale, and not from the attachment, for the attachment does not change the possession, though it imposes a clog upon it.

The sequestration of an estate by the Collector for balances, or its transfer to a farmer, is not destructive of the proprietary rights of the party in arrears during the period of the Collector's management or of a farming lease. The proprietor's rights are merely in abeyance, and may be revived on the expiration of the attachment or of the lease. But if the revenue officer, being in possession, make a settlement with a stranger, treating him as proprietor and giving him possession, this is an ouster of the owner, and his cause of action arises at the date of the settlement.\textsuperscript{c}

But although the officers of Government may have admitted A. to settle for revenue as proprietor of land which really belongs to B., this is no ouster, unless the possession has been changed.\textsuperscript{d}

If the object of the suit is to set aside or to amend a settlement of noabed land, the time is calculated from the date of the settlement, not from the date of the measurement.\textsuperscript{e}

Temporary possession acquired by a man by virtue of an order of the Settlement Officer, acting under the provisions of Regulation IX. of 1833, which order was reversed by the Commissioner on appeal, is not regarded as amounting to that substantive and \textit{bona fide} possession, the deprivation or disturbance of which constitutes a legitimate ground of action.\textsuperscript{f}

\textsuperscript{a} S. D. 1854, p. 141. \hspace{1cm} \textsuperscript{d} Agra, 1851, p. 27.
\textsuperscript{b} S. D. 1849, p. 38. \hspace{1cm} \textsuperscript{e} S. D. 1852, p. 359.
\textsuperscript{c} Agra, 1851, p. 19; S. D. 1854, p. 92. \hspace{1cm} \textsuperscript{f} Agra, 1852, p. 173.
Any wrongful change of possession, whether it purports to be absolute or only temporary and precarious,—as where one of two joint owners of land makes a conditional sale of the whole, and gives possession,—will constitute a cause of action; and the time runs from that date, and not from the period when the conditional sale is made absolute.

A man died leaving a widow, and in consequence of her failing to adopt a son, certain property of her husband passed into the possession of other branches of the family. Nineteen years after they had taken possession, and twenty-seven years after the death of her husband, the widow adopted a son and claimed the property on his behalf. The claim was held to be barred by the law of limitation, although it was contended that, under the Hindoo law, the plaintiff was still entitled to sue.

When a man is wrongfully excluded from the enjoyment of that which he has not possessed, the cause of action arises at the time when he first becomes entitled to demand such enjoyment: so that the possession of any other person is an usurpation of his right, and an exclusion of him; as, for instance, from the time when a man who has granted a derivative estate, becomes entitled to resume it by failure of heirs of the grantee; or when a person to whom a conditional sale of land has been made without possession being given, becomes entitled to claim absolute proprietary possession.

It has also been ruled, that where a man sues to recover land of which he has been deprived under a decree, the

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* Agra, 1851, p. 1.
* S. D. 1851, p. 122.
* S. D. 1856, p. 973.
decrees itself (which of course means the decree of the Appellate Court, if there was an appeal*) is the cause of action, and not the dispossession of the party by virtue of the decree, and that the time runs from the date of the decree.

But it is not easy to accede to this proposition; for he could not yield up the land according to the decree, until the decree-holder called upon him to deliver possession, and this demand is not always made. Nor is a man obliged to sue to set aside a decree which the other party, perhaps, does not intend to enforce. It is submitted, therefore, that the time can only run from the time when possession, according to the decree, has been demanded.

Where a son or other relative claims as heir to his ancestor, the time runs from the death of the ancestor, not from the date of an illegal act of the ancestor tending to defeat the reversionary rights of his heir (as where a father takes upon him in the district under the law of Mithila to alienate ancestral property), and any person who possesses the property otherwise than in the name and in right of the heir, is considered to hold it adversely to him. Thus, where an estate was possessed by the ancestor’s widow, who had no right in the property, except the right to receive food and raiment during her life, her possession was decided to be adverse to the heir, and not such as could keep alive his right of action after the lapse of twelve years from the death of the ancestor.

Where a widow claims to inherit from her husband, the time runs against her from her husband’s death.  

Where a Hindoo dies intestate leaving a widow, and she formally asents to the succession of a person to her husband’s estate as an adopted or as a natural born son; it has been decided that the person who would be the heir of the deceased if he had died without a widow, and without a son of

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* Agra, 1856, p. 299.  
* S. D. 1845, p. 408.
born or adopted, is entitled to contest the succession during the lifetime of the widow, and the time of limitation will run against him from the date of the widow's assent, for the alleged son takes not as assignee of the widow, but as successor to his father; the widow's own act has not merely conveyed away, but has absolutely extinguished her interest, and thus the reversionary right of the heir has been changed into a right to immediate possession.\(^a\)

But in cases not affected by the peculiar doctrines of the Hindoo law of inheritance, the person who stands next in order to one who holds an estate for life or for years, although he has a right to enter or to sue for possession if the holder does anything whereby his interest is forfeited, yet is not bound so to enter or to sue; and therefore if he comes within twelve years after the natural termination of the period for which his predecessor was originally entitled to possession, it cannot be objected that more than twelve years have elapsed since the forfeiture.

The possession of a Hindoo widow, as immediate heiress of her husband, which by the law of the country she is entitled to inherit, is not adverse to the heir in reversion.\(^b\) But where the property is such as the law of the country does not permit the widow to inherit; as in the case of land which a man held, under the Mithila law, jointly with his brother, the possession of the widow is adverse to the brother, and the rules of limitation apply.\(^c\)

As one Mutwallee succeeds another under the same title, they are, in the eye of the law, the same person, and any claim of a Mutwallee in respect of his ownership of particular property (e.g., a claim by a Mutwallee to resume, as belonging to his zemindary, lands which are held rent-free) is barred

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\(^a\) S. D. 1850, p. 369. See S. D. 1856, pp. 450, 454.
\(^b\) S. D. 1856, p. 125.
\(^c\) Agra, 1856, p. 442.
by adverse enjoyment for the prescribed period, whether it commenced in his own time, or in that of a predecessor.

The period of limitation is reckoned against the claim of dower, from the time when it becomes legally demandable. Where (as is frequently the case among Musulmans) part of the dower is payable immediately on marriage, and part on the dissolution of the marriage, by the husband's death or by divorce, the former portion cannot be sued for after the lapse of twelve years from the celebration of the marriage, and the latter cannot be sued for after the lapse of twelve years from its dissolution.

Where persons make a partition of a joint estate, arranging among other things that each shall receive a certain proportion of the outstanding debts when realized, and one of them afterwards realizes an outstanding debt, the others may sue him for their share of it at any time within twelve years from the realization.

With reference to debts generally, the period of limitation is calculated from the latest day on which interest was paid by the debtor to the creditor.

In the case of a bond or other instrument for securing the payment of money, the cause of action is considered to arise when the money becomes payable.

And a bond, granted to secure the payment of an old debt, constitutes a fresh cause of action.

Where a bond was given to secure the liquidation of a debt by instalments, and contained a stipulation that in the event of non-payment of any one instalment, the plaintiff should be entitled to recover the full amount of the bond at once, with interest; it was held that although the plaintiff had refrained from suing on the occasion of a breach of contract, this did...
not impair his right to recover instalments which had become due within twelve years before suit.\textsuperscript{a}

When a man is ousted from a tenure in the nature of a mortgage-lease, he becomes entitled to sue for his money, and the time begins to run.\textsuperscript{b}

Upon a note payable at sight the time runs from the day when it is presented for payment. Upon a note payable by instalments, from the several dates when the instalments fall due.

In the case of a conditional debt, from the fulfilment of the condition

In the case of a guarantee, from the happening of the event against which the guarantee was given, that is, from the time when the principal makes default.

Upon a warranty as to the quality of goods sold, from the time the goods turn out to be otherwise than they are warranted.

In the case of a surety seeking to recover from his defaulting principal, the time runs from the date of his payment of the debt, or of each instalment, if he has paid it by instalments.

In the case of goods sold, if no specific credit be agreed upon, the time begins to run from the day of the sale; but if specific credit be agreed upon, it runs from the expiration of the credit.

Where the suit is brought by one man against another for breach of any duty towards him, as in the case of suits by a party against his pleader under Regulation XXVII, 1814, Section 12, the time runs from the date of the breach of duty, and not from the date on which damage was sustained in consequence of it.

It has been decided that the rent of land which, by the tenure under which it is held, is liable to a variable assess-

\textsuperscript{a} Agra, 1851, p. 401. \hspace{1cm} \textsuperscript{b} Agra, 1856, p. 526.
ment, is an annually recurring cause of action; and that the rule of limitation does not bar a suit for enhancing the rent of such land.\textsuperscript{a}

And so is the right of the lumberdar to a commission on the collections made by him, such right being derived from the wajib ool urz, or administration-paper prepared at time of settlement.\textsuperscript{b}

A suit for wasilat or mesne profits may be brought at any time within twelve years from the date of the final decree which awarded the land itself to the plaintiff.\textsuperscript{c}

Where an estate is sold for revenue, and a suit is brought to reverse the sale, and the sale being upheld, the excess proceeds are paid to the late proprietor, any person aggrieved must sue within twelve years after they were so paid.\textsuperscript{d}

To a suit for the proprietary possession of land, it is a sufficient answer that the land has been used and enjoyed as a public road for the period defined by the law of limitation.\textsuperscript{e}

Where Hindus are entitled to require the performance of certain ceremonies by the members of their family, each refusal to perform the ceremonies constitutes a separate ground of action.\textsuperscript{f}

A decree awarding maintenance for life constitutes a perpetually recurring cause of action, and in a suit instituted to obtain the benefit of it by subjecting certain property to its operation, maintenance may be ordered out of that property retrospectively for twelve years before suit, and in all time coming.\textsuperscript{g}

Where land has been washed away, a suit may be brought

\textsuperscript{a} Sel. Rep. v. 7, p. 217. N.B. There has been much controversy on this subject of late, into which it is unnecessary here to enter. See Act X. of 1859.

\textsuperscript{b} Agra, 1856, p. 464.

\textsuperscript{c} Cir. Ord. 15th June, 1849; S. D. 1853, p. 849.

\textsuperscript{d} S. D. 1857, p. 747.

\textsuperscript{e} S. D. 1851, p. 464.

\textsuperscript{f} R. S. C. 5th January, 1842.

\textsuperscript{g} S. D. 1847, p. 517.
for reduction of rent in respect of the injury thereby sustained, at any time within twelve years after the time when the land was so lost.\(^a\)

If the loss of land was gradual, and was in part sustained upwards of twelve years before the commencement of the suit, it seems uncertain whether the suit can be successful in respect of that part.

Probably this ought to be regulated by the nature of the injury. Where the action of the water on the land has been such, that it was impossible to ascertain exactly the amount of damage done in each year, it would be fair to reckon the period of limitation only from the time when the diluvion ceased. But where its effects from year to year have been distinctly visible, all questions connected with it ought to be brought forward without delay, since it is extremely difficult to investigate the progress of diluvion after any considerable lapse of time.

The law which gives a special remedy, by summary suit within a year, for wrong suffered by illegal distraint,\(^b\) does not abridge the right of action previously existing in respect of that injury, according to the regulations:\(^c\) although of course the plaintiff cannot recover the penal damages given by Section 6, Regulation XVII, 1793, unless he sues within a year under the general rule as to penal damages,\(^d\) and this principle applies to all special and summary remedies.

When the prescribed period has begun to run, as against any man, those who derive title under him, whether by purchase or gift, or inheritance (with the exceptions, of course, specified in the regulation), are subject to its operation, precisely as he would have been if he had lived and had continued entitled.\(^e\)

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\(^b\) Reg. V., 1812; Con. 467.
\(^c\) S. D. 1849, p. 147.
\(^d\) Reg. II., 1805, Sect. 7.
As regards all rights and claims not confined within the limits of the estate purchased, a purchaser, whether at a private sale or at a judicial sale, in execution of a decree, takes only what his predecessor had to give or to forfeit; he purchases it, subject to all the conditions and relations, as to the law of limitation or otherwise, upon which it was held by the previous possessor. Thus if the owner of estate A. has claims, as such owner, to a portion of the land which is held as part of the adjoining estate B., but six years have run against such claim at the time when estate A. comes into his possession by a purchase of either kind,—he has only six years remaining for the prosecution of his claim.

By private sale, or by judicial sale in execution of decree, the leases granted by the former zamindar are not affected; and if an action be brought by the purchaser to set aside any such lease, the lessee is entitled to reckon the period of limitation in his own favour from the date of the lease.

But for the reasons already stated, a revenue sale sets aside the leases of the former zamindar, with certain exceptions; and if the purchaser sues to oust a party holding by such a tenure, time of limitation is to be calculated only from the date of the sale, for it was then that the cause of action accrued. And one who has purchased an estate at a sale for arrears of revenue, may recover land as belonging to the estate purchased by him, although subsequently to the decennial settlement the land has been held without claim or dispute for twelve years, as against a former owner of the estate.

So one who purchases a putnee talook at a sale for arrears, succeeds to all the rights of the putneedar at the date of the original creation of the putnee, irrespectively of any length of intermediate possession by any party.

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* Supra, p. 54.
  

  
  S. D. 1850, p. 949.

 Rights of purchasers.

Right of purchaser at revenue sale to quash previous leases.
To a purchaser at auction sale in execution of decree, time runs from the date at which he might legally have come into possession, i.e., where unopposed, at the time at which, under the particular regulation governing the sale, the sale is considered complete; where opposed, then from the date on which delivery of possession might be ordered to be made to him.\(^a\)

When a man's right of action has once been barred by the law of limitation, it cannot, under any circumstances whatever, be revived in the person of his heir, or of any one claiming under or through him.\(^b\) It does not pass from him at the end of the twelve years to the person who would be entitled to sue if he had died within the period of limitation, but it becomes absolutely extinguished for the benefit of the person in possession.

But as a Hindoo childless widow takes only a qualified interest in her husband's estate, and as the heir, on her decease, takes the estate by inheritance from her husband and not from her, it has been made a question how far her failure to sue during twelve years, brings the law of limitation into operation against the heir, and how the rights of the widow and the heir, as between themselves, are affected by this default.

There is, however, little doubt that the Civil Courts would arrive at the same conclusion as that which has for many years been adopted by the Supreme Court of Calcutta, in which it is considered that the widow fully represents the estate, and that adverse possession which bars her, bars the heir also after her.\(^c\)

Whether the heir has any remedy by suit in the lifetime of the widow is another question: if she were friendly, he might easily prevail on her to take steps for regaining possession,
and if he could show that she had been colluding with the person in possession to destroy the reversionary rights of the heir, the possession would not be adverse to her, and so the time would not begin to run against the heir till her death.

The law of limitation is so far penal in its nature, that the Court will not construe the language of the pleadings very strictly, when a literal construction would bar the claim. Where the dispossession which constituted the ground of action was stated by the plaintiff to have occurred “in the beginning” of a year, and the action would have been barred if the expression had been construed to mean the very beginning of the year, it was held that any time within the first quarter of the year might be intended.*

An action is barred by the rule of limitation, as against persons subject to the jurisdiction of the Civil Courts, when the period prescribed by the laws of this country has elapsed, although it may not have been barred by the law of the country wherein the cause of action arose.

SECTION III.

FIRST EXCEPTION TO THE TWELVE YEARS’ RULE—DEMAND AND ACKNOWLEDGMENT.

The first exception to the twelve years’ rule of limitation is where the complainant can show, by clear and positive proof, that he had, within twelve years before the commencement of the present suit, demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money.

There must have been both demand and acknowledgment: the former by the plaintiff, or by his ancestor standing on the

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* S. D. 1848, p. 97.
same right; and the latter by the defendant, or by some one through whom he claims.a

The operation of the rule of limitation is barred by an admission, within twelve years, of the plaintiff's right in an official proceeding of a servant of the Government; as where the salt agent officially acknowledges a right to compensation for salt khelarees which have been taken by the Government.b

It is barred by the payment of an instalment on a bond, or the execution of a fresh security.c

The simple offer of a sum by way of compromise, does not involve an admission of the justice of the plaintiff's demand, so as to suspend the operation of the rule of limitation; for such offers are frequently made merely with a view to escape litigation.d

Where suit is brought upon two bonds, one dated within, and one previous to the period of limitation, and the second contains an acknowledgment of the money due on the first, and a promise to pay the same, the suit is not affected by the rule of limitation.e

If the admission be explicit, the form and manner of making it are unimportant, and it is valid for the purposes of this law, though it be made in the course of miscellaneous proceedings.f

A simple written acknowledgment of the truth of a demand is not sufficient to constitute a new ground of action, so as to bring within the cognizance of the Courts a suit, the prescribed period for instituting which has once fully elapsed.g

Where a man who is a co-sharer in joint property dies,

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a S. D. 1855, p. 20.
b Sel. Rep. v. 6, p. 135.
d Bhaeechund versus Pertabchund, 1 Moore's Ind. Cases, 154.
g Con. 196, 1st March, 1815.
leaving a widow who is his heir, the period does not run against her while she continues to receive maintenance, from those in possession, on account of her right to her husband’s share.\(^a\)

But the real nature and intention of payment by the party in possession must be examined, for nothing can be inferred from mere presents, or acts of bounty, especially between persons very closely connected.\(^b\)

SECTION IV.

SECOND EXCEPTION TO THE TWELVE YEARS’ RULE—WHERE PROCEEDINGS HAVE BEEN HAD.

The second exception to the twelve years’ rule of limitation is, where the complainant can show that he directly preferred his claim within that period for the matters in dispute, to a Court of competent jurisdiction to try the demand; in which case he must assign satisfactory reasons to the Court for not having proceeded in such former suit.

The claim must have been directly preferred in the ordinary course of law. It is not enough, that the plaintiff has made summary or miscellaneous applications to a Civil Court connected with the matters in dispute, such as a summary application for the review of a judgment passed in a regular suit.\(^c\)

It was decided\(^d\) by two Judges of the Sudder Court, that an application by either party to the Magistrate for possession, under Regulation XV., 1824, prevents the operation of

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\(^a\) S. D. 1845, p. 293; S. D. 1854, p. 97.

\(^b\) 1 Moore’s P. C. C., 19, 34; S. D. 1850, p. 263; S. D. 1853, pp. 250, 254.

\(^c\) Sel. Rep. v. 7, p. 50; Con. 813.

\(^d\) S. D. 1847, p. 141.
the rule, but the third Judge dissented, upon weighty grounds, from this conclusion.

An application to the supreme power in a State not then forming part of the British dominions, has been held, after the incorporation of that State with the British dominions, to be an application to a competent Court, and to exempt the applicant from the operation of the rule of limitation. But this decision is to be taken in connexion with what has been stated above as to the periods of limitation established in different provinces.

In calculating the period of limitation, no allowance is made for the time during which an application for permission to sue as a pauper under the old procedure was pending in Court, for such application was merely preliminary to the institution of a suit; and the circumstance that the petition to sue as a pauper and the petition of plaint had been written together, so as to form but one document, made no difference, for it could have no effect as a plaint until the applicant had been authorized to present one.

But if the petition to sue as a pauper was presented early enough to allow of a decision being arrived at before the period of limitation shall have elapsed—and if, without any neglect or default of the petitioner, the decision was kept back until the period has elapsed; it would be unjust to exclude from calculation the whole time during which the petition was pending.

Where there has already been a suit before a competent tribunal for the matter in dispute, which suit has ended in a nonsuit, or in dismissal with permission to sue again, the period of limitation is computed from the accruing of the original cause of action; the time while the first suit was

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* S. D. 1849, p. 466.
* Supra, p. 8.
pending in the Courts (including the Court of Appeal) being deducted.\\n
In this reckoning it is right to include the time between the date of the decree of the Court of first instance in favour of the plaintiff, and the date of the defendant's appeal, because that did not depend upon the plaintiff. But where the plaintiff was nonsuited in the Court of first instance, no longer period would be allowed him, in respect of the time which may have intervened between the order of nonsuit and his appeal against such order.\\n
The period of limitation ends on the day when the plaint is duly lodged by the complainant in a Court of competent jurisdiction, not on the day when the suit is placed by the Sudder Court upon the file of the Court which they deem most proper to try it; nor upon the day when the plaint is numbered and sent for decision: for if there be any delay in that process, it is the delay of the Court and not of the plaintiff.\\n
But the period during which a suit is pending, which is finally struck off for default, does not prevent lapse of time under the law of limitation.\\n
Where the permission given is not a permission to sue again generally, but to sue after a certain event, such as the decision of a different suit, the deduction should extend up to the time when the event happened; because the order of the Court, in effect, restrains the party from proceeding in the meantime.\\n
The widow of a deceased Mussulman, having taken possession of her husband's property, was sued by his heirs for

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*c* S. D. 1846, p. 291.

*d* S. D. 1849, p. 252.

*e* Act XXIX. of 1841, Sect. 2; S. D. 1849, p. 270.

*f* See S. D. 1847, p. 386.

*g* Sel. Rep. v. 5, p. 105.
that property within twelve years after the date of his death. She claimed to retain the property for the payment of her husband's debts, including the Dower debt due to herself. The Court thought proper to decree in favour of the plaintiffs, referring the defendant to a separate suit for her Dower. Soon after the final decision of this cause, but upwards of twelve years after her husband's death, the widow sued his heirs for her Dower debt. It was decided that her claim was not barred by the law of limitation. There was no one whom she could sue, while she herself retained the property.

It has been not unusual for judicial officers of every grade to add to their decrees a declaration that some person, who may or may not be before the Court, may sue hereafter for the whole or some part of the subject matter of the suit—and such declaration or permission has been occasionally regarded as marking a new term, from which the period of limitation is to be reckoned.

But it is very clear that a permission or declaration of this kind is mere surplusage in a decretal order, except in so far as it shows that the Court pronouncing the order does not thereby intend to decide against the person whose rights are thereby reserved, or to preclude claims which either are not before the Court at all, or are not before it in a proper state for adjudication. Such an order cannot control existing legal disabilities; it does not constitute a right, nor can it form a cause of action.

The operation of the rule of limitation is not prevented by the circumstance that the complainant has during the interval been engaged in suing the same defendant upon a different cause of action, or that he has been litigating against other

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persons than the defendant, a question material to his claim against the defendant.

Thus where a man who had been engaged in establishing against his brother a general gift to himself of all his father's property, sued strangers, after lapse of twelve years from his father's death, for the land which he alleged to have belonged to his father, he was held to be barred by efflux of time.\(^a\)

A personal claim was held not to be barred by lapse of time where a suit was instituted to enforce it within twelve years after the decision of a former suit between the same parties, in which suit the validity of the engagement on which the new suit was founded, had been put in issue (though it was not the main question in issue). This decision might be right with reference to the peculiar circumstances of the case, but strictly speaking the complainant ought to be prepared to show that the former proceedings were taken for the same purpose as the present suit; and not merely that the same facts were put in issue; for the issue might have been the same, while the object of the suit was different.\(^b\)

Where the object of the former suit had been to obtain enhancement of rent, the Court held that the pendency of that suit prevented the time of limitation from running, in bar of a subsequent suit to recover rent at the old rate.\(^c\)

The pendency of proceedings will not exempt a claim from the operation of the law of limitation, if such proceedings have their origin wholly in mistake or fraud, and would not have been permitted but for the Court's ignorance of the truth.

Certain land was decreed to A. in 1802, and it was judicially acknowledged by him in 1806 that possession had been given accordingly, but the question was afterwards revived, and remained open till 1835, when the Judge struck the case

off his file of execution of decrees, recording his opinion, grounded upon this acknowledgment, and upon inquiries made in his own directions, that possession had been given in 1806.

A suit by the heirs of A. for the possession of the same lands, grounded on the assertion that possession had never been really given, was held to be barred by the law of limitation, although brought within twelve years from 1835.\footnote{S. D. 1849, p. 161.}

Nor will a suit be regarded as interrupting the operation of the law, which was brought by a son on behalf of his father, the latter not being incapable of managing his own affairs.\footnote{S. D. 1856, p. 48.}

A suit, not being a pauper suit, will be exempted from the operation of the rule, if proceedings which form an essential preliminary to the particular suit have been instituted within the twelve years.

Where the object was to set aside a sale made under a decree of the Supreme Court, and to obtain possession of the property from a person who derived his title under the purchaser at that sale, but who was not subject to the jurisdiction of the Supreme Court, the plaintiff, within twelve years from the sale, instituted proceedings in the Supreme Court, under which the sale was set aside. And as this was necessary to be done before he could sue for possession in the Mofussil Court, it was held that his suit in the Mofussil Court was in time, although the twelve years had expired.\footnote{Sel. Rep. v. 7, p. 97.}

A person who sues for land as a joint sharer, is barred if he has been more than twelve years out of possession, although one of the co-sharers may have obtained a decree in his own favour within twelve years.\footnote{S. D. 1848, p. 229.}

In the province of Benares indeed,\footnote{Reg. XXII. of 1795, Sect. 35, Cl. 2, 3, 5; Con. 960. See S. D. Agra, 1854, p. 101.} and owing to circum-
stances which had occurred previous to its cession to the British power, a rule was passed, under which the possession of any one or more of the putteedars, or sharers, within the limited period, was to entitle to restoration all the other persons having a right to claim as putteedars. But even under this rule, the general law of limitation operates against the putteedars at large, from the date of the decree awarding the right of one of their number.

Where the complainant has really endeavoured within the prescribed time to obtain redress, he has been exempted from the operation of the rule, even though his claim may have been preferred to an authority which cannot strictly be called a Court of competent jurisdiction to try the demand.

Thus where land was sold for revenue in 1803, and the owner during four years after the sale fruitlessly petitioned the Collector to set it aside, and in 1813 sought redress from the Board of Revenue, from which he only in 1817 received a reply, giving him leave to sue in the Civil Court; it was held that a suit brought in 1819 to cancel the sale was not too late.\(^a\)

In the case just mentioned, the petition of the complainant was actually pending before the Board in 1815, when the period of twelve years from the date of the cause of action expired.

But where \(^b\) a person, in like manner, objecting to a revenue sale of 1803, petitioned the Civil Court, which apparently in 1807 referred him to the Board of Revenue, to which he applied in 1817, and was in 1818 referred back to the Civil Court in which he instituted a suit within twelve years from the last reference, it was held that as no application for redress was pending before any authority in 1815, when the period of twelve years expired, his claim was barred by the law of limitation.

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\(^b\) Sel. Rep. v. 8, p. 175.
Effect of attachment of land.

Attachments by the civil or the criminal authorities do not affect the proprietary right of any party, and are no obstacles to the institution of a Civil suit. When the period of limitation has begun to run such attachments do not interrupt its action, as against a party out of possession, and no deduction can be made on that account from the period of limitation.

The appearance of a party in a resumption suit, to oppose the claims of Government to assess the disputed lands, or any allegations he may have made in the course of that suit, do not constitute a direct "preferring by the plaintiff of his claim for the matters in dispute to a Court of competent jurisdiction to try the demand."*

SECTION V.

THIRD EXCEPTION TO THE TWELVE YEARS' RULE—DISABILITY.

Third exception.

The third exception to the twelve years' limitation is where the complainant can prove that from minority, or other good and sufficient cause, he had been precluded from obtaining redress.

The period of his minority is always deducted in favour of a plaintiff.†

The Sudder Court of Calcutta holds that where an original right accrues to a minor, such as the right to succeed his father in property of which the father died possessed, the period of limitation in respect of suits to enforce such right does not begin to run until the expiration of the minority: and that, where a right against which the period of limitation has already begun to run, devolves upon a minor, the operation of the rule is suspended until he attains his ma-

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* S. D. 1847, p. 141; 1856, p. 741.
† S. D. 1850, p. 349.
Sect. V. THE TWELVE YEARS’ RULE.

jority: that is to say, the time which intervenes between the devolution of the right and the attainment of legal ability, is deducted in computing the period of limitation.

The doctrine of the Agra Court is, that whether the right was an original right accruing to the minor during nonage, or whether it devolved upon him after the period of limitation had begun to run, he is within the operation of the twelve years’ rule, unless he bring his suit within a “reasonable” time after he comes of age.

If the minor be under the tutelage of a guardian appointed by the Court of Wards, the minority is considered to have terminated at the date when such guardian was removed by that Court, because the party could not legally bring a Civil suit in his own name, until he is relieved of his state of tutelage; and this is good 

primâ facie evidence of the age of the party.

A sole or joint proprietor of an estate paying revenue direct to Government, whether he be under the guardianship of the Court of Wards or not, comes under the exceptional rule of Sect. 2, Reg. XXVI. of 1793, and is entitled to reckon his majority from the completion of his eighteenth year.

Indeed it is held that the period during which an estate was under management of the Court of Wards may be deducted, although the proprietor may not have been a minor during the time.

The fact, that there has been a guardian, and that he has neglected to sue, does not prevent the ward from suing after he attains majority.

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b See the Agra cases cited S. D. 1855, p. 281; S. D. Agra, 1856, p. 47.

* S. D. 1848, p. 644.


* S. D. 1848, pp. 513, 676.
But a right of suit, once barred by time, cannot be revived in consideration of the minority of any person, upon whom, but for such bar, it would have devolved.\textsuperscript{a}

Insanity.

Madness has the same privilege as minority.\textsuperscript{b}

A. B. was sane for eight years after the cause of action accrued; then became insane, and after more than twelve years from the accruing of the cause of action his committee appointed in England sued. The Agra Court held him barred by limitation; but the Privy Council laid down that in computing the twelve years there should not be reckoned any time during which the person was not free from disability.\textsuperscript{c}

And it is said, that a similar impunity exists with respect to imprisonment.

Imprisonment.

Married women who can sue alone, are entitled to no immunity.

Coverture.

But it would seem that English married women, who enjoy by the law of their own country the same exemptions in this respect as are extended to infants, ought to be considered as having been disabled to act during their coverture.

Absence in foreign country.

Where a person is absent in a foreign country when the right of action arises, the rule does not begin to operate against him till he returns.\textsuperscript{d} But if he voluntarily goes abroad after the right has accrued to him, he is not excused.

The residence of the debtor beyond the limits of the jurisdiction of the Company's Courts, is not a good and sufficient excuse for the delay of the creditor to sue within twelve years, unless it be shown that the debtor has not been resident in a country where the creditor could have procured redress if he had attempted to do so.\textsuperscript{e}

\textsuperscript{a} Sel. Rep. v. 6, p. 139.
\textsuperscript{c} Troup and others v. E. I. Company; Privy Council, Feb. 1858. Reported in Calcutta 'Englishman,'
\textsuperscript{e} Bhaeechund v. Pertabchund, 1 Moore's Ind. App. 154.
The residence of a female complainant at a distance of many hundred miles from the lands in dispute, has been held to be no excuse for her delaying to sue within twelve years, there being circumstances to show that she must have had early notice that her rights had been usurped by some one.\(^*\)

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**SECTION VI.**

**OPERATION OF THE SIXTY YEARS' RULE—CLAIMS BY GOVERNMENT.**

Where the Government has lost its right to sue, it will not be permitted to put itself in possession by any exertion of executive power.

The Government, having a claim to land in Bengal (Chittagong) which was not capable of being enforced by suit, by reason of the cause of action having arisen previous to 1765,\(^b\) which was at that time the utmost period of limitation in Bengal, took forcible possession of the land in 1800. The persons dispossessed sued Government in 1804, and recovered the land by a decree of the Sudder Dewanny Adawlut.\(^c\)

It is an acknowledged duty of the Government\(^d\) to provide that endowments for purposes deemed pious and beneficial, be applied according to their real and original destination.

A person, therefore, who is appointed mutwallee or trustee, or superior of a religious endowment or wuqf, becomes thereupon the authorized agent of the Government for the protection of the endowment; and, as it is said, the founder and the mutwallee are one and the same. Where the endowment is perpetual, the duty of protection is a public and perpetual duty of the Government.

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  \(^b\) Reg. III. of 1793, Sect. 14.  
  \(^c\) Sel. Rep. v. 2, p. 156.  
  \(^d\) Reg. XIX. of 1810.
If the office of a mutwallees has been long vacant, and the
mutwallees who is at length appointed brings his suit within
twelve years from the date of his appointment, then the enjoy-
ment of the property by the defendant for twelve years and
upwards affords no defence to the suit, for the mutwallees had
no power to sue till he was appointed.\(^a\)

But this principle is applicable only to a plaintiff who is
neither heir nor representative of his father in respect of the
property sued for, and who derives his right to property of the
nature of wuqaf, from an express personal appointment; and
there is no pretence for extending the rule to suits by the
Nawab Nazim of Bengal.\(^b\)

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**SECTION VII.**

**OPERATION OF THE SIXTY YEARS' RULE—PRIVATE CLAIMS.**

In a claim for lands, of which possession has been fraudu-
ently obtained, the period of limitation is not reckoned from
the time when the fraud was committed, but from the time
when it was discovered,\(^c\) or when there was a probable oppor-
tunity of discovery, so that it might with reasonable diligence
have been found out.

It is difficult to define the circumstances which will induce
a Court to regard a title as tainted in its origin with violence, 
fraud, injustice, or dishonesty.

Literally speaking, every possession which is not strictly
lawful, might be held to fall within one or other of these
descriptions.

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\(^b\) S. D. 1849, p. 75.

It is obvious, however, from the third clause of the section, that it is not intended to include every acquisition without a just title, for by that clause acquisitions are protected that have been obtained by any title which was believed by the acquirer to be just and valid, though it was in reality insufficient.a

Good faith is always presumed; and to avoid the effect of lapse of time, the plaintiff must establish, by proof, the existence of conscious injustice at the time of the acquisition.

It is enough that good faith has existed at the moment of the acquisition, i.e., subsequent fraud alone, however reprehensible in itself, does not vitiate previous honest possession. Yet the imputation that fraud was employed in the original acquisition of the property may be strengthened by circumstances in the subsequent conduct of the party to whom the fraud is imputed, such as the abstraction of the muniments of title which are impugned as fraudulent.b

In judging of the question of good faith, the Courts have laid stress on the fact that the title originated in a lease taken by a public officer in violation of his duty;c and a violation of private duty, such as a purchase, by an executor, or guardian, of the property entrusted to him, would no doubt suggest a like unfavourable inference.

Thus the Courts would judge unfavourably of the commencement of a title resting only on an alleged gift to a member of her husband's family, by a Hindoo widow, whose right notoriously does not amount to absolute ownership, and a transfer from whom could not, therefore, be considered by the donee to convey to him a permanent right of property.d

Possession given, even if erroneously, in execution of a decree of Court, is not regarded as a dishonest means of acquisition within the meaning of the Regulations.e

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b Sel. Rep. v. 5, pp. 268, 323.
c Sel. Rep. v. 4, p. 130.
e S. D. 1849, p. 125; S. D. 1853, p. 666.
The order of a Criminal Court, giving or upholding possession, confers no proprietary right or title, and affords no evidence that the party holds under a just and honest title: for the Criminal Court exercises jurisdiction in such matters merely in order to prevent the public peace from being disturbed, and it has no authority to determine questions of civil right.\(^a\)

Where the early history of a title cannot be very clearly ascertained, the Courts will readily make any reasonable presumption of fact in favour of a party who has long been in quiet occupation, and of the validity of the act by virtue of which the possession took place; and the burden of proving those circumstances which render it invalid in point of law, if the nature of the case requires such proof, lies on the other side.\(^b\)

The person in actual possession who can prove that he was in possession at a former given period, is presumed to have possessed during the interval, unless the contrary be proved.

For the purposes of limitation, there must be possession continued and not interrupted, peaceable, public, unequivocal, grounded on an alleged title of ownership.\(^c\)

Possession had for any number of years not as owner, but as a compensation for services rendered from time to time, forms no bar to the re-occupation of land by the proprietor on the services ceasing to be performed.\(^d\)

And as ghatwallee tenure is of this nature, the title of the ghatwal ceases whenever the service is no longer required to be performed, and the zamindar who has never given up his right to the lands, has the right to resume the possession of them.\(^e\)

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\(^a\) S. D. 1851, p. 459.
\(^c\) See S. D. 1849, p. 374.
\(^d\) S. D. 1857, p. 1772.
\(^e\) S. D. 1857, p. 1812.
A man took forcible possession of land situated in a territory subject to the Government of Oude. He afterwards obtained from that Government a charter of confirmation, and having occupied the land quietly for ten years after the confirmation, he died, and his son held quiet possession for ten years after his death. The son was then sued for the land in the Courts of the East India Company, to whom the territory had in the mean time been ceded: it was decided, that the original forcible seizure had been cured by the confirmation and the long occupation.\textsuperscript{a} The meaning of this decision, no doubt, was, that the confirmation formed the commencement of a good title, and that, at the end of twelve years from that event, the title became complete in the son, and would have become complete in the father if he had lived so long.

Where a title originally vitiated has been cured, as against people who have been under no disability, by twelve years’ \textit{bona fide} possession, the plaintiff may still recover if he can bring himself within the exceptions noticed above.\textsuperscript{b}

Where a title originally unjust has not been rendered valid by some of the circumstances above mentioned, it would seem that the delay of the complainant to sue is only so far considered, as it tends in some degree, if unexplained, to throw discredit on his claim.\textsuperscript{c}

The exception by which a remedy of longer continuance is granted in the case of immoveable property, as against persons claiming under a vitiated title, does not extend to the profits of that immoveable property, which can only be claimed for twelve years next before the date of the institution of the suit.\textsuperscript{d}

It has been ruled that the sixty years’ limitation being confined to lands, houses, and other immoveable property, does

\textsuperscript{a} Sel. Rep. v. 1, pp. 253, 314.  \hspace{1cm} \textsuperscript{b} Sel. Rep. v. 4, p. 130.  \hspace{1cm} \textsuperscript{c} Sel. Rep. v. 5, p. 123; v. 4, pp. 89, 130.  \hspace{1cm} \textsuperscript{d} Sel. Rep. v. 5, p. 323.
not apply to suits for the temporary or absolute possession of idols, even where fraud or violence may be alleged.\textsuperscript{a}

SECTION VIII.

MORTGAGE AND DEPOSIT NOT BARRED BY TIME.

The rule which exempts mortgages and deposits from the influence of the law of limitation is inflexible,\textsuperscript{b} and has been applied in favour of an heir, after the lapse of fifty years from the time when the mortgagee or depositary was put in possession.\textsuperscript{c}

Where a mortgagee was in possession of an estate, and the revenue fell into arrears, so that the estate was put up to auction sale for liquidation of the arrears, and the mortgagee himself became the purchaser, it was decided\textsuperscript{d} that a new title was created by the sale, and that the mortgagor could not impeach this transaction after the lapse of twelve years from the sale. But the Court ought not in equity to consider the relation of mortgagor and mortgagee to be capable of being dissolved by the wrongful act of the mortgagee, for the benefit of the mortgagee himself, and if it should appear that the revenue fell into arrears through the contrivance of the mortgagee, no wrong would be done in holding him to be still only mortgagee.

The rules of limitation apply to conditional sales.\textsuperscript{e}

The sixty years' rule has no application to suits by a mortgagee, who is bound to bring his action for foreclosure of

\begin{itemize}
  \item \textsuperscript{a} S. D. 1847, p. 512; S. D. Agra, 1851, p. 69, Pursotum Poorree v. Go-ahem Hurkeshore Poorree. \textit{Qy, as to the Hindoo law; see Colebrooke on Inheritance, p. 133.}
  \item \textsuperscript{b} Sel. Rep. v. 1, p.185. \textit{See S. D. 1847, p. 610; S. D. 1855, p. 57.}
  \item \textsuperscript{c} Agra, 1856, p. 517. \textit{See Mr. Arthur Macpherson's Treatise on Mofussil Mortgages.}
  \item \textsuperscript{d} Sel. Rep. v. 2, p. 4; v. 5, p. 236.
  \item \textsuperscript{e} S. D. 1852, p. 392.
  \item \textsuperscript{f} S. D. 1846, p. 243.
\end{itemize}
the mortgage within twelve years from the expiration of the year of grace allowed to the mortgagor for redemption.a

Where a debt has been contracted on the security of land, as, for instance, where the borrower grants to the lender a deed in which he stipulates that the latter shall hold possession of the land until the advance shall be satisfied,—the law of limitation does not apply, and the borrower is held responsible for the debt, until it be proved that the debt has been satisfied from the produce of the land, or by other means.b

An entry in an account-book, whereby a man debited himself with a sum of money payable to a female on her marriage, with interest in the mean time, (such sum being a gift from himself, and the fact of the entry not communicated to the party interested,) was held not to make the sum so debited a deposit, so as to keep alive the right of suit, if any such there were, after twelve years from the event on which the money became payable.c

But property of any kind given by a testator to his representative as a trustee for a third party, is not possessed by the representative under a title bonâ fide believed to have conveyed a right of property to the possessor.

If A. be directed to hold possession of an estate on the part of B., and to pay a certain portion of the produce annually to C. during her life, for her maintenance, this does not make A. a depositary on behalf of C. so as to prevent the period of limitation from running against any claim to the inheritance by her or by her heirs or representatives.d

The administrator is a trustee and depositary for the behoof of all persons interested in the succession; his possession

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is not adverse to them, and the rule of limitation cannot operate between him and them.

Acts of accommodation, or of simple toleration, do not constitute possession in the person accommodated or tolerated, so as to bring the rule of limitation into play.

A man is always presumed to hold possession for himself and by title of ownership, if it be not proved that he has begun to hold possession on behalf of another.

But where a man can be shown to have occupied property as manager for another, there is no possession upon which, as between those two, the rule of limitation can operate.\(^a\)

But as between the manager or trustee, and third parties to whom he stands in no fiduciary relation, the statute operates; and if he is not a natural person, but a corporation, or the holder of a permanent office, as a mutawallee, the statute operates against the corporation, or holder of permanent office.\(^b\)

When a man commenced his possession on behalf of another, he is presumed to continue in possession by the same title unless there be proof to the contrary.

It happens, however, not unfrequently, that persons who have obtained possession of land merely as surburakars or managers, advance pretensions to hold the land without enhancement of rent, and to become talookdars.\(^c\) And a depositary, or the heir of a depositary, may alter the nature of his possession by opposing himself to the right of the proprietor; or he may be turned out by a third party, and may take possession again as owner. In either case, the period of limitation will run from the date of such alteration of possession.

Possession by a mortgagee after foreclosure is adverse to the original owner, and bars his claim after twelve years.\(^d\)

It is held that suits for the resumption of rent-free tenures,

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\(^a\) Sel. Rep. v. 1, p. 118. See 1

\(^b\) Supra, p. 74.

\(^c\) S. D. 1845, p. 238.

\(^d\) S. D. 1854, p. 137.
that is, not for the possession of lands so held, but to declare
void the exemption from rent which they have enjoyed, and
to assess a rent upon them, are not affected by the rules of
limitation, except where the grant and possession are of earlier
date than 12th August, 1765: and that such suits may be
brought at any time, either by zemindars or by putneedars; and so may suits for enhancing the rent of mokurureedars.

As between a zemindar and a holder of lakhiraj land, of less
area than one hundred beegas, within the limits of the estate,
the cause of action is held to have accrued to the zemindar at
the time of the enactment of Reg. XIX. of 1793, when those
tenures were assigned to them by Government; after that
date the twelve years' limitation applies. But with this ex-
ception, twelve years' quiet possession on the part of a de
facto lakhirajdar gives him no just and valid title as against a
zemindar, who is an auction-purchaser suing to resume within
twelve years from the date of his purchase.

A ryot who has paid an uniform amount of rent, as for a
certain supposed quantity of land, for more than twelve years,
but who is bound by no pottah or kubooleut or other express
engagement, is not debarred from claiming a measurement of
the land actually in his occupation, and a reduction of his
jumma upon the pergunnah rates according to the result of
such measurement: in the same manner as a zemindar has,
when not bound by express engagement, a claim to a like
measurement.

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*a* S. D. 1848, pp. 460, 873; 1856, p. 439.
*b* S. D. 1849, p. 66.
*d* Sel. Rep. v. 7, pp. 217, 499, 505; Act I. 1845, Sect. 26; Act XII. 1841, Sect. 27.
*e* S. D. 1855, pp. 501, 530; 1856, p. 438; 1857, p. 345.
*f* S. D. 1856, pp. 436, 929, 1046.

* S. D. 1849, p. 188; 1856, pp. 617, 624. The limitation pre-
scribed by Cl. 2, Sect. 2. Reg. II. of 1805, applies to proceedings for re-
sumption of lands by the Government, instituted (before the Revenue au-
thorities) under Reg. II. of 1819, and III. of 1828.—Case of Rajah of
Burdwan, 4 Moore's Ind. App. p. 466.
But there is nothing in the law which authorizes a distinc-
tion between the claim of a zemindar, suing for possession of
lands in his zemindary against a party who has cultivated
them without distinct title for more than twelve years, and
any other claim of possession. The character of zemindar
does not, in the case of possessory actions, confer any exemp-
tion from the ordinary rules of limitation.

SECTION IX.
APPLICATION OF THE LAW OF LIMITATION IN CASES OF
JOINT OWNERSHIP.

The ancestral property of a joint Hindoo family is divisible
in due course of law.

And this right is not barred by the rule of limitation ex-
cept where the shares have been actually severed and separ-
rately occupied; or where the sharer who claims a division
has been absolutely excluded from the possession of the land
and from participation in its profits. In such cases, if the
period of limitation has elapsed since such transactions took
place, the right to a division is barred.\(^a\)

This principle applies, even although the joint proprietors
may have entered into separate engagements with the Govern-
ment, for the jumma of their respective shares (the shares not
being actually divided),\(^b\) or although one of the joint pro-
prietors has been solely registered as proprietor.\(^c\) Among the
proprietors themselves, the right to a division continues.

Where a co-heir in possession of the joint property remitted
out of its profits money and goods to a co-heir who was absent
and had never taken possession, this was considered to amount

to a recognition of the title of the latter, and to make the title of the former a friendly and not an adverse possession, and consequently a possession not affected, as between the co-heirs, by the law of limitation.\footnote{Sel. Rep. v. 5, p. 342.}

But the mere fact that the person claiming the property has, since the accruing of his cause of action, received money and other things from the person in possession, will not bar the operation of the rule, if it be not shown that the plaintiff has been in receipt of any portion of the profits of the estate.\footnote{S. D. 1847, p. 160; supra, p. 83.} The question will be, upon what ground and with what intention the payments or gifts have been made.

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**SECTION X.**

**Act No. XIV. of 1859.**

[Assent of the Governor-General given 4th May, 1859.]

**An Act to Provide for the Limitation of Suits.**

WHEREAS it is expedient to amend and consolidate the laws relating to the limitation of suits: It is enacted as follows:—

I. No suit shall be maintained in any Court of Judicature within any part of the British territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding; and the periods of limitation, and the suits to which the same respectively shall be applicable, shall be the following, that is to say:—

1. To suits to enforce the right of pre-emption, whether the same is founded on law or general usage or on special contract, the period of one year to be computed from the time at
which the purchaser shall have taken possession under the sale impeached.

2. To suits for pecuniary penalties or forfeitures for the breach of any Law or Regulation; to suits for damages for injury to the person and personal property, or to the reputation; to suits for damages for the infringement of copyright, or of any exclusive privilege; to suits to recover the wages of servants, artisans, or labourers, the amount of tavern bills or bills for board and lodging or lodging only; and to summary suits before the Revenue authorities under Regulation V. 1822 of the Madras Code—the period of one year from the time the cause of action arose.

3. To suits to set aside the sale of any property, moveable or immovable, sold under an execution of a decree of any Civil Court not established by Royal Charter when such suit is maintainable; to suits to set aside the sale of any property, moveable or immovable, for arrears of Government revenue or other demand recoverable in like manner; to suits by a puttee or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him, to set aside the sale of any puttee talook, or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, moveable or immovable, sold in pursuance of any decree or order of a Collector or other Officer of Revenue—the period of one year from the date at which such sale was confirmed or would otherwise have become final and conclusive if no such suit had been brought.

4. To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue authorities for arrears of Government revenue, or to recover any money paid under protest in satisfaction of any claim made by the Revenue authorities on account of arrears of revenue or demands recoverable as arrears of revenue—one year from
the date of such attachment, lease, or transfer, or of such payment, as the case may be.

5. To suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable—the period of one year from the date of the final decision, award, or order in the case.

6. To suits brought by any person to contest the justice of an award which shall have been made under Regulation VII. 1822, Regulation IX. 1825, and Regulation IX. 1833, of the Bengal Code, or to recover any property comprised in such award—the period of three years from the date of the final award or order in the case.*

7. To suits by any party bound by any order respecting the possession of property made under Clause 2, Section I., Act XVI. of 1838, or Act IV. of 1840, or any person claiming under such party, for the recovery of the property comprised in such order—the period of three years from the date of the final order in the case.

8. To suits to recover the hire of animals, vehicles, boats, or household furniture; or the amount of bills for any articles sold by retail; and to all suits for the rents of any buildings or lands (other than summary suits before the Revenue authorities under Regulation V. 1822 of the Madras Code)—the period of three years from the time the cause of action arose.

9. To suits brought to recover money lent or interest, or for the breach of any contract—the period of three years from the time when the debt became due, or when the breach of contract in respect of which the suit is brought first took

* Supra, p. 67.
place, unless there is a written engagement to pay the money
lent or interest, or a contract in writing signed by the party
to be bound thereby or by his duly authorized agent. *

10. To suits brought to recover money lent or interest, or
for the breach of any contract in cases in which there is a
written engagement or contract, and in which such engage-
ment or contract could have been registered by virtue of any
Law or Regulation in force at the time and place of the exe-
cution thereof—the period of three years from the time when
the debt became due, or when the breach of contract in re-
spect of which the action is brought first took place, unless
such engagement or contract shall have been registered within
six months from the date thereof.

11. To suits in cases governed by English law upon all
debts and obligations of record and specialities; and to suits
for the recovery of any legacy—the period of twelve years
from the time the cause of action arose.

12. To suits for the recovery of immoveable property, or
of any interest in immoveable property, to which no other
provision of this Act applies—the period of twelve years from
the time the cause of action arose.

13. To suits to enforce the right to share in any property
moveable or immoveable on the ground that it is joint family
property; and to suits for the recovery of maintenance, where
the right to receive such maintenance is a charge on the in-
heritance of any estate—the period of twelve years from the
death of the persons from whom the property alleged to be
joint is said to have descended, or on whose estate the main-
tenance is alleged to be a charge; or from the date of the last
payment to the plaintiff or any person through whom he
claims, by the person in the possession or management of

* Supra, pp. 75, 82.
such property or estate on account of such alleged share, or on account of such maintenance, as the case may be.¹

14. To suits by the proprietor of any land or by any person claiming under him, for the resumption or assessment of any lakheraj, or rent-free land—the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person under whom he claims, first accrued. Provided that in estates permanently settled no such suit, although brought within twelve years from the time when the title of such person first accrued, shall be maintained, if it is shown that the land has been held lakheraj or rent-free from the period of the permanent settlement.²

15. To suits against a depositary, pawnee, or mortgagee of any property moveable or immovable for the recovery of the same—a period of thirty years if the property be moveable, and sixty years if it be immovable, from the time of the deposit, pawn, or mortgage; or if in the mean time an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption, shall have been given in writing signed by the depositary, pawnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing.³

16. To all suits for which no other limitation is hereby expressly provided—the period of six years from the time the cause of action arose.

II. No suit against a trustee in his lifetime and no suits against his representatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time; but no suit to make good the loss occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the

¹ Supra, pp. 77, 83, 103. ² Supra, pp. 79, 80, 100-102. ³ Supra, p. 67.
said Courts, unless the same is instituted within the proper period of limitation according to the last preceding section, to be computed from the decease of such trustee; provided that nothing herein contained shall prevent a co-trustee from enforcing, against the estate of a deceased trustee, any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen.

III. When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied notwithstanding this Act.

IV. If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due, by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them.

V. In suits for the recovery from the purchaser or any person claiming under him of any property purchased bona fide and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase. Provided that in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15, Section I.

VI. In suits in the Courts established by Royal Charter by a mortgagee to recover from the mortgagor the possession of the immoveable property mortgaged, the cause of action shall
be deemed to have arisen from the latest date at which any portion of principal money or interest was paid on account of such mortgage debt.

VII. In suits to avoid incumbrances or under-tenures in an estate sold for arrears of Government revenue due from such estate, or in a putnee talook or other saleable tenure sold for arrears of rent, which by virtue of such sale becomes freed from incumbrances and under-tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure, became final and conclusive.*

VIII. In suits for balances of accounts current between merchants and traders who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of limitation shall be computed from, the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings; such year to be reckoned as the same is reckoned in the accounts.

IX. If any person entitled to a right of action shall by means of fraud have been kept from the knowledge of his having such right or of the title upon which it is founded, or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessory thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it, or when he first had the means of producing or compelling the production of the concealed document.b

X. In suits in which the cause of action is founded on fraud, the cause of action shall be deemed to have first arisen

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* Supra, p. 79.  
* Supra, p. 94.
of action is founded on fraud.

Computation of period of limitation in case of legal disability.

What persons to be deemed to be under legal disability under preceding section.

Computation of period of limitation in case of absence of defendant.

Computation of period of limitation in case of suit prosecuted bona fide, but in wrong Court.

at the time at which such fraud shall have been first known by the party wronged.

XI. If at the time when the right to bring an action first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person, or of the legal disability of any person claiming through him.\(^a\)

XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding section—married women in cases to be decided by English law, minors, idiots, and lunatics.\(^b\)

XIII. In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India shall be excluded from such computation, unless service of a summons to appear and answer in the suit can during the absence of such defendant be made in any mode prescribed by law.\(^c\)

XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, bona fide and with due diligence, in any Court of Judicature which, from

\(^a\) Supra, p. 78. \(^b\) Supra, p. 90. \(^c\) Supra, p. 92.
defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation.

XV. If any person shall without his consent have been dispossessed of any immoveable property otherwise than by due course of law, such person, or any person claiming through him, shall in a suit brought to recover possession of such property be entitled to recover possession thereof notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossessions. But nothing in this section shall bar the person from whom such possession shall have been so recovered, or any other person instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Act.

XVI. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

XVII. This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

XVIII. All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this

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* Supra, p. 83.  
* Supra, pp. 65, 93.
Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

XIX. No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the mean time such judgment, decree, or order, shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment, or acknowledgment, or the latest of such revivers, payments, or acknowledgments, as the case may be, provided that for three years next after the passing of this Act, every judgment, decree, and order, which may be in force at the date of the passing of this Act shall be governed by the law now in force, anything therein contained notwithstanding.

XX. No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for such execution.

XXI. Nothing in the preceding section shall apply to any judgment, decree, or order in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire.
XXII. No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter, or of any Revenue Authority, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force within one year next preceding the application for such execution.

XXIII. Nothing in the preceding section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within two years next after the passing of this Act, whichever shall first expire.

XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits' Settlement; but shall not take effect in any non-regulation province or place until the same shall be extended thereto by public notification by the Governor-General in Council, or by the Local Government to which such province or place is subordinate. Whenever this Act shall be extended to any non-regulation province or place by the Governor-General in Council, or by the Local Government to which such province or place is subordinate, all suits which within such province or place shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such province or place after the expiration of the said period, shall be governed by this Act, and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.
CHAPTER IX.

WHAT CLAIMS OUGHT TO BE COMPRISED IN THE SAME SUIT.

Every suit ought to be so framed as to afford ground for such a decision upon the whole subject in dispute at one and the same time, as may, if possible, prevent any further litigation concerning it.

Were the rule otherwise, a man might be sued repeatedly in respect of different parts of the same matter, and conflicting judgments might be pronounced regarding separate portions of the same property, included in the same cause of action. And as the value of the property claimed by the plaint determines the class of Judges by which a suit is cognizable and the remedies of the parties in appeal,* a suit might be split up, so that each branch of it should be decided by a Judge of a lower class than that by which, with reference to the value of the whole property in litigation, it ought to be decided, and the right of the parties to appeal would be unfairly limited.

If, on the other hand, the suit is marked by the faults of misjoinder or multifariousness, that is to say, if it comprises several distinct claims all made by the plaintiff upon the same defendants, but which are wholly dissimilar in their nature, or if it is brought against parties, some of whom are unconnected with a large portion of the matters in question; the Court may be compelled, in the one case, to try several distinct lawsuits while it is nominally trying only one, or, in the other

* See Index, tit. Court.
case, to keep parties before it, to their great damage, where
the ends of justice do not require it.

In order that litigants may avoid, for their own sake, a
course which, even if not expressly prohibited, is almost cer-
tain to lead to confusion and needless expense, I have
thought it convenient to state the doctrines prevailing on
these subjects. They are founded on convenience and jus-
tice, and deserve consideration under any judicial system,
although they are certainly liable to be pushed too far, and
have therefore been somewhat relaxed by the Code of Civil
Procedure, which enacts as follows:

"7. Every suit shall include the whole of the claim arising
out 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. If a plaintiff relinquish or omit to
sue for any portion of his claim, a suit for the portion so re-
linquished or omitted, shall not afterwards be entertained.

"8. Causes of action by and against the same parties, and
cognizable by the same Court, may be joined in the same suit,
provided the entire claim in respect of the amount or value
of the property in suit do not exceed the jurisdiction of such
Court.

"9. If two or more causes of action be joined in one suit,
and the Court shall be of opinion that they cannot con-
veniently be tried together, the Court may order separate
trials of such causes of action to be held.

"10. A claim for the recovery of land and a claim for the
mesne profits of such land shall be deemed to be distinct
causes of action within the meaning of the two last preceding
Sections."

The course to be adopted, where the property sued for is
situated within different jurisdictions, is prescribed by Sections
11 to 15 of the Code.

Each party indebted to the estate of a person deceased,
may be sued separately by the undoubted legal representative in estate of the deceased, for the entire amount he owes to it.\(^a\)

Persons who have jointly entered into a contract are not entitled to subject the contractor to the inconvenience of dealing with them separately.

Where undivided property has been mortgaged by its joint proprietors, without specification of their several shares therein, to secure the repayment of a joint debt at a certain period, one of the proprietors cannot sue separately for the redemption of his own share.\(^b\)

No doubt one proprietor might come forward on behalf of all to redeem the mortgage, and would then stand, as regards all his co-sharers, in the place of the original mortgagee; or if he were ready to make good his own proportion of the loan at the proper time, but suffered any loss by the default of his co-sharers in making good their proportions, he might have his remedy against them.

In disputes between partners respecting mercantile accounts, the plaintiff ought to bring his action for the whole of his demand against the defendant, so that there may be a general adjustment of the accounts between them. He must not split the cause of action by suing for a particular item or items, for he might thus obtain a decree in his favour upon one item, though a full inquiry into the state of the accounts would show a balance in favour of the defendant.\(^c\)

If the matters or the persons are distinct, separate proceedings ought to be taken, unless there exists some connecting link, rendering a single suit convenient or necessary.

A man cannot in one suit recover from A. mesne profits for a certain period during which A. has unjustly held his

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\(^a\) R. S. C. 20th January, 1848.
\(^b\) Sel. Rep. v. 7, p. 53.
\(^c\) Sel. Rep. v. 7, p. 177. S. D. 1857, p. 838. As to the time within which such suit must be brought, see Act XIV. of 1859, Sect. 8, supra, p. 109.
lands, and from B. mesne profits for a subsequent period during which B. was in like wrongful possession of the same lands.

If a person be in possession as the admitted third sharer in a joint estate, he has a right to sue for his third share of the rents due by all the ryots, unless it can be shown that by his own act he has expressly or by implication consented to his share being collected by his co-sharers or other parties on his behalf.

He has a right also to put in issue the question, on what quantity of land the ryots are bound to pay rent; and to receive his proportional share of the rent on the whole of that quantity; and if his co-sharers claim rent on a smaller area than he does, he is not bound by that restriction of claim.

Where an estate is held by several sharers in separate and distinct possession under a deed of partition, each may bring actions for rent against the tenant of the share assigned to himself, although the partition may have been only a private one, and the estate may still continue joint and undivided, so far as regards its responsibility to Government for the revenue assessment.

It will be observed that the tenant was bound to pay rent to his landlords collectively, or to their assigns, and the latter description applies to him to whom the property formerly joint has been allotted by the consent of all.

But where one man has obtained a decree against another, for a money claim generally, not affecting any property in particular, if he seeks to enforce this decree against the land of his debtor, he must bring separate suits against the persons in possession, as each may have acquired possession

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* S. D. 1850, p. 523.  
*b S. D. 1853, p. 618.  
*c S. D. 1848, p. 297.
under a different title, and may have a separate defence to make.\textsuperscript{a}

Where there is a kubooleut or agreement to pay rent, signed by several ryots, whereby each stands security for the other, they may all be sued upon it in one action.\textsuperscript{b}

The pergunnah A. was held in four shares, each share by its own semindar, as a separate estate. The plaintiff and his ancestors held a moiety of thirteen talooks extending through different parts of the pergunnah, in one mookururee tenure, as an entire estate (originating, it may be presumed, prior to the division of the pergunnah into four zemindrees), and he paid his fixed rents to the four zemindars, according to the quantity of land which he held within their respective portions of the pergunnah. The zemindars ousted him, and he brought one suit against them all for the recovery of possession. It was argued that there ought to have been four suits because the talooks were spread through the four separate shares: but the Sudder Court decided that, as the claim was grounded on one foundation, and the tenure was one and entire, the suit was correctly brought against all the shareholders.\textsuperscript{c}

If the plaint comprises several distinct and separate demands which are wholly dissimilar in their character, this, though not actually forbidden by the Code, is a misjoinder of claims, and even although the plaintiffs and defendants are parties to the whole of the transactions which form the subject of the suit, the Court will probably find it convenient to order separate trials to be held, under Section 9.\textsuperscript{d}

Nor can a man institute a suit against another, seeking a decree against him personally in respect of transactions which have passed between them, and also charging him as executor of A. in respect of transactions between A. and the complainant.

\textsuperscript{a} S. D. 1845, p. 110. \\
\textsuperscript{b} S. D. 1847, p. 418; 1848, p. 543. \\
\textsuperscript{c} S. D. 1848, p. 769. \\
\textsuperscript{d} Supra, p. 115.
Here it is evident that the defendant is interested in every portion of the suit, but he is personally interested in one portion of it, and he is interested in the other portion of it only as executor: the demands against him are distinct and unconnected; and A.'s estate ought not to be implicated in a litigation regarding the private and separate affairs of the person who happens to be his executor.\footnote{S. D. 1851, pp. 497, 743.}

So a demand, in which all the plaintiffs jointly have an interest, cannot be united with a demand in which only one of them has an interest.

A suit is multifarious when a party is named as defendant in a suit with a large portion of which he has no connection whatever, whereby he may be put to useless expense.

If an estate be sold in lots to different purchasers, the vendor cannot sue in one action the purchasers of different lots, for the circumstances of each sale may be distinct from the others, and it is unfair to call upon a defendant to answer a plaint containing several distinct matters, relating to individuals with whom he has no concern.

A suit ought not to be brought for the double purpose of administering a testator's estate, and of setting aside a sale made of a part of it by the executor to A., a stranger. The defendant A., the purchaser, has nothing to do with the general administration of the estate. His case is perfectly distinct, and he has a right to have that case discussed and decided by itself.

If indeed the plaintiff alleges that the executor, in the first instance, corruptly purchased the estate for himself, and that the defendant A. bought from him what he had so corruptly purchased, then A. is properly joined in the suit, because if the purchase by the executor is set aside, his sale to A. must also be reversed.
A demand against all the defendants jointly cannot be united with a demand against only one of them.

As, for instance, if the plaintiff, jointly with A., made a shipment of sugar to England, and also jointly with A. and B. made a shipment of opium to China, and he seeks in one suit his share of the profits of both adventures; this is in truth a demand which the defendants are jointly interested in resisting, coupled with a demand which only one of them is interested in resisting, and the suit is multifarious with respect to B. who is exposed to useless trouble and expense by being compelled to take part in an investigation of a transaction to which he was a total stranger. Nor can the joint demand be properly united with the separate demand, even where both are founded upon one deed of agreement, as where A. and B. made an agreement with the plaintiff, and after a time A. put an end to the agreement, but B. continued to deal with the plaintiff on the footing of the agreement. A. and B. must be sued jointly in respect of any obligations contracted by them before A. put an end to the agreement, and B. must be sued alone in respect of his subsequent dealings with the plaintiff.

Where all of the plaintiffs are interested in the matter in dispute, and all the defendants are interested, though perhaps not equally interested, in the different questions raised in the cause, and those questions relate to one common object, there the objection for multifariousness does not apply.

Of this class are some of the cases mentioned above.

If the object of the suit be single, but different persons have separate interests in distinct questions which arise out of that single object, those persons must be brought before the Court in order that the suit may conclude the whole subject. The object of the plaintiffs, or the case as to one defendant,

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a S. D. 1851, p. 417.  
b S. D. 1849, p. 211.
may be so entire as to be incapable of being prosecuted in several suits, and yet another defendant may be a necessary party to some portion only of the case stated by the plaintiffs.\(^a\)

The objection of multifariousness or misjoinder, then, is a question of discretion, to be determined with reference to the circumstances of each particular case. The things chiefly to be avoided are, the mixing up dissimilar subjects of litigation between the same parties (as to which, however, the Code is very indulgent), and the bringing and keeping before the Court, without necessity, as defendants, persons who have no interest in a great part of the matters to which the suit relates.\(^b\)

If a father has executed three deeds, all vesting property in the same trustees, and upon similar trusts, for the benefit of his children, the administration of the trusts created by the three deeds may be embraced in one suit.

And although the trustees of the three deeds should be different persons, the administration of the trusts may still be made the subject of one suit; for the whole property being devoted to one purpose, the trusts of the three deeds cannot be administered irrespectively of each other.

A claimant may sue in the same action any number of persons who are infringing his rights as to the same property, as for instance any number of decree-holders attaching the same land;\(^c\) and where one general right is claimed by the plaintiff, the suit is not multifarious, although the defendants have separate and distinct interests.

Thus a person claiming some general rights as a zamindar, may file a plaint against a number of persons claiming particular rights inconsistent with his general right: or if there are questions between him and the occupiers as to the land held, and the rent payable, by each, he may file one plaint

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\(^a\) S. D. 1853, pp. 69, 102, 118.  
\(^b\) S. D. 1852, p. 352.  
\(^c\) R. S. C. 31st Jan., 1842.
against them all for the ascertainment of the boundaries of their lands.

But a single suit ought not to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such defendants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land.\(^a\)

And so where several persons claim under one general right, such as a right of common, or of irrigation, they may sue together for the establishment of that right, although they may not all be interested to an equal extent in the enjoyment of the right.\(^b\)

It has been held that where the cause of action is single, and directly affects the property in dispute, as when lands have been conveyed to the plaintiff by one deed of sale, a suit for possession is not multifarious; although the defendants may set up separate defences, each claiming a distinct portion of the lands, and each claiming under a separate conveyance to himself.\(^c\)

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\(^b\) See S. D. Agra, 1851, p. 95, where one man sued on behalf of himself and the whole of the Mahomedan population.

CHAPTER X.

PARTIES TO SUITS.

It is a principle of all fair juridical procedure, that no man's rights shall be adjudicated upon, except in his presence. Accordingly, the decree which the Civil Court may pronounce in any suit, is only binding upon the persons who are named upon the record as parties complainant or defendant, and upon those who derive their rights through or under such parties.*

The decree ought, if possible, to provide for, and settle the rights of all persons who are interested in the questions decided; so that those who are to obey it may be secured against molestation, and that there may be no further litigation on the subject.

For these reasons, all those persons ought to be made parties to a suit, either as plaintiffs or as defendants, whose interest in the subject-matter of the suit is such as may be affected by the decree which shall be pronounced: or, in the language of the Code (Sect. 73), "all the persons who may be entitled to, or who claim some share or interest in the subject-matter of the suit, and who may be likely to be affected by the result."

Thus, if land has been given to B. for his life, and after his death, to A., where a third person claims the land as being absolutely his own in perpetuity, both A. and B. must be

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made parties to the suit, because the interests of both will be adjudicated upon by the decree.

A person may be interested in the property to which the suit relates, and yet his interest may be such as cannot be affected by the decree. As, if land be so settled that it will undoubtedly belong to A. at the death of B., but there is a suit between B. and C. as to the possession of the land during the life of B. only: A. is interested in the land which forms the subject-matter of the suit, but he is not interested in that which is demanded by the plaint, and his interest cannot be affected by the decree. A. therefore need not be a party to such a suit.

But all those persons must be parties against whom a decree may be made, or against whom relief may be prayed, or who have an interest in the subject of the suit, which interest must be bound by the decree; all persons from whom a benefit may be obtained, or upon whom a duty may be imposed by the suit; in short, all persons concerned in the object, as well as in the subject-matter of the suit.

The plaintiff ought to name, as parties, all persons who by his own statement appear to have such interests as have been mentioned. If there be other persons similarly interested whose interests he does not set forth, and whom he does not make parties to the suit, he runs the risk of obtaining, even if successful, a decree which will be ineffectual as against some of those whom it is his object to bind: and he exposes himself to all the objections which the defendants may raise to the progress of the suit, upon the ground that it is imperfectly constituted by reason of the omission of necessary parties.

If the circumstances of the case are such, that the plaintiff will be satisfied with a decree against the defendant whom he

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* S. D. 1851, p. 13.
is actually suing, he need not make any third person a party, although such third person claims for himself the property in dispute; because if the plaintiff proves his case against the defendant whom he does sue, he will be entitled to a decree against that defendant; and if he fails to prove his case, his plaint is dismissed, but nothing is decided by such dismissal except as against the plaintiff; and therefore the absent claimants cannot be wronged.

Thus A., claiming as heir of B., brings an action against C. for the possession of land which C. asserts that he bought from B. Whether A. or C. be successful in this suit, D. may still sue for the estate, on the ground that it has always belonged to himself, and that B. had no right to it.

The other persons interested in the objects of the suit may have claims either wholly or partially concurrent with those of the plaintiff, or wholly adverse: and where they are adverse, their interest in resisting his demand may be direct, or it may be merely consequential.

Thus, where one of several joint owners sues a stranger for possession, the rights of the co-sharers are in entire accordance with those of the party suing.

Where several persons agree with the plaintiff in asserting that the property in question belonged to A. deceased, and that it was wrongfully taken possession of by the defendant B., and that A. disposed of it by will; but they put different constructions upon the will, each insisting that under it the property belongs to himself; or where they agree that A. died intestate, but each of them alleges that he is himself the heir and representative of A.: here the claims of those persons are so far concurrent with those of the plaintiff, that they rest as against B. upon facts to be substantiated by the

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same body of evidence; but they are at variance with the plaintiff, and with each other, as to all the rest of the case.

If, on the other hand, an individual is in the possession or enjoyment of the property sued for, or has any interest in it which is likely to be defeated or diminished by the enforcement of the plaintiff’s claim, such person has an immediate interest in resisting the demand.

If the success of the plaintiff against the defendant who is immediately interested, may give to that defendant a right to demand a compensation from a third person for the loss sustained, such third person, as being liable to be affected consequentially by the result of the suit, is also a necessary party to it, and ought to be brought before the Court in the first instance, in order that the relief which the defendant is entitled to against him, in the event of the plaintiff’s success, may be awarded by the same decree.

Persons whose interests are concurrent with those of the plaintiff, yet who do not choose to join in the action, ought to be made defendants, as ought also, of course, those whose interests are in any degree adverse to the plaintiff.*

In suits to obtain possession of immovable property by virtue of a deed or will, all persons who claim an interest in such property under the instrument in question, ought to be parties, as well as those who hold possession adversely to them: and where the person having the apparent legal right to demand that which it is the object of the suit to obtain, is not the plaintiff, but is alleged to be a trustee for the plaintiff, such person ought to be a party to the suit, for if he were not, he might in his turn claim some right in his own person.

Thus, if A. sues B. to set aside the sale to B. of lands which were held in the name of C., but which A. alleges to

have been so held in trust for himself, C. must be a party to
the suit.\textsuperscript{a}

Where the only question between the plaintiff and the
defendant is, which of the two is the real owner of lands,
which both allege to be held in the name of one who is a
mere trustee, and the plaintiff does not desire any decree
against the trustee, then the latter need not be a party.\textsuperscript{b}

But where one person contracts as agent for the benefit of
another, the person for whose benefit the contract was made
may claim performance of it without making the agent a
party, if he can show, by the terms of the contract, that the
person making the contract was merely his agent.

If, however, this cannot be shown, he must make the
agent a party, either as co-plaintiff or as defendant, because
otherwise the agent might himself claim performance of the
contract.\textsuperscript{c}

Where a contract is entered into by an agent, in his own
name, but really on behalf of other persons, and a suit is
instituted respecting that contract, those persons who are
interested in the contract must be parties to the record.

If an account is sought against a defendant, all persons who
are interested in having the account taken, or in the sum
which shall appear to be due on taking the account, ought to
be parties, for otherwise the defendant may be subjected to as
many suits as there are persons interested.\textsuperscript{d}

Where it appears that some of the persons who are in-
terested in the account sought for, have been accounted with
and paid, such persons need not be made parties to the suit,
as where a definite portion of an ascertained sum is sought
from trustees.

In a suit for foreclosure or redemption of mortgaged land,

\textsuperscript{a} Sel. Rep. v. 7, pp. 95, 481.
\textsuperscript{b} S. D. 1851, p. 356.
\textsuperscript{c} See Sel. Rep. v. 6, p. 108.
\textsuperscript{d} See Baboo Janokey Doss v. Bin-
dabun Doss, 3 Moo. Ind. Ca., p. 175.
all the parties entitled to the mortgage money ought to be before the Court.

A decree of foreclosure obtained in a suit by A. against B. will be no defence for A., in a suit for redemption by a third person who was not a party to the former suit, and who claims by a higher title than B.\textsuperscript{a}

Where a suit is instituted for a partition, all persons interested, and whose possession is to be altered by the decree, ought to be parties.

In a suit for the reversal of orders passed by the Criminal Courts under the provisions of Regulation XV. of 1824, all the parties to the proceedings in the Criminal Courts, or those upon whom the interests of such parties may have devolved, must be made parties.\textsuperscript{b}

If a suit be brought for reversal of an order passed by the Collector in a summary suit for rent, and for the refund with interest of money paid under that order, the parties to the summary suit are the proper parties to the regular suit, and it is not correct to include a third person because he may have been deemed the instigator of the summary suit.\textsuperscript{c}

If three persons be joint lessees, two of them cannot sue in respect of rights claimed under the lease, without making the third a party.

And if a lessee sues to establish some right as belonging to his tenure (as a right of way over the land of a neighbour) the lessor ought to be a party, otherwise he might sue the defendant anew, though the suit were determined against the lessee. So if the lessee is sued, the lessor, if not a party, is not bound by the decision.\textsuperscript{d}

It has been held that where a lessee brings a suit for possession under his lease, against a party who puts him or keeps

\textsuperscript{a} Sel. Rep. v. 7, p. 52.
\textsuperscript{b} S. D. 1848, p. 615.
\textsuperscript{c} S. D. 1851, pp. 194, 247.
\textsuperscript{d} Sel. Rep. v. 2, p. 223.
him out of possession on the ground that the lessor had no right to grant the lease, the lessor must be made defendant: for his title is brought into question, and the lessee, if unsuccessful, would have consequential relief against him on account of the invalidity of the lease: and also that if one man sells to another land which is not in his possession, and if the person in possession resists the claim of the purchaser on the ground that the vendor had no title to sell, the vendor must be a party to a suit by the purchaser for possession.

But this rule only applies where something is required to be done by the vendor, and it is idle to bring him before the Court where no decree is sought against him.

So a mortgagee of moveable property, holding a release or quit-claim from the mortgagor, and being prepared to prove that he has really acquired the rights which he seeks to enforce, is competent to sue alone as owner of property.

Tenants who occupy land on lease, or other persons claiming under the possession of a party whose title to real property is disputed, are not in general deemed necessary parties, unless their derivative rights happen to be of great value, although those rights cannot be bound by a decision in a suit to which they are not parties.

Where one man sells to another certain land which a third party holds in putnee under the vendor; in a suit against the vendor to obtain possession, the putneeedar is properly made a defendant, as the possession is to be obtained through him.

If the purchaser of an estate subject to rent be sued for rent which is alleged to have partly accrued due before his purchase, the proprietors who were in possession during the

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* S. D. 1848, p. 31.  
* S. D. 1853, pp. 201, 748.  
* S. D. 1845, p. 194.
period in question ought to be made defendants along with him.\(^a\)

If a landlord sues his tenant for rent due, it is not necessary to name as a party another person, to whom the tenant may allege that he rightfully paid the rent.\(^b\)

Where A., holding a lease from a zemindar, sues B. as for rent due on an under-lease—and B., on the other hand, denies that the land is comprised in the lease to A., but claims to hold it by a lease from the zemindar direct, and is supported in this contention by the zemindar, the zemindar ought to be a defendant.\(^c\)

There can be no inquiry into, or judgment upon, an alleged lakhiraj tenure, in the absence of the zemindar or manggaloozdar, whose rights are involved in the determination of the question, and therefore he ought to be made a party in all suits in which it is a question whether the tenure be lakhiraj or not.

Thus where\(^d\) the plaintiffs sued for land, as land liable to revenue, under pottahs or leases granted to them by the farmers, and the defendant urged his right to hold it without payment of revenue under a lakhiraj sannud or grant from the zemindar, it was held that there could be no inquiry into the merits of the grant in the absence of the zemindar.

In a suit for money claimed as due from an infant's estate, the person in charge of the property ought to be a party.

Where a suit seeks to remove or virtually to supersede the authority of the legal guardian, he ought to be made a defendant.\(^e\)

A person who claims an estate as his inheritance, upon the ground that it has devolved upon himself through its

\(^a\) S. D. 1847, p. 536.
\(^b\) S. D. 1851, p. 27.
\(^c\) S. D. 1856, pp. 100, 825.
\(^e\) S. D. 1853, p. 159.
relinquishment by a nearer heir, ought to name that nearer heir as a defendant.\textsuperscript{a}

If a man assigns any security for money or any valuable engagement which has been granted to, or contracted with himself, it seems to be considered a rule of practice that he must be a party to any suit which the assignee may bring to give effect to the security or engagement.\textsuperscript{b} But if this be so, he ought to be a defendant and not a co-plaintiff.

It is not merely necessary that all proper parties should be before the Court, but they must be so arrayed that every facility shall be given for the investigation of their claims,\textsuperscript{c} for the plaintiffs are practically the actors in the suit, and it is a mistake if persons join as plaintiffs who cannot act in concurrence throughout.

If two persons join in a suit for land or other property, one claiming under the will of A. deceased, and the other claiming as heir of A. not under any will, but by the general rules of law, they may together say, with some show of reason, that it does not signify to the defendant whether the property belongs to the devisee or to the heir: that it belongs to one or the other, and that the defendant ought not to retain the property unless he can show a preferable right to those who represent the interest vested in one or other of those parties.

But the defendant has a right to know by whom he is to be compelled to yield up the property; he can only be so compelled by a person having a better title than himself, and he has a right to avail himself of any infirmity in the title of the party suing him; he is entitled, therefore, to ask whether he is to contest the question with the heir or with the devisee.

\textsuperscript{a} S. D. 1849, p. 204.  \textsuperscript{b} S. D. 1848, p. 94.  \textsuperscript{c} Supra, p. 56.
If the estate passed by the will, one has nothing to do with it: if it did not pass by the will, the other has nothing to do with it.

Both the plaintiffs cannot be entitled to the property; one of them must be entitled to the exclusion of the other; the Court by its decree must say which is entitled, and must order the defendant to give it up to the person entitled. The Court must therefore decide between the claims of the co-plaintiffs before they can decide between the co-plaintiffs and the defendant. But this is impossible, for parties between whom any question is to be decided must be arrayed on opposite sides, in order that the question between them may be raised and decided according to the common rules of pleading.

So where the plaint filed by A. and B. against C. states that A. being absolutely entitled to a sum of money has assigned it to B., by a complete assignment, which wants nothing to make it perfect, not even leaving to the assignor a nominal interest, as trustee for the assignee; here are two parties, one of whom cannot have any interest in the subject-matter of the suit; but both concur for the purpose of preventing the defendant from alleging an infirmity in the title of either.

Two plaintiffs cannot be put to interplead; if the decision be in favour of either, it must be a decision passed without hearing what the other has to say against it: if the Court decides that one of the plaintiffs is entitled, and the defendants do not complain, the other plaintiff has no means of appealing against the decree obtained by himself.

It is therefore impossible to make a decree at the suit of A. and B. which is to destroy the right of A. and give the right to B., or to give the right to A. and to destroy the right of B., and the Court cannot give joint relief to both the plaintiffs, or separate relief to either.
PARTIES TO SUITS.

It may be said indeed that the consent of the co-plaintiffs prevents any wrong being done to them. But wrong is done to the defendants; for where persons having conflicting interests, or parties, one of whom has an interest and one has no interest, are thus joined, it prevents the defendant from making two distinct defences. Or if he does make two distinct defences, with distinct evidence in support of each, this is in reality carrying on two law-suits in one.

Where the plaintiffs claim things wholly distinct from one another, as if in the same suit A. claims the land only, and B. only the mesne profits, this amounts to a misjoinder of parties.

A person not interested need not in general be made a defendant.

A party who has appealed to the Revenue Commissioner against a sale for arrears of revenue, is entitled to sue in the Civil Court for reversal of the sale under Section 27, Regulation XI. of 1822; but one who has not so petitioned is not entitled to sue, and ought not to be joined as a co-plaintiff with those who have petitioned.*

If a plaint be filed either to enforce or to impeach an award, the arbitrators ought not to be made defendants, for the plaintiff can obtain no decree against them.

But a Collector may represent important interests, and is frequently a necessary party.

Where an action is brought against the mookurureedar of land to recover malikana, and the right of the plaintiff to claim as malik is disputed, the Collector ought to be made a defendant, that the right to malikana may be contested with him.\(^b\)

He ought also to be made a party to a suit, brought to set aside a revenue sale.

* S. D. 1856, p. 1055.

\(^b\) Reg. VIII., 1793, Sect. 44 ; S. D. 1846, p. 93 ; S. D. 1853, p. 196.
aside a revenue sale of land,\(^a\) or to obtain possession of land which is alleged to have been wrongfully taken from the plaintiff by an act of the Collector.\(^b\)

If the Collector refuses to perform a duty which the law imposes upon him, as to make a butwara of land which is legally divisible in that way, he ought to be made a defendant in a suit for a division.\(^c\)

A Regular suit to contest the decision of a Collector under the powers vested in him by Sections 11, 12, 14, 15, 16, 17, 18, 19 and 20 of Regulation VII., 1822, is in the nature of an appeal from a summary award, and it is not necessary that the Collector, or any other officer of Government, should be a party to such a suit.\(^d\)

In an action for the recovery of property, attached by an ameen appointed by the Collector under instructions from the Civil Court, the Collector ought not to be made a party.\(^e\)

No sale under Regulation VIII., 1819, can be reversed, unless the purchaser and also the zemindar at whose instance the sale took place, are parties.\(^f\)

The proprietary right to land cannot be tried in the form of an action against the tenant for the value of the crop. If the right to the crop be incident to the proprietary right, the zemindar must be a party.\(^g\)

If a man lets land to another, and the lessee is ousted by a third party claiming the land under a lease from a different zemindar, it is held that he may sue such third party for redress, making his own lessor a defendant, without making the zemindar of the dispossessing party a defendant.\(^h\)

If the question between two ryots be, whether certain land belongs to one or to another village, where both villages

\(^a\) Sel. Rep. v. 5, p. 358.
\(^b\) Sel. Rep. v. 5, p. 72.
\(^c\) S. D. 1852, p. 550; supra, p. 23.
\(^d\) Reg. VII., 1822, Sect. 23, Cl. 2.
\(^e\) S. D. 1845, p. 412; S. D. 1858, p. 93.
\(^f\) S. D. 1846, p. 328; 1849, p. 246.
\(^g\) S. D. 1847, p. 123.
belong to the same zemindar, it is not necessary to make the zemindar a party.\(^a\)

If the question in a suit be whether a certain piece of land belongs to estate A. or to estate B., and estate B. is held by several as co-sharers, they must all be parties, and it is not enough to sue the one who is alleged to have turned the owners of estate A. out of possession of the land in question.\(^b\)

When a man holding dewuttur lands from A. is forcibly compelled by B. to give him a caboolent, or attornment, in respect of the same lands, the tenant may sue B. to set aside the caboolent without making A. a party; for the wrong was done exclusively between B. and the tenant.\(^c\)

Where a debt is joint and several, the plaintiff must bring each of the debtors before the Court, because they are entitled to the assistance of each other in taking the account, and because debtors are entitled to a contribution among themselves when one pays more than his share of the debt.

But where the obligor who is sued is the principal, and the other obligors are only sureties, the latter need not be sued.\(^d\)

If the principal is clearly insolvent, and can be proved to be so (as by his having subsequently to the contract taken advantage of the insolvent rules of the Civil Courts, or of the Act for relief of Insolvent Debtors in Calcutta),\(^e\) he need not be a party to the suit, unless the plaintiff thinks fit.

In a suit by one surety against another to make him contribute, the executor of a deceased co-surety ought to be a party.

If several persons be jointly indebted to a third party, and one of them takes the benefit of the Act for the relief of

\(^a\) S. D. 1856, p. 521.
\(^b\) S. D. 1850, p. 371.
\(^c\) S. D. 1847, p. 393.
\(^d\) See Sel. Rep. v. 4, p. 238.
\(^e\) See Index, tit. Execution; 10 and 11 Vict., Chap. XXI.
Insolvent Debtors in Calcutta; although he cannot be sued, the others may be sued without him.

When A., B., and C. are jointly indebted to D., and D. obtains judgment in the Supreme Court against A. (who alone is subject to the jurisdiction of that Court) and so recovers a portion of the debt; A., B., and C. may still be sued in the Civil Court for so much of the debt as remains unpaid.\(^a\)

Whenever more than one person is liable to contribute to the satisfaction of the plaintiff’s claim, they should all be made parties to the suit: as if there be a demand against a partnership, all the partners must be before the Court, and if any of the partners liable to the demand are dead, their representatives ought to be parties.

Even though the demand be against several persons jointly, yet the Court may entertain a suit against some of them for the whole, where the others are abroad.

Persons may be co-plaintiffs, whose titles, though distinct, are not inconsistent with each other; thus all the joint owners of an estate which has been erroneously sold for arrears of revenue may sue to set aside the sale; the creditors of a deceased debtor may join in a suit to cause his estate to be administered according to law and applied to the discharge of their claims; or, for the sake of convenience, one joint owner or creditor may file a plaint on behalf of himself and all the others; and the others, if they choose to avail themselves of his act, will, without becoming parties on the record, obtain equal advantages with the actual plaintiff.\(^b\)

It sometimes happens, especially in the case of trading partnerships, that the persons who are interested in the objects of the suit, and who, according to the general rules of law, ought to be parties, are so numerous as to render it incon-

venient or impracticable that they should all be parties to the record.

In such cases, if they have all one common interest, a few may sue on behalf of themselves and all the other members of the association or body: thus, where all the inhabitants of a village have rights of common or other general rights, one may sue for all.*

It must, however, be clear that the object of the suit is beneficial to all parties whom the plaintiffs undertake to represent: and in such case a few may sue on behalf of themselves and others, even though the majority disapprove of the institution of the suit: as where the plaint seeks to obtain a direct advantage for all, or to impeach a contract manifestly injurious to the whole, or where it is filed by a legatee or creditor of a person deceased, praying on behalf of himself and of all the other legatees and creditors, that the executor may render an account of the estate and may satisfy their claims.

But if it be in any degree uncertain whether it will be advantageous to all that the Court should make the decree which is prayed for in the suit, the suit cannot be maintained by one on behalf of all. One partner cannot file a plaint on behalf of himself and other partners for a dissolution of the partnership, because it cannot be known, before the case has been investigated, whether a dissolution would or would not be advantageous to all.

Where land forms part of a joint and undivided estate, one or more of the co-sharers cannot, without the consent of the others, obtain possession as against a cultivating ryot, even by suing him, and naming as defendants those of the co-sharers who refuse to join in the plaint. A decree for a fractional portion of the ryot's holding in such an estate, cannot be executed without the consent of all the sharers; each sharer is

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* Only where object of suit beneficial to all.

Cultivating ryot not ousted without concurrence of all sharers.

Supra, p. 122.
entitled to his portion of each beegah of land, and if the co-sharers at large do not wish to disturb the ryot's possession, the plaintiffs cannot do so.*

But, although the Court will not interfere in the internal management of an estate, yet if a joint owner finds his co-sharers persisting in a course of management which he deems injurious to the common interest, he may sue them for a partition.

One of several owners may, without the concurrence of the others, sue a stranger for possession of the joint property, on behalf of the co-partners generally, if the stranger professes to hold under an adverse title.\(^b\) The Court will take care, by its decree, to provide for the safe keeping of the property which may be eventually adjudged to the plaintiff, until all who claim to be interested jointly with him have had an opportunity of asserting their rights.\(^c\)

Those who seek relief in this form, must be persons who all have one common interest in all the objects of the suit, such as creditors who are entitled to satisfaction of their demand out of one estate, or members of a joint adventure or partnership, who are entitled in common to aliquot shares of one property.

In order that all proper parties may be before the Court by representation if they are not personally before it, the plaintiff must sue on behalf of all who are interested, except the defendants.

On the other hand it may happen, that the parties who according to general rules ought to be defendants in a suit, are so numerous that they cannot conveniently be named as defendants.

In such a case the suit may be brought against certain

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persons on behalf of others as well as themselves. The persons thus sued ought to be such, in character and in number, that it may be justly expected that they will fairly and honestly try the legal right between themselves and other persons interested upon the one hand, and the plaintiff upon the other hand.

Where all the defendants have but one right amongst them, founded upon the same circumstances, it is enough to sue a few of them, as where a great number of occupiers of land are liable for the whole rent and for each other.*

But where there are several different rights under which the claim of the plaintiff may be resisted, there must be a corresponding number of defendants on the record, who may maintain all the several defences.

If a hundred persons fish in A.'s lake, all claiming a right to do so as lessees of B., it is enough to make one or two of them defendants; but if fifty of them claim under B. and fifty claim under C., then one of each class should be named as a defendant.

Where the object of the suit is merely to establish a right (e.g., A.'s exclusive right to fish in certain waters), this mode of suing may well be resorted to, and the decree could not be questioned by any member of a class which was fairly represented in the suit. But if the object be to compel all the members of a class to do some act, as for instance to pay a sum of money to the complainant, it might be found difficult to enforce the practical performance of the decree by persons who were not actually parties to the suit.

Sometimes it is necessary for the plaintiffs to bring their suit on behalf of themselves and others, against the defendants on behalf of themselves and others.

The number of shareholders in joint-stock companies, whether enjoying corporate privileges or not, is frequently so

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* Supra, p. 117.
great, that if disputes arise among them concerning the affairs of the company, those who desire to enforce their claims through the instrumentality of the Court could not all join as plaintiffs, without extreme inconvenience. The evil would be still greater if each shareholder should file a separate plaint to recover his portion of the property in dispute. The Court will therefore endeavour to do justice to all in one suit; and for this reason, where individual members of a company wish to sue the directors or others who are also members of the company, and where they cannot persuade the company itself (if a corporation) to institute a suit, they may bring such a suit in their own names, either suing by themselves and making the rest of the company defendants, or, suing on behalf of themselves and the other members of the association who may come in and contribute to the expense of the suit.

But such suits are governed by the principles already stated. The relief which is prayed must be one in which the parties whom the plaintiffs profess to represent, have all of them an interest identical with that of the plaintiffs; for a man cannot be represented by a hostile party.

If the decree which is asked for may possibly be injurious to any members of the society, those parties ought all in strictness to be made defendants, because each of them may have a reply to give, adverse to the interest of the parties suing. But the rules which prescribe this endless multiplication of parties to suits, operate in many cases as an absolute denial of justice, for which it is very desirable that some remedy should be found.
CHAPTER XI.

HOW A SUIT IS TO BE BROUGHT.

All suits must be commenced by a plaint, which, except where otherwise specially provided by the Code, is presented to the Court by the plaintiff in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf.¹

Chapters II. and III. of the Code prescribe who are to be recognised as agents, how pleaders are to be appointed, what particulars the plaint is to contain, how it is to be subscribed and verified, and in what cases security must be given for the payment of the costs which the opposite party may be put to in the suit; where the plaint is to be rejected by the Court, and where it is to be received and its particulars to be registered.

If the complainant sues, not on his own behalf, but as a guardian or near friend of one who is alleged to be incompetent to manage his own affairs, this ought to be distinctly stated in the plaint.²

The vakalutnamah ³ must, in all Courts, except that of the Moonsiff,⁴ be written on stamped paper; but it is not liable to the stamp duty imposed on exhibits. In the Moonsiff's Court it may be written upon unstamped paper.⁵ Two or more Vakeels may be appointed by one vakalutnamah.

When a Vakeel to whom a vakalutnamah may have been given, consents to undertake the prosecution of the suit, he affixes his signature to the back of the vakalutnamah, together

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¹ Code, Chap. III., Sect. 25.
² S. D. 1852, p. 47. See S. D. 1850, p. 6.
³ Reg. X., 1829.
⁴ Con. 950, Cal. C. 1st May, West. C. 10th July, 1835.
⁵ Con. 798, Cal. C. 14th June, West. C. 19th July, 1833.
with the date of signing, and he is thenceforth precluded from being employed in the same cause against the party who has so retained him.

Parties employing pleaders are at liberty, whatever may be the Court they sue in, and whether they sue as paupers or otherwise, to settle with them by private agreement the remuneration to be paid for their professional services; and it is not necessary to specify such agreement in the vakalutnamah: such agreements, however, can only be enforced by a regular suit.

The Government sues by pleaders of its own, who are appointed for that purpose in every Court, and the order of a Government Officer, filed by a Government pleader, is sufficient authority to the latter to plead a cause. It is written on plain paper.

The Vakeel of Government, on the requisition of the Collector, must plead the cause of an invalid jaghirdar free of cost.

The petition of complaint, in whatever Court it may be filed, bears a stamp proportioned to the value of the property sued for.

Where more than one stamp is required for engrossing petitions of plaint, the plaintiff may at his option file several stamps, the aggregate value of which will be equal to the amount required by law, or one stamp of the full value, with as much plain paper attached thereto as may be required.

When a person has obtained permission to sue as a pauper, if he can induce any of the Vakeels of the Court in which

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*a* Reg. XXVII., 1814, Sect. 22.
*b* Act I., 1846, Sect. 7.
*c* Con. 1297, Cal. C. 28th May, West C. 18th June, 1841.
*d* Act I., 1846, Sect. 8.
*e* See Reg. XXVII., 1814, Reg. XIII., 1829, Cir. Ord. 14th July, 1848.
*f* R. S. C. 14th July, 1846.
*h* Reg. V., 1831, Sect. 8. *Infra*, Chap. XIV.
*i* Cir. Ord. 28th August, 1840.
he intends to sue, to undertake his suit, he may do so, settling privately with the Vakeel as to his remuneration. The vakalutnamah must in such case bear the usual stamp. If he is unable to prevail upon any of the Vakeels to act for him, and is also unable to plead the cause in person, the Court may require any of its authorized pleaders to undertake and plead the suit.

The Court states on the record, its reasons for every exercise of this power, and the order of the Court is a sufficient warrant to the Vakeel to plead the suit without filing the usual vakalutnamah.

The Court cannot require a Vakeel to receive a vakalutnamah from, or to undertake the suit of, any one who is not a pauper.

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*a Con. 1309, West. C. 15th September, Cal. C. 22nd October, 1841.
*b Con. 1132, West. C. 16th February, Cal. C. 9th March, 1838.
*c Reg. XXVIII., 1814, Sect. 7.
*d R. S. C. 1st August, 1842.
CHAPTER XII.

THE PLAINT.

The object of the plaint generally is to pray the decree of the Court touching some right claimed by the person making the complaint, in opposition to rights claimed by the person against whom the complaint is made.

Every plaint ought to show the rights of the complainant, by whom and in what manner he is hindered from enjoying them, or in what he wants the assistance of the Court; and it should pray relief suitable to the case.

The case stated ought always to be such, that if the whole statement is proved to be true, the Court will be justified in giving to the plaintiff in whole or in part, the relief or assistance he requires. Indeed it is provided that, if upon the face of the plaint, or after questioning the plaintiff, it appear to the Court that the subject-matter of the plaint does not constitute a cause of action, or that the right of action is barred by loss of time, the Court shall reject the plaint, or cause it to be amended.\(^a\) The Code prescribes a similar course if the plaint does not contain the requisite particulars, or if it contain particulars other than those required (by the Code) to be specified, whether relevant or not, or if the statement of particulars be unnecessarily prolix.\(^b\)

The task, therefore, of the person who prepares the plaint is no easy one; but it will be prudent, in framing that document, to make sure, in the first place, that all the particulars

\(^a\) Code, Sect. 32.  \(^b\) Code, Sect. 29.
required by the Code have been accurately given, and in the second place to omit everything that is not fairly within the meaning of the Code, but not to make the plaint unintelligible by excessive brevity, since it is easier to remove what is superfluous than to supply deficiencies.

The annual produce of lakhiraj and malguzary lands is taken to be the aggregate of the sums that may have been paid, under the Regulations, by the dependent talookdars, under-farmers, and ryots, on account of the year in which the claim may be preferred, and that would be payable by them were the claimant to be put into possession of the lands during that year.

Where the suit embraces two objects, the stamp must represent the value of both. Thus if a man sues to establish a right of keeping open a water-course, and also for damages on account of its having been closed, it has been held that the plaint must contain a fair valuation of the profits arising from the water-course being kept open, as well as of the damage which has been sustained by its being closed.

The valuation should not extend beyond the property in respect of which the plaintiff seeks a decree. Thus if a man be dispossessed of two acres of land, out of five acres which he holds on lease, the valuation relates to the two acres only; or if he sue for two-thirds of an undivided estate, he lays the valuation at two-thirds of the whole value, however much his plaint may affect the title of the possessors to the whole.

It is enough that the valuation is sufficient according to the facts which the plaint sets forth. It need not be raised in order to meet the case which the defendant may intend to set up by his answer.

If the valuation be sufficient in amount, it does not signify whether it is made upon correct principles or not.
This specification of value is not only expedient, but absolutely necessary, in order to ascertain the Court in which the suit should be tried, and to obviate the inconveniences which would arise from the trial of suits for portions of the same estate by different Courts; whereby conflicting decisions on the same issue may be passed by different Judges.

It would be unjust to compel a man to come before the Court and to defend a suit, upon the application of one who has not, at least, an apparent title to be heard regarding the subject-matter of the suit; and therefore every plaint ought to show that the plaintiff has a right to the thing demanded, or that he has such an interest in the subject-matter as entitles him to institute a suit concerning it, and if there be more than one plaintiff, it should appear, not only that they are all interested, but that their respective interests are not inconsistent with each other.

If a man sues to enforce any right derived from or through a Hindoo widow (either by her own assignment or by seizure for her debts), in property which had come to her as representative of her husband, the plaint ought to show (if the fact be so) that the alienation was made by the widow for some purpose for which she was legally entitled to alienate her husband's estate, and a similar statement ought to be inserted in the plaint, where the claim is founded upon the alienation by a guardian, of the property of his ward, or the alienation of joint property by the managing member of a joint family.

- The interest in respect of which the suit is brought ought to be an actual existing interest, in possession or in reversion, and not the mere possibility or probability of a future interest; nor ought it to be a precarious interest, of which the plaintiff may be deprived at the will of another.

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* S. D. 1849, p. 405.
It is not easy to anticipate the interpretation which may be put upon the provisions of a new enactment, but as written plaintiffs have been retained, it seems convenient that they should be full enough to dispense with the necessity of questioning the plaintiff as to the nature of his claim; and that it should still be the rule to show by the plaintiff not only that the plaintiff has an interest in the subject-matter, but that he has complied with all the forms that are necessary to enable him to institute a suit concerning it.

Thus if he sue as guardian of a Mahomedan minor, not being guardian according to the law and usage of Mahomedans, he ought to show that he has been especially appointed guardian.\(^a\)

If he sue in a representative character, he ought to state that he has proved the will, or has obtained the usual certificate of heirship to the deceased. The mere allegation that the plaintiff’s title is complete, is not sufficient, without showing what has been done to complete it.

A plaint seeking to enforce a right of pre-emption,\(^b\) or a suit to recover possession of mortgaged land,\(^c\) should set forth that all needful preliminaries have been complied with, and how they have been complied with.

And where it is required by law that parties shall apply to the Executive Government for redress before bringing suit, the plaintiff should allege precisely that this has been done, and should show how it has been done.\(^d\)

In the case of a mortgage by way of conditional sale, if the debt be not repaid, the lender, unless good and sufficient cause be shown, has not the choice of suing either for the money or for the property pledged, but is restricted to an action for possession of the property.\(^e\) If, then, the lender

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\(^a\) Sel. Rep. v. 7, p. 559; Reg. V., 1799, Sect. 3.  
\(^b\) S. D. 1848, pp. 12, 22; Ibid. 1853, p. 704.  
\(^c\) S. D. 1849, p. 392.  
\(^d\) S. D. 1849, p. 274.  
\(^e\) Con. 898, 5th September, 1834; Sel. Rep. v. 7, p. 92.
sues for the money and not for the property, his plaintiff ought to set forth the special circumstances under which he conceives himself entitled to depart from the ordinary course.

A plaintiff, claiming by inheritance, should set forth his pedigree with sufficient precision to show how he is entitled: for a mere general allegation of hereditary right is not a sufficient ground upon which to put the defendant to the trouble and expense of answering.

But this principle applies only where the title of the plaintiff to relief depends upon the completeness of his hereditary title, and not where, by reason of some transaction between him and the defendant, he has acquired an independent title as against the latter.

Thus a mortgagor in suing his mortgagee, need not carry his title higher than the mortgage, by which both are bound, but it is sufficient to state the execution of that security.

And a lessor suing his tenant may rely upon the lease; for the fact of the defendant having accepted a lease from the plaintiff is sufficient to preclude him from disputing the title of the plaintiff to grant it; or indeed his title to grant leases to others (all circumstances being similar); and one suing his agent whom he has employed to receive the rents of land, need not show title to the rents, but only that the defendant was employed by him in collecting them.

Where one man occupies the land of another adversely, and has neither accepted a lease nor paid rent, he ought not to be sued for rent, but for possession with wasilat. The real and principal claim of the plaintiff should be distinctly stated, and a decree should be expressly prayed in respect of it.

Where a regular suit is brought to enforce a proprietary

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* S. D. 1849, p. 384.  
* S. D. 1857, p. 694.
right, and summary proceedings have already been had, and an order pronounced adverse to the plaintiff’s interests, the plaintiff ought not, in general, to set forth the reversal of the summary order as the sole or even the main scope of the suit, for the reversal of the summary order will in general merely remit him to the position in which he stood before the order was passed. Such reversal may indeed be prayed as one of the results of the action, if the plaintiff’s interests require it, and if the intent be not simply to contest the justice of the summary order upon the pleadings and proofs which were adduced in the summary inquiry.*

Where a suit is brought simply and solely for the reversal of a summary decree, although the inquiry is more full, formal, and deliberate, the question for decision remains exactly the same, and no points can be made the subject of inquiry, save those which either were or might have been inquired into in the summary proceedings. If the summary suit was for arrears of rent, the Collector could not have inquired into deductions claimed by virtue of bonds, assignments, underleases to third parties, and the like. Claims of such a nature could not be disposed of summarily, nor can they be brought under the cognizance of the Civil Court where application is made merely to set aside the order passed on the summary investigation.

A person suing for the possession of land as rightly belonging to himself, need not pray for the reversal of an order under Act IV. of 1840, by which the possession was adjudged to be with the defendant. That order is a mere possessory order, which falls as a matter of course when the plaintiff establishes his proprietary right.\textsuperscript{b}

If the cause of action arose before the ordinary period of limitation, the plaintiff ought to set forth distinctly the grounds

\textsuperscript{a} S. D. 1850, p. 476. \textsuperscript{b} S. D. 1852, p. 387.
upon which the plaintiff claims to be exempt from the law of limitation in respect of the matters sued for; whether he relies on his own disability; or on the fact that he has already taken the proceedings necessary to keep alive his right; or on the defendant's acknowledgment of his claims, or on the fraudulent and unjust origin of the defendant's possession.\(^a\)

In the latter case the provisions of Regulation II., 1805, must be expressly insisted upon; and it is not enough to make clear and specific allegations of fraud or injustice, unless the benefit of this law is claimed. And even if the fraud or injustice be expressly stated, and the law specially cited, the plaint ought to show that the suit is brought within twelve years from the time when the fraud was discovered, or might with ordinary diligence have been discovered.\(^b\)

The plaintiff must state enough to show that the defendant is not a mere stranger, but that he is interested, or claims to be interested, in the matters in question in the suit, or that he is in some way liable to be called upon to answer the plaint.

A plaintiff may have an interest in the subject of his suit, and a right to institute a suit concerning it, and yet may have no right to call upon the defendant to answer his demand, although the defendant likewise is interested in the subject of the suit. This is the case where, though each party is interested in the subject of the suit, neither of them has entered into any contract or dealing in respect of it, with the other or with those whom he represents: that is, there is no privity between them.

Thus a legatee, who has not received his legacy, is interested

\(^a\) Sel. Rep. v. 7, p. 399; S. D. 1848, p. 880; Ibid. 1847, p. 245; Reg. II., 1805, Cl. 2.
in the estate of his testator, and has a right to have it called in and duly applied; yet he has no right to institute a suit against the debtors to that estate, for the purpose of compelling them to pay debts in satisfaction of his legacy; for the debtors contracted with the testator, and are answerable only to him, or to his representatives. If, however, the debtors collude with the executor for the purpose of defrauding the legatees, or if the executor causelessly refuses to sue the debtors, the legatees are entitled to sue them. A plaint filed by legatees, under such circumstances, ought to set forth the special reasons which make it proper that their suit should be entertained.

Where a mortgagee devises the mortgage security by his will and appoints an executor, the executor is the proper person to bring a suit for foreclosure of the mortgage; and in one case, where the executor was stated to be in prison, but where it does not appear that he was unwilling or unable to sue, and where he was not made a party to the suit either as plaintiff or as defendant, it was decided that the foreclosure could not be enforced by the guardian of an infant devisee, or even by a devisee of full age. But it is conceived that if the executor had been unwilling or unable to sue, the devisee or his guardian, if he was under age, might properly have sued for foreclosure, making the executor a defendant.

All the creditors of A. are of course interested in his obtaining payment of any debts or legacies to which he may be entitled; yet they cannot sue those who are liable to pay him such debts or legacies; for the persons liable to pay A. are strangers to his creditors, and have no means of judging whether the demands upon him are just, or whether he may not have other creditors equally entitled.

So in cases of land-tenure. The neem-ousut talookdar or


* S. D. 1848, p. 302.
holder of a sub-grant of land, is constituted by the ousut talookdar or original grantee, to whom his ground-rents are payable. If they be in arrear, the ousut talookdar should take proceedings against the neem-ousut talookdar; but the zemindar cannot sue the neem-ousut talookdar, with whom he has entered into no engagements.a

But where an agent has been employed, his principal has, in many cases, a right to demand the property with which he has been entrusted, or the value of it, from those with whom the agent has had dealings. Thus a merchant, who has employed a factor to sell his goods, may demand the price of the goods from those to whom the factor has sold them, if the factor has not been paid.

A private purchaser of an estate from one who has bought it at public auction, may sue the original proprietors for possession.b

The complainant must set out his case so clearly as to enable the defendant to know the precise grounds on which the suit is brought.c

But the circumstances of a case may be so complicated as to afford to the plaintiff many different grounds upon which his action may be sustained, and it is possible that neither he nor his advisers are able to say which is the best of these grounds. Where this is so, if the plaint states the facts fully, and also states distinctly what the Court is asked to do, nothing more is required. It is not the duty of the plaintiff to narrow his grounds of suit.

Where the object of the suit is to obtain payment of a balance already ascertained and struck, the date and particulars of the settlement, which is relied on as the basis of the suit, ought to be mentioned in the plaint; but this is unnecessary where the plaint seeks merely to recover a

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a S. D. 1848, p. 626.  
b S. D. 1848, p. 355.  
c See S. D. 1851, p. 471.
balance alleged to be due upon a general account between the parties. 

If a suit be brought for title-deeds relating to lands in the possession of the defendant, and for the possession of the lands; the plaintiff must state what the deeds are, and what the property is to which they apply.

But it is otherwise, if the ground of the suit be that the defendant has got possession of the title-deeds, and has intermixed the boundaries of the disputed estate with his own, so that the plaintiff is prevented by the act of the defendant from stating his own claim precisely.

It sometimes happens the plaintiff is not certain of his title to the specific relief he wishes to pray for: the prayer may therefore be framed in the alternative, in order that if one species of relief is denied him, another may be granted.

Where the boundaries of the property in suit are required by the Code to be specified, they ought to be stated with as much precision as possible; a map being, if necessary, annexed to the plaint, or some map which has the character of a public document being referred to; but if the boundaries be set forth, the land may be decreed to the plaintiff, even though its quantity be somewhat more than that stated in the plaint.

And if it appears by the plaint that it is absolutely impossible to state the boundaries particularly, from the land being under water, or from other circumstances, the deficiency is not fatal to the suit, but may be supplied at a later stage.

It has been held to be sufficient where the plaint refers to the boundaries as specified in a proceeding in the Magistrates' Court under Act IV. of 1840, if such specification be complete and adequate.

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a S. D. 1854, p. 235.  
c S. D. 1852, p. 79; S. D. 1853, p. 389.
So where the claim is for an entire mehal, with a specified exception as to a certain number of biggahs of land occupied by the homestead, or where it is for the proceeds of attachment of a share in a joint estate, or where it is grounded on a pottah in which the lands granted were designated mouza-waree or by villages.\(^a\)

Where mesne profits are sued for, an approximate estimate of the amount is generally deemed sufficient.\(^b\)

The plaint must contain all information which is necessary to give it certainty and precision with regard to the subject-matter of the suit.

Thus in the North-Western Provinces,\(^c\) wherever that species of land-tenure prevails, in which the interest of the numerous co-proprietors of each estate mainly depends upon the extent of land in each man's occupancy, rather than upon the laws of inheritance, the plaintiff is required to state the exact fields, with their numbers in the muntukhub, (or list of the cultivators, whether proprietors or otherwise, disposed according to the subdivisions of the estate in which they hold lands,) which he claims to transfer from the possession of the defendant to his own.

But no such specification is required where the estate is undivided, and is held by co-shares in definite fractional portions, each man's interest depending wholly upon the laws of inheritance.\(^d\)

The Code prescribes (Chapter VII.) a mode in which questions may be raised for the decision of a Civil Court by any persons interested, without filing a plaint.

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\(^a\) S. D. 1850, p. 207; S. D. 1854, pp. 124, 254.
\(^b\) S. D. 1854, p. 323.
\(^d\) S. D. 1850, p. 517.
CHAPTER XIII.

VALUATION OF SUITS.

SECTION I.

VALUATION AT ONE YEAR'S JUMMA.

In a suit for lands paying revenue to Government, and not permanently assessed, if they form an entire mehal, or a specific portion of a mehal, with a defined jumma, or rent payable to Government in respect of the portion, the value of the suit is assumed at the amount of the annual jumma.\(^a\)

Suits instituted with a view to fix the jumma of a ryot's holding, are estimated at one year's rent; although it is evident that in such suits not merely the one year's rent, but also the right to an increase of rent during succeeding years, is virtually brought into question.\(^b\)

SECTION II.

VALUATION AT THREE YEARS' JUMMA.

In suits for lands paying revenue to Government and which have been assessed in perpetuity, if they form an entire mehal, or a specific portion of it with a defined jumma, the value of

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\(^a\) Reg. X., 1829, Sch. B. Art. VIII.; Madras, p. 318.

\(^b\) Con. 1272, Cal. C. 31st January.

Con. 1143, West. C. 24th March, Cal. West. C. 19th June, 1840; Con. 811, C. 6th April, 1838. See Appendix 2nd August, 1838. A., and Dawes, Civil Procedure of
the suit is assumed at three times the annual jumma payable to Government on account of such mehal, or portion.\textsuperscript{a}

If the suit be not for a specific portion of a mehal, upon which specific portion a definite jumma has been fixed, but for a definite fractional part of the entire mehal, one jumma being assessed upon the entire mehal, the suit is valued at three times the corresponding fractional part of the entire jumma.\textsuperscript{b}

In suits by a Collector against a farmer and his sureties under Sections 26 and 28 of Regulation XXVII., 1803,\textsuperscript{c} or for the forfeiture of an estate for resistance or evasion of process under the old procedure,\textsuperscript{d} the value of the suit is determined by the jumma of the estate which has been forfeited, or from which the arrear is due; and not by the amount of the fine to be levied, nor of the arrear due.

\textbf{SECTION III.}

\textbf{VALUATION AT EIGHTEEN TIMES THE ANNUAL RENT.}

The value of a suit for lands not paying revenue to Government, is assumed at eighteen times the amount of the annual rent by computation.\textsuperscript{e}

And if the defendant represent his lands as such, it has been held that the plaintiff is justified in valuing his suit at eighteen times the annual rent, whether it be or be not proved that the lands are lakhiraj.\textsuperscript{f}

\textsuperscript{a} Reg. X., 1829, Sch. B. Art. VIII.; Con. 1143, West. C. 24th March, Cal. C. 6th April, 1838.
\textsuperscript{b} Con. 1340, West. C. 18th May, Cal. C. 17th June, 1842.
\textsuperscript{c} Con. 808, West. C. 2nd, Cal. C. 30th August, 1833.
\textsuperscript{d} Con. 386, 27th May, 1825.
\textsuperscript{e} Reg. X., 1829, Sch. B. Art. VIII.
\textsuperscript{f} S. D., 1837, p. 1443.
SECTION IV.

VALUATION ACCORDING TO AGGREGATE VALUE OF THINGS SUED FOR.

If the suit be for two or more distinctly-assessed mouzahs or mehals, the cause of action being one and the same, the valuation is made by adding together the sums at which each estate would be valued in a separate suit for it.  

If a man thinks fit to combine in one suit a claim to land, and to the mesne profits which accrued while the plaintiff was out of possession; the suit is valued, in respect of the land, according to the rules already laid down; and in respect of the mesne profits, at the amount sued for; and the aggregate of these two sums gives the total value at which the suit is estimated.  

The estimate is made upon the same principle when a claim for lands is brought, in connexion with a money-demand, not being for mesne profits.

SECTION V.

VALUATION AT RATE LAID BY PLAINTIFF.

In suits for compensation for injury, and the like, the value of the suit is computed at the rate assumed by the plaintiff.  

If a resident cultivator sue for reversal of a summary decision passed by a Collector, adjudging a balance against him and ejecting him as a defaulter, the value of the suit is esti-
mated at the amount of the rent in dispute, i.e., at the sum originally sued for before the Collector.\footnote{Con. 862, West. C. 7th, Cal. C. 28th February, 1834.}

By the Circular Order of the 14th May, 1847, it seems to have been intended to rule, that if the suit be instituted to recover the whole balance of principal and interest remaining due upon a bond, so that when the claim is satisfied the account upon that bond will be finally closed, the stamp must be sufficient to cover the whole claim; and that if the suit be instituted for the recovery of an instalment, with or without interest, the stamp must be of a value equal to the aggregate amount of the instalment and interest claimed, and of the sum of all instalments due or to become due thereafter.

The value of the principal includes that of the subordinate right. Thus where a man brought a suit to recover mesne profits of a haut or fair, and interest thereupon, and also to compel the defendant to keep up an establishment of accountants in the haut, laying his suit at the sum which he sought to recover, it was held to be unnecessary for him to estimate the value of the right to have accountants appointed.\footnote{R. S. C. 16th March, 1846.}

\section{SECTION VI.}

\textbf{VALUATION AT THE ESTIMATED SELLING PRICE.}

In suits for\footnote{Reg. X., 1829, Sch. B. Art. VIII.} houses, gardens, and other things of value, real or personal, not of the description above specified, as well as for any interest in malguzary or revenue-paying land not capable of valuation under the rules already stated (as for instance where lands form part of an assessed estate, but do not constitute a definite fractional portion of it, nor a specific portion with a defined jumma);\footnote{Cir. Ord. Cal. and West. C. 23rd August, 1833; Sel. Rep. v. 7, p. 19; S. D. 1848, p. 613; S. D. 1853, p. 427.} the value of the suit is com-
puted according to the estimated selling price, and the plaintiff is not at liberty to substitute any other standard of value, such as an arbitrary jumma assumed by himself, or the alleged amount of the annual produce of the lands.

Where the suit is for a garden consisting of lakhiraj land, yielding no rent to its owner, but held directly by him, the trees and plants are estimated at the selling price, and the land is valued, in addition, at eighteen times the annual produce.

A suit to recover possession of a mela or fair, is laid at the estimated value of the interest claimed.\textsuperscript{a}

The same rule prevails where the thing claimed is the possession (of course for a limited period) of land included in an ijarah or in the jote of a cultivating ryt.\textsuperscript{b}

A suit to obtain the sale of lands in satisfaction of a judgment which has been obtained against their owner in a previous suit, is computed at the estimated selling price, or, if that be in excess of the plaintiff’s claim under the judgment, at the amount of the plaintiff’s claim.\textsuperscript{c}

In suits brought by a mortgagor to regain possession of property mortgaged, the amount of stamp is calculated on the value of the property, according to the rules of valuation already laid down, and not on the sum for which the property was mortgaged.\textsuperscript{d}

The Sicca rupee having ceased to be a legal tender on the 1st January, 1838,\textsuperscript{e} it has been laid down that all questions regarding the value of the stamped paper upon which plaints are written are to be determined with reference to the existing and not the old currency.\textsuperscript{f}

\begin{itemize}
  \item \textsuperscript{a} Sel. Rep. v. 7, p. 225.
  \item \textsuperscript{b} Con. 702, Cal. C. 6th West. C. 27th July, 1832.
  \item \textsuperscript{c} Con. 1301, West. C. 25th June, Cal. C. 16th July, 1841; 2 Servet's Reports, p. 173.
  \item \textsuperscript{d} Con. 957, West. C. 17th June, Cal. C. 7th August, 1835.
  \item \textsuperscript{e} Act XIII., 1836.
  \item \textsuperscript{f} Cir. Ord. 15th April, 1842.
\end{itemize}
In a suit on an account kept in Sicca rupees, if the agreement was for value, and not for specific coins, the calculation must be made at Company's rupees 106-10-8, for 100 Sicca rupees.\(^a\)

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**SECTION VII.**

**SUITES FOR PRE-EMPTION.**

Suits to enforce a right of pre-emption of land are valued as suits for possession of the same land would be.\(^b\)

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**SECTION VIII.**

**AMOUNT OF STAMP DUTY.**

By Regulation X. of 1829, the following rates of stamp duty are imposed upon petitions of plaint for the recovery of any sum of money, or to obtain possession of any interest, matter, or thing.\(^c\)

<table>
<thead>
<tr>
<th>If the amount or value of the property claimed shall not exceed</th>
<th>16 Rupees</th>
<th>Rupees</th>
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<tr>
<td>above 16 Rs., but not exceeding</td>
<td>32</td>
<td>2</td>
</tr>
<tr>
<td>32 &quot;ditto&quot;</td>
<td>64</td>
<td>4</td>
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<tr>
<td>64 &quot;ditto&quot;</td>
<td>150</td>
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<tr>
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<td>300</td>
<td>16</td>
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<tr>
<td>300 &quot;ditto&quot;</td>
<td>800</td>
<td>32</td>
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<td>800 &quot;ditto&quot;</td>
<td>1,600</td>
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<tr>
<td>1,600 &quot;ditto&quot;</td>
<td>3,000</td>
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</tbody>
</table>

\(^a\) Con. 1151, 27th April, 1838.

\(^b\) See Con. 1047, Cal. C. 23rd September, West. C. 14th October, 1836.

\(^c\) The rate is uniform throughout the three Presidencies. See Dawes, Civil Procedure of Madras, p. 318, and Appendix A. to the present work.
CHAPTER XIV.

IN WHAT COURT SUIT MUST BE BROUGHT.

SECTION I.

AS TO THE RANK OF THE JUDGE.

The Civil Courts exercising original jurisdiction in the Presidency of Bengal are of four grades; the first and lowest is the Moonsiff's Court, the next is that of the Sudder Ameen, the third is that of the Principal Sudder Ameen, and the highest is the Court of the Zillah Judge. As to Madras and Bombay, the reader is referred to Appendix A. to the present work.

A suit may be brought in the Moonsiff's Court for the "property or proprietary right in the possession of" land (whether exempt from the payment of revenue or not) or other real property, the value of which, computed according to the rules stated in the foregoing chapter, does not exceed three hundred Company's rupees.

Suits of any kind, other than suits of the kind just men-

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* For a history of the changes in the constitution of the Courts, see the Report of the Indian Law Commissioners, 2nd July, 1842, at p. 503 of Special Reports, printed by order of the House of Commons, 30th May, 1843; and the Preface to Morley's Digest of Indian Cases.

* The Judges of Patna, Dacca, and Moorshedabad were originally Judges of those cities only, and are still called City Judges, though their jurisdiction has been extended over large rural districts. They always possessed the powers of Zillah Judges, and they may be considered as Zillah Judges in all but name.
tioned, may be brought in the Moonsiff's Court, if the claim does not exceed in amount or value the sum of three hundred rupees, and if it includes the whole amount of the demand arising from the cause of action. There are, however, certain special exceptions which will be noticed below. The Moonsiff also has jurisdiction to try suits referred to him, under the rules hereinafter mentioned, by the superior authorities.

A Moonsiff\(^b\) may try a suit brought by a zemindar against his tenant, for an increased rent, provided the sum claimed in the suit do not exceed three hundred rupees; although it is manifest that a right of much greater value is virtually in issue.\(^c\)

Moonsiffs may receive, try, and decide claims to arrears of rent preferred by regular suit, and may dispose of all claims preferred by under-tenants or others who may be desirous of resisting the distraint of their property or the attachment of their persons, or who may prefer a claim for damages for such acts.\(^d\)

If the value of the land sued for is within three hundred rupees, and if the suit comprises the entire claim of the plaintiff in respect of the same cause of action, the Moonsiff has jurisdiction to entertain it, although the land sued for may form a portion of a purchase of greater value, exceeding the amount which may be sued for in the Moonsiff's Court.\(^e\)

If the suit be instituted to recover the balance of principal and interest due on a bond for more than three hundred rupees, and the amount claimed be within the competence of a Moonsiff, the Moonsiff has jurisdiction.\(^f\)

And so if the suit be instituted for the recovery of an instalment, with or without interest, and if the sum thereof,

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\(^a\) Reg. V., 1831, Sect. 5, Cl. 2, Act VI., 1843, Sect. 8; Cir. Ord. 8th October, 1844, para. 2.
\(^b\) See Act XXVI. of 1852, Sect. 4.
\(^c\) Con. 811, 2nd August, 1833.
\(^d\) Reg. VIII., 1831, Sect. 11. On the subject of suits for rent, see Act X. of 1859 (for Bengal).
\(^e\) S. D. 1849, p. 352.
\(^f\) Cir. Ord. 14th May, 1847.
together with the sum of all other instalments subsequently claimable under the bond, be within the competence of a Moonsiff.

The amount which is sought to be recovered fixes the jurisdiction, and not the sum which may eventually after investigation be found to be due to the plaintiff.

A Moonsiff may determine three several suits between the same parties, for three sums of one hundred and fifty rupees each, for which three several bonds were given the same day.

Here it is evident that the parties themselves intended the three transactions to be separate.

But where a debtor has an account running from day to day, although each item of goods supplied, or of work done, forms the subject of a separate contract, so that, after the stipulated price becomes due, the creditor could sue for each item; yet the understanding in such cases certainly is, that the dealing is not to terminate with one contract, but is to be continuous, so that if one item is not paid it shall be united with other items and form one entire demand. If, therefore, after several items are added to the first, the creditor were to bring separate actions for each as a distinct debt, the total exceeding three hundred rupees, this would amount to a splitting of claims for the purpose of having a demand really above three hundred rupees, decided by a Court whose jurisdiction is limited to that sum: and the Moonsiff’s Court would have no jurisdiction.

A difficulty sometimes arises as to the jurisdiction, where a suit is instituted before the Moonsiff for a sum within his competency to adjudicate upon, but which may involve the discussion of engagements to a larger amount. In such cases,
the Courts appear to have held that the jurisdiction of the Moonsiff depends in great measure upon the line of defence which may be adopted, and that if such defence be merely that the sum sued for has been paid, so that the validity of the original engagement is not brought into question, the Moonsiff has jurisdiction.¹

The jurisdiction of the Sudder Ameen resembles that of the Moonsiff, except that its limit is one thousand rupees instead of three hundred rupees, and all suits for claims ranging between these sums ought to be instituted in the Court of the Sudder Ameen.² There are exceptions from his jurisdiction, which will be noticed below.

The Sudder Ameen is also competent to try causes duly referred to him by superior authority.³

What has been said of the Sudder Ameen applies likewise to the Principal Sudder Ameen, except that his ordinary jurisdiction has no limit in amount or value.⁴

The Zillah Judge has primary jurisdiction in all suits, of whatever value.⁵

Suits are not usually or properly brought before him in the first instance, except under peculiar circumstances: he may, however, if he perceives any special reasons, receive and try them.

The Zillah Courts are the proper tribunals for receiving and trying,—

Actions against uncovenanted Judges in reference to Regulation XXIII, 1814, Sections 10 and 67, for corruption, extortion, or any oppressive or unwarranted act of authority, and in which suits the decree may cause the offender to pay damages to the party injured.⁶

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² Reg. V. 1831, Sect. 15, Cl. 2; Act IX., 1844, Sect. 1.
³ Code, Chap. I.
⁴ Act IX. 1844; Act XXV., 1837, Sect. 1; Infra, Sect. 3.
⁵ Reg. V., 1831, Sect. 7; Act IX. of 1844, Sect. 2.
Charges under Regulation XII., 1793, Section 8, Regulation XI., 1795, Regulation XI., 1803, Section 8, Regulation III., 1827, Sections 2 and 3, of corruption or extortion against the law officers of the Zillah Courts, in which cases the decree would adjudge the offender to refund the amount or value of the money or property received or taken, with interest and costs of suit.\textsuperscript{a}

Suits under Regulation XXXIX., 1793, Section 11, Regulation XLIX., 1795, Section 3, Regulation XLVI., 1803, Section 11, against Cazees, for undue practices in the discharge of the duties prescribed to them by the Regulations.\textsuperscript{b}

Suits under Regulation XIV., 1793, Section 33, and Regulation XXVII., 1803, Section 36, against a Collector for sums of money demanded, directly or indirectly received or taken by him for his use from any proprietor or farmer of land, or any surety, or any purchaser of land, or for acts done in his official capacity, repugnant to the Regulations or not warranted thereby, and that do not involve any claim to sums received or demanded by him on behalf of Government in conformity to the Regulations.\textsuperscript{c}

Every Zillah Judge has one or more Judges of the lower grades subordinate to him, and exercising jurisdiction in such districts of the zillah as may have been specially assigned to them.\textsuperscript{d}

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\textsuperscript{a} Govt. Ord., No. 8.  
\textsuperscript{b} Ibid. No. 9.  
\textsuperscript{c} Govt. Order, No. 17. For further information as to suits cognizable by the different tribunals, see Marahman's Civil Guide, pp. 93, 97.  
\textsuperscript{d} Act IX. 1844.
SECTION II

AS TO THE LOCAL LIMITS OF THE JURISDICTION.

If the complaint relates to land or other real property, the suit must be instituted in the Court within the limits of whose jurisdiction the property is situated.

Where the suit relates to land, the situation of the land alone determines the jurisdiction, and no weight is attached to the circumstance that the defendant may be resident beyond the local limits of the Court's jurisdiction, as for instance in Calcutta.\(^a\)

If real property has been wrongfully sold in execution of a decree, the reversal of the sale must be sued for in the district in which the property is situated, and not in that in which the decree was passed.\(^b\)

The local limits of the jurisdiction of a Civil Court are determined in all cases, whether relating to land or to other matters, solely with reference to the division which has been made of the country for judicial purposes, and are not affected in any way by the Revenue or Police divisions. See further on this subject, The Code, Chapter I.

If the suit be for the recovery of money advanced on mortgage, the loan is held to be the cause of action.\(^c\)

In a suit by a husband against his wife and others, in order to oblige his wife to return to cohabit with him, the refusal is held to be the cause of action.\(^d\)

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\(^a\) Reg. III., 1793, Sect. 8; Benares, Reg. VII., 1790, Sect. 7; Ced. and Conq. Prov. Reg. II., 1803, Sect. 5; Con. 991. Cal. and West. C. 8th January, 1836; Con. 956, West. C. 12th June, Cal. O. 10th July, 1885; Act. XXIII., 1843.

\(^b\) R. S. C. 7th March, 1848.


\(^d\) Ubdool Mujeed, Petitioner; R. S. C. 17th March, 1846.
Where goods are consigned for sale by A., in one district, to B. in another district, and B. sells the goods, and applies the proceeds in discharge of a debt alleged to be due to him from A.; if A. contests the validity of this transaction, his cause of action is considered to have arisen in B.'s district.a

Where the claimant demands the money in question, and the defendant admits the truth of the demand or promises to pay the money, it seems to be heldb that this amounts to something equivalent to a new ground of action, so as to take the claim out of the law of limitation, but that it does not constitute a new ground of action so as to give jurisdiction to any tribunal which had not jurisdiction in respect of the original ground of action.

A woman entered into a certain transaction at Agra, her husband being in a foreign territory (viz., at Gwalior). A person suing husband and wife for damages in respect of that transaction was held entitled to treat his cause of action as having arisen at Agra.c

But where certain persons being within a particular jurisdiction, contracted, one that he would deliver, and the other that he would receive and pay for, certain goods at a specified rate; and after the goods had been received and partly paid for, the same parties, within another jurisdiction, entered into an engagement to pay and to receive (respectively) the balance due, with interest, by instalments; it was decided that this new engagement constituted a new cause of action, and that an action for breach of it might be received and tried within the latter jurisdiction, although the defendant was not resident there.d

The Court ruled in this case, that the place for performing the condition of the bond or new engagement, and therefore the jurisdiction in which a suit for its non-performance would

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b S. D. 1849, p. 68.  
c S. D. Agra, 1854, p. 76.  
d S. D. 1849, p. 69.
lie, must be taken to be the place where the new engagement was entered into; upon the general principle that unless otherwise expressed or clearly implied, the place of executing an instrument of contract is to be taken as that of its intended performance.

This view, that the place for performing the condition of the engagement determines the jurisdiction in which a suit for its non-performance would lie, is not wholly in accordance with a previous construction promulgated by the Sudder Court, by which it was determined that where a contract is made for the delivery of goods in a particular place, and the goods are not delivered accordingly, the action may be brought either where the contract was entered into, or where the defendant is resident, but that the failure to deliver is not a circumstance which would give jurisdiction to the Court of that district in which the goods ought to have been delivered.

Probably the more convenient and the more liberal doctrine, and that which harmonizes best with the decisions of the Courts, is that which permits an action to be brought either in the forum of the place where the contract was made, or in that where the performance was to have taken place. Either the contract may be considered as affording a cause of action to enforce performance—or the non-performance as giving cause of action for damages thereby incurred.

All complaints (cognizable by the Civil Courts) against the Collector of Customs at Calcutta, or his public officers, or any other public officer at the Presidency, are to be received, tried, and determined, as prescribed in the Regulations, by the Judge of the Zillah of the Twenty-four Pergunnahs.

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a Con. 866, West. C. 14th, Cal. C. 28th February, 1834.
d Reg. VII, 1806, Sect. 8. See further as to jurisdiction of Court of the 24-Pergunnahs, Reg. III., 1793, Sect. 17; Con. 991, Cal. 1st, and West. C. 8th January, 1836, Act XXII, 1843.
SECTION III.

TRANSFER AND REFERENCE OF SUIT.

The Court of Sudder Dewanny Adawlut may order (recording at the same time its reasons) that any suit which has been brought before a Zillah Court, shall be transferred to any other Zillah Court.\(^a\)

It is competent for a Zillah Judge, whenever he may see sufficient reason for so doing, to withdraw any suit from the Principal Sudder Ameen’s or Sudder Ameen’s Court, in which it may have been instituted, and to try it himself, or to refer it for trial to any other Court subordinate to his authority, and competent in respect of the valuation of the suit. The Judge ought to record specially the reasons of his interference.\(^b\) If two suits are very closely connected, both as regards the parties and the subject matter, the Judge ought not to try one himself and send the other to the Court of a subordinate officer.\(^c\)

No Judge, European or Native, is permitted to hear or to try a cause to which he is a party, or in which either of the parties may be his creditor.\(^d\)

No Moonsiff is competent to try a suit in which any of his relatives or dependents is a party.\(^e\)

He may, indeed, receive such suits, but he must forward them to the Judge of the Zillah to which he is subordinate, who may thereupon refer the same for trial and decision to any other Moonsiff of the district.\(^f\)

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\(^a\) Code, Chap. I., Sect. 6.
\(^b\) Ibid.
\(^c\) S. D. 1852, p. 376.
\(^d\) Cir. Ord. Cal. and West. C. 26th
\(^e\) Ibid.
\(^f\) Act VI., 1843, Sect. 9.
A Moonsiff is not prohibited from trying a suit to which another Moonsiff is a party.

No suit can be tried by any Sudder Ameen, in which any of his relatives or dependents is a party.

No suit can be tried by a Principal Sudder Ameen in which any of his relatives or dependents is a party.

Where a suit cannot be referred to a Principal Sudder Ameen, because he or some of his relatives or dependents is a party, and when the Zillah Judge cannot refer such suit to be tried by any other competent authority, the Sudder Court may direct that such suit shall be transferred to any other Zillah Court subordinate to itself, and the Judge of such other Court may thereupon refer the cause in the same manner as if it had been originally instituted in his own Court.

No suit in which the documentary evidence is in the English language ought to be referred to a Principal Sudder Ameen or to any inferior Judge, unless he be acquainted with that language; and in the very few cases in which it may be the duty of the Zillah Judge to make a reference, it is his duty, if any difficulty on this head be suggested, to inform himself on the subject before he makes the reference, and not to make the reference blindly, leaving it to the Principal Sudder Ameen to consider the objection and send back the case, and subjecting the suitors to unnecessary delay, and to the injurious consequences which delay may involve.

But this is to be understood of those cases only in which the nature of the English writing, and of the transactions to which it may relate, appear to involve such complicated considerations as would make a knowledge of English indis-

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* Reg. V., 1831, Sect. 15, Cl. 2; Act XXVI., 1852
* Reg. V., 1831, Sect. 18, Cl. 1; Act XXVII., 1838, Sect. 1.
* Act XXVII., 1838, Sect. 2. N.B. —The word "Principal" has evidently been omitted by mistake. See the 1st Section.
* Cir. Ord. Cal. and West. C. 23rd February, 1838, para. 4.
* Cir. Ord. Cal. C. 18th October, West. C. 31st October, 1839.
pensable to a correct adjudication of the case, not to cases where the initial petition merely refers to some English document of a simple nature, such as an account.

All suits under Regulation XIII., 1793, Section 11, and Regulation XII., 1803, Section 14, for extortion committed by native servants of Judges, which servants are not officers of Court, are to be received by the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as they may be cognizable by one or other. A suit so received is to be immediately forwarded to the Zillah Judge, who will use his discretion in trying it himself or referring it to any other Principal Sudder Ameen, Sudder Ameen, or Moonsiff, by whom it may be cognizable.

Where a Collector is promoted to the office of Judge, he cannot try an appeal from a decision pronounced by himself, as Collector, under Section 30, Regulation II., 1819. But he may try, as Judge, a suit instituted for the reversal of an order passed by himself as Collector, for in the latter case the proceeding is not in the nature of an appeal, but is adopted for the purpose of obtaining that full investigation which the mechanism of a Court of Justice can alone afford: whereas in the former case the object is to obtain the decision of a new and higher authority upon the same data on which the Collector adjudicated; and an officer may decide, as Judge, causes on which he has reported to the Civil Court while he was Collector.

Where a suit, which has been partly tried by a Sudder Ameen, is transferred by the Zillah Judge to the list of a Principal Sudder Ameen, the latter, whose Court is thus in fact constituted a Court of the first instance, cannot adopt the evidence already taken, but must try the cause anew from the very beginning.

* Con. 779, Cal. C. 12th April.
All the evidence in a cause ought to be brought forward under legal sanction and in public, in such a way that there may be the means of controverting it.

This obvious rule of justice is infringed where the Judge himself imports, as a ground of his decision, something which has come within his own private knowledge, such as the resemblance of a claimant by inheritance, to his alleged father.\(^a\)

If, therefore, a Judge has personal knowledge of a material fact in a cause, he ought to depose to it as a witness, and ought to be examined under the usual sanctions, and subject to the usual tests. But as he can hardly be deemed capable of impartially deciding on the admissibility of his own testimony, or of weighing it against that of another, he ought to apply to the proper authority for an order of transfer.\(^b\)

He is at liberty, however, to advert to any circumstance which has become known to him as a Judge, such as the fact that a particular witness is in the habit of appearing in his Court to bear testimony, and apparently makes a profession of it.\(^c\)

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\(^a\) Jeswunt Sing-jee v. Jet Sing-jee, 3 Moo. Ind. Ca. 245.
\(^b\) S. D. 1847, p. 482. See further as to stamps, Act XXV., 1837, and Act IX., 1844, Sect. 5.
\(^c\) In a case where a Judge had made a remark of this nature, and had been blamed for it by the Sudder Court, the Privy Council strongly dissented from the censure thus cast upon the Judge.
CHAPTER XV.

PRESENTATION AND ADMISSION OF PLAINT.

The duty of the Judge, upon the presentation of the plaint, requires great care and discrimination in its discharge; and it is to be hoped that judicial officers of all ranks will see the necessity of performing it in person, and not delegating any part of it to their subordinates.

The Court must* examine the plaint, must see that it is not defective, nor redundant, nor prolix; that it has been presented to the proper Court, that the valuation and the stamp are right, that a good cause of action is shown, that it has not been barred by lapse of time, that security for costs is given where requisite. The documents referred to in the Code b must also be produced and marked, and compared with the copy which is left in Court. Where such documents are voluminous and the cause important, the examination and marking may occupy a very long time, and it is not unreasonable to suppose that the Judges will avail themselves of the assistance of their ministerial officers, but a vigilant superintendence will be very necessary.

Where a plaint is rejected c at the outset, for any of the reasons mentioned in the Code, an appeal lies from the order of rejection. This shows that the Legislature intended the examination of the plaint to be a purely judicial function. It is hardly necessary to remark that, in cases of doubt, the

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*a Code, Chap. III., Sects. 29 and 38.  b Sect. 39.  c Code, Sect. 38.
Judge ought rather to admit than to reject, as the injustice done by an improper rejection, especially in the case of a plaintiff who is too poor to appeal, may often be irreparable.

As the defendant does not come before the Court at this stage of the cause, it will, in the first instance, be apprised only of the plaintiff's view of the case. The most upright and intelligent Judge may, therefore, without impropriety, be warned against allowing the plaintiff's statement, though verified, as it must be, to make too much impression upon him.

When the Court considers the plaint to be _prima facie_ sufficient, and the plaintiff to have done all that is required of him, it requires the opposite party to appear and answer the claim, and to produce any written document in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.
CHAPTER XVI.

OF THE PROCESS OF THE CIVIL COURTS.

The reader is referred to the Code, Chapter III., Sections 41 to 91, for a statement of the manner in which the plaintiff's demand is made known to the defendant, and the defendant required to appear and to answer it; of the consequences of disobedience, and of the circumstances in which he may be arrested, or his property attached, to insure the execution of the decree which the Court may ultimately pronounce; and in Sections 92—97 will be found the doctrine as to the issue of injunctions before the trial, in order to prevent irreparable injury to property.

Great care ought to be taken to see that all writs are correctly framed; and that the person upon whom the writ is intended to be served be named in the body of it, in order that the serving officer may know whom to serve.

Process issued by any Court, of whatever rank, in the territories beyond the local limits of the Supreme Court of Calcutta, may be executed within those limits in manner following:

A copy of such process, authenticated by the attestation of the Court issuing the same, and accompanied by a certified translation in the English language, is forwarded to the address of the Deputy Sheriff of Calcutta, either by post, or by the hands of a peon or other public officer, as may be

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* It is not clear whether Sects. 59, 284-296, of the Code are intended to supersede these provisions or not.
most convenient, with a letter in which the Deputy Sheriff is requested to lay the process before the Judges of Her Majesty's Court. The Deputy Sheriff lays the writ before a Judge of Supreme Court, who may thereupon endorse and direct the same to be executed, within the local limits of his Court, by the Sheriff, or if he finds it defective in any matter of form, may remit it for amendment to the authority by which it was issued.¹

The names of the parties for and against whom respectively the process may be issued, are inserted in the writ; and not merely the names of the firm or company under which the respective parties may be associated for trade or business, except when any company may be empowered by law to sue or be sued in the name of an officer of their society.²

Upon the delivery to the Sheriff of the process so endorsed, that officer makes a memorandum of the date of delivery, and executes the process as if it had originally issued from the Supreme Court and had been delivered at the date noted by him; and he makes no distinction, as to priority or otherwise, between its execution, and that of any process originally issued from the Supreme Court; but all writs, warrants and other process, whether original or endorsed as aforesaid, are subject amongst themselves to the same rules, touching the mode and order of execution, as are established in respect of process originally issued from the Supreme Court.³

The Sheriff's liabilities and responsibilities in respect of such process, and the effect of the process upon all persons and property, and the consequences of disobeying or obstructing the execution of such process, and the rules touching expenses and other matters where the process is for the

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¹ Act XXIII., 1840, Sect. 1; Cir. Ord. 1st March, 1841; Act VIII. of 1852.
² Cir. Ord. 30th May, 1845.
³ Act XXIII., 1840, Sect. 2.
attendance of witnesses, are precisely the same as if the process had issued originally from the Supreme Court.

In the case of persons seized or detained by virtue of any process executed within the limits of the Supreme Court by the Sheriff, it is the duty of the Sheriff, if so required by the endorsement of the Judge, to deliver the party in custody to such authority or persons as shall be particularly specified in such endorsement, and who shall have been charged with the execution of the process by the authority originally issuing the same, and for that purpose to cause the party in custody to be conveyed to any place within the British territories beyond the local limits of the jurisdiction of Her Majesty’s Court.

In the case of any process which may be required to be endorsed for the seizure or detention of any person, the Judge endorsing the process may direct by his endorsement that bail (the amount and number of sureties to be specified in such endorsement) may be taken; and for this purpose he may call for such documents and make such inquiry as he shall think proper.

Any money which it may be requisite to send to the Deputy Sheriff is remitted by a bill on the General Treasury from the Collector of the district.

All subordinate judicial officers submit the processes of their Courts, which may require execution under the authority of the Supreme Court, to the Zillah Judge, to be by him forwarded in the prescribed manner to the Deputy Sheriff.

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* Act XXIII., 1840, Sects. 3 and 4.
* Act XXIII., 1840, Sect. 5.
* Act XXIII., 1840, Sect. 7.
* Cir. Ord. 1st March, 1841, para. 2.
* Cir. Ord. 1st March, 1841, para. 3.

As to expenses of witnesses, see Act XIX. of 1853, Sect. 12, and the Code, Chap. III., Sect. 151. For the forms of process, see ed. 3 of this work.
CHAPTER XVII.

OF THE APPEARANCE OF THE PARTIES, AND PROCEEDINGS THEREUPON.

On the day fixed in the summons for the defendant to appear and answer, both parties ought to be in attendance at the Court-house in person or by a pleader. The consequences of non-appearance are stated in the Code, Chapter III., Sections 110—120.

The parties or their pleaders may tender, at the first hearing of the suit, statements of their respective claims, written upon stamped paper and verified like the plaint, which statements are to be as brief as the nature of the case will admit, and shall not be augmentative, nor by way of answer one to another; but each statement shall be confined as much as possible to a simple narrative of the facts which the party believes to be material and capable of proof. Written statements may be given in after the first hearing, if called for by the Court, but not otherwise.

The rules as to these written statements are contained in the Code, Chapter III., Sections 120—124.

As to the stamp it may be convenient here to mention that, by the old law, all pleadings after the plaint, in the Court of the Zillah Judge, are written on paper of the value of four rupees, except in original suits for property not

exceeding one thousand rupees in value, and in cases of appeal from the decisions of Sudder Ameens and Moonsiffs. In such cases, the pleadings are written on stamped paper of only one rupee value.

The pleadings in the Court of the Principal Sudder Ameen are written on paper of one rupee value; those in the Sudder Ameen's Court, on paper of eight annas value; and the pleadings in Moonsiffs' Courts (except the petition of complaint) are written upon unstamped paper.a

The defendant in a suit instituted by a pauper is permitted to file on unstamped paper his pleadings and all other papers in respect of which the pauper plaintiff enjoys exemption from stamp duty.b

A suit commonly arises out of some dispute of the following kind. The parties admit certain facts to be true, but dispute as to their legal consequences; or they do not agree as to the truth of the facts, although they agree as to the legal consequences which the facts, if proved, would lead to: or they differ as to the truth of alleged facts, and also as to the consequences of the facts if true.

The parties are permitted, and may be required, to put in their statements and counter-statements in writing, in order that it may be made apparent how far they agree, and what they really differ about, that the Judge may, upon a review and comparison of those documents, perceive what questions he has to try, and that he may regulate the further conduct of the controversy; deciding at once the questions of law, if there be no dispute as to facts; and, where facts are disputed, directing how they are to be investigated. The parties, too, being thus compelled to examine closely the merits of the

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*a Reg. V., 1831, Sect. 9, Cl. 2; and Bombay, see Appendix A. Sect. 20; Reg. VII., 1832, Sect. 3; Con. 767; Con. 1118. As to Madras

*b Act IX. of 1839, Sect. 2.
case, have an opportunity of arranging the dispute without proceeding to trial.

Where the defendant does not admit the justice of the plaintiff's demand, he must closely scrutinize the nature of that demand, and also the manner and form in which it has been brought forward, and must then proceed to frame his statement, if the case be not so simple as to enable him to dispense with it.

His facts must be truly and faithfully stated, but they should be brought forward and marshalled with a just appreciation of their relevancy and real importance in the case, and the line of argument which each party means to adopt. It may be useful, therefore, here to repeat the substance of what has been written in the former editions of this work regarding the pleadings, as the contention, whether conducted by written pleadings or not, will substantially be found to assume certain logical forms.

Every suit is brought with a view to the enforcement of some real or alleged right, and the essence of the defence always is, either that the alleged right has no existence at all, or that there is a higher right in the defendant.

The claim, however expressed or arranged, commonly amounts in substance, though not in form, to an assertion of, or a reference to, some general rule of law, an assertion that the case falls within that rule, and a demand that the general rule may be applied to the particular case, by granting to the plaintiff the relief which he seeks.

Thus, the claim may be founded upon a general rule, not expressed in the plaint, but in substance referred to and relied on, that an only son is entitled to possess the land of his deceased father; or upon a rule, that a creditor is entitled to recover from his debtor the sum lent, together with the interest which he stipulated for.

It then asserts that the plaintiff's case falls within the rule,
i.e., that certain land was the land of A., deceased; and that the plaintiff is his only son; or that the plaintiff lent a certain sum of money to the defendant at a certain rate of interest; and it concludes with a demand for the practical application of the rule; that is, (if the conclusions be correctly drawn,) that the land of A. be given up to the plaintiff, or that the debtor may be ordered to pay to him a sum equal to the sum lent and the interest due upon it.

The opposite party will naturally deny, if he can, the existence of the alleged general rule of law, or the truth of the assertion that the plaintiff's case falls within that rule; or he will argue that the demand of the plaintiff is not founded on a correct application of the rule to the particular case. His defence will prevail, if he can successfully deny it to be the law that an only son is entitled to succeed to the land of his father, or that a creditor is entitled to recover principal and interest from his debtor; or if he can successfully controvert the statement, that the plaintiff is son of A., or that the plaintiff lent money to the defendant. The defence will prevail in whole or in part, if the lands demanded in the suit were not the lands of A., or if the sum demanded exceeds the principal and interest due to the plaintiff.

If the defence be of this simple character, the case may be disposed of by investigating and deciding the points upon which the parties have respectively taken their stand; as, whether the general rule of law be such as the plaintiff has alleged; whether the plaintiff is the son of A.; whether the alleged debt was ever contracted; whether the land demanded was the land of A.; whether the sum demanded be greater than the debt alleged to have been contracted.

The defence, however, may be much more complicated. Admitting, or at least not directly controverting, the facts alleged by the plaintiff, the defendant may avoid or elude their effect by alleging some other facts.
It may be true that the land of a father descends by law to his only son, that the land demanded was A.'s, and that the plaintiff is his only son, yet the defendant may have bought the land from the plaintiff and paid him for it, and so he may conclude that he shall be allowed to retain the land.

It may be true that the law enforces the payment of debts, and that the defendant borrowed of the plaintiff the sum alleged—and yet the former may reply that he has obtained from the plaintiff a release of this obligation, and therefore that he ought not to pay the sum demanded.

If the plaintiff denies that he sold the land, or that he executed the alleged release, the case is simple, and may be decided as soon as the investigation of the disputed point is complete. The plaintiff may, however, without direct contradiction, destroy the effect of this defence.

The purchase may have been procured by fraud. The release may have been extorted by violence. Upon the other hand, the fraud or the violence may be directly denied: and thus the parties are at issue, and the result of the suit will depend upon the determination of these questions of fact. But the defendant, without direct contradiction, may still elude the effect of such defences. He may allege that the plaintiff subsequently, and when under no deception, confirmed the sale of the land; or that he confirmed the release when under no coercion: such pleas will probably be admitted or denied at once, and the result of the suit depends upon their truth or falsehood.

With a view to develop the vital questions in a suit, it is desirable that the defendant should, in the first place, consider, whether the facts, as stated in the plaint, do really, if true, bring the plaintiff's case within any known rule of law, which may entitle him to the assistance of the Court: for if they do not so entitle him, it is unnecessary to inquire whether they are truly or falsely stated.
The second inquiry is whether, supposing the facts to be truly stated in the plaint, and to be sufficient, if they stood alone, to entitle the plaintiff to the aid he has prayed for, there is not yet some decisive fact, not stated in the plaint, but known to the defendant, which may afford a complete reason why the Court should refuse to pronounce any decree in favour of the plaintiff; the establishment of the one fact thus propounded will decide the suit, and will render it unnecessary to inquire into the truth of the statements in the plaint.

The defendant's written statement may either deny facts upon which the plaintiff rests his case, or confess the facts, but give them a different character and operation by the introduction of a new matter, from which contrary inferences may be drawn.

It is obvious that each of these defences may embrace one or more of the points which have been already noticed as entering into every defence.

There may be no such law as alleged; the facts may not bring the case within the rule of law; the application of the law to the facts may result in a conclusion different from that which the plaintiff has drawn.

As to defences falling under the first head.

It may appear by the plaint itself that the period prescribed by the rules of limitation has elapsed, since the cause of action accrued, or that the suit is undervalued, or that it has been instituted in the wrong Court, either with reference to the rank of the Judge, or to the local limits of his jurisdiction; as where a suit is brought in the Moonsiff's Court for 5,000 rupees, or is brought in Zillah A. for lands situated in Zillah B.

So it may appear that the plaintiff, by reason of some personal disability, is not entitled to sue, as in the case of an alien enemy; or that he is not entitled to sue alone, as where

2nd Defence.
That by reason of a fact not stated, the case stated does not entitle to the relief prayed for.

3rd Defence.
That the case stated is wholly or partially false.

1st Defence.
Objections apparent in the plaint; limitation, valuation or jurisdiction.

That plaintiff is under personal disability:
he is an infant or an idiot, and no competent person sues on his behalf; or that the plaintiff has no interest in the subject;—as where a man sues for lands as an inheritance from his grandfather, and the plaint admits that his father is alive, or does not state that he is dead, or where the plaint in any way discloses that another person exists, having an interest prior to that of the plaintiff.

Where A. sues for the property of B. (a Hindoo) deceased, alleging that B. died childless, and that the person in possession of his property as adopted son was not duly adopted, and that A., as son of a brother of B., by the half-blood, is the nearest collateral relative, and therefore the heir of B.; A.'s claim is answered at once by showing, either through his own admissions or otherwise, the existence of a son, duly adopted, of a brother of B., by the whole blood.\(^a\)

The plaint may be, on the face of it, deficient in some of the points which have been already\(^b\) enumerated as essential.

It may fail to show that the plaintiff has done all that was necessary to entitle him to sue, or it may assert a future or a precarious title in him, or it may show that there is no privity between him and the defendant in respect of the thing sued for; or that the party who is sued has not that interest in the subject which can render him liable to the claims of the plaintiff; as where a plaint is filed either to enforce or to impeach an award, and the arbitrators are named as defendants, though no misconduct is imputed to them.

Sometimes the suit is insufficient to answer the purpose of complete justice, because it does not include all proper parties, or because it is too limited or too comprehensive, tending to

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\(^a\) Shamchunder and Rooderchunder v. Narayni Dibeh and Ramkishore Bai, Sel. Rep. v. 1, p. 209; 3 Knapp

\(^b\) Supra, Chaps. XII, XV.
multiply litigation unreasonably, or confounding distinct subjects in the same suit.

Many of these defects, even where they exist, and are known to the defendant, may not be apparent from the plaint itself, and may require to be brought forward by the defendant, as matters of fact.

Thus objections relating to limitation, valuation, or jurisdiction, may be brought forward in the way of direct statement, if the facts on which the objection is grounded do not appear on the plaint.

There may, for instance, be a previous decree by which the rights of the parties have been already determined.

Such pleas ought to be stated with precision. Thus upon a statement of a former decree, so much of the former proceedings ought to be set forth as is necessary to show that the same point was then in issue, and that the former order really determined that the plaintiff had no title to the relief sought by him: for a nonsuit, or an order to dismiss a plaint for want of prosecution, does not seem a sufficient bar to a second suit.

To a suit for an account, the fact that an account has already been finally stated and adjusted is a good answer. Such a fact ought not to rest upon a vague assertion, but it ought to be shown that the account was in writing, and that it was a just and true account, and how and when the adjustment took place, and whether the vouchers were delivered up.

So if the suit be for enforcing claims which were adjusted by arbitration, the award may be stated, unless the suit be brought expressly to set aside the award for misconduct in the arbitrators.

Sometimes the defendant denies that he has any right to the thing demanded by the complainant, and disclaims or

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* Supra, Chaps. IX., X.
renounces all pretensions to it. He cannot, however, disclaim a liability, merely by alleging that he has no interest in the matter of the suit; for others may have an interest in it against him, as where he is called upon for an account. Nor can a disclaimer by one defendant be permitted to prejudice the plaintiff's rights as against the others. Thus, if lessor and lessee be sued together, the disclaimer of the lessor must not be suffered to prejudice the rights of plaintiff against the lessee.

When the defendant passes on from the first and second class of defences to his general statement, he ought to mention all the circumstances of which he intends to avail himself by way of defence: not, indeed, so largely as to set forth the particulars of the evidence by which he intends to support his main positions or statements of fact, but yet so fully as to show all the points which he intends to prove by evidence.

Things which rest within the personal knowledge of the defendant must be truly stated by him: thus if A. sues B. for money lent, B. must answer either that he never borrowed the money, or that the debt has been in some way discharged or released.

In matters of which he has no certain knowledge, the defendant may set up, at the hearing of the cause, (though not in his written statement,) any number of defences as the consequence of the same state of facts, or of facts which are consistent with each other; he may show that the facts which he knows, may be attributed to different causes, each cause being favourable to himself, and adverse to the claim of the plaintiff.

Thus if A. sues the heir of B. for the debt alleged to have been due from B. to A., the defendant may rely upon a written acknowledgment by A., that B. at the time of his death owed him nothing; and the defendant may insist upon this as showing either that the alleged debt never was contracted, or that, if contracted, it was fully discharged.
But he cannot insist on two defences which are inconsistent with each other, or are the consequence of inconsistent facts. For instance, it cannot be true, both that A. never had a son, and that A.'s only son died in infancy.

It is not just that the defendant, who is presumed to intend to prove everything that he states, should be allowed to state as true, circumstances wholly irreconcilable with each other.

But the defendant is at liberty to deny the plaintiff's general title, and also to insist that even if he establishes his title, he is precluded from obtaining what he demands by some other circumstance, which would equally serve to preclude him or any other person claiming in the same right; e.g., he may deny that the plaintiff is the heir of A., and also deny that if heir of A. he is entitled to the land which he claims as such heir. There is nothing inconsistent in such a proceeding; for by denying the plaintiff's title the defendant merely puts the plaintiff to prove his own case, to show that he has a prima facie right to sue—that he is the heir of A. If the question is determined against the plaintiff upon investigation, there is an end of the suit. If it is determined in his favour, there still remains the question, whether the heir of A. has a better title than the defendant.

It is prudent to state the case of the defendant pretty fully, even although he may have a very strong plea which may be urged in few words, against the plaintiff's demand.

Thus, if the suit be for possession of lands, and the answer be that the defendant bought them and paid the price to a person undoubtedly entitled to sell them, it is still right to set out any additional circumstances in favour of the defendant, such as that he has expended a considerable sum of money in improvements, with the knowledge of the plaintiff.

It is proper, with reference to the evidence that is to be offered, and also to the impression which the perusal of the statements is likely to make upon the mind of the Judge, that
the defence should meet the plaintiff's case (so far as disclosed) as fully as possible, since the adverse statement is likely to be presumed true, where the defendant has not controverted it.

If the defendant deny a fact, he should deny it directly, and not in the form which is called negative pregnant: thus, if a fact be stated to have been done with various circumstances, as if a man be charged to have done a thing upon such a day or in such a place, or to have received a particular sum, the defendant must not merely deny that he did the deed under the circumstances, or in the manner alleged, or that he received the particular sum; for that does not exclude the supposition that he did the deed in some other way, or that he received some money, though not the precise sum alleged: but he ought, if the fact be so, to deny point blank that he did the deed at all, or that he received any money.

The written statements contemplated by the Code, like the pleadings previously in use, ought to be free from scandal and impertinence.

Scandal consists in the allegation of anything which it is unbecoming the dignity of the Court to hear, or which charges any person with crime or misconduct not necessary to be shown in the cause.

But even where the words in the written statement impute extreme misconduct, yet if they are material to the subject of the suit, they will not be considered to be scandalous.

Thus parties may be stated to be guilty of fraudulent and wicked actions: as where one has obtained advantages by personating another man, or by making false representations, or by immoral compliances of any sort: or where a trustee or executor is acting corruptly or maliciously, or is a person of violent and drunken habits and unfit to be trusted with money, and it is the object of the suit to remove him from
the trust; in such cases as these, criminatory allegations, which are material to the success of the suit, may with propriety be introduced into the record, in order that the party making them may be enabled to adduce his proofs, and that the party against whom they are made may have notice of the charges, and may defend himself against them.

But the allegation must be of such a nature that, if substantiated, it would influence the decree of the Court in the particular suit; if it be not relevant to the matter in hand, it is scandalous.

Thus if A. is enforcing his real or supposed rights in the usual way against B. it is irrelevant, and therefore scandalous, to allege upon the record (as is too frequently done) that A. is an enemy of B. and sues for the purpose of annoying him; or that A. brings his suit out of revenge because he has been unsuccessful in another suit: for the Judge cannot be influenced in his decision by the opinion which he may entertain of the character or the motives of the litigants, and he is bound to decree according to the legal merits of the case, whether the parties be friends or enemies to each other.
CHAPTER XVIII.

OF THE FIRST HEARING OF A CAUSE.

Causes are to be brought to a hearing according to the provisions of the Code, Chap. III. Sects. 110—120.

When the cause is brought on for hearing, and the parties have tendered their written statements (if any), if the defendant's written statement alleges a set-off it is inquired into at once, according to the same rules which govern the inquiry into the principal case.

The inquiry, whether into the merits of an alleged set-off or into those of the principal case, commences with an examination of any party who appears in person or is present in Court, or the pleader of any party who appears by a pleader, or if the pleader be accompanied by another person (deputed of course by the party) who is able to answer all material questions relating to the suit, then such person is examined. The examination is conducted like the examination of an ordinary witness; any party whose personal attendance is deemed necessary may be ordered to attend upon a future day, and on his refusal to attend or to answer questions the Court may pass judgment against him, and make such order as it shall think proper.

The substance of the examination is reduced into writing, and forms part of the record.

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*a* Code, Chap. III. Sect. 121.  
*b* Ibid., Sect. 124.  
*c* Ibid., Sect. 125.  
*d* Code, Chap. III., Sects. 126, 127.  
*e* Ibid., Sect. 125.
At the first hearing of the suit the Court shall inquire and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the issues of law and fact upon which the right decision of the case may depend.

The Court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations contained in the written statements. If the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced, it may adjourn the framing of the issues in order that the deficiency may be supplied.

It will be remembered that the summons may be either for the settlement of issues only, or for the final disposal of the suit.

The issues ought to be carefully recorded by the Judge. The specimen form which was circulated by the Sudder Court of Calcutta in 1850 for the guidance of judicial officers may still be followed with advantage. It is as follows:—

"The issues raised in bar of the hearing of this suit are:—

"1st. Whether the Civil Courts generally, or the particular Court in which the plaint is brought, can take cognizance of the suit.

"2nd. Whether the valuation of the suit as laid by the plaintiff is correct.

"3rd. Whether in consequence of any defect in the plaint, or of parties, &c., the plaintiff is, or is not, liable to be nonsuited."

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*a* Code, Chap. III., Sects. 139, 140, 141.

*b* See the Code, Chap. III., Sect. 140.

*c* Code, Chap. III., Sects. 41, 145.

*d* S. D. 1851, pp. 181, 490, 716, 734, 739.

*e* S. D. 1851.
"4th. Whether in consequence of a former decree dated having been passed, regarding the same matter, this suit is, or is not, liable to be dismissed under Section 12 or Section 16, Regulation III., 1793.

"5th. Whether in consequence of (here set forth the facts alleged) the suit is not liable to be dismissed on the ground of limitation under Section 14, Regulation III. 1793.

"Or any other plea which may be urged for rejecting the plaint without going into the merits.

"The material issues of fact, arising upon the pleadings, after making any necessary inquiries, from the parties or their plainers, under Clause 2, Section 10, Regulation XXVI., 1814, are—

1st, 
2nd, 
3rd, 
&c.

"(Here only material points of fact, contested between the parties should be stated;) averments acknowledged by both parties need not be set forth in this proceeding:—

"1. For plaintiff. First. The material issues on facts averred by the plaintiff, and denied by the defendant, should be stated, and

2. For defendant. Secondly. Material issues on facts averred by the defendant, and denied by the plaintiff.

"The material issues of law arising upon the pleadings and with reference to the decision which may be formed upon the foregoing issues of fact, are—

1st, 
2nd, 
3rd, 
&c.
"(Under these heads are to be stated precisely the questions of law arising upon the issues of fact, as they may be determined affirmatively whether for the plaintiff or the defendant.)"

The Judge should not enter into any investigation of the merits, until the preliminary points have been disposed of: but he ought to define at once, in this proceeding, all the issues which may be required to enable him to try the cause upon its merits, in case he shall overrule the preliminary objections.

It is to be observed that some of these preliminary points may have been already considered by the Judge, and determined by him in favour of the plaintiff;* but as this will have been done in the absence of the defendant, it is absolutely necessary that the latter should have an opportunity of urging those pleas for himself, and their validity ought not to be considered as in any way affected by the _ex parte_ proceeding which has taken place.

To apply this form practically:—Where A., a Hindoo, sues B. for the possession of land, alleging that Z., being proprietor of the land, died, leaving A. his only child and heir. B. replies that Z. was not proprietor at the time of his death, that A. was born blind, and therefore incapable, according to Hindoo law, of inheriting the land, even if it had belonged to Z. at the time of his death. A. denies that he was born blind, and insists that even if he had been so, he would not have been incapable of inheriting.

The material issue of fact averred by the plaintiff and denied by the defendant is, whether Z. was at his death proprietor of the land.

The material issue of fact averred by the defendant and denied by the plaintiff is, whether A. was born blind.

* * * Supra, p. 173.
The material issue of law (which arises if it be found that Z. was proprietor and that A. was born blind) is,—

Whether a person born blind is incapable by Hindoo law of inheriting the land in question.

Again,—A. sues B. for the possession of land, alleging that C. being in possession, as widow, heiress, and representative of a Hindoo proprietor, did for a purpose specified in the plaint grant to D. a mortgage of the land, with a power of private sale, and that D. sold the land to A. under that power.

The defendant denies that C. was the widow of the deceased proprietor; he denies that she executed the instrument in question; he insists that a power of sale, such as that which the plaintiff sets up, is contrary to the Regulations; and he insists that even if C. had been the widow of the proprietor, and had executed the instrument, and if the power had not been contrary to the Regulations, still C. as widow and representative, was not entitled, by Hindoo law, to mortgage the property for the purpose specified in the plaint.

Here the material issues of fact averred by the plaintiff and denied by the defendant are—

1. Whether C. was the widow of the proprietor.
2. Whether she executed the instrument in question.

No material issue of fact is averred by the defendant and denied by the plaintiff.

The material issues of law (which arise if the issues of fact are found affirmatively) are—

1. Whether the power of sale is allowed by law.
2. Whether C., as a Hindoo widow, was entitled to mortgage the estate for the purpose specified.

The Judge must be careful to exclude no material issue of fact raised by the pleadings on either side: and previously to rejecting evidence to any point as unnecessary, he ought to consider whether or not it is probable that such evidence, although not deemed requisite for his own satisfaction, may
be so deemed by the Court before whom the cause may be brought on appeal."

If a Judge refuses to take evidence at all, upon a particular point, he must not afterwards decree on that very point, against the party whose evidence he has refused to take."

The duty of selecting the points of issue, is one for the discharge of which no rules can be laid down: every man will select the points which appear to him most material, and their materiality will appear in various lights to different minds, and perhaps even to the same mind at different stages of the inquiry." In order to meet this change of view, if the points originally fixed upon do not appear to be sufficient for the final determination of the matters in dispute, and if proof shall be required on any other points in the course of the trial, such additional points are distinctly recorded from time to time, on the proceedings, and the proper party is called upon for the requisite evidence; and no exhibit is allowed to be filed, or witness summoned, unless expressly in proof, or refutation of some point, upon which the Court may have directed that evidence should be taken."

The proceedings thereupon are of course similar to those which accompany the original selection of issues.

It may, perhaps, not be wholly unprofitable to notice a few of the cases in which the lower Courts have been held, on appeal, to have miscarried in their selection of issues.

Land was sold by public sale to A. as the lakhiraj land of B.: C. having interfered, A. sued C. for possession. C. replied that the land was not lakhiraj, but was subject to the payment of rent to him."
Here it is evident that C.'s allegation, if true, affords no answer to A.'s demand of possession. It is therefore erroneous to take issue upon the question, whether the land be or be not of rent-free tenure. The point to be decided is, whether this is the same land which has been sold to A. If it is, A. is entitled to be put in the same plight that B. was in before the sale. If B. wrongfully held the land rent-free, A. can be sued in the usual way, as B. might have been, by the person seeking to subject the land to the payment of rent.

If the plaintiff alleges a right on his own part, and the defendant, admitting the right, pleads that it was relinquished in his favour by the plaintiff himself;—the question is, whether there has been such relinquishment, and not whether the right which both parties admit is well founded.\(^a\)

Where a man claims lands because they are included in a lease to him, the question is whether those very lands are or are not comprised in his lease, and not whether he has more land in his possession than is mentioned in his lease.\(^b\)

If a man sue for the value of his crops forcibly cut and carried off by the defendants, it is enough for him to show that the crops were his; that they were illegally carried off, and that the defendants were concerned in the aggression;—and it is unnecessary for him to prove by what title he holds the lands, or to show what quantity was cut and in what manner carried off by each individual.\(^c\)

So if the plaintiff sues for damages for injury done to his crops by a certain proceeding of the defendant, which caused them to be inundated, the question of damages is the question to be decided, and it is erroneous if the Court, without pronouncing any opinion upon that point, states in its decree

\(^a\) S. D. 1848, pp. 240, 243, 707.
\(^b\) S. D. 1848, p. 888.
\(^c\) S. D. 1848, p. 893.
that the real question at issue is a boundary dispute, and refers the plaintiff to an action to settle the boundary.

Where the ground of complaint is* that the defendant has encroached upon the public road by the erection of a wall, the only issue is one of fact, viz., whether the wall stands upon what was previously the public road. It is erroneous to decide the cause upon such grounds as these, that the road now existing is broader than an adjoining road, or that the wall complained of does not obstruct the free passage of men and beasts.

Where documents which form the foundation of the claim of one party, are alleged by the opposite party to have been executed in furtherance of a fraudulent purpose, the honesty or dishonesty of the transaction is the point in issue, and it is erroneous to decide in favour of the claimant merely upon proof of the execution of the deeds.\textsuperscript{b}

In a suit to assess rent, where the defendant alleges that his tenure is exempt from assessment, as having been held rent-free from a period previous to the 12th August, 1765, the date of the Company's accession to the Dewanny; the question in the cause is, whether the land has been held rent-free during the period alleged, and it is error if this be not fixed as an issue.\textsuperscript{c}

Where a suit is brought to assess rent at the current rate of the pergunnah, the question is, what are the present rates of the pergunnah for lands of the like quality to those in suit.\textsuperscript{d}

Where a man sues to recover money advanced by him to the defendant on security of a lease of lands under which he has himself been in possession, and the defence is that he has

\textsuperscript{a} S. D. 1848, p. 202. \textsuperscript{b} S. D. 1848, p. 815. \textsuperscript{c} S. D. 1850, p. 72. See the next. \textsuperscript{d} S. D. 1851, p. 620; S. D. 1852, p. 120.
been reimbursed by the profits of lands during his occupancy,\footnote{S. D. 1847, p. 152.} this plea must be inquired into; and it is erroneous to decree for the plaintiff, and to leave the defendant to establish his set-off in a cross suit.

In distinguishing the real points in issue, and in deciding upon them, a close attention to the pleadings will generally guide the Court safely, and most of the miscarriages in this respect seem attributable to the want of an attentive analysis of the conflicting allegations.

Although the Judge is not at liberty either to prescribe or to suggest to the parties the particular evidence by which they are to substantiate their allegations, it is yet considered to be his duty to take a more active part in the investigation than usually falls to the lot of Judges in other countries: and indeed a case will be remanded by the Appellate Court, if it does not appear by the proceedings that the Judge has resorted to all reasonable means of informing himself of the truth.

If, for instance, the case turns upon the question, whether the surrender of a lease was completed according to the usual practice in such cases, or whether a lease be genuine,\footnote{S. D. 1848, p. 245.} or whether a defendant has been adopted into another family and has thus ceased to be responsible for his father’s debts,\footnote{S. D. 1848, p. 15.} or upon the value of certain articles at a particular place and time:\footnote{S. D. 1849, p. 139.}—in such cases the Judge is himself to state minutely the points on which he requires evidence to be adduced, and the public records, if any, which he requires to be searched, and he is responsible for the incompleteness of the investigation, unless where he has thus called for evidence, and the parties have failed to produce it; for the parties cannot adduce evidence on any point not laid down in the proceeding of the Court.\footnote{Supra, p. 195.}
Wherever anything appears on the face of the proceedings which naturally and obviously suggests inquiry, such as an admission of the existence of a document, which, if produced, might throw light upon the merits of the case, it is the duty of the Court itself to inquire further.

If at the first hearing it appears that the parties are not at issue on any question of law or fact, the Court shall at once give judgment. When they are at issue on law or fact, and issues have been framed, if the Court is satisfied that no further argument nor evidence than such as the parties or their pleaders can at once supply is required for the decision of the suit, the Court, after hearing such argument and evidence, may proceed to determine the issues; and if the finding thereon is sufficient for the decision, may give judgment accordingly, whether the summons shall have issued for the settlement of issues only, or for the final disposal of the suit; otherwise 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 may require. But if the summons shall have been issued for the final disposal of the suit, and either party shall fail, without sufficient cause, to produce the evidence on which he relies, the Court may at once give judgment.

The Code prescribes when and on what terms the hearing of the suit may be adjourned.

Issues may likewise be settled between the parties by agreement. As to these, see the Code, Chap. III., Sects. 142, 143.

* S. D. 1848, p. 396; S. D. 1853, p. 405.  
* Code, Chap. III., Sects. 144, 145.  
* Chap. III., Sects. 146-148.
CHAPTER XIX.

HOW AND BY WHOM THE FACTS IN A CAUSE ARE TO BE ESTABLISHED.

The Judge must not only consider what are the points upon which the case really turns, but also how far the facts which he deems material have been already substantiated, and how far it is necessary for the parties to offer evidence in proof of them.

The parties themselves are interested in drawing this distinction before the case comes before the Court.

A defence which is essentially hostile, whether such defence be made in the old form of an answer or of written or oral statements, may contain admissions which tell very strongly in support of the plaintiff’s case, and it is unnecessary for the plaintiff to offer proof of that which is admitted by his adversary.¹

It is, therefore, important for the plaintiff to ascertain the real extent of the defendant’s admissions.

He must, therefore, see whether the effect of the defendant’s admission is impaired or destroyed by any new matter with which it may be coupled. If such be the case, he should deny the untrue statements of the defendant, and should prepare to establish his own case by proofs; or, where the affirmative must be established by the defendant, he should put him to prove it.

¹ See (e. g.) S. D. 1850, pp. 89, 133; Cir. Ord. 8th May, 1850; S. D. 1852, p. 28, 35.
The first consideration with both parties must be, what is necessary to be proved; they must then ascertain how it can be proved.

Although the Judge selects the issues and the main facts to be established on either side, the parties themselves, if they understand their case, will enable him by their explanations to do so in a more satisfactory manner.

There is a class of facts which the Court recognizes without requiring the parties to prove them, and of which it is said to take judicial notice.

The public tribunals take judicial notice of all Regulations and Ordinances made before or on the 22nd day of April, 1834, by the Governor General in Council of the Presidency of Fort William in Bengal, by the Governor in Council of the Presidency of Fort St. George, or by the Governor in Council of the Presidency of Bombay, and having the force of law in any part of the territories in the possession and under the government of the East India Company, and of all Laws and Regulations heretofore made by the Governor General of India in Council, and of all Acts and Regulations made by the Governor General of India in Council, constituted for the purpose of making Laws and Regulations, whether the same be of a public or of a private nature.a

They take judicial notice of all public Acts of Parliament and of all local and personal Acts declared by Parliament to be public and to be judicially noticed, and they admit as primâ facie evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King’s Printer.b

They take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation, and termination of hostilities between the British

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a Act II. of 1855, Sect. 2.
b Ibid. Sect. 3.
Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases, the Court may resort for its aid to appropriate books or documents of reference.

They take judicial notice of the fact\(^b\) that the opium sold at the public sales of the Government is the property of the Government of India, and that the proceeds of the sale form part of the public revenue; of the customs and usages of Hindoos and Mahomedans generally, and in certain cases, the customs and usages of Hindoos and Mahomedans prevailing in particular districts or among particular sects.

It is unnecessary to prove facts which may certainly be known from the invariable course of nature, such as that a man is not the father of a child, if he has been absent from the country for the twelve months immediately preceding its birth; nor is it necessary to prove the course of the heavenly bodies, nor the ordinary public fasts and festivals, nor the coincidence of one with another of the various eras current in this country, nor the order of the months, nor the meaning of words in the vernacular language, nor the value of the coin of British India, nor any matters of public and general history.

Considering the variety of races and of districts comprised within the British dominions in India, it may obviously be occasionally a matter for inquiry by the Court, what era is current in a particular district; all contracts having reference to time are governed by such era, unless otherwise expressed.\(^c\)

The Courts notice not only the territorial extent of the jurisdiction and sovereignty actually exercised by their own

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\(^a\) Act II. of 1855, Sect. 6.  
\(^b\) Ramlool Thakoorsey Dass v. Soojunmulld Dhondmull, 4 Moore’s Indian Cases, 339.  
\(^c\) R. S. C. 11th January, 1848.
Government, but likewise all the local divisions of the country, which have been made for political, judicial, financial, or military purposes, or for purposes of police. But the Courts cannot recognize, without proof, the precise boundaries of such territories and divisions, any further than they may be described in public treaties or in the public acts or regulations of the Government.

The Courts take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of Her Majesty's East Indian dominions:—Governor General, Governor, Lieutenant Governor or Deputy Governor, Secretary, or Under-Secretary to Government, Commander-in-Chief, Bishop, Member of Council, Legislative Councillor, Judge of any of Her Majesty's Courts at the Presidencies, or of any Sudder Court, of the existence of a war in which the British Crown is engaged; and, in short, all matters which affect the Government of the country.

They absolutely adopt those presumptions which are ordinary presumptions of law,—as that a man is innocent till the contrary be shown, and that all official acts have been done in due form.

The Civil Courts are bound to notice their own rules and course of proceeding, and those of all other Courts subject to the same Sudder Court, and also the limits of the jurisdiction of the Supreme Court.

Every Court takes judicial notice of its own members and officers respectively, and of their deputies and subordinate officers or assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakeels, pleaders, and other persons authorized by law to act before it.\(^b\)

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\(^a\) Act II. of 1855, Sect. 5.  
\(^b\) Ibid., Sect. 4.
The Judge may, on matters of public history, literature, science, or art, refer, for the purpose of evidence, to such published books, maps or charts, as he considers to be of authority on the subject to which they relate.\(^a\)

In such cases, where the memory of the Judge is at fault, he resorts to those sources of information which he may deem worthy of confidence.

Thus if the point at issue be a date, he will refer to an almanac;\(^b\) if it be the meaning of a word, to a dictionary, or to the explanation of one versed in the language. The parties, though they are not to be called upon for evidence on the subjects, ought yet to be prepared to assist the inquiries of the Judge by producing the necessary books or documents.

But the Court ought at all events to make the necessary inquiries, without strictly confining themselves to the time of the trial; thus, where the question is whether a particular Prince or State is recognized by the British Government as independent, the Judge, if he feels any doubt, may refer to the Sudder Dewanny Adawlut, which applies for information to the department of the Government within whose province the subject actually falls.

In cases turning upon English law or upon the law and practice of the Supreme Court, the subordinate Court ought to apply to the Sudder Court, which will, if necessary, consult the Advocate General upon such application, as it will in cases pending before it in appeal.\(^c\)

If a doubtful question of Hindoo or Mahomedan law should arise, the Judge must call for the opinion of the pundit or

\(^a\) Act. II. of 1855, Sect. 11.

\(^b\) N.B.—There are three almanacs in use in Bengal, all of which differ in their computations of the astrological year. The Sacar Era is generally used in astrological calculations, and frequently differs from civil time by one or two days.—(S. D. 1857, p. 507.)

\(^c\) Cir. Ord. 21st April, 1843.
casi of the division; laying before him a statement of the facts, and requiring him to certify the rights thence arising under the Hindoo or Mahomedan law, but by no means submitting to him the evidence in order that he may find the facts and apply the law, for this is delegating the whole function of judgment.\(^a\)

The easiest mode of proving facts not judicially noticed, is by admissions on the record, that is to say, statements made by either party in the manner already mentioned,\(^b\) and which may be taken, as against such party, to be true.

The facts alleged in the written or oral statements of a plaintiff, and not corrected by him on the proper occasion,\(^c\) where they are alleged positively, amount (though perhaps they were not so intended) to admissions, which the defendant may insist upon in his own favour if he thinks it expedient to do so, and they need not be proved; for, whether they be true or not, the plaintiff, having once stated them to be true, and thus induced the defendant to abstain from taking any steps to prove them, cannot afterwards dispute them.\(^d\)

Statements which are not intended as admissions may go very far to prove the plaintiff's case.

A Mahomedan \(^*\) man and woman intermarried, upon which occasion the husband executed a kabinnamah, or settlement, by which the wife's dower was ascertained, and made demandable upon divorce. The wife, alleging that she had been divorced, claimed her dower. The husband denied that he had divorced her, and he alleged that she had executed an ibranamah, or written relinquishment of her claim of dower,


\(^b\) Supra, p. 190.

\(^c\) Ibid.

\(^d\) S. D. 1849, pp. 89, 374.

\(^*\) S. D. 1856, p. 311; see Wilson's Dict. p. 505.
and also, subsequently, a khalanamah, which is defined to be a dissolution of marriage at the request of the wife, in which she agrees to make her husband a compensation for her loss by relinquishing to him a portion of her peculiar property, and by foregoing her claim to dower. The Sudder Court held, after consulting their law officer, that the effect of this pleading of the khalanamah by the husband was, according to the principles of Mahomedan law, to establish the fact of divorce, such pleading being in itself a complete divorce, though the husband failed to prove that a valid khalanamah was executed. That is to say, he admitted that a divorce had in fact taken place, but he did not prove that it took place upon terms favourable to himself.

Besides statements of this kind, which are construed to amount to admissions as against the party making them, there may be express admissions on the record intended to be actual acknowledgments by one party of the absolute or partial truth of facts which the opposite party has alleged.

The complainant cannot adduce any part of his own statements as evidence in support of his case, unless where they are corroborated by the defendant; as, where the plaintiff states a deed or will, and the defendant admits the deed or will to have been properly executed, and to be to the effect asserted in the plaint; the plaintiff's statement is evidence for him to the extent of the admissions made by the defendant: and the genuineness and authenticity of a written instrument thus admitted, cannot be controverted by either party, or by the Judge in his ultimate decision.\footnote{8. D. 1847, pp. 536, 541; see Sel. Rep. v. 7, p. 81.}

So, if the defendant states that he paid the debt in respect of which he is sued: this is an admission that the debt was contracted by him, and the plaintiff need not prove it; but the defendant may prove payment if he can.\footnote{8. D. 1848, p. 141.}
No evidence is admissible except upon the points in issue. Therefore in an action for recovery of a debt secured by bond, where the defendant denies the execution of the bond, and the issue is whether it be the defendant’s deed or not, he cannot give a release of this bond in evidence; for that does not destroy the bond, but shows only that it is discharged; and therefore does not support his side of the issue.

Admissions, even though faintly worded, and short of a positive avowal, will be held sufficient as against the party who makes them, for it is generally found that a mandenies with all the vigour which the circumstances warrant, any fact that militates against his own interest.

Thus a statement by the defendant that he believes that such a fact is true, is sufficient to establish the fact as against him, unless the statement is coupled with some clause to show that it is not intended as an admission; for it has been said that what the defendant believes against his own interest, the Court will likewise believe; but a mere statement by the defendant that he has been informed that such a fact is true, without any expression of his belief concerning it, is not such an admission as can be deemed to prove the fact.

And so where a defendant, without expressly admitting the truth of a statement of the plaintiff, makes a defence which impliedly admits the statement, and offers some new matter to do away with its effect—this admission may be as effectual an admission in a plaintiff’s favour, as if it were an express admission. Thus where a man sued certain persons for cutting and carrying away the entire crop on certain lands, cultivated by them under the bhaolee tenure, according to which the zemindar and the tenant divide the crop; the cultivators replied that the plaintiff had not supplied them with seed at the proper time, that when he did give it, the seed was

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* See S. D. 1849, p. 286.  
* S. D. 1847, p. 184.
bad, that in consequence of this the produce was very trifling, and that, owing to the late sowing, the crop, such as it was, was destroyed by the rains;—this was considered to amount to a clear admission of the bhaolee tenure.

The answer of one defendant cannot be used for the purpose of affording evidence, either in the way of admission or of positive averment, against another; because there is no issue between the parties, one does not seek the aid of the Court against the other, and they do not litigate questions as between themselves, with the advantage of knowing each other's case and of taking the usual precautions which hostile parties take: and therefore each cannot bring the statements of the other to any accurate test.\(^a\)

If a suit be brought against several defendants, to recover damages for an injury alleged to have been committed by them, the answer of one of the number, alleging that he alone committed the whole of the acts complained of, will not prevent the plaintiff from offering evidence to show that they all joined in the trespass: for if it were otherwise, they might get rid of their own liability, and deprive the plaintiff of redress, by procuring such an admission from one co-defendant, who may have no means of paying the demand.\(^b\)

The Court will not sanction an agreement by which any of the known rules of law are evaded. Where the law requires an instrument to be stamped in order to its validity, the Court will not give effect to an agreement to waive the obligation arising from its not being stamped, for thus litigants might, by mutual agreement, practically repeal the stamp laws.

A Vakeel may, by his admission made with due authority, bind his client, though the latter is not present at the time of

making it. It has even been held that he may by his consent bind his client to adopt that version of the story which the opposite party shall give when put to his oath, and that the client cannot object to a decree passed upon such statement.

Admissions of matter of fact, made in open Court by the Vakeel of either party, in answer to questions put by the Judge, and recorded by the Judge, are binding upon the party.

Were this rule not established, it would not be safe for the Court to deal with any agent or pleader, but the parties themselves must be called upon to appear, even in the most trifling matters.

If, however, it were clearly proved that a Vakeel made any admission, or gave any consent, by collusion with the opposite party, the Court would not hold the client bound by it.

All essential facts of which the Courts do not take notice, and which are not admitted between the parties, in any of the ways abovementioned, must be proved by evidence.

A disputed fact ought, generally speaking, to be proved by the party who affirms its truth, because the assertion that a fact is true, is capable of more direct and simple proof than the denial of it: and because it is reasonable that the party who relies upon the existence of a fact, should be called upon to prove his own case.

If the defendant who has been served with process and compelled to answer, denies that he is the person really liable to the plaintiff's demand, and states that another

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* S. D. 1849, p. 151.
person of the same name is the party liable,—it is for the plaintiff to prove that the actual defendant is the person who ought to be defendant.a

The burden of proving that a compromise or any other engagement has been obtained by intimidation and false representation, is cast upon those who seek to impeach the validity of their own deed.b

In general wherever a *prima facie* right, a right which if not qualified or affected by any other right, is sufficient to warrant the conclusions which the party draws from it, is admitted or proved, the person who asserts that it is so qualified or affected, must prove his assertion.

A wife in a Hindoo family, setting forth a title on a purchase by means of her own streedhun, as exempting particular property from responsibility for her husband's debts,—is bound to prove that she really had streedhun, and that she employed it in the purchase of the property in question.c

A party who seeks to enforce a right of pre-emption must prefer his claim immediately on learning (from whatever quarter) that the land has been sold to another—and it is incumbent upon him to prove that he did so prefer it.d

Pre-emptive rights, though frequently acknowledged or agreed to by Hindoo communities, are neither inherent in the customs nor recognized in the laws of the people. When, therefore, the village administration papers contain no clause distinctly recording the existence of a pre-emptive right, it is to be inferred that no such right exists, unless strong positive proof be adduced to the contrary.e

Where one man seeks to recover from another, property of

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*a* S. D. 1853, p. 542.  
c* S. D. 1852, p. 125.  
e* Agra, 1857, p. 34.
which the latter is in possession, or to establish a title in himself, to land which has been purchased, and conveyances made out in the name of another man, the burden of proof lies upon the plaintiff.

In cases where the claim is preferred on general unquestionable grounds, such as inheritance, and the defendant pleads a special ground (e.g., a family custom, or a will, or an adoption), then of course the burden of proof is on the defendant, and his plea must be investigated.

Where one of two brothers sues the other for one-half of the joint estate, and the defendant alleges that there has been a partition, he must prove the partition and where it is alleged, on either side, that property which belonged to a member of a joint and undivided Hindoo family was separate and not joint property, the burden of proof rests upon those who assert its separate character.

But of course it must be clearly admitted that the family was generally joint and undivided in estate, otherwise this fact must in the first instance be proved by the complainant.

And where a division of personal property among a family has taken place, lands subsequently purchased in the names of individual members will be held to be their separate property, unless it can be proved that the purchases were made with joint funds.

Where one co-sharer of a farming lease brings a suit for an account against the other, alleging that the latter has acted as sole manager, he must prove this allegation: when it has

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a Ram Rutton Rae v. Furrookonnaissa Begum, 4 Moore's Indian Cases, 233; S. D. 1851, pp. 18, 439; S. D. 1856, pp. 408, 432, 474, 638, 721, 1082; Agra, 1856, pp. 74, 143.

b S. D. 1850, pp. 89, 575; but see Code, chap. iv., s. 260.

c S. D. 1849, p. 286; S. D. 1856, pp. 399, 702; Agra, 1857, p. 43.


f S. D. 1856, p. 986.
been proved, then the defendant has to prove that he duly paid or accounted for the share of his companion.\(^a\)

Where a man borrows money in his own name, the borrower cannot recover the amount from the joint family of which the borrower was a member, unless he can show that the money was borrowed for and applied to the purposes of the joint estate.\(^b\)

Where the defendant acknowledges the execution of the deed upon which the action is brought, but seeks to avoid it by alleging the execution of a subsequent deed by which the terms of the agreement were varied to his own advantage, the burden rests on him.\(^c\)

Where a man has proved himself zemindar, or has otherwise established, *prima facie*, his title to receive rent, (as, where he has shown himself to be a dur-putneedar,) an occupant who resists his claim of rent on the ground that he has paid it already, or that he has been ousted from the lands comprised in his holding, must prove that he has paid the rent, or that he has been ousted,\(^d\) and an occupant who claims to hold land as lakhiraj, must prove its exemption.\(^e\)

Zemindars are entitled generally to measure the lands within their estates in order to enable them to issue notices according to law, with a view to assessment; and if a ryot opposes the measurement on the ground of some special title in himself, the burden of proving that special title lies upon him, in an action brought against him for damages in consequence of the obstruction.\(^f\)

Where the zemindar sues to assess rent, the proof of exemption rests wholly on the defendants.\(^g\)

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\(^a\) S. D. 1856, p. 659.

\(^b\) S. D. 1858, p. 181.

\(^c\) S. D. 1856, p. 161.


\(^f\) S. D. 1846, p. 223; S. D. 1851, p. 8.

\(^g\) S. D. 1850, pp. 451, 608.
It has been laid down, with respect to the Lower Provinces, that where a suit is brought for enhancement of rents, and the plaintiff has shown that he is landlord, a the defendant who pleads a mookurrree tune, must prove his right to hold at a fixed rent, exempt from enhancement, unless he be a talookdar of the kind specified in Section 51, Regulation VIII., 1793. But where the zemindar demands an increase of rent from a dependent talookdar, recognized as such at the time of the decennial settlement, and holding his lands at an ascertained rent, in such cases it is for the zemindar himself to prove his right to an augmentation of rent, b and to show that the rate at which he claims it is proper. c

These rules, however, may require considerable modification when the Courts have to deal with claims similar in name, but relating to a different system of land tenure, and to a different revenue settlement.

In the North-Western Provinces there are d two classes of non-proprietary cultivators. One consists of those who are merely tenants at will, and who hold on from year to year at the pleasure of the zemindar. The zemindar who sues to oust a tenant of this class or to raise his rents, generally obtains a decree in his favour at once, upon the production of the record of settlement.

The constitution of the other class is not precisely defined, but it would seem to comprise those who have overcome great natural obstacles in reclaiming the land from waste, those who have expended capital upon it in a permanent form, and those who hold by prescription under long-continued occupancy.

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a S. D. 1857, p. 1427.  
c S. D. 1857, p. 214; see Act X.  
of 1859.
Tenants of this class have a *primâ facie* right to protection, and when the zemindar seeks to raise their rents, the burden of proof rests upon him. He must establish either that the present rents are inadequate as compared with those paid in the neighbourhood; or that the tenure has increased in value in consequence of improvements effected by himself or by the State, or that some other permanent change has occurred which entitles him to demand more from the land than he has hitherto received.

Where it has been established that a water-course was formed by the ancestors of the plaintiff, and flows through his property, it is for the defendant to prove his own right to the use of the water by express grant from the proprietor, or permission equivalent to a grant, or long-continued use of the water.\(^a\)

A party who has been ousted of the possession of lands under Act IV. of 1840, is entitled to possession on showing that he was wrongfully ousted, and that the order ought to be set aside, although it may happen that he cannot show a title which would enable him to recover in an ordinary action of ejectment. For it is only a possessory action, and does not conclude proprietary rights.\(^b\)

If the widow of a man who died leaving minor heirs (his grandsons) takes upon her to alienate his estate, the burden of proving that it was for the man's debts, or some purpose recognized by Hindoo law, lies on her, or those claiming under her.\(^c\)

Where the defendant admits that the plaintiff deposited with him a sum of money, to be expended according to special instructions, it lies on the defendant to prove that he has expended the money according to those instructions.\(^d\)

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\(^{a}\) S. D. 1856, p. 218.  
\(^{b}\) S. D. 1856, p. 961.  
\(^{c}\) S. D. 1857, p. 401.  
\(^{d}\) S. D. 1857, p. 226.
A plea of limitation must be established by the party advancing it, and the proof rests wholly on him.\footnote{S. D. 1847, p. 378.}

All grants for holding land in Bengal exempt from the payment of revenue, made previous to 12th August, 1765, when the British Government obtained the Dewanee, are to be established by proof that the grantee actually and in good faith obtained possession, previous to that date, of the land so granted. It is immaterial whether the grant was with or without writing; nor need the competency of the authority be established.\footnote{S. D. 1850, p. 85; S. D. 1851, pp. 2, 7, 330. See p. 107, supra.}

A man who sues as superintendent of a religious endowment or who claims under a deed of such a person, must prove that the appointment as superintendent was legally made and (where necessary) ratified.\footnote{S. D. 1850, p. 250.}

It is always for a rent-payer, or bond-debtor, or any other debtor to prove the payment of the money which he owed: and where a debtor has given mere \textit{prima facie} evidence of payment, which has been rebutted by contrary evidence, the debtor has failed to discharge himself.\footnote{S. D. 1847, p. 618; S. D. 1849, p. 379; Agra, 1856, p. 487; S. D. 1857, pp. 1102, 1473.}

When documentary evidence is contested, the proof of its genuineness lies upon the person who produces it.\footnote{3 Moore’s Indian Cases, p. 347.}

A man who sues to enforce an agreement contained in a written instrument, ought to produce the instrument, unless its contents are admitted, or unless he is entitled to give secondary evidence of its contents.\footnote{S. D. 1847, p. 104.}

A deed or instrument, when proved to be the genuine instrument of those whose signature it bears, is treated by the Court as being what it purports to be, unless the contrary is
shown: and therefore it is incumbent on the party impeaching it to show that it is not what it purports to be.

When a party admits the execution of a bond by him, but seeks to avoid liability under it, by pleading that full consideration, according to the terms of the contract, has not been received by him, the proof of such non-receipt lies upon him; and in the absence of proof to that effect, he must be held to the terms of the deed to which he has deliberately affixed his signature.\^a

Thus where an action is brought upon a bond, which is upon the face of it a common money bond, and the defence is that this instrument was in truth a mere indemnity bond, and not a bond intended to create an immediate debt; the burden of proving it to be an indemnity bond lies on the party who seeks to restrict its operation.

Except under special circumstances, it is unnecessary to prove the account on which an acknowledgement of the balance stated and settled between the parties is founded.\^b

Where a transaction apparently legal—such as a transfer of property—is impeached on the ground that it was effected under circumstances which made it illegal, the circumstances importing illegality must be proved by the party alleging them.\^c

In a suit instituted under Clause 4, Section 18, Regulation VIII., 1819, to bring to sale the real property of the defendant, against whom a summary decree has been passed by the Collector, the plaintiff must prove the whole of his case, notwithstanding the summary decree.\^d

If a man be surety for the Treasurer of a Collectorate, and if the Collector put up for public sale the land of the surety, alleging that the Treasurer has embezzled a certain sum, and

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\^a S. D. 1857, p. 1114.  
\^b S. D. 1856, p. 959.  
\^c S. D. 1847, p. 100; S. D. 1850, p. 159; S. D. 1851, pp. 530, 590, 683, 738.  
\^d Agra, 1856, p. 151.
the surety thereupon pays a sum of money to save his estate from sale, it is held that the surety may recover his money from the Collector if he can disprove the alleged embezzlement.\footnote{S. D. 1848, p. 566.}

Wherever the presumption of law is in favour of one party it will be incumbent on the other party to disprove it, though in so doing he may have to prove a negative. If the question turns on the legitimacy of a child; if a legal marriage is proved, the legitimacy is presumed, and the party asserting the illegitimacy ought to prove it by adducing irresistible evidence that it could not be the child of the alleged father; as, for instance, that he was absent from the country for the whole of the year next preceding its birth.

If a man seeks to impeach a will or other instrument, on the ground that the party who executed it was insane at the time;—where a person has been subject to the custody of a guardian appointed by the Court of Wards, or to a Commission of Lunacy in the Supreme Court, or to any restraint permitted by law, even a domestic restraint, clearly and plainly imposed upon him in consequence of undisputed insanity;—the duty of showing general sanity, or a lucid interval of sanity at the date of the particular transaction, is thrown upon those who maintain the validity of the instrument.\footnote{S. D. 1851, p. 612.}

On the other hand, where insanity has not been imputed by friends and relatives, or even by common fame, the proof of insanity which does not as yet appear ever to have existed, is thrown upon the party asserting it, and it must be distinctly proved to have existed at the particular date of the transaction which is impugned on this ground.

It will be presumed, until the contrary be shown, that persons who enter into a contract are of full age, that a man duly executes his office, that a workman has duly performed...
the work entrusted to him by his master, and has not produced an imperfect article.

A man must prove what lies peculiarly within his own knowledge; and if he fails to do so, the Courts will adopt that presumption which is least favourable to him.\footnote{S. D. 1856, p. 1069.}

Where a man sued a tailor for the value of cloth which he had delivered to him to be made up; the latter admitted receipt of the cloth, but alleged that he had returned it; it was held that the burden of proof lay upon the defendant.\footnote{S. D. 1857, p. 1628.}

Where a man has caused the crops and personal property of another to be illegally attached, he must prove that he restored them, or he will be liable to make good their value.\footnote{Sel. Rep. v. 7, p. 423.}

And where a party, by his own act, deprives his opponent of the means of proving his case; as where he detains the property of another and refuses to produce it, or to give any evidence as to its value; the Court will presume everything against the party who acts thus, and will award damages upon the assumption that the article so kept back was of the highest value that such an article can reasonably bear.

It is not always obvious at first sight which is the affirmative and which the negative proposition in a cause, for that which is substantially affirmative may be negative in form. The plaintiff sometimes grounds his right of action on a negative allegation, as for instance on the allegation that his Vakeel did not use due diligence in conducting his cause, or that a tenant who was bound by his lease to keep a house in repair, has not so kept it.

The best tests for ascertaining upon whom the burden of proof lies are, to consider which party would succeed if no evidence were given on the other side: and to ascertain what would be the effect of striking out of the record the allegation
which is to be proved. The burden of proof must be on the party which would fail, if either of these steps were taken.

It will be plain that in the case supposed above, if no evidence were offered to prove that the Vakeel did not do his duty, or that the tenant did not repair the house, or if those allegations were struck out of the record, the plaintiff's case would wholly fail. It is, therefore, the plaintiff's duty to substantiate them.

And so where a claim depends in some degree upon a negative, reasonable proof must be given of it, as where the plaintiff has to make out a pedigree as heir, and has to show that the elder branches of the family have become extinct: he may succeed upon slight evidence, such as reputation in the family, that the persons supposed to be extinct have been long absent and unheard of, and that no report of their being married or having issue has reached the family.\(^a\)

The rule, that no evidence will be admitted to prove any facts but those which are selected by the Judge, requires only that the main facts themselves should be put in issue, and not the materials of which the proof of those facts is to consist, and therefore such particulars may be admitted, in proof of the general facts.\(^b\)

If it be alleged that A. is the son of B., the fact to be proved is the relationship of A. to B.; and that may be done by any mode of proof which the rules of evidence will allow, and it is not necessary to state the mode upon the record.

Where the charge is that a man is insane, or is addicted to drinking, such assertions are to be proved by giving in evidence particular acts of madness, or particular instances of drunkenness.

It is not only necessary that the substance of the case set up by a party should be proved; it must be essentially the

\(^a\) *Infra*, Chap. XX.  
\(^b\) S. D. 1851, p. 199.
same case, and not a different case; for the Court will not allow a man to be taken by surprise by a case proved on the other side, which, though plausible in itself, is different from that which was set up.

There must be a direct and real conformity, though not, perhaps, a minute literal conformity, between the proofs and the allegations; parties who come for the execution of agreements must state them as they ought to be stated, and not set up titles which they cannot support.

Thus a party should not set up a general title, such as inheritance, and then seek to recover under a particular deed merely.¹

Where the plaintiff sues on a special ground, such as an onomatyee putr, or deed granting power to adopt, the Judge should confine himself to the investigation of that point only; and on its not being established, he should simply dismiss the suit. He should not decree any portion of the property in suit, on a ground totally different from that on which the claim was preferred,—that is to say, upon the general right of inheritance, when the claim was founded on right to adopt, which was rejected as invalid.²

A party cannot be allowed to prove facts inconsistent with his case as stated. It must be decided with reference to the allegations upon which he has himself rested it; and when his averments have been of an original and exclusive right and unbroken possession on his part, no presumptions of his having acquired the property by purchase or in any other manner can avail him.³

In cases where the burden of proof rests manifestly upon the plaintiff, if the plaintiff do not establish the special

² S. D. 1849, pp. 286, 483.
³ S. D. 1849, pp. 89, 374; S. D. 1851, pp. 131, 635, 683.
grounds on which he comes into Court, there is no necessity to investigate the grounds upon which the defence may rest."

When a man advances one set of claims and establishes another, Judges are very often tempted to take irregular courses for the purpose of saving further litigation. But it is reasonable and just that the right of parties litigating should be decided *secundum allegata et probata*: and it has been well observed, that attempts to reach the supposed equity of each case by departing from the rules which have been established for the purpose of maintaining and administering justice, generally lead in the particular cases to results, which were never contemplated, and introduce disorder, uncertainty, and confusion into the general practice of the Courts.

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CHAPTER XX.

EVIDENCE.

What is evidence.

That which (independently of all argument and comment) is legally offered by a litigant party in order to convince the mind of the Court that the facts alleged by him are true, is said to be evidence: and the evidence amounts to proof, when it is sufficient to produce the desired conviction in a mind intelligently and justly exercised.

The truth of a past occurrence may generally be best learnt from those who saw it; and next best from those to whom they have stated what they saw.

Men naturally tell the truth where they have no special motive to falsehood; and naturally believe the statements of other men as to what they know, if there be nothing to excite suspicion.

If more direct information cannot be had, it is natural to inquire what circumstances accompanied the transaction, and to infer the unknown facts from the known ones, according to previous experience.

Such is the order of inquiry which the Courts endeavour to pursue, but many are interested in obstructing and misleading them; they are generally obliged to decide quickly, and with little knowledge of the real value of any man's testimony, especially where they do not see the witness, and observe his demeanour.

The Courts, then, would be more liable to be misled than persons in private life, unless the reception of evidence were
subjected to some rules which may tend to guard them from error.

It is proposed to enumerate briefly some of the most important of these rules.

Every fact ought to be established by the best evidence that the case admits of. Until it is shown, that the party who undertakes to prove a fact, is unable to obtain that original or primary evidence which affords the greatest certainty of the fact in question, no evidence ought to be received which is merely secondary or derivative: for where the original evidence is withheld, it is natural to suspect that the party is afraid to produce it.\(^a\)

But if a party allows evidence to be put in and used without offering objections on this score, he will be held to have waived his right to require formal proof that primary evidence was not available.\(^b\)

Accordingly, so long as a man can be called to give his testimony in person, the Courts do not receive secondary evidence of what he formerly stated upon oath regarding the matters in issue: whether such secondary evidence consist of a copy of his deposition, or of the statement of persons who were present when he was examined.\(^c\)

The inability to call him may be owing to his death, or incurable illness, or insanity, or to his being absent from the country, or being kept out of the way by the contrivance of the opposite party, or missing, so that he cannot be found.

The existence of some such impediment must be proved before secondary evidence of his former testimony is given, and the Court will not presume the man’s death or removal,
or any other obstacle, even although many years may have elapsed since the date of his former testimony.

Where a witness has given his testimony upon oath, or upon the usual\(^a\) declaration in lieu of an oath, in a proceeding of a judicial nature, either in a Civil Court, or before the revenue or criminal authorities, to which proceeding the party against whom his testimony is offered in the second suit was legally bound to submit, and in which he had the power to cross-examine the witness;\(^b\) should it be impossible, from some of the causes abovementioned, to call the witness himself, his testimony, so given, will be admitted in any subsequent suit between the same parties, or those claiming under them, provided it relate to the same subject, or substantially involve the same material questions.

But secondary evidence of testimony cannot be received under circumstances that would exclude the original testimony itself. Where depositions have been taken, either by parties not legally authorized to take them, or without the sanction of an oath or declaration, or where they have been taken in the absence of the party against whom they are offered, the depositions cannot be received.

Evidence of this kind is admitted against persons who had an opportunity of cross-examining the witness in the former suit, although neither the parties nor the points in issue, in the two proceedings, be precisely the same. Therefore, where a witness has testified in a suit, in which A. and several others were plaintiffs, and B. defendant; his testimony is after his death admissible in an action relating to the same matter brought by B. against A. alone. And if the second trial is between those who represent the former parties, and who claim through them by some title acquired subsequently to the first trial, the evidence is admissible. Again, if in a dispute

\(^a\) S. D. 1848, p. 100.
\(^b\) See 4 Moore's Indian Cases, p.
respecting lands, any fact comes directly in issue, the testimony given to that fact is admissible to prove the same point, in another action between the same parties, or those who claim through them, though the last suit relate to other lands.\(^a\)

Where the point in issue was, whether certain land was liable to assessment according to ordinary rules, or was held at a fixed annual jumma under a particular deed, the Zillah Judge decided against the validity of the deed; but, an appeal being lodged, the party claiming the right to assess executed a written acknowledgment that the lands were mokurruree, and that they should be held by the occupier at fixed rent: a razeenamah, or deed of compromise and acquiescence, was filed in the Court of Appeal on the basis of this acknowledgment.\(^b\) The question of assessment having been raised again between the parties, it was held that the original adjudication against the deed fixing the jumma, was no bar to an inquiry into the validity of that deed in the subsequent suit.—Here it will be observed that by the arrangement the validity of the mokurruree tenure had been conceded, and the appellant had thus been induced to forego his appeal, in which he might have established the tenure.

Depositions in a nonsuited case are available in a subsequent suit between the same parties for the same thing; but the Judge or either party may require the attendance of the witnesses for re-examination.\(^c\)

Where the second suit is not between the same parties as the first, nor between persons claiming under them respectively, evidence taken in the first suit cannot be used even before the same Judge,\(^d\) against a party to the second who

\(^a\) See S. D. 1849, p. 89.
\(^c\) Cir. Ord. 26th November, 1847; S. D. 1857, p. 1298.
\(^d\) Sumboo Chunder Chowdry v. Narain Dibeh, 3 Knapp's P. C. C., p. 55.
was not party to the first: and as he cannot be bound by it, so neither can it be used by him against his opponent who was party to the former suit.

Depositions previously taken, are open, when admitted as evidence, to all the objections which might have been urged had the witness himself been personally present.

The party producing a document as evidence, must prove that it is written or signed by the person by whom it purports to be written or signed. This is generally proved (in the case of unattested documents) by the testimony of some one who is acquainted with the handwriting of the person in question.

On an inquiry whether a signature, writing or seal is genuine, any undisputed signature, writing or seal of the party, whose signature, writing or seal is under dispute, may be compared with the disputed one, though such signature, writing or seal be on an instrument which is not evidence in the cause.

The Courts are prohibited from "decreeing the payment of any sum due on a tamassook, or bond, unless the bond shall be proved to have been executed in the presence of two credible witnesses, or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the Court. But this restriction does not extend to bills of exchange, receipts or notes of hand, in the determination on which the custom of the country is to be abided by."

If the instrument be one which would be valid without attestation, it may, though attested, be proved as unattested.

If a deed, or other attested instrument, be produced, and if it be an instrument, to the validity of which attestation is requisite, its execution must, in general, be proved by calling the

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* Act II., 1855, Sect. 48.
* Reg. III., 1793, Sect. 15 ; S. D. 1850, pp. 429, 350; but see Index.
* Act II. 1855, Sect. 37.
subscribing witnesses, or such of them as are alive. If they be dead or not forthcoming, there is no positive rule in the Civil Courts as to what shall be considered the next best evidence, but there appears to be no objection to receiving the testimony of persons who were present at the execution of the instrument, though not attesting witnesses.—The attestation of the instrument ought to be proved to be that of the deceased witness. But if there be several attesting witnesses; so long as any one of them is alive, and capable of being produced in Court without any extraordinary inconvenience, it is not sufficient to prove the signature of another witness who is deceased; for it is held that the witnesses have been chosen by the parties, as the persons on whose testimony they rely; and that the surviving witness can state directly whether all that the law requires has been observed or not, whereas the proof of the handwriting of the deceased witness would only afford presumptive and not direct evidence that the legal requisites had been complied with.

Where a party to an attested instrument admits that it was executed by himself, this is, as against him, sufficient primâ facie proof of such execution of it, though it be an instrument which is required by law to be attested.

If one of the witnesses to the execution of a document be living, he ought to be called to prove the execution, although the Court may have before it copies of the deposition of deceased witnesses, taken in a proceeding relating to the same property.

Persons unable to write or read may be attesting witnesses to a legal instrument, but no great value is attached to their testimony.

Strict proof is required of the execution of a deed by a

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* S. D. 1818, p. 554.
* Act II. 1855, Sect. 38.
* S. D. 1848, p. 136.
* S. D. 1847, p. 488.
* See S. D. 1849, p. 78.
female of rank, who does not appear before strangers, as fraud may be easily practised in such cases.\(^a\)

And strict proof is also required where the deed is of an unusual kind, and where its existence has been concealed, and there has been no registration before the Register of Deeds, or in the Collector’s office.\(^b\)

Among Mahomedans of property some written document, in the shape of a deed of dower, or deed of marriage settlement, is usually executed at the time of marriage, and the absence of any paper of that sort, in a case where the fact of marriage is disputed, tells against the marriage.\(^c\)

A deed of gift not signed by the donor, nor attested by any subscribing witness, was held valid under the Mahomedan law; on the deposition of the cæzee, and of the person who drew the deed, that it was drawn in the presence and by the desire of the donor, and was acknowledged by him before the cæzee, who thereupon affixed his seal, though not his signature.\(^d\)

The draft of an acknowledgment of a debt and agreement to pay it, which was proved to have been drawn up in the presence and by the direction of the debtor, but which was not signed by him, has been admitted as an acknowledgment of the debt.\(^e\)

The best evidence to prove jumma-wasil-bakee papers is the testimony of the writer.\(^f\)

The rule which requires the production of the best evidence, excludes only that evidence which itself indicates the existence of original sources of information, but it does not forbid a party to submit to the Court weaker, instead of stronger proofs. For instance, if there are several subscribing witnesses to a deed or will, it is only necessary to call one

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\(^a\) Sel. Rep. v. 1, p. 257.
\(^b\) S. D. 1851, p. 72.
\(^c\) S. D. 1857, p. 298.
\(^d\) Sel. Rep. v. 1, p. 52.
\(^f\) S. D. 1851, p. 42.
of them; though the others are at hand. Neither is it necessary to call the Magistrate who signed depositions which are offered; it is enough to prove the signature of the Magistrate, and the Court will presume that the examination was conducted in proper form.

Where an action is founded on a certain document, the evidence adduced in support of that document must in the first place be considered, and then the evidence against it.

But it is erroneous to reject a document merely because certain other documents connected with the parties but unconnected with the case, have a suspicious appearance. No secondary evidence of contents of producible instruments.

A title by deed must be proved by production of the deed itself, if it is within the power of the party setting up such title; copies may be inaccurate, the recollection of witnesses as to the purport of writings can seldom be relied on, and the whole contents of the instrument may produce a very different impression from that which is produced by the statement of a part of them.

The contents of documents may be proved by secondary evidence, only where the original writing is destroyed or lost, where its production is physically impossible, or at least highly inconvenient, or where the document is in possession of the adverse party, who refuses, after notice, to produce it, or where it is in the hands of a third person, who refuses to produce it, and who is not compellable by law to do so, or where the papers are voluminous, and it is only necessary to prove their general results.

If the instrument is destroyed or lost, the party seeking to give secondary evidence of its contents must either prove its destruction positively, or at least presumptively, by show-

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* S. D. 1847, p. 286.
* S. D. 1857, p. 1326.
* S. D. 1848, p. 103; S. D. 1852.
* S. D. 1847, p. 368.
* See the next Chapter.
ing that it has been thrown aside as useless; or must establish its loss, by proof that a search has been unsuccessfully made where it was most likely to be found, and that he has exhausted all the sources of information which were accessible to him.\footnote{Meer Usdoollah v. Mussumat Bibe Imaman, 1 Moore's Indian Cases, p. 19; S. D. 1850, p. 295; S. D. 1853, p. 620.}

If the document be important, or if there be reason to suspect that it has been fraudulently withheld, a strict examination is required; in other cases a slighter degree of diligence will suffice, as unimportant papers are more likely to be destroyed or lost than papers of moment. If, in order to prove the destruction, scraps are produced which are alleged to be fragments of the missing instrument, it must be clearly established, and not taken for granted, that such fragments are really parts of that instrument.\footnote{Syud Abbas Ali Khan v. Yadeem Rany Reddy, 3 Moore's Indian Cases, p. 156.}

Before secondary evidence is admitted, it is necessary to show that the original instrument was duly executed, and was otherwise genuine.

A contract which the parties have put in writing, ought in general to be proved by the production of the writing itself. The written instrument may be regarded, in some measure, as the ultimate fact to be proved, especially in the case of negotiable securities; and in all cases of written contracts, the writing is tacitly considered by the parties, as the repository and evidence of their agreement. Whenever the issue depends in any degree upon the terms of a contract, the party whose witnesses show that it was reduced to writing, must either produce the instrument, duly stamped, or give some good reason for not doing so.

Where a suit is grounded on a document which is under the stamp laws inadmissible as evidence, no decree can be
made upon merely oral evidence in support of that document. But if the contract, of which the document was the record, can be completely proved by oral testimony independently of that document, the existence of an unnecessary unstamped document does not invalidate a contract which would be valid if there were no writing in existence regarding it: although, of course, the defendant, if he means to rely on a valid contract in writing, as an answer to the plaintiff's demand, must produce it, duly stamped; for all documents which are exhibited as evidence must be stamped. And this is probably all that was meant by the Sudder Dewanny Adawlut when it laid down that although a document written on paper not bearing the prescribed stamp, cannot be admitted or filed, yet if the plaintiff can prove his claim by any other evidence, the Courts are not precluded from receiving such evidence.

The "other evidence" alluded to must not be understood to include either copies or any other secondary evidence of the contents of the unstamped document, but must be restricted to evidence which goes directly to prove the transaction of which the parties intended the document to form the record, but of which, in consequence of the omission to stamp it, they possess no available record.

If a written communication be accompanied by a verbal one to the same effect, the latter may be received as independent evidence, though not as a substitute for the writing. Thus, the payment of money may be proved by oral testimony, whether a receipt be taken or not, and the admission of a debt is provable by oral testimony, though the

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* S. D. 1848, p. 349.  
* S. D. 1847, p. 43.  
* See the next Chapter.  
* S. D. 1847, p. 43.
admission was accompanied with a written promise to pay. So the fact of birth, baptism, marriage, death or burial may be proved by oral testimony, though a memorandum of these events may have been entered in registers, for the entry is no more than a collateral or subsequent memorial of the fact, which may furnish a convenient mode of proof, but cannot exclude other evidence, though its non-production may afford grounds for severely scrutinizing such evidence.

The title of a person as executor or administrator may be proved, by producing either the probate or letters of administration, or an exemplification or certificate thereof granted by the Supreme Court through its officer.

Oral evidence cannot be substituted for any writing, the existence or contents of which are disputed, and which is material, either to the issue between the parties, or the credit of the witnesses, and is not merely the memorandum of some other fact. Thus a witness cannot be asked whether certain notices were published in the newspapers, neither can he be questioned as to the contents of his account-books, but in both these cases the papers and the books, as being the best evidence, must be produced.

There are some occasions, on which it is necessary to produce the written instruments themselves. If a bill of exchange, promissory note, or cheque has been originally drawn payable to bearer, or has become so payable in consequence of having been endorsed in blank, it would not be fair to entertain a suit on such instruments when lost, or on the consideration which was given for each, unless the payee who has lost the instrument tenders sufficient indemnity to the acceptor or maker. As between the endorsee and the acceptor of a bill, the acceptor on payment of the amount has a right to the possession of the instrument, first for his own security, and secondly, as his voucher and discharge in his account with the drawer. If the action be brought by
the drawer of a bill against the acceptor, or by any of the parties to a note against the maker, it is necessary that the acceptor or maker should be secured by the possession of the instrument against the demands of a subsequent bona fide holder.

The contents of writings may be proved by secondary evidence when their production is either impossible or highly inconvenient. Thus inscriptions on walls, surveyors' marks on boundary trees, or notices affixed on boards, may be proved by secondary evidence, and so may a document deposited in a foreign country, if the law or usage of that country will not permit its removal.

For the same reason the existence and the contents of any record of a judicial Court, and of entries in any other public books or registers, may be proved by copies duly authenticated.

If it be shown to the Court that a material instrument is, or that there is reason to suppose that it is, in the hands or under the control of a party to the suit, who refuses, after notice, to produce it, or of his agent or servant, it is just that secondary evidence of its contents should be admitted.

It seems reasonable, likewise, that secondary evidence should be admitted even without notice to produce, if from the nature of the action, or from the form of the pleadings, the defendant must know that he will be charged with the possession of an instrument, and be called upon to produce it; as for instance in an action on account of the detention of a bond or bill of exchange, or other writing, or where he has himself stated the loss of a document.*

Secondary proof may be admitted, where the evidence required is the result of voluminous facts or of the inspection of many books and papers, the examination of which could

* See S. D. 1856, p. 611.
not conveniently take place in Court. Thus, if there be one invariable mode in which bills of exchange have been drawn between particular parties, this may be proved by the testimony of a witness acquainted with their habits of business, without producing the documents, though if the mode of dealing has not been uniform, the writings must be produced. So a witness who has inspected the accounts of the parties, though he may not give evidence of their particular contents, will be allowed to speak to the general balance without producing the accounts. But such general evidence will only be admitted, so far as it rests simply upon the honesty of the witness, and not upon his feelings or judgment. His observation, but not his judgment, may be substituted for those of the Court.*

The evidence most satisfactory to the mind is that which is afforded by our own senses.

In many instances, especially where the fact in dispute is sought to be proved by circumstantial evidence, the decision will rest materially on things submitted to the ocular inspection of the Court.

Where the question turns on the identity or comparison of articles, although a witness be permitted to testify to his having made the comparison without first proving that the articles cannot be produced, yet their non-production, when unexplained, may naturally give rise to a suspicion of unfairness.

In causes either relating to disputed rights of way, or involving some question which depends upon the relative position of places, it is often desirable that the Court should have an opportunity of viewing the spot to which the controversy relates, since maps and papers frequently are inaccurate and obscure, and may, perhaps, have been prepared with an express view to mislead.

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Judges occasionally view the spot. In such cases both parties ought to have notice of the intended inspection, and if this be not practicable, it is proper for the Judge to put his observations on record for some time before coming to a final decision, in order to enable the absent parties to prefer any objections which they may desire. The most ordinary mode of procuring the requisite information is by deputing an ameen to view it.\footnote{S. D. 1852, p. 448. Code Chap. III. Sect. 180.}

As evidence afforded by our own senses is seldom attainable in judicial trials, the Courts are satisfied with requiring the testimony of those who can speak from their own personal knowledge, either of the main fact in controversy, or of other facts from which the truth as to the main fact may be inferred.

The witness should be permitted to state those facts only, which lie within his own knowledge, whether they be things said or things done. Where he gives his testimony upon information derived by him from others, he virtually ceases to be himself a witness: we can only learn from him what some one else has said as to the fact in dispute: and the person whose words are thus quoted becomes the real witness; and a witness whose testimony is of little value, as it is not given under the sanction of an oath or declaration, and is not liable to be tested by cross-examination; so that the Court has no opportunity of judging what were his powers of perception, his opportunities of observation, his attentiveness in observing, the strength of his recollection, or his disposition to speak the truth. The original speech having been made without oath or affirmation, an oath or affirmation that there was such a speech, gives it no further solemnity or sanction. This sort of second-hand evidence is called hearsay, and cannot, except in a few special cases, be received in judicial investigations.\footnote{S. D. 1851, p. 74.}
Legal meaning of hearsay.

The term "hearsay" is used with reference to what is done or written, as well as to what is spoken; and in its legal sense it denotes that kind of evidence which does not derive its value solely from the credit given to the witness who appears in Court, but which rests also, in part, on the veracity and competence of some other person.

It may happen, however, that the very fact in controversy is, whether certain things were written or spoken, and not whether they were true; or the oral or written statements tendered in evidence may prove to be the natural or inseparable concomitants of the principal fact in controversy.

In either of these cases the writings or words are not regarded as hearsay, but are original and independent facts in proof of the issue. Thus if the question be whether a party has acted prudently, wisely, or in good faith, the information upon which he acted, whether true or false, is original and material evidence. This may be the case in actions for malicious prosecution or libel, and also in suits against agents or trustees for alleged breach of duty.

Wherever the bodily or mental feelings of an individual are material to be proved, the usual expressions of those feelings made at the time in question, such as the representation by a patient of the nature and effects of his disease, are also original evidence.

There are other declarations and acts which are admitted as original evidence, being distinguished from hearsay by their connexion with the principal fact under investigation, and by their tendency to explain the intention and character of facts which are in their own nature ambiguous.

Thus where a person enters upon land in order to assert any right, or changes his actual residence, or domicile, or goes upon a journey, or leaves his home, or returns thither, or remains abroad, or secretes himself, or does any other act which it is material to understand, his declarations made at
the time of the transaction, expressive of its character, are regarded as equivalent to acts, indicating a present purpose and intention, and are therefore admitted in proof.

But such declarations, though admissible as evidence of the declarant's knowledge or belief of the facts to which they relate, and of his intentions respecting them, are no proof of the facts themselves, and therefore, if it be necessary to show the existence of such facts, independent proof of them must be given.

The circumstances and declarations offered in proof, must be so connected with the main fact under consideration, as to illustrate its character, to further its object, or to form, in conjunction with it, one continuous transaction.

If several persons are jointly sued for a trespass committed by them, the declarations of each, so far as they are part of the transaction which constitutes the ground of suit, are admissible against all; but those declarations which amount to mere admissions or narratives of past events, can only be received against the party making them.

The act or declaration of each member of a partnership, in furtherance of the common object of the association, is the act or declaration of all: for each is, in fact, the agent of the others for all purposes within the scope of the partnership.

An agent may, within the scope of his authority, bind his principal by his agreement;* and in many cases by his acts, and by the words with which those acts were accompanied, so far as the words tend to determine the quality and intention of the acts. What the agent has said, may in fact constitute the agreement of his principal, or the statements of the agent may be the inducement of the third party to accede to the agreement. Evidence must therefore be admitted to prove what statements the agent has made.

A party is bound by his own admission; but he is not precluded from questioning or contradicting any thing which another person has asserted respecting his conduct or his agreement, merely because that person has been an agent of his. As the declarations of the agent are admitted only because of his legal identity with the principal, they bind the principal only so far as the agent has authority, express or implied, to make them.

A statement made by a third person is evidence against the plaintiff or defendant, if he was present when the statement was made; for it then becomes material to consider, whether by his language or demeanour on the occasion it appeared to receive his assent.

In questions relating to matters of public and general interest, the general opinion or reputation which exists on the subject is admissible as evidence, since it is natural to suppose that persons converse together and inform themselves about public rights which they may themselves have occasion to exercise.

Such evidence appears to be admissible where the question relates to rights of common, to local customs, to the boundaries of zillahs, or public divisions of the country, to a claim of dues on a ferry, or to the question whether a piece of land on a river is a public landing-place or not, or whether a certain road is a public road or not, or to a prescriptive liability to repair bridges or embankments.

But evidence of reputation is not admissible to establish titles or rights having no connexion with the exercise of any public duty, or with any subject of general interest; because men in general have no special inducement to discuss or to acquaint themselves with private rights.

In questions respecting inheritance or descent, facts must

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*a* S. D. 1857, p. 769.  
often be inquired into, which occurred many years before the trial, and which were known but to few persons. It may be impossible to prove by living witnesses, the relationships of past generations.

In matters of pedigree, therefore, traditional evidence is allowed as being often the sole species of proof which can be obtained; and the declarations of persons who were related by blood or marriage to the family in question, may be given in evidence; for where family transactions are talked of among relatives, what passes in conversation upon such subjects is likely to be true.

Even general reputation in the family, proved by the testimony of a surviving member of it, may be considered as falling within the rule.

Indeed by a modern enactment it is ordained that in cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.*

But before a declaration is admitted in evidence, there ought to be reasonable proof, from other sources than the statement of the declarant himself, that he was entitled to make the declaration.

If the declarant be himself alive, and capable of being examined, his declarations are inadmissible.

In such questions, not only are the oral declarations of deceased relatives admissible, but family conduct, such as the tacit recognition of relationship, and the disposition and enjoyment of property, will also be regarded as evidence from which the opinion or belief of the family may be inferred.

* Act II. 1855, Sect. 47.
Thus if the alleged father is proved to have brought up the party as his legitimate son, this amounts to a daily assertion that the son is legitimate; so the concealment of the birth of a child from the husband of its mother, the subsequent treatment of such the child by a person who at the time of its conception was living in adultery with the mother, the fact that the child was never recognized as the legitimate offspring of the husband; all these circumstances go far to rebut the presumption of legitimacy which exists in all systems of law, in favour of the issue of a married woman.

Thus a man who, being the eldest son of the family, performs the funeral rites of an alleged widow of his father, could not afterwards urge with much force that she was not a wife but a concubine.\textsuperscript{b}

Entries made by a parent or relative in any book or any document or paper stating the fact and date of the birth, marriage, or death of a child or other relative, are received as the written declarations of the deceased persons who respectively made them. So the correspondence of deceased members of the family will, on proof of the handwriting, be received, as well as recitals or descriptions in wills, or family deeds, or deeds which are proved to have been executed by some member of the family to which the statement refers.

Declarations, to be admissible as evidence of reputation, must have been made not only before any suit was instituted, but before any controversy arose, regarding the matter to which they relate; for, when a contest has begun, people are apt to take part on one side or the other, and the statements are less to be relied upon. But they are not to be rejected, in consequence of their having been made with the direct view of preventing disputes.

\textsuperscript{a} Kajah Hidayut Oollah v. Rai, Jan Khanum, 3 Moore's Indian Cases, p. 295.  
\textsuperscript{b} S. D. 1856, p. 438.
Declarations made by persons, since deceased, against their own interest, if such interest be of a pecuniary or proprietary nature, are receivable in evidence; because men are seldom found to make any untrue admission against themselves. This evidence ought not to be received if the declarant be alive (even although it may be out of the power of the litigant party to produce him), nor unless the declarant be shown to have had a competent knowledge of the facts to which the declaration related.

The books of stewards, or other receivers, though strangers to the suit, are admitted in evidence after their death, so far as the entries therein tend to charge them with the receipt of money.

The Court will admit every entry which, at the time when it was made, completely charged the maker to any extent, great or small, whether such entry was made at the time of the fact declared, or on a subsequent day; and it will not merely read an admission against interest, as for instance, the statement of a sum paid to the writer, but will look to the whole contents of the entry, to see what the demand was, which is thereby admitted to be discharged; but it will not read independent matters which are unconnected with such entries. The entry must have been made by a person against whose interest the entry is, or by his authorized agents, or he must be shown to have adopted it as his own.

Where one man sues another for the money due on a bond or note, and the defendant pleads that the period of limitation has elapsed, the plaintiff may rebut this plea by showing that a payment has been made to him within 12 years in respect of the money due on the instrument.

If, in order to prove this fact, he tenders in evidence a receipt written by himself upon the back of the instrument; this endorsement, as it to some extent discharges the debtor, appears at first sight to fall within the rule which admits, as
evidence, entries against the interest of the party making them, and also within the general rule, that instruments are, in the absence of evidence to the contrary, presumed to have been written at the time they bear date.

It is, however, almost impossible for the defendant to prove that the endorsement was not written on the day of the date, because the instrument continues in the hands of the creditor or his representatives, and although it may seem at first sight against the interest of the creditor to admit a past payment, yet he may thereby in many cases set up the instrument for the residue of the sum secured; and therefore such endorsements ought to be proved to have been upon the instrument at or recently after the times when they bear date.

If there be no reason to suspect sinister motives, entries made in the ordinary course of business or professional employment are presumed to be correct, because such entries usually relate to facts which are known but to few persons, and because they are made for the purpose of preserving a true record of the transactions to which they relate, and are generally subject to the inspection of those by whom any inaccuracy would be detected.

Where a declaration by word of mouth or in writing is made in the course of the business of the individual making it, it may be received in evidence, though it is not against his interest.

But proof must be given that it was made contemporaneously with the fact which it narrates, by a person whose duty it was to make it, and to make the whole of it, who was personally acquainted with the fact, who had no interest in stating an untruth, and who is since dead.

Thus the books of the messenger of a bank are admissible to prove the dishonour of a bill of exchange by the acceptor, upon proof that the entries were made in the ordinary course of business, and by the party who has himself done the business.
Though an entry made in the course of office, respecting facts necessary to the performance of a duty, is proof of those facts, yet the statement of other circumstances, not necessary to the performance of the duty, is no proof of those circumstances.

The accounts and papers of a salt agent's office, or of any Government officer, must, like those of a private individual, be proved before they are received in evidence.\textsuperscript{a}

Official documents are not always evidence in support of the facts they state: they must be examined critically, like other documents. Thus a report of a Darogah to a Magistrate, founded on hearsay, does not prove the truth of the facts therein stated by the Darogah. It only proves that the Darogah made such statements.\textsuperscript{b}

An entry in the quinquennial register of a Collectorate, which entry has been compared and certified as exact by the Zillah Judge, is not of itself sufficient to prove that a village entered in the register in 1795, as a neej talook, actually was a neej talook.\textsuperscript{c}

Any entry or statement, which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, is admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing bonâ fide and permanently beyond the reach of the process of the Court, or cannot after diligent search be found.\textsuperscript{d}

Any entry in any books proved to have been regularly kept...
in the course of business or in any public office, so far as such entry merely refers to and tends to identify by name, description, number or otherwise any bank notes or other securities for the payment of money, or other property, and the payer or receiver of them, is, in any case where such identification is necessary to be proved, admissible in evidence for that limited purpose, if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness.\textsuperscript{a}

Any receipt in writing, acknowledging the receipt of any money, valuable securities, or goods, is, on proof of the execution thereof, admissible in evidence, not only against the party giving it, but also against any person in whose favour such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security, or goods acknowledged to have been received.\textsuperscript{b}

Whenever a receipt would be admissible under the preceding Section, if given by a principal, a receipt given by an agent or servant of such principal, is in like manner evidence upon the proof of the authority to give such receipt.\textsuperscript{c}

Books proved to have been regularly kept in the course of business or in any public office are admissible as corroborative, but not as independent proof of the facts stated therein.\textsuperscript{d}

The following documents may be admitted as corroborative evidence:—Certificates of shares, and of registration thereof, bills of lading, invoices, account sales, receipts usually given on the payment, deposit or delivery of money, goods, securities,

\begin{itemize}
  \item \textsuperscript{a} Act II. of 1855, Sect. 40.
  \item \textsuperscript{b} Ibid. Sect. 41.
  \item \textsuperscript{c} Ibid. Sect. 42.
\end{itemize}
or other things, provided they be proved to have been given in the ordinary course of business.  

* Any Government Gazette of any country, colony, or dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the Courts or persons aforesaid.

All Proclamations, Acts of State, whether Legislative or Executive, nominations, appointments, and other official communications of the Government appearing in any such Gazette, may be proved by the production of such Gazette, and are prima facie proof of any fact of a public nature which they were intended to notify.

Any recitals contained in any Act of the Governor General of India in Council, constituted for the purpose of making Laws and Regulations, of any fact of a public nature, are deemed to be prima facie evidence of the truth of the fact recited.

The Gazette or Newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation or Ordinance, or of any Rule or Order of a Court of Justice, or of any Board or Officer of Revenue, may be received by any such Courts or persons as aforesaid as prima facie evidence that such advertisement was published duly under the authority from which it purports to proceed.

Books printed or published under the authority of the Government of a foreign country and purporting to contain the Statutes, Code, or other written Law of such Country, and also printed and published books of reports of decisions of the Courts of such country, and books proved to be commonly admitted in such Courts as evidence of the law of

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* Act II. of 1855, Sect. 44.  
* Ibid. Sect. 7.  
* Act II. of 1855, Sect. 9.  
* Ibid. Sect. 10.
such country, are admissible as evidence of the law of such foreign country."a

All maps made under the authority of Government or of any public municipal body, and not made for the purpose of any litigated question, shall \textit{prima facie} be deemed to be correct, and shall be admitted in evidence without further proof.b

An impression of a document made by a copying machine shall be taken without further proof to be a correct copy.c

Any power of attorney, which has been executed at a place distant more than 100 miles from the place wherein the action, suit or proceeding is depending, may be proved by the production of it, without further proof, where it purports, on the face of it, to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Consul or Magistrate.d

Whenever it is proved that a letter book is kept, and that, according to the usual course of business, letters are copied into such book and dispatched, and the letter book is produced, and it is proved that the letter was dispatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the Court may presume the dispatch of that letter according to the usual course of business.e

Any book proved to have been kept for marking the dispatch and receipt of letters, containing an entry of the dispatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be \textit{prima facie} evidence of the receipt of such letter.f

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\(a\) Act II. of 1855, Sect. 12.
\(b\) \textit{Ibid.} Sect. 13.
\(c\) Act II. of 1855, Sect. 35.
\(d\) Act II. of 1853, Sect. 49.
\(e\) \textit{Ibid.} Sect. 50.
\(f\) \textit{Ibid.} Sect. 51.
Whenever, by any Statute or Act, Regulation or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other document, shall be receivable in evidence of any particular in any Court of Justice, the same, if it is substantially in the form and purports to be executed in the manner directed by the Statute, Act, Regulation, or Ordinance which makes it evidence, shall be *prima facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character or authority, which it is directed to have, or from which it is directed to proceed.

In a suit to recover rent from an occupier of land, if, by the accounts, it appears that the arrears are due, the plaintiff is entitled to recover, even although he may not have granted a lease to the defendant or received any kubooleut or farming engagement from him.

If the jumma-wasil-bakee papers of the village are on the record, and are proved in the cause, they are of themselves good and sufficient ground to establish a balance.

And so the jumma-wasil-bakee papers for the period immediately preceding an alleged injury to an estate, with the same papers for subsequent years, are regarded as important evidence to confirm or to refute the allegation that the value of the estate has been diminished.

A deed, having nothing suspicious about it, and bearing so old a date that it may reasonably be supposed that the attesting witnesses are dead, may safely be presumed to be genuine without express proof, especially if there be evidence that the property to which it relates was enjoyed according to the tenor of the deed, and if it come out of the custody of a person in whose hands one might reasonably expect to find it, though that may not be actually the best and most proper custody.

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* Act II. of 1853, Sect. 56.  
* S. D. 1847, p. 403; Con. 380; Con. 574.  
* S. D. 1856, p. 222.
In deciding whether an instrument is genuine or not, the Courts will readily allow for any apparent error; or any inconsistency, in dates or otherwise, which could only have arisen from inadvertence.  

In judging of questions of this class, the Courts will review the conduct of the person who relies upon the instrument, the genuineness of which is in question, and will attach weight to the fact that his conduct has been inconsistent with the rights which the deed purports to confer upon him, as for instance if he has submitted to adverse adjudications, which the production of the deed, if genuine, would have prevented.  

The acts of the parties are more regarded than the words. Where a suit was brought to enforce an alleged settlement of accounts, between bankers, it was held that the absence of any voucher (for the settlement) and the retention by the parties of the notes of hand or other acknowledgments which had passed between them, tended to disprove the adjustment.  

Where a man sued for possession of land, alleging that it had been sold to him, at first conditionally, to secure the payment of a loan; and afterwards unconditionally, upon a further advance to the defendant; although no instrument importing an unconditional sale was produced, the Court considered such sale to be established by the fact, that the ikrarnamah, or deed of defeasance, executed by the plaintiff at the time of the conditional sale, had been returned to him by the defendant.  

Under the old law it was held that important documentary evidence, if it exist, ought to be mentioned in the pleadings, in order that the attention of the opposite party may be called to it, and that he may be prepared to meet it. Where the plaintiff sued for money due on bond,
and the defendant, in proof of payment in full, produced certain accounts purporting to bear the signature of the plaintiff, who denied that the signature was his; the Sudder Dewanny Adawlunt was of opinion that the absence of any mention of these accounts in the defendant’s answer, threw much suspicion upon their genuineness.

It is almost unnecessary to state that registration confers no validity upon a document which is not genuine.

It was laid down in one case by the Privy Council, that the statement in a written instrument, that a certain sum of money has been paid by A. to B. an executing party, is primum facie evidence that the money was paid at the time of the execution of the deed; and if it be supported by other more direct evidence, or by a series of acts on the part of B. inconsistent with the non-payment of the money, A. will not be put to further proof of payment. But as such statements are usually inserted in documents, in expectation that the money will be paid when the documents come to be executed, they do not afford conclusive evidence of the payment, and their effect may be rebutted by other evidence, tending to show that the money was not paid when the deed was executed.

Notwithstanding the language of Regulation III. of 1793, it has become, in the Lower Provinces, a rule, that in suits founded on bonds, the plaintiff must in general prove that he gave consideration.

The Agra Court, on the contrary, is satisfied, primum facie, with proof of the execution of the bond. Of course if it is

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a S. D. 1847, p. 45.
b S. D. 1849, p. 123; S. D. 1853, p. 245.

* And see S. D. 1856, p. 378.
pleaded that no consideration really passed, this plea must be
inquired into.\* 

But where the bond proceeds upon the statement of an
adjustment of accounts, and purports to be given to secure
the balance, proof of the execution of the bond is sufficient
prima facie to support, in either Court, a suit brought to
enforce the bond.\b 

Indeed it is manifest that where a bond or note has been
drawn up on balancing an account current, it would not be
practicable for a suitor to adduce oral evidence as to the
time and place of payment of each item of the sum which
forms the consideration money, since they were not in fact
paid otherwise than by setting one charge against another
until a balance appeared;\c and so the practice is, that where
accounts have been stated and settled between the parties,
and a balance struck, and expressly recognized, it is not
necessary, except under special circumstances, to prove the
accounts themselves.\d 

Of course it is open to the defendant to show that any of
the entries were incorrect.

The evidence which a witness gives in any cause, may be
used against him in a case to which he is himself a party.

A witness is not excused from answering any question
relevant to the matter in issue, or upon the ground that the
answer to such question will criminate, or may tend, directly
or indirectly, to criminate such witness, or that it will expose,
or tend, directly or indirectly, to expose such witness to a
penalty or forfeiture of any kind. But no such answer,
which a witness shall be compelled to give, can, except for
the purpose of punishing such person for wilfully giving false
evidence upon such examination, subject him to any arrest

\* Agra, 1854, pp. 69, 188.
\b S. D. 1853, pp. 141, 656, 693.
\c S. D. 1856, p. 573.
\d S. D. 1856, p. 959.
Agra, 1854, p. 196.
or prosecution, or be used as evidence against him in any criminal proceeding.\(^a\)

The Courts are, upon grounds of public policy, required to abstain from pressing for information in certain quarters where important information is likely to exist.

A husband or wife is competent to give evidence for or against the other, but any communication made by husband or wife to the other during their marriage is deemed a privileged communication, and is not to be disclosed without the consent of the person making the same, unless such communication relates to a matter in dispute in a suit pending between such husband and wife.\(^b\)

A barrister, attorney, or vakeel, must not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he may have acquired in the course of his professional employment. The privilege, however, is that of the client, and if any party to a suit gives evidence therein at his own instance, he is deemed thereby to have waived his privilege, and to have consented to the disclosure by such barrister, attorney, or vakeel, of any such matter as aforesaid, which may be relevant, and which the barrister, attorney, or vakeel would have been bound to disclose, but for the privilege of his client, and the barrister, attorney, or vakeel, is bound, upon examination, to disclose any such matter.\(^c\)

An interpreter or an intermediate agent between the client and the adviser is under the same obligation as the legal adviser himself. The protection does not cease with the litigation, nor is it affected by the party's ceasing to employ the adviser

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\(^a\) Act II. of 1855, Scts. 32, 33.  
\(^b\) Act XIX. of 1853, Sect. 4; Act II. of 1855, Sect. 20.  
\(^c\) Act XIX. of 1853, Sect. 23; Act II. of 1855, Sect. 24.
and retaining another, nor by the vakeel being struck off the list of practitioners, nor by the death of the client.

The legal adviser may be called to prove his client's handwriting, or to prove the execution, by his client, of a document which he has himself attested.

Judges, arbitrators, and counsel are not compelled to testify to matters in which they have been judicially or professionally engaged.

There is no legal bar to the managing agent of one of the parties to a civil suit, being summoned and examined as a witness on the motion of the opposite party.\(^a\)

Secrets of State, or things, the communication of which would be prejudicial to the public interest, are likewise protected from disclosure.

A witness, whether a party to the suit or proceeding in which he is summoned, or not, is not bound to produce any document relating to affairs of state, the production of which would be contrary to good policy.\(^b\)

The official transactions between the heads of the Departments of Government, and their subordinate officers, are in general treated as secrets of State.

And where the production of papers is on this ground forbidden to be enforced, secondary evidence of their contents is for the same reason excluded. But communications, though made to official persons, are not privileged, where they are not made in the discharge of any public duty.

A witness not a party is not bound to produce his own title deeds, unless he shall have agreed in writing with the party requiring the production thereof, or with some person through whom he claims, to produce such deeds.\(^c\)

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\(^a\) R. S. C. 22nd September, 1836. 
\(^b\) Act XIX. of 1853, Sect. 20; Act II. of 1855, Sects. 21, 23. See further on this subject, Code, Chap. III., Sect. 138. 
\(^c\) Act XIX. of 1853, Sect. 19.
But the law recognizes no other privilege in this matter; and compels medical or spiritual advisers to divulge the secrets (if relevant to the issue) with which they have become professionally acquainted, and will not allow even a servant or a private friend to withhold a relevant fact, though communicated to him in the strictest confidence.

These rules relate to the admissibility of evidence in different cases. As to its effect upon the mind of the Judge, it has been observed that evidence may be either positive, amounting to a direct proof of the very fact in question; or circumstantial, implying a proof of circumstances from which the existence of that fact may be presumed. And the strength of circumstantial or presumptive evidence varies according to the nature of the facts proved, and their relation to each other.

The direct evidence of one witness, who is entitled to full credit, is sufficient to establish any fact, however important.\(^a\)

In estimating the value of evidence, the testimony of a person who swears positively, that a certain conversation took place, is of more weight than that of one equally credible, who says that it did not; because the evidence of the latter may be explained by supposing that his attention was not drawn to the conversation at the time; whereas the statement of the former must be true, if it be not a pure invention.\(^b\)

It is hardly necessary to observe, that although the parties to a suit are now allowed to give evidence on their own behalf, their testimony ought always to be received with extreme caution.

It has been justly remarked, that where there are some facts which are established beyond all possibility of doubt, there is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best

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\(^a\) Act II. of 1855, Sect. 28.  \(^b\) See S. Moore's Indian Cases, p. 357.
accords with those facts, according to the ordinary course of affairs, and the usual habits of human life. But merely to take an arbitrary mean between the two extremes, according to the conflicting statements of the parties and their witnesses, is not to decide, but to abandon the duty of decision.\(^a\)

Upon subjects of science and of professional skill, the opinions of persons versed in the particular science or profession are received as evidence.

And so where the question turns on local usage.

Where A., a gomashtah, drew a hoondee or bill of exchange on B., his principal, which was cashed by C. on the security of D. given by D.'s simple endorsement on the hoondee; the Court of first instance exonerated D. from liability, because the instrument of surety was not executed on a separate piece of paper bearing the requisite stamp; but the Sudder Court remitted the case, in order that evidence might be taken as to what was customary among mahajuns, in the matter of becoming surety by a simple endorsement on a hoondee.\(^b\)

In conformity with this general rule, the existence and meaning of the laws, as well written as unwritten, and of the usages and customs of foreign States, may be proved not only by the production of books as mentioned above,\(^c\) but by the testimony of professional or official persons of practical experience in the particular branch of law, or the particular custom, which is under discussion; e.g., a merchant may be examined, when the question relates to the law and usage as to bills of exchange.

The Courts not only consult their Law Officers when doubtful points of Hindoo or Mahomedan law arise: but, if necessary, they refer for information to pundits of peculiar sects.\(^d\)

\(^a\) See 1 Moore's Indian Cases, p. 44; S. D. 1849, p. 160.


\(^c\) P. 245, supra.

The priests of the Armenian and Greek Churches in India are referred to for expositions of the Armenian and Greek law.\(^a\)

The law of this country, as current among Mahomedans and Hindoos, is a matter upon which evidence is not to be received, as upon foreign law, but all questions upon it are to be determined by the Court:\(^b\) and when questions are submitted to the Law Officers, the object is not to examine them as witnesses, but to consult them (as assessors), upon matters of which they are supposed to be fully cognizant.\(^c\)

A statement of the facts on which the question of law may arise is to be made out in writing and signed by the Judge, and transmitted to the Law Officer for his opinion.\(^d\)

The Judge in framing his statement of facts ought to note carefully all the material points which it may be proper that the Law Officer should have before him, in order to enable him to furnish a current exposition of the law.

It has already been shown how, and in what sense, a previous decision prevents the institution of a new suit;\(^e\) and the same principles bear upon the defence. The doctrines which govern this subject would appear to be equally applicable when it becomes necessary to consider the operation of a judgment already pronounced, such judgment being adduced as evidence of particular fact in a suit.

The judgment of a Court of concurrent jurisdiction directly upon the point, is, as evidence, conclusive between the same parties upon the same matter directly in question in another Court. But it is not evidence of any matter which came collaterally in question, nor of any matter incidentally cogniz-\(^f\)

\(^a\) S. D. 1848, pp. 735, 771; supra, p. 10; Sel. Rep. v. 7, p. 528. See Beglar v. Dishkoon, 1 Sevrest's Rep. p. 159, from which it seems doubtful whether there be any Armenian law at all.

\(^b\) S. D. 1850, p. 321.


\(^d\) Agra, 1852, p. 509.

\(^e\) Supra, Chap. VII.; S. D. 1850, p. 405.
able, nor of any matter which can only be inferred by argument from the judgment.\textsuperscript{a}

It is a rule applicable to the evidence of verdicts and judgments, that they are, in general, not evidence for or against one who was a stranger to the judicial proceeding in which they were obtained: inasmuch as he had no opportunity of calling witnesses, or of cross-examining those on the other side, or of appealing against the judgment. It has been stated as a reason for not allowing judgments as evidence for a stranger, even against a party who was engaged in the former suit, that if the stranger had been a party to that suit instead of the person who succeeded in it, the result might have been different; for the parties being different, the evidence might have varied; part of the evidence might then have appeared inadmissible or doubtful, or perhaps other evidence might have been produced by the party who was unsuccessful.\textsuperscript{b}

The exact weight due to foreign judgments, whether as evidence, or as a bar to the institution of a suit, may, perhaps, be considered as scarcely settled;\textsuperscript{c} but the better opinion seems to be, that foreign judgments must, in order to be received, finally determine the points in dispute, and must be adjudications upon the actual merits, and they are open to be impeached upon the ground that the foreign Court had not jurisdiction, whether over the cause, over the subject-matter, or over the parties, or that the defendant never was summoned to answer, or had no opportunity of making his defence, or that the judgment was fraudulently obtained. But where there is no tenable objection upon any of these grounds, the case ought not to be again investigated on its merits, for whatever constituted a defence in the foreign Court ought to have been pleaded there.

To avoid a foreign judgment on the ground of want of jurisdiction, it is necessary to show that the defendant was not a subject of the foreign State, or resident, or even present in it at the time when the proceedings were instituted; and therefore that he could not be bound, by reason of allegiance or domicile, or temporary presence, by the decisions of its Courts; and further that the defendant was not the owner of real property in such State, for otherwise, since his property would be under the protection of its laws, he might be considered-as virtually present, though really absent.

By the Mahomedan law, the death of a missing person may be judicially presumed when ninety years from his birth have elapsed, even though he may have been last seen within five or ten years.*

CHAPTER XXI.

WITNESSES AND EXHIBITS.

Each party must, at the proper time, submit to the Court the evidence, oral and documentary, upon which he relies in support of his case; and the Judge is not at liberty to decide a cause upon the mere perusal of evidence (such as the records of previous cases) indicated to him by a party litigant, but not regularly filed in the particular cause.

The Code contains very full directions as to the summoning of witnesses, the consequences of their non-attendance, the examination of witnesses and of parties by the Court, or, where necessary, by a Commissioner appointed for the purpose.

Section 172, prescribing where and how witnesses are to be examined, requires the most careful study of every judicial officer. Its aim is, to relieve the administration of justice in India from one of its chief scandals, the careless and perfunctory manner of taking evidence. Assuredly no simplification of forms, no rapidity of procedure, whether in the Regulation Provinces or in those which are not subject to the Regulations, can secure a just decision, where the Judge determines the cause without listening to the testimony of those who are acquainted with the facts. The Judge is not listening to that testimony when he permits it to be taken down

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*a Supra, Chap. XVIII.*  
*b Reg. XXVI. 1814, Sect. 12, Cl. 8;*  
*R. S. C., 7th September, 1841, Sel.*  
*See infra, p. 267.*  
*c Chap. III. Sects. 149—179.*
by a common writer, out of his hearing, and to be hurriedly read over afterwards, perhaps even to the wrong witness. Such a course places the litigants, and the Judge also, at the mercy of the subordinate officials of the Court: and it is to be hoped that those who superintend the administration of justice will rigorously insist that real effect shall be given to the salutary provisions of the Code, and will not overlook any departure from them. But judicial officers ought not to be harassed by admonitions to decide causes more rapidly than the real interests of justice will allow. Whatever number of suits may appear by the public records to have been decided within a given time, unless it be really felt by the inhabitants of a district that the Court gives to every man his own, the presiding officer will not have honestly discharged his duty, and the end for which Courts were created, and for which Government itself exists, will not have been attained.

Any person attending to produce a document, may be called upon to produce the same, without being sworn or examined as a witness.

A witness not a party to the suit or proceeding in which he is summoned, shall not be bound to produce his own title deeds unless he shall have agreed in writing, with the party requiring the production thereof, or with some person through whom he claims, to produce such deeds.a

A witness, whether a party or not, is not bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.b

A witness being a party to the suit, is not bound to produce

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a Act XIX. of 1853, Sect. 19.
b Act XIX. of 1853, Sect. 20; Act II. of 1855, Sect. 21.
any document in his possession or power, which is not relevant or material to the case of the party requiring its production, nor any writing or correspondence which may have passed between him and any legal professional adviser. If any party, however, offer himself as a witness, he is bound to produce any such writing or correspondence, in his custody, possession, or power, if relevant or material to the case of the party requiring its production.\footnote{Act XIX. of 1855, Sect. 21; Act II. of 1855, Sect. 22.}

Every witness summoned to produce a document, will, if the same be in his custody, possession, or power, be bound to bring it, or cause it to be brought into Court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading, or putting it in as evidence, or to the disclosure of the contents thereof; the validity of any such objection made by the person producing the document is to be determined by the Court; and for the better determination thereof, it is lawful for the Court to receive any admissible evidence which the person producing the document may give respecting it, and it is also lawful for the Court, except in the case of any document relating to affairs of State, to inspect the document, and if necessary to call to its assistance any person who it may appoint to interpret the same. Such person, however, is to be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof except to the Court, unless the Court shall order the document to be given in evidence.\footnote{Act XIX. of 1853, Sect. 22; Act II. of 1855, Sect. 23.} If the Court be of opinion that such document should not be produced, the Court must not disclose the contents thereof to the parties, or take any note, or make any mention of the contents or effect thereof in its judgment or proceedings, but must return the document at once to the
party producing the same, having previously marked the same for the purpose of identification, and must record in its proceedings that a document, identifying it by the mark put upon it, was called for, by the person (naming him) who shall call for its production, that the person having the possession of the document (naming him) objected to the production, and the reasons, if any, for such objection, together with the reasons of the Court for refusing to compel its production. If the Court refuse to enforce the production of a document, or to receive the same in evidence, the Court of appeal may, upon a regular appeal, compel the production of such document, and if such Court thinks that the production of the same ought to have been forced, or that it ought to have been received as evidence, may themselves enforce its production, and receive it in evidence, and decide the case upon such document, coupled with the other evidence given in the suit.

The person summoned must attend at the sitting of the Court, and the Court is not bound to wait for him before dismissing the suit.

Whatever may be the amount of proof, whether oral or documentary, exhibited by a party who may have himself been summoned as a witness in a suit, on the application of the opposite party, and who, after being duly ordered to attend, may fail to attend at the time and place appointed, or to give evidence or produce documents, the Court is competent to pass judgment against him. But upon such a hearing, the Court ought not to take everything for granted against the party in fault, but to require the other party to prove his case so far as he can without the desired evidence, to consider well the effect of the default or refusal, with reference to the rules of evidence already

* Act XIX. of 1853, Sect. 22.  
* Agra, 1856, p. 243.  
* Agra, 1856, p. 243; Code, Chap. III. Sect. 170.
stated. The party may have been summoned merely for formal proof, or he may have been summoned to be examined on some matter in which his evidence would have at once decided the case.\(^a\)

The Court has no authority to fine a party for adducing in evidence documents which the Judge may consider to be forgeries.\(^b\)

The Court itself, indeed, has power to refer to a record,\(^c\) should the circumstances of the case show such a reference to be expedient. But when reference is made to a record, the Court causes copies of the necessary papers and evidence to be recorded with the case under investigation,\(^d\) and whenever it may have occasion to refer to a Collector’s register, the law requires from the Collector the production of the original register, or an attested copy of such part thereof as may contain the required information.\(^e\)

The Judge may cause public notice to be given in Court, either before or during the examination of any witness, requiring all or any other witnesses, whether parties or not, who have been summoned or inserted in the list of witnesses in the same cause, to leave and to remain out of Court until further order. Any witness in a cause who without lawful excuse shall wilfully remain in, or come into Court, contrary to such notice, shall be punishable in the same manner as for a contempt of Court in open Court. Whenever such notice shall be given, the consequence of disobedience thereto shall be publicly explained at the time of giving the notice.\(^f\)

Paupers who are unable to pay the expense of summoning witnesses, are entitled to have them summoned gratis by one of the paid chuprassies attached to the Court of the Zillah

\(^a\) S. D. 1857, p. 1089, 1271.
\(^b\) S. D. 1856, p. 941.
\(^c\) Code, Sect. 138.
\(^d\) S. D. 1847, p. 203; S. D. 1848, pp. 352, 791.
\(^e\) Reg. VIII. 1800, Sect. 15.
\(^f\) Act XIX. of 1853, Sect. 36.
Judge, but in point of fact it is very difficult to obtain the assistance of those officers.

A foreign potentate cannot be called to give evidence in the Courts; although, if he should think fit to give evidence of his own accord, there can be no reason for rejecting his testimony.

Persons of the Hindoo or Mahomedan persuasion within the territories of the East India Company, when called upon to bear evidence in the Civil Courts, make affirmation to the following effect:—"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

It is not required that the deponent should sign his name to any written affirmation, but he should read it aloud in Court, or the declaration should be read out to him and repeated by him before giving his deposition, and at the heading of his written deposition it should be stated that he was sworn, or rather that he was caused to affirm, according to the provisions of Act V., 1840.  

A statement made without oath, and without the usual declaration in lieu of an oath, cannot be received in evidence.

All persons, of whatever religion or country, who have the use of their reason, are to be received and examined as witnesses.

No person is disqualified to be a witness by reason of a conviction of any offence whatever.

No person is, by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, deemed incompetent to give evidence in any such suit.

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* S. D. 1849, p. 423.  
* R. S. C. 26th February, 1844.  
* Act XIX. 1837.  
* Cir. Ord. 3rd April, 1840, para. 3.  
* Act XIX. of 1853, Sect. 3; Act II. of 1855, Sect. 18.  
* S. D. 1848, p. 100.
The fact of a witness being afflicted with leprosy does not bar the admission of his evidence.\(^a\)

The following persons only are deemed incompetent to testify:\(^b\)

Children under seven years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. No person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the Court before which his attendance is required.

Any person who, by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of such Court, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.

A deposition taken on oath or affirmation in the private dwelling of a Sudder Ameen or other judicial officer, is illegal, and cannot be received as evidence.\(^c\)

The witness is first examined by the party calling him, then cross-examined by the opposite party; then, if need be, he is re-examined by those who produced him; and the Court may also put such questions as the exigencies of justice require.

In the examination of a witness the parties and the Vakeels must be carefully prevented from instructing or intimidating the witnesses; the questions put must relate to the matters in issue, and not to the personal character of the parties,

\(^{a}\) Con. 726, 26th October, 1832.
\(^{b}\) Act II. of 1855, Sect. 14.
\(^{c}\) Con. 627, 28th February, 1831.
unless those be matters in issue; they must not be such ques-
tions as in themselves suggest the answer which is required
to them, but such as will induce the witness himself to state
in his own language that which he knows; they ought to
relate to that which the witness himself knows, and not to
what he has merely heard.

The witness may be allowed before any Court to refresh
his memory by any writing made by himself or by any other
person at the time when the fact occurred, or immediately
afterwards, or at any other time when the fact was fresh in
his memory, and he knew that the same was correctly stated
in the writing. In such case the writing shall be produced
and may be seen by the adverse party, who may, if he choose,
cross-examine the witness upon it.¹

Whenever a witness may refresh his memory by reference
to any document, he may, with the permission of the Court,
refer to a copy of such document, provided the Court, under
the circumstances, be satisfied that there is sufficient reason
for the non-production of the original.²

After a witness has been examined by the party who called
him, he may be cross-examined by the other side. The object
of cross-examination may not only be to obtain new facts not
before elicited, as, to show that his means of knowledge were
imperfect, or that he has some interest in the event of the
cause; but also to impeach the character of the witness for
veracity.

The party at whose instance a witness is examined may,
with the permission of such Court or person, cross-examine
such witness, to test his veracity, in the same manner as
if he had not been called at his instance, and may be allowed
to show that the witness has varied from a previous statement
made by him.³

¹ Act II. 1855, Sect. 45. ² Ibid. Sect. 46. ³ Ibid. Sect. 30.
A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. The Judge may at any time during the trial, require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.\textsuperscript{a}

A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction.\textsuperscript{b}

But no evidence can be given against him of particular acts of misconduct, for this would be to engraft another trial upon that which is already before the Court, and would not only perplex the administration of justice, but put the witness himself to the disadvantage of being assailed on charges of which he had no previous notice.\textsuperscript{c}

If a witness be cross-examined, the party who called him has a right to re-examine him with respect to any statements made by him in his cross-examination, in order that he may explain them where it is necessary and practicable. But he cannot at this stage be examined on perfectly new matter.

In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, shall be admissible, and for that purpose a copy of any deposition or statement taken before any Court, Judge, Justice of the

\textsuperscript{a} Act II. 1855, Sect. 34. \textsuperscript{b} Ibid. Sect. 33. \textsuperscript{c} S. D. 1850, p. 290.
Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, or before a Commissioner or Superintendent for the Suppression of Thuggaee or Dacoity in the discharge of his duty, shall, if certified by such Court, Judge, or other officer above mentioned, under his hand or the Official Seal of the Court, or under the hand or Official Seal of such Judge, to be a true copy of such deposition or statement, without further proof, be received as \textit{primà facie} evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate, or on the face of the deposition or statement.\footnote{Act II. 1855, Sect. 31.}

It is obvious that the presence of the Judge, during the examination, is a matter of high importance; for besides the respect with which his presence will naturally inspire the witness, he ought to be able by use and experience to exclude irrelevant questions and to keep the evidence from wandering from the issues, duly laid down and recorded in the cause, to which it ought to be strictly confined;\footnote{Cir. Ord. 28th February, 1854. See p. 258, \textit{supra}.} and he has an opportunity of observing the quality, age, education, understanding, behaviour, and inclinations of the witnesses, upon whose evidence he is to decide; in which points there is far less power of discrimination when their depositions are reduced to writing, and read to the Judge in the absence of those who made them.

The party on whose behalf a commission is issued to the Court of Small Causes for taking the depositions of witnesses, is to appear in that Court personally, or by a duly constituted agent, to point out the witnesses, and to pay the usual fees of that Court for subpenas: and if he fail to do this within a reasonable period, the Court of Small Causes will, at their
discretion, return the whole of the documents to the Court from which they proceeded.\textsuperscript{a}

The law has directed that deeds, instruments, and writings shall be charged with stamp duties according to a prescribed scale; and that they shall not be pleaded, given in, admitted in evidence, or otherwise received or filed in any Court whatever, unless the paper on which they are written be stamped with the stamp thereby prescribed.\textsuperscript{b}

Copies or counterparts of any deed or instrument, attested as true copies, and furnished to a party to the same for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right, secured thereby, must bear the same duty as is prescribed for the originals.\textsuperscript{c}

A document which was executed while no stamp was required by law, is admissible without a stamp; and a document which bears the stamp which was required by law at the time of its execution, is considered as duly stamped, although the stamp be lower than would, under the existing law, be required for a similar document.\textsuperscript{d}

The circumstance that account-books are written on unstamped paper, constitutes no objection to their admission as evidence.\textsuperscript{e}

But where guarantees, bonds, tumusooks, or other obligations for the payment of money, are entered in account-books, they cannot be received, as such, as evidence in a civil suit, unless the paper upon which they are respectively engrossed, bear the stamp appropriate to such instrument.\textsuperscript{f}

\textsuperscript{a} Cir. Ord. 8th July, 1842.
\textsuperscript{b} Reg. X. 1829.
\textsuperscript{c} Reg. X. 1829, Sched. A, Art. 20; S. D. 1853, p. 6.
\textsuperscript{d} S. D. 1850, p. 2.
\textsuperscript{e} Con. 275, 2nd July, 1817; Con. 592, 6th May, 1831; S. D. 1852, p. 134; S. D. 1853, p. 59.
\textsuperscript{f} Con. 325, 18th August, 1820; Con. 970, Cal. C. 7th August, West. C. 4th September, 1835; Cir. Ord. West. C. 3rd, Cal. C. 31st August, 1838; S. D. 1852, p. 31.
A deed of gift drawn on unstamped paper in Calcutta for the conveyance of immovable property in the Mofussil, the donor being at the time a resident of Calcutta, and the donee a resident of the Mofussil, is not admissible as evidence in the Civil Courts.

Under the late and the present Acts for the Relief of Insolvent Debtors in Calcutta, documents executed on plain paper pursuant to Section 79 of the former Act, and Section 75 of the latter, are admissible as evidence.

A Moonsiff is not to give official copies of any proceedings, depositions, or exhibits on plain paper for the purpose of being used elsewhere as evidence: nor are such documents capable of being filed as evidence. Copies of final orders in miscellaneous cases, as well as of all interlocutory orders, may be granted on plain paper to the parties litigant.

Documents which partake of a twofold character, namely, that of letters, and of engagements for the payment of money, such as in some parts of the country pass between buyers and sellers, and are looked upon by the parties themselves rather as correspondence than as legal obligations for the payment of money, are admissible in evidence without a stamp.

A deed is admissible as evidence in a Court of Justice, upon which the proper stamp has been affixed under the orders of any Commissioner of Revenue, on the representation of any Collector subordinate to his authority.

It is not the province of the Civil Courts to decide upon the powers of the Revenue officers in respect to each other: and if a deed, when presented to a Court, bears the proper stamp, it should be received in evidence, without raising any question as to the competency of the authority by whose orders such stamp was affixed.

* Con. 312, 1st April, 1820.
* Cir. Ord. 9th March, 1848.
* S. D. 1847, p. 507; S. D. 1855, p. 48.
* Cir. Ord. 7th January, 1842, para. 2.
* Ibid., para. 6.
The document must be actually stamped.

Stamp on deeds contained in more than one sheet of paper.

Proviso as regards deeds, &c., to be hereafter executed.

The state of exhibits when filed is to be noted.

Course to be pursued where record of case has been destroyed.

The Collector's receipt for the amount of the penalty is not sufficient to legalize a document; it must be submitted to the superintendent to be actually stamped.⁷

By Act XLI. of 1858, it is provided (for Bengal) that documents contained in more than one sheet or piece of paper or other material, shall be deemed to be sufficiently stamped if any one or more of such sheets, &c., shall bear the requisite stamp, or stamps equal in value thereto, whether the signatures or seals of the parties and witnesses shall or shall not be upon such sheet or sheets. In the case of documents executed after the first day of January, 1859, that every sheet or piece of paper or other material must bear a stamp of the value of at least one anna.

In order to prevent any alteration being made in documents which have been filed in Court as exhibits, the Record-keeper, or some other officer of the Court, is required to certify, in the presence of the Vakeels of the parties, or of the parties themselves, the actual state of such document at the time of filing, and to note all interpolations, erasures, or other alterations at that date apparent on the face of them.⁸

Where the record of a case has been destroyed, the Judge ought to call upon the parties to file such evidence as they may possess, or may be able to procure, and also to state whether they wish the witnesses, whose depositions have been already taken, to be re-examined; and he must do everything in his power to supply what has been destroyed.⁹

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⁷ Con. 6, 3rd April, 1805.
⁸ Reg. IV. 1793, Sect. 6, Benares; Reg. VIII. 1795, Sect. 2, Ced. and Conq. Prov.; Reg. III. 1803, Sect. 7.
CHAPTER XXII.

PARTICULAR INVESTIGATIONS.

In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any meane profits or damages, the Court may issue a commission to an officer of the Court appointed to execute such commissions, or if there be no such officer, to any suitable person, directing him to make such investigation, and to report thereon to the Court. And a similar power exists wherever an investigation or adjustment of accounts may be necessary. The Code prescribes the mode of proceeding under such commissions and upon the report being made.

Such duties are at present entrusted to officers called Ameenas. The office is regulated in Bengal by Act XII. of 1856.b

The Judges must not order or allow a report of any matters of fact relating to any cause depending before them, with a view to the passing a decree, to be made to them by any officer of the Court, or any other person, excepting in cases in which special authority for that purpose is given to the Courts, or where a reference is made to the officers on any point concerning Hindoo or Mahomedan law.c It is therefore

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* As to Madras, see Dawes' Civ. — Reg. IV. 1793, Sect. 16.
irregular to call upon the treasurer of the Judge's establishment for reports regarding the trustworthiness of account-books in the native languages, as affecting the validity of claims which may be grounded upon such books.*

As it is only for the purposes of minute local investigation that the Commissioner is deputed, all the main facts in the cause ought to be established by evidence taken in the cause itself; but all parties ought to lay before the Commissioner the best information they possess, and it would probably be found difficult to shake the credit of his report, upon the strength of a map which has not been brought before him.\textsuperscript{b}

The Ameen must perform in person the duties entrusted to him, and is not in any case permitted to act by deputy.

\footnotesize{\textsuperscript{a} Cir. Ord. 4th February, 1840. \textsuperscript{b} S. D. 1850, p. 290.}
CHAPTER XXIII.

ARBITRATION.

The Code lays down, in Chapter VI., rules according to which a suit may be referred to arbitration at any time before final judgment, and the award of such arbitrators, as well as of arbitrators appointed privately by contending parties without suit, may be enforced. I proceed to state some portions of the system previously in force in Bengal, which do not appear to be superseded by the new law.

Where the Court is closed on the last day allowed by the law for application to enforce an award, the application may be made on the next ensuing Court day.\(^a\)

Whenever private awards shall be tendered in evidence by the parties in regular suits, the Courts, if such awards shall appear to have been performed, and the possession of the contested property to have been held under them, shall allow equal validity to the same, as if they had been made under the authority of the Court. But if the awards tendered shall not have been performed at all, or shall have been performed only in part, the Courts ought not to admit the same, unless they are established by clear and satisfactory proof, and are distinct and intelligible so as to admit of easy execution, and the delay which may have occurred in the performance of them is duly accounted for.\(^b\)

No decree which was passed by any Civil Court previous to 1813 confirmed.

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\(^a\) Con. 1342, Cal. C. 18th, West C. | May, 1842.
29th March, 1842; R. S. C. 10th

\(^b\) Reg. VI. 1813, Sect. 3, Cl. 3.

Effect of private award tendered in regular suits.
to the promulgation of Regulation VI., 1813, founded either upon an award made under the authority of the Court, or upon a private award respecting the property in land or limited tenures therein, or rights dependent thereon, can now be amended or reversed upon the ground of its being founded on an award of arbitration not authorised by the regulations, at the time the award was made, unless such award be open, on the merits, to just impeachment.\(^a\)

On the application of one of the parties to the Civil Court to cause execution of an arbitration award, the Judge is to determine whether the award should be executed or not. He is not to refer it from the Civil to the Criminal Court, nor to act with reference to proceedings which may have been held by the criminal authorities relating to the case.\(^b\)

Where an award is not sufficiently specific, and therefore incapable of being executed—as where it affirms a claim, subject to a deduction for a particular reason, the amount of which deduction it does not specify, the award ought not to be set aside, but to be remitted to the arbitrator with instructions either to specify the amount of the deduction, or not to make any deduction at all.\(^c\)

The Judge is not competent to alter or modify an award which is not set aside or remitted.\(^d\)

In order to set aside an award, it is not necessary that partiality or corruption should be proved by the testimony of two witnesses, if the award itself contains internal evidence of corruption or of partiality.

In one case indeed\(^e\) where two arbitrators decided a boundary dispute, and adjudged that certain lands were situated within the limits of a particular village, the award was set aside because one of the arbitrators had, in an arbitration

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\(^a\) Reg. VI. 1813, Sect. 4.  
\(^b\) Con. 609, 18th November, 1831.  
\(^c\) Code, Chap. VI. Sect. 323; Sel.  
\(^d\) S. D. 1837, p. 1370.  
\(^e\) R. S. C. 18th February, 1845.
held eight years before, decided by an award which was still on record, that the same lands formed part of another village.

This decision probably met the exigencies of justice in the particular case. It must be observed, however, that the second investigation might possibly have produced in the mind of the arbitrator an honest conviction that his former award was erroneous. If indeed the contradictory awards had been made in the same case, or at the same time, the evidence of corruption or partiality would have been sufficient.

The Courts do not encourage trivial objections to awards. An action was brought to set aside an award on the ground that one of the two arbitrators had not accompanied the other to the disputed lands for the purpose of local investigation. The award was upheld, as it appeared that the one who visited the spot alone, had done so at the request of the other arbitrator, and with the consent of the parties, that the evidence on both sides was taken in the presence of their respective mooktars, and that the plaintiff made no objection to the award until five months after the award of the arbitrators had been confirmed by the Civil Judge.\(^a\)

An award will not be opened merely on the allegation that the award is in itself inequitable, or founded on an error of law, for by submitting to arbitration the parties have agreed to be ruled by the opinion of the arbitrators on these points, and no Court has any cognizance of the matter, by way of appeal from their decision.\(^b\)

Nor will the award be opened because the award embodies the decision only of the majority; unless, by the particular conditions under which the arbitrators acted, unanimity was essential to the validity of their award.\(^c\)

Nor because it is alleged that some of the parties who

\(^a\) Sel. Rep. v. 6, p. 51; S. D. 1853, p. 679; S. D. Agra, 1854, p. 56.  
\(^b\) S. D. 1848, p. 296.  
\(^c\) S. D. 1848, p. 301.
formally consented to the arbitration are unwilling to abide by the award.\(^a\)

Nor because the award is only made by three out of four arbitrators originally appointed, the three having been permitted to carry on the arbitration for four years without objection from either party.\(^b\) If, in that case, either party had objected, the arbitrators could not have proceeded; but any objection to the authority of an arbitrator is considered as waived, if the party who objected attends before him and treats him as arbitrator.

It has been held that an award ought not to be annulled merely because the arbitrator examined witnesses in the absence of the party against whom he decided.

But unless the absence of the party was wilful, there was substantial injustice in such a proceeding, and it must be presumed, that in the case in question there was some evidence that the absence was wilful.\(^c\)

When no proceedings have been taken for ten years to set aside an award, the Courts will not interfere with it.\(^d\)

If men who submit to arbitration, in the instrument of submission bind their representatives in a case where the action would survive to or against their representatives, although one or both of the parties should die before the award be made, the arbitrator may proceed with the reference: the parties have provided for the event of death, and have agreed that those who take their property, should take it subject to the decision of the arbitrators appointed.

But if the representatives are not included in the reference, and one of the parties die, that reference is determined, and

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\(^a\) R. S. C. 18th March, 1848; S. D. Agra, 1853, p. 472.
\(^b\) S. D. 1848, p. 277; S. D. Agra, 1854, p. 378.
\(^d\) Scinde Rep. v. 4, p. 46; S. D. 1849, p. 257.
the heir taking the property of the deceased party ought not to be considered as bound. A man who agrees to a reference may know that he is capable of giving explanations which his heirs cannot give. He knows that he may be examined as a witness. For these reasons, he may agree to submit to an arbitration, but not to bind those who are to succeed him."

* See Knapp, P. C. C. v. 1, p. 100.
CHAPTER XXIV.

COMPROMISE, WITHDRAWAL, AND ADJUSTMENT OF SUITS.

It may happen that the parties to a suit think fit, after a time, to adjust their differences without calling upon the Court to decide them; or that persons between whom disputes exist, arrange them amicably, without resorting to the Courts at all. This subject is now regulated by the 97th and 98th Sections of the Code.

The relinquishment of a part only of the claim does not entitle the plaintiff to any remission of stamp duty.\(^a\)

If an adjustment of claims be made, by division of property, and if any part of the divisible property is fraudulently concealed when the adjustment is made, the compromise will be set aside so far as regards the property concealed, but no further.\(^b\)

A deed of compromise is construed liberally by the Courts; and where it proceeds upon a principle definitely laid down, but by an oversight some of the property which ought to be included in the division effected by the compromise has been left out, the Court will decree division of that property also, according to the true intent of the deed of compromise.\(^c\)

So where it conveys a right to certain lands but is silent as to the mesne profits, it will be held to convey a right to the latter also, if clearly within the principle of the arrangement.\(^d\)

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\(^a\) Agra, 1856, p. 472; S. D. 1852, p. 321.
If a man has been frightened, surprised, forced, or cheated into executing a compromise, or into transacting any matter of business, the transaction is liable to be set aside; but the proof must be very clear and free from suspicion, otherwise the evidence of his own hand will prevail: and a man's ignorance of his legal rights at the time of the compromise will not excuse him from performing it, if no deceit has been practised.\textsuperscript{a}

A party will not be permitted to excuse his non-performance of the terms of a compromise, on the ground that the other party has failed to do him justice in some collateral matters, not included in the compromise.\textsuperscript{b}

Where a written instrument of compromise, or a bazeenamah or relinquishment of demand, is alleged by either party to contain only part of the real terms upon which the dispute was adjusted, the Courts will receive evidence in support of such allegation, and will give effect to the additional articles if clearly proved, or if they can be inferred from the terms of the compromise, even though not consistent with the language of the written instrument; as where a claim is stated in the instrument to be relinquished through compassion, and a separate money consideration is proved: but not if they be wholly repugnant to the instrument which the parties have executed.\textsuperscript{c} It is manifest that this is a very difficult branch of jurisdiction, and that the Courts ought to act with extreme caution.\textsuperscript{d}

If one party does not comply with the conditions of a compromise, the other is not bound by it, and it cannot be used as evidence to reduce his claim.\textsuperscript{e}

\textsuperscript{a} Sel. Rep. v. 4, p. 80; ibid. 27th July, 1812, v. 2, p. 23.
\textsuperscript{b} S. D. 1850, p. 379.
\textsuperscript{c} Sel. Rep. v. 1, p. 188; v. 5, p. 107; v. 1, p. 222.
\textsuperscript{d} S. D. 1851, p. 227.
But where the terms of compromise have been in part fulfilled, and the party still has it in his power to perform the remaining conditions, the Court will give full effect to the compromise on the performance of the remaining conditions: and this even though the time fixed by the deed for the fulfilment of the conditions has gone by. But not if the deed contained an express stipulation that the compromise should be void unless the conditions were performed within a given time, or if it was in any other way made clear, that time was of the essence of the compromise.

Where the plaintiff presents a petition praying for leave to withdraw his claim, it is not competent for the Court to reject the petition and to decree in favour of the plaintiff.\(^b\)

Even if it be alleged by a third party, who is not regularly before the Court in the suit, that such a petition as that just mentioned, or any compromise of a suit, is collusive, and is intended to defraud him, this objection cannot be listened to, as the compromise only affects those who are parties to it.\(^c\)

When the compromise of a suit has been finally agreed upon by deed, it will be enforced by the Court, and cannot be evaded by the retracting party making default in filing his razeenamah in Court in the cause:\(^d\) nor is the Court at liberty to make an award of costs contrary to the terms of the compromise, or to depart from it in any way.\(^e\)

But where the discontinuance of a suit in the Mofussil Court was alleged to have formed part of a settlement of a suit in the Supreme Court, and the Mofussil suit was not discontinued accordingly, the Mofussil Court held that a plaintiff has a right to have an inquiry and decision on his original plaint, and that nothing can deprive him of this right but his

\(^a\) Sel. Rep. v. 1, p. 222.
\(^b\) Sel. Rep. v. 6, p. 181.
\(^d\) Meeni Ram Awasty v. Sheechurn Awasty, 4 Moore's Indian Cases, p. 114.
\(^e\) S. D. 1851, p. 57.
own act of withdrawal, perfected by his acknowledgment of it in the face of the Court, and by the Court's sanction and adoption of it, and that the party injured should be left to the aid of the Supreme Court.\footnote{S. D. 1856, pp. 630, 673.}

If there be a compromise, not as to the material questions in a suit, but as to the mode of executing the decree, even though it go the length of substituting new provisions for those contained in the decree, this compromise will be recognized by the Court, and the orders passed accordingly will stand in all respects on the same footing with orders made by the Court in execution, and a regular suit will not lie to set aside such orders.\footnote{S. D. 1851, p. 106; Con. 1129.}

An offer to compromise is not an admission of the claim.\footnote{As to evidence of compromise, see S. D. 1850, p. 142.}
CHAPTER XXV.

DECREES.

SECTION I.

GENERAL RULES.

When the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. Many important rules, both as to the form and the substance of the judgment, are laid down in the Code.*

In cases coming within the jurisdiction of the Court, for which no specific rule may exist, the Judges are to act according to justice, equity and good conscience.\(^b\)

It is not, however, to be understood that any discretionary power is vested in the Judge, or that he is to require men to adopt any peculiar and lofty standard of morality. The suitor may be enforcing his legal rights in a spirit of malice, ingratitude, or oppression, but it is none the less the Judge’s duty to declare those rights. He must act upon general principles, applicable alike to rich and poor, to good men and to bad, but he ought to review, in a fair and impartial spirit, the whole of the facts which have been proved before him, and to consider what the principles are, that really apply to the case; which

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* Code, Chap. III., Secta. 183—198.
\(^b\) Reg. III., 1793, Sect. 21; Act XXVI., 1852.
Sect. I. GENERAL RULES.

will, perhaps, be found upon examination to be very different from those under which it may have at first sight appeared to fall.

The scope of the present work is too narrow to admit of any general view of the principles by which the Courts are guided, but it may not be amiss to state a few of the doctrines applicable to certain matters of no uncommon occurrence.

It is a general rule that men shall be compelled to perform their engagements; and an instrument of contract, signed by the party, may be thought to be full proof of a binding engagement. But when the execution of the instrument is shown to have been obtained by force or fraud, by accident or mistake, then justice, equity and good conscience forbid the Courts to enforce its performance.

Where the case is new, not in principle, but only in the instance, and the only question is upon the application to such new case of a principle already recognised in law, it is the duty of a Judge, when requisite, to extend the limits of his jurisdiction.

The maxim of the law is, to amplify its remedies, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice, to enforce the performance of contracts not injurious to society, and to administer justice to a party who can make that justice appear, by enlarging the remedy, if necessary, in order to attain the justice of the case.

The Courts frequently have much difficulty in determining the true meaning of the Regulations and Acts, which the legislative authorities of British India have from time to time enacted.

In putting a construction upon these enactments, it is necessary to consider what was the mischief or inconvenience which the new enactment was intended to remedy, and what was the time, nature and reason of the remedy:—and the duty of the Judge is to carry out the meaning of the enactment, and not
to permit it to be evaded by contrivances which are clearly repugnant to its spirit and its general scope.

Where, however, a case occurs which was not at all foreseen by the Legislature, or where the case, though within the mischief which the Act was intended to remedy, is not clearly within the meaning of the Act, or where the words of the Act fall short of, or go beyond, the intent of its makers, the Judge must give effect to the expressed sense or words of the law, in the order in which they are found in the Act, and according to their fair and ordinary import and understanding; for it is not his province to make laws, but to apply them.

If, from the terms employed by the Legislature, any doubt arises as to its true intention in passing the Act, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the Act, and to have recourse to the preamble, "as being a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress."

One part of an Act ought to be so construed by another that the whole may, if possible, stand, and that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.\(^a\)

If any Regulation or Act of the Legislature is passed, differing from a former Regulation, either wholly or partially, the new Regulation or Act is considered as a virtual repeal of the old one so far as it may differ from the latter, provided that the new one be couched in negative terms, or by its matter necessarily imply a negative.\(^b\)

Subsequent Acts of the Legislature expressed merely in the affirmative, instituting new methods of proceeding, do not repeal former methods of proceeding ordained by preceding Acts, or by the general law.

Where both Acts are merely affirmative, and the substance

\(^a\) Reg. XLI. of 1703, Sect. 19. \(^b\) Ibid. Sect. 20.
is such that both may stand together, the latter does not repeal
the former, but they have both a concurrent efficacy.\footnote{Supra, p. 79.}

Yet, where the provisions of a later Act are plainly and
directly opposed to those of an earlier, the statute is con-
sidered as modified or repealed.\footnote{Vide Reg. XLI. of 1793, Sects.}

If an Act or Regulation which repeals another, is itself sub-
sequently repealed without qualifying words of any sort, the
first statute is thereby revived without any formal words for
that purpose, but it is not so revived as to legalize acts done
while it was under repeal.\footnote{Vide Reg. XLI. of 1793, Sect. 21.}

When any deed, as a bond, is altered in a material point,
by the person in whose favour it was made, or by a stranger
without his privity, the deed thereby becomes void.

So if he himself alters the deed, though in a point not
material, yet the deed is void; though if a stranger without
his privity alters the deed in any point not material, it shall
not be thereby void.

The reason is, that the law will not permit a man to take
the chance of committing a fraud, and when that fraud is
detected, of recovering on the instrument as it was originally
made.

An unauthorized alteration in the date of a bill of exchange
after acceptance, whereby the payment would be accelerated,
even when such alteration is made by a stranger, renders the
instrument void, and no action can be afterwards brought
upon it by an innocent holder for a valuable consideration.

So a bought or a sold note cannot be altered after they
have been exchanged; or a guarantee.

Where more is done than ought to be done, that portion
for which there is authority shall stand, and the act shall be
void as to the excess only; as, where a Mahomedan assumes
to dispose of the whole of his property by will, the will stands good for one-third only; so if the vendor of land is entitled to certain shares only of the land sold, and if the deed imports to pass more shares than he has, it will nevertheless pass those shares of which he is the owner.

Where an estate has been sold for arrears of revenue, the surplus proceeds which remain after discharging the arrears are merely the same property in another form, and continue subject to the same rights to which the estate, while unsold, was subject.\(^a\)

It has been held in the case of a Hindoo will, that in the absence of specific powers given to the executors to trade, either generally or with any given sum, the "profit and interest" or the "profit" of a legacy must be taken to mean the profits arising from the investment of the legacy in the public securities.\(^b\)

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**SECTION II.**

**SUBSTANCE OF DECREES.**

The decree ought\(^c\) to enumerate all the material allegations and pleas on either side; it ought to show that the Judge has duly inquired into their truth, by calling for evidence, where necessary, and by full consideration of the evidence laid before him; and he must record whether they have been substantiated or not; so that it may appear clearly that no material allegation or plea has been overlooked by the Court in forming its judgment; and costs ought not to be awarded against a successful party, without an explicit statement of the reason.

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\(^a\) S. D. 1856, p. 808.
\(^b\) S. D. 1856, pp. 463, 761.
The Judge must record his reasons at large, and must make clear the principle upon which his judgment is founded. Thus if he awards damages which appear trifling in amount, in respect of an injury which appears a grave one, the reasons ought to be set forth in the decree.¹

If the suit be for damages for property taken and sold under an illegal distraint, the actual value of the property, and not the price which it fetched at such sale, affords the measure of damages.²

If the judgment proceeds in any degree upon the consent of the parties, or of either party, or of the pleaders, that consent must be expressly stated in the decree.³

It is irregular to say, merely, that with reference to the witnesses adduced by the plaintiff and the accounts filed by the defendant, the claim is not proved against the defendant,⁴ or that the defendant’s witnesses are adverse to the plaintiff’s claim, but that the Judge has no grounds for giving the preference to the witnesses of one side rather than the other.⁵

The Court must record its opinion positively as to the genuineness of all documentary evidence laid before it, in order that it may appear distinctly whether such evidence was admitted or rejected, and that there may be no doubt as to the grounds upon which the Court has proceeded.⁶

The facts of every kind on which the Court proceeds must be positively found, and their truth must not be left in doubt by the language of the decree. Every material date of an occurrence must be recorded (such as the date of dispossess- tion, when the decree rests upon the law of limitation), and

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¹ S. D. 1850, p. 109; S. D. 1851, p. 186.
² S. D. 1857, p. 1440.
³ S. D. 1851, p. 57.
⁴ S. D. 1847, p. 469.
also the dates of all the documents upon which the decision is based.*

If the decree fixes a specific sum as a suitable monthly allowance for the maintenance of a Hindoo female, it ought to specify the family income and the parties who are to share in it, so as to show the fairness of the award. b

The decision must be founded upon some intelligible principle, and is not to be a mere conjecture, or a compromise to escape from a difficulty. c

Where a Judge finds it difficult to come to any conclusion on the evidence as to boundaries, he is not on that account to give the land to the litigating parties according as it lies contiguous to, or at a distance from, their respective estates, but he is to dispose of the case upon the evidence, oral and documentary, in the suit.

The Judge, in recording his decision, ought to set forth his reasons in the decree itself, and it is irregular to refer to another proceeding for the grounds of his opinion, d or to refer to a document filed in another case, without requiring the parties interested to file a copy of it in the case under decision. e He must not found his decision upon any matter not placed on the record before him. f

The Judge must decide according to the evidence before him, and is not bound to adopt the views of his official superior, expressed in a different suit. g

The judgment ought not to contain any merely speculative opinion or any extra-judicial suggestion, h such as an intima-

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* S. D. 1848, pp. 120, 703, 750; S. D. 1849, p. 2; S. D. Agra, 1851, p. 29; S. D. 1850, p. 571; S. D. 1852, p. 28.

b S. D. 1851, p. 653.


e S. D. 1848, p. 791.

f S. D. 1848, p. 352; S. D. 1850, p. 117.

s Agra, 1856, p. 267.

h S. D. 1847, p. 133.
tion that costs which it orders a man to pay, may be reclaimed by him in another suit.\footnote{S. D. 1849, pp. 281, 398; see S. D. 1850, p. 219.}

A decree based upon the report of the Ameen deputed to make local inquiry, ought not merely to refer to that report, but ought to state the nature of the inquiry, conducted by the Ameen, and how the result tended to establish the view affirmed by the decree.\footnote{S. D. 1847, p. 40.}

Where an Ameen deputed to make local inquiry has in the course of his duty framed and filed in Court a map of the property in dispute, the Court, if it does not adopt the map, must assign reasons for rejecting it,\footnote{S. D. 1850, p. 217.} and the reports of Ameens must not be set aside without clearly recording the reason.\footnote{S. D. 1848, pp. 426, 440, 441.}

Where a case is intricate, and requires full details and specific grounds to be laid down for the understanding of the judgment, it is not to be disposed of by remarking generally that the defendants have, in concert one with the other, collusively defrauded the plaintiff of his rights.\footnote{S. D. 1848, p. 532.}

The judgment ought to be expressed in the clearest and most precise language. If a fact be deemed worthy of notice, such as the neglect of a party to adopt a particular proceeding, the inference of the Judge ought to be distinctly stated.

If there be several plaintiffs, the claims of all must not be rejected, while evidence is recorded which only militates against the claim of one of them.\footnote{S. D. 1847, p. 40.}

Nor ought an entire claim to be dismissed because part of it cannot be supported.

Where a man sued to establish his right to assess lands,
held by the defendant, and also to recover from him rent at a higher rate than that which he had previously paid; the latter portion of the claim failed, because the plaintiff failed to prove that the notice prescribed by Regulation V., 1812, Sections 9 and 10, had been served upon the defendant, but it was held to be an error to dismiss the entire plaint upon this ground.\(^a\)

So where the plaint claims the possession of land, and alleges that the plaintiff was ousted partly at a time beyond the period of limitation, and partly at a time within the period of limitation; it is erroneous to dismiss the whole claim as barred by the rule of limitation, unless it be expressly recorded in the decree, as a fact ascertained, that the allegation of partial ouster within the period is untrue.\(^b\)

A claim to land ought not to be dismissed altogether, where it is only partially disputed by the defendant. If indeed the claim as to the part admitted by the defendant has been put forward without necessity, or under circumstances which render it improper for the Court to enforce it, the decree ought to state those circumstances in detail.\(^c\)

Where the defendant denies part of the demand of the plaintiff altogether, but admits that the rest of the demand was originally good, and pleads payment of it; the Judge ought to consider whether the plea of payment is proved or not, and he ought not to dismiss the plaintiff’s whole claim because he discredits the evidence adduced by him as to the other part of it.\(^d\)

Nor ought a Judge to dismiss that part of a claim which has been legally proved, because the rest of the claim has not been so; nor even because he thinks that false testimony, or forged exhibits have been adduced in support of it.\(^e\)

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\(^a\) S. D. 1848, p. 812.  
\(^b\) S. D. 1848, p. 832.  
\(^c\) S. D. 1847, p. 617.  
\(^d\) S. D. 1856, p. 939.  
\(^e\) S. D. 1857, p. 1072.
A claim against several persons ought not to be wholly dismissed, where one of the defendants has admitted a portion of the sum claim to be due from himself.\(^a\)

It has been held (in accordance with the principle that he who seeks equity ought to do equity), that, if a man claims possession of his share of certain property, which belongs to him jointly with the defendants, admitting by his plaint that he is in exclusive possession of certain other property which also belongs to him jointly with the defendants; the decree ought not to award to him the share which he claims, without awarding to the defendants their share of the property of which the plaint admits possession.\(^b\)

Where two parties to a bond are jointly sued for the money thereby secured, and the whole is decreed to be paid by one of the defendants, the decree ought to state the grounds upon which the other defendant has been exempted.\(^c\)

Although some parties may have been improperly or unnecessarily made defendants, yet the cause ought to be decided on its merits as regards those who are properly made defendants.\(^d\)

The Judge is to give or to withhold wholly or in part that which is sought by the plaintiff, but is not to give him what he does not ask for. Thus, where a man sues for rent for the years 1241 to 1249 B. S., it is erroneous to declare him entitled to receive rent from the year 1250.\(^e\)

If the plaint seeks damages for a trespass of cattle, the decree ought not to be for payment of rent.\(^f\)

So, if the Judge awards interest or wasilat at a higher

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\(^a\) S. D. Agra, 1851, p. 85, Daledo Dass and others v. Hurkissen.

\(^b\) S. D. 1853, p. 517.

\(^c\) S. D. 1847, p. 598; S. D. 1851, p. 403.

\(^d\) S. D. 1852, p. 375.


\(^f\) S. D. 1851, p. 602.
rate, or from an earlier period than that which has been specified in the plaint: or if, in decreeing possession of lands, he awards wasilat from the date of dispossession, the plaint not having claimed wasilat at all: in which case it ought only to be given from the date of suit.

If a party has proved his title to the possession of land, the decree must award him possession accordingly; and must not, in the absence of anything showing fraud upon his part, allow his adversary to retain the land on payment of compensation, because the latter has, while in possession, laid out money on improvements.

Where a man sues to recover his wife, the Court ought not to decree that she shall be returned to him, or in lieu of her a sum of money.

Where the plaintiff’s claim is a specific one, for the value of a crop carried away from his land by the defendant, claiming to be landlord, the Court must simply award or refuse to award this value to the plaintiff, and must not, in rejecting the claim, proceed to fix the rate at which the plaintiff shall hereafter pay rent. So, if the action be brought to obtain a receipt for rents actually paid, the Court is to dispose of that claim only, and is not to enter upon and decide the extent of the plaintiff’s jumma or rent.

Where the claim is for possession only, the decree ought not to award an enhancement of the rent of under-tenants holding by an alleged mookururee tenure. The plaintiff must bring a fresh suit for such enhancement if he conceives himself entitled to it.

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* S. D. 1848, pp. 471, 687, 749;
Code, Chap. III, Sects. 196, 197.
* S. D. 1849, p. 365.
* S. D. 1853, p. 785.
* S. D. 1853, p. 312.
* S. D. 1848, p. 135.
* S. D. 1848, p. 751.
Where A. sues B. for exacting from him, A., an excessive rent, the Court cannot adjudicate upon a claim of C. to be the real holder of part of the land, which is stated in the pleadings to belong to the tenure for which the rent was taken.\(^a\)

Where a zemindar sues to resume lands held on an alleged rent-free tenure, the only question for the Court to determine is the validity or invalidity of the tenure, and not the amount of rent which can be assessed thereon. The decree, if in favour of the plaintiff, should merely declare the land liable to assessment.\(^b\)

Where the suit is to recover money lent, and not to enforce the security upon which it was lent, the decree ought to be simply for the money, and ought not to touch the property pledged as security.\(^c\)

Where the suit is only for foreclosure and possession, the decree cannot be for the money lent.\(^d\)

Where a person is sued only as manager of a factory for the proprietor, it is erroneous to decree that he shall be liable in person and property for the wasilat of the lands held by the factory.\(^e\)

If a man who has purchased a share in a family dwelling-house sues for partition and separate possession, the Court is not empowered to award him a sum of money instead of what he has prayed for, however inconvenient his suit may be to the other parties.\(^f\)

Where a regular suit is brought to reverse the decision of a Collector on a claim for rent, the merits of the claim for rent, and not the regularity of the proceedings before the Collector, form the subject of adjudication in the suit.\(^g\)

The Court ought not to concern itself with the rights of

\(^a\) S. D. 1849, p. 349.
\(^b\) Con. 576, 1st Oct. 1830, para. 3.
\(^d\) S. D. 1851, p. 648.
\(^e\) S. D. 1852, p. 416.
\(^f\) S. D. 1857, p. 1585.
\(^g\) S. D. 1850, p. 208.
persons who are not before it, and who ought to sue separately
to establish their claims. If a mortgagee sue under a deed of
conditional sale to foreclose his mortgagor, the Court, if the
plaintiff proves his case, ought simply to decide whether the
deed of conditional sale is to be rendered absolute, and the
mortgagee to be set in the place of the mortgagor. It ought
not to declare, by its decree, the rights of a stranger who
comes in by petition after the institution of the suit, and
claims by a title higher than that of the mortgagor.

So, where the party whom the Court thinks better entitled
is before it, but merely as a co-defendant with the principal
defendant, and not claiming anything, the proper course is to
dismiss the suit.

If the Court thinks that the interests of any party are not
legally represented in the suit, (as where there is a legal
 guardian of an infant, and the plaint has been filed in the
infant's name by a person who is not the legal guardian), the
Court ought not to decide the case upon the merits.

If a claim be definite, and be made upon one distinct ground,
as for instance where property is claimed by virtue of a deed
—and if the Court decide that the ground is invalid; it is not
competent to adjudge to the claimant a portion of the pro-
 perty sued for, upon some other title, which he has not himself
put forward.

A cause ought not to be decided in favour of a party, upon
a plea of fact not put forward by the party himself. If a
defendant either expressly or virtually adopts as right, or
waives his objections to, some position which he might have
contested, and takes issue upon a different point; then, since
the plaintiff has not had an opportunity of contesting the matter

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*b* Sel. Rep. v. 7, p. 439; *infra*, Chap. XXXIV.

*c* S. D. 1857, p. 1289.

*d* S. D. 1850, p. 471; *Code*, Chap.
so put out of controversy by the defendant, it is unjust to decide in favour of the defendant because of the matter so waived.\(^a\)

Thus where a man is sued\(^b\) for a debt contracted by his father, and pleads, not that he has succeeded to no property of his father's, and is therefore not liable to pay, but simply that the debt has been discharged; this is a tacit admission of the liability to pay, and the Court cannot decide in favour of the defendant on the ground that he has succeeded to no inheritance, and therefore is not liable: for if he had pleaded his non-liability on this ground, the plaintiff might perhaps have proved that he had received property of his father's.

But if the claim advanced by the plaintiff be one which upon the face of the proceedings is clearly illegal, it can never be the duty of the Court to enforce such a claim, even though the defendant may have mistaken his true ground of defence.

The law of Hindoos and Mahomedans is a subject supposed to be known to the Court itself, and the Court must decide all questions which may arise upon it. However desirable it may be, therefore, that all points as well of law as of fact may be fully discussed before judgment is passed, the Court must decide according to its own knowledge of the law, and must not decide against a party who really has the law on his side, merely because his pleader has failed to point out the true application of the law to the facts.\(^c\)

Thus, where an estate paying revenue direct to Government was sold for arrears of revenue, A. being the ostensible purchaser; a suit by B. against A., claiming to participate in the purchase, was liable, under the 22nd Section (since repealed) of Act XII., 1841 (requiring the real to be also the ostensible purchaser), to be dismissed with costs, whether the defendant pleaded that Act or not.\(^d\)

\(^a\) S. D. 1852, p. 1126.  
\(^b\) Sel. Rep. v. 7, p. 314; and see S. D. 1848, pp. 188, 352.  
\(^c\) Sumboochunder Chowdry v. Narain Dibeh, 3 Knapp's P. C. C. 55.  
\(^d\) S. D. 1848, pp. 537, 574.
So if the plaint be wholly inconsistent with itself; as where a person sues as heir, alleging in the plaint some fact from which the law infers that another person exists having a prior right by inheritance; this is a repugnancy apparent on the face of the plaint, and it is impossible for the Court to pronounce any decree on the merits, whether the defendant insists on the repugnancy or not.*

A decree ought not to touch, even collaterally, upon questions not directly in litigation between the parties in the suit.b

A decree is bad, if its different parts be grossly inconsistent with each other, or with any part of the record,c or if it be professedly based on the written opinion of a law officer of the Court, and be inconsistent with that opinion;d or if it proceeds upon a mistranslation of a material document,e or a misconception of its purport, or a material misstatement as to the points which have or have not been urged in the pleadings,f or if it shows that the Judge has failed to advert to any very important piece of evidence.g

Decrees have been held bad (to give but a few examples),—

Because a plea urged by either party has not been sufficiently considered or inquired into.h

Because a decision is based on a statement not admissible as evidence, or on a disputed document, which has not been produced and filed as an exhibit in the cause.i

Because the judgment is founded on the report of an Ameen, the case being one in which the deputation of an Ameen was not authorised by law.j

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* S. D. 1848, p. 762; see 3 Knapp's P. C. C. p. 60.

b S. D. 1857, p. 1100.

c S. D. 1850, pp. 60, 86, 471.

d S. D. 1850, p. 5.

e S. D. 1850, pp. 19, 87.

f S. D. 1850, p. 15.

S. D. 1850, p. 23.


i S. D. 1848, pp. 82, 100.

j S. D. 1851, p. 706.
Because the Court has decreed against a man solely on the ground of a former decree in a cause to which he was not a party, or an order which was subsequently reversed; or vice versa.\textsuperscript{a}

Because the decision, in a case which ought to be governed by the Mithila law, is based upon a Bengal precedent.\textsuperscript{b}

Because it rests on a manifest excess of jurisdiction, such as a Circular Order of the Zillah Judge, who has no power to issue Circular Orders.\textsuperscript{c}

Or because it is incomplete, as where it pronounces only upon one of two claims involved in the plaint.

Where a claim has been wholly dismissed, though only partially disputed.\textsuperscript{d}

Where the claim has been decreed to the plaintiff in full, although the Court finds by the same decree that he has received part satisfaction.\textsuperscript{e}

Where one of two defendants against whom a claim was established has not been included in the decree, and no reason has been given for his exemption.\textsuperscript{f}

Where a claim and counter-claim have been dismissed, the two judgments being plainly contradictory.\textsuperscript{g}

Where the Judge has refused to take evidence at all upon a particular point, and has afterwards decreed on that very point against the party whom he has prevented from tendering evidence.

So, where the decree is unintelligible or obscure, as where a decree is passed against the trustees of a minor, but does not show whether they have been held personally liable, or liable only to the extent of the trust property in their hands.\textsuperscript{h}

\textsuperscript{a} S. D. 1848, p. 292; S. D. 1850, p. 343.
\textsuperscript{b} S. D. 1848, p. 767.
\textsuperscript{c} S. D. 1848, p. 881.
\textsuperscript{d} S. D. 1847, p. 617.
\textsuperscript{e} S. D. 1851, p. 420.
\textsuperscript{f} S. D. 1847, p. 598.
\textsuperscript{g} S. D. 1847, p. 610.
\textsuperscript{h} S. D. 1848, p. 130; S. D. 1851, p. 328.
Or where the ordering part is not full enough to enable a party to recover that which is declared to be his due.\(^a\)

Or wherever the investigation has been obviously insufficient, or its results are not stated with sufficient clearness to enable the Appellate Court to deal with the case.\(^b\) Much delay and expense will be saved to the suitors if the Judge takes care to frame his decree so that it shall afford to his official superiors full materials for judging whether his conclusions are correct.

A decree is bad where the facts, recorded as proved, manifestly do not warrant the decision which has been pronounced—as where a man is ordered to pay money, its receipt by him not having been established.\(^c\)

In the Sudder Court, a manifest error in a decree of that Court, such as the making costs payable by the successful instead of by the losing party, may be amended by the Judge who pronounced the decree, or, in his absence, by two other Judges of the Court, and no application for a review is necessary. There seems, therefore, to be no reason why a Judge of an inferior Court should not correct such an error in a decree passed by himself or by his predecessor.\(^d\)

A decree awarding wasilat or meene profits ought to state precisely the period from which it awards them.\(^e\)

Interest on mesne profits may be awarded as of course, from the date of the institution of the suit. Where interest is awarded from an earlier or later time than this, special reasons should be assigned in the decree.\(^f\)

Where there is no express stipulation in a lease that interest

\(^a\) S. D. 1851, p. 308.
\(^c\) S. D. 1850, p. 198.
\(^d\) R. S. C. 13th July, 1841.
\(^e\) R. S. C. 3rd February, 1848;
\(^f\) S. D. 1848, p. 342.

shall be payable on arrears of rent, the Courts, in exercise of
the discretion given to them by Act XXXII. of 1839, will, as
a general rule, not give interest on the balance previous to
date of suit, where a party has not proved that he made any
demand for rents upon a tenant, and has not accounted for
the delay which has taken place in realising his rents by
summary process.\textsuperscript{a}

In suits between debtor and creditor, the Courts do not
allow compound interest arising from intermediate adjust-
ment of account, except when new bonds or agreements
are taken; all payments are applied first to the liquidation
of the interest, and the surplus, if any, in reduction of the
principal.\textsuperscript{b}

Where the validity of a claim depends upon the due per-
formance of certain conditions by the claimant—as in a claim
of pre-emption under the Mahomedan law, which requires
particular acts to be done within a limited time,—the Court\textsuperscript{c}
should record in detail what it considers the condition to be
and what it considers to have been established by the evidence
in relation to the performance or non-performance of the con-
dition; and it ought not merely to state that the require-
ments of the law have or have not been complied with; the
very mode of performance is necessary to be known, and the
objections to the mode which has been resorted to must be
disposed of seriatim; for without these particulars it is impos-
sible for the Court of Appeal to know whether the Judge has
taken a correct view of the law or not.

A decree which upholds a tenure as rent-free under Section 2,
Regulation XIX., 1793, ought to show clearly how the evi-
dence in the case establishes the conditions required by that

\textsuperscript{a} S. D. 1852, p. 508; S. D. 1853, p. 775; see S. D. 1857, p. 1792.
\textsuperscript{b} Reg. XV., 1793, Sect. 7; S. D. 1853, pp. 461, 841.
\textsuperscript{c} S. D. 1847, p. 44; S. D. 1848, pp. 12, 766; S. D. 1850, p. 356;
Agra, 1853, p. 769; Agra, 1851, p. 17.
law; and it should also show on what precise footing the land was held.

Where the question is whether a portion of an ancestral estate is liable to sale for debt incurred by the widow of a deceased proprietor, the validity of the debt, as a charge upon the estate, may depend upon whether it was contracted for the purpose of defraying expenses chargeable to the estate, and whether it was necessarily so contracted. The decree ought therefore to specify the object for which the debt was incurred, and whether there was any other fund out of which the widow might have defrayed the expense without charging the estate.

So where a debt ostensibly contracted by A. alone, is alleged to have been contracted by him on behalf and by the authority of another person also.

In directing what sum A. is to pay to B. in a suit, it is irregular to deduct the amount which B. has been decreed to pay to A. in another suit, unless A. has regularly availed himself of the plea of set-off in his defence.

In remote districts, where local customs, at variance with the ordinary law, prevail to so great an extent, that the Court does not make its usual presumption in favour of the ordinary law, care must be taken not to rest decrees upon general rules of law, without ascertaining and recording that they are commonly recognised in the district.

Thus where a man sued in Assam to recover the value of certain jewels given by him to a woman in contemplation of their intermarriage, after the receipt of which jewels she married another man, although the Court considered that

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\* S. D. 1851, p. 764.
\* S. D. 1848, pp. 316, 817; S. D. 1849, p. 64.
\* S. D. 1849, p. 17.
\* S. D. 1849, p. 139.
\* Codc, Chap. III., Sect. 195.
\* S. D. 1851, p. 322.
\* S. D. 1848, p. 410.
according to the Hindoo law, such jewels, once given, become irreclaimable, yet a decree to this effect was held incomplete, because it did not record, as a fact, that the general Hindoo law was recognised in Assam as governing such cases.

The ordering part of the decree must be definite and capable of being carried into execution. Thus if it awards to the plaintiff that portion in the village which he held previous to a certain event, and the amount of that very portion is in dispute between the plaintiff and the defendant, the decree must go on to state the amount of the portion.\(^a\)

If the decree award merely the land described in the plaint, and the plaint does not define the boundaries, or in some way afford the means of readily and certainly defining them, the decree is erroneous and cannot be executed.\(^b\) The decree itself ought to specify the land of which possession is to be given, so that it may be enforced without the necessity of reference to the plaint or to any other document.\(^c\) It should not, upon any conjectural or hasty view, award to a party more than has been actually proved to belong to him.\(^d\)

The decree ought not to direct anything illusory or impossible; thus if it be in evidence, as the result of local inquiry, that the lands sued for have been wholly washed away, it is absurd to direct, that the plaintiff shall recover such portion of them, as may, in the execution of the decree, be found in the possession of the defendant.\(^e\)

A decree ought not to be passed which is absolutely incapable of being enforced, such as a decree declaring a right to be summoned to marriages of members of a particular

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\(^a\) S. D. 1848, p. 16; S. D. 1850, p. 43; Code, Chap. III., Sect. 190.
\(^c\) Sel. Rep. v. 7, p. 41.
\(^d\) S. D. 1850, p. 86.
\(^e\) S. D. 1849, p. 1.
community, and to receive pawn from them upon such occasions.\footnote{S. D. 1850, p. 64. See Sel. Rep. v. 6, p. 152.}

The Courts should avoid passing any order of a conditional and undeterminate nature—such an order that defendant should be exempted from costs unless he should further oppose the plaintiff’s claim, in which case he is to pay costs of suit. This involves a fresh issue, which no one has any jurisdiction to try, for it is indefinite in time.\footnote{S. D. 1857, p. 1145.}

But an order may be made conditioned upon plaintiff doing something within a certain time, as, for instance, an order giving a right of pre-emption to the plaintiff, if he shall lodge the purchase-money within one month; for there the act to be done will be proved by the records of the Court, and be available in execution process. No authority can alter or vary such condition save on appeal.\footnote{S. D. 1857, p. 1895.}

Where a right to some land has been established, but the site of the land has not been ascertained, the Judge ought not to pass a decree affirming the right to the land, but referring the party to a second suit to fix the boundary, or in any way reserving that question for subsequent determination.\footnote{Sel. Rep. v. 7, p. 341; S. D. 1848, p. 485.} The Court must ascertain and define that which it desires to award; or if this be impossible, it must not award possession of that which may have no existence. If the Judge is not satisfied with the investigation which has taken place, he must investigate further: all the important issues must be tried and disposed of before he parts with the case before him; and it is highly erroneous to pronounce a decree which involves a re-trial of the same question between the same parties.\footnote{S. D. 1849, p. 86.}

The decree ought not to direct an adjustment of accounts

Nor anything requiring re-trial of the same questions.
in execution, but the amount of balance ought to be ascertained in some of the modes already enumerated, before the decree is pronounced, and ought to be settled as a part of the decision in the suit, and this award should be embodied in the decree.\footnote{S. D. 1850, p. 118; S. D. 1853, p. 464; S. D. 1854, p. 433. It would seem that this rule does not apply to mesne profits. Code, Chap. III, Sects. 181, 197.}

Where a decree awards to a party any interest in lands, short of absolute ownership (as when it gives to a Hindoo widow possession of her lands), it ought to define the extent of the interest awarded.\footnote{Sel. Rep. v. 3, p. 114.}

The persons against whom a payment is awarded ought to be distinctly specified.\footnote{S. D. 1848, p. 870.} Where persons are sued as trustees or guardians, or take defence in those characters, and the Court gives judgment for the plaintiff,\footnote{S. D. 1848, p. 130; S. D. 1851, p. 527.} the decree ought not merely to describe the defendants as trustees, but it ought to state particularly whether they are personally liable for the sum decreed, or whether they are only liable as trustees or guardians, and to the extent only of the trust funds possessed by them; for of course where the decree is against the trustee or guardian personally, he and his estate, and not the person or estate of those for whom he acts, can be taken in execution.\footnote{R. S. C. 29th January, 1839.}

Where a decree is passed against several defendants holding under distinct titles, the amount due by each defendant ought to be specified.\footnote{Con. 849, 20th December, 1838.}

Where a proprietor of the soil succeeds in establishing his demand of malikana against the rent-free holders of several villages (being a percentage on the gross rent of each village) the defendants, not being joint sharers in the whole, but occupants of distinct villages or portions of villages, the Court

\footnote{S. D. 1847, p. 1; S. D. 1856, p. 730.}
should record distinctly, in the body of the decree, the mode in which the malikana for each village is determined, the period and the amount for which each defendant is responsible. It ought not to fix a gross sum as payable on all the villages, and to charge the defendants indiscriminately with the payment.

But if a man establish his right to dues from a certain estate in which all the defendants are sharers, the decree is against all the sharers, jointly and severally, and the estate is made expressly answerable. The defendants in such a case have the option of apportioning among themselves, according to their respective shares, the amount decreed to be paid, or of allowing the estate to be sold in satisfaction of the claim.\(^a\)

If, however, one of the shareholders pays the whole amount to save the estate, he does so at his own risk, and can only claim from his co-sharers the amount due from each in proportion to his share; and this must be defined by the decree.

If A. claims property from B. and the Judge comes to the conclusion that C., a stranger to the suit, is better entitled than either of them to possess the property, still his duty is limited to the adjudication of the claims before him: and he must not adjudge the property to C., until C. has brought a direct suit against the parties in possession of it.\(^b\)

And so, if A. sues certain persons as the heirs of B. deceased, and A. wholly fails to prove his own right to the thing sued for, the Court ought simply to dismiss his suit, and not to give an opinion as to who are or are not heirs of B.\(^c\)

Where it shall appear to the Court that the arrest of the defendant during the progress of the suit was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and

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\(^b\) S. D. 1849, p. 142.  
\(^c\) S. D. 1851, p. 508.
it shall appear to the Court that there was no probable ground for instituting the suit, the Court at this stage awards compensation to the defendant, according to the rules laid down in the Code. And so in the case of attachment of his property before judgment.

Where the vernacular translation of the Judge's decision is at variance with the decision as recorded in the language of the Judge, the discrepancy must be corrected in accordance with the original.

SECTION III.

COSTS.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole, or in what part or proportion, and the Court shall have full power to award and apportion costs in any manner it may deem proper.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of commissioners, either in taking evidence or in local investigations or in investigations into accounts.

When vakeel's fees are awarded as part of costs, interest runs upon them from date of decree. But where vakeel's fees are sued for independently in a suit brought by vakeel against

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* Code, Chap. III., Sect. 79.

b Ibid., Sect. 88.

c S. D. 1848, p. 218; S. D. 1850, p. 171; Agra, 1832, p. 366. N.B. There are many Agra cases in which the Sudder Court has pronounced the translation (which alone the officers and suitors have to act upon) excessively inaccurate.

d Code, Chap. III., Sects. 187, 188.
client, interest only runs from the date of demand, or if none, from date of suit.a

Costs bear interest from the date of decree to the date of payment.b

Although the award and the apportionment of costs rest in the absolute power of the Court, yet that power, like all judicial power, must be exercised systematically and not capriciously, and the Court will no doubt continue, in general, to award costs against the party who is found to be in the wrong, and to follow the very reasonable course of practice which has been already established, partly by regulation and partly by decision, and of which an outline follows, although the practice has lost the positive authority which belonged to it. It may, however, be thought that where a claim, just in the main, has been resisted, the costs ought to be awarded to the plaintiff without reckoning minutely (as heretofore) the extent to which he may have failed to establish his demand.

If the decree shall be given against the defendant, and the whole of the money or property, which may be demanded by the plaintiff, shall be decreed to him, a sum equal to the whole of the fees of his pleader (computed as mentioned below), shall be adjudged to the plaintiff, in addition to the other costs which may be awarded to him; but if only a part of his claim is decreed to the plaintiff, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fees bear to the demand stated in the plaint, is to be decreed and added to the costs, which may be awarded to the plaintiff.c

This principle applies to the computation of costs generally, as well as to the pleader's fees. Where a decree giving wasilat directs an inquiry and adjustment of the amount to be

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a S. D. 1857, p. 1175.
b Con. 715, C. O. 12th August, 1842.
c Reg. XXVII., 1814, Sect. 26, Cl. 1; S. D. 1853, pp. 358, 558, 810.
made in course of the execution of the decree, it ought to
direct the costs to be paid eventually, only in proportion to
the amount which may be found due upon such adjustment of
mesne profita.  
If the suit be dismissed, whether upon an investigation of
the merits or otherwise, the plaintiff is charged with the fees
of his own pleader and with those of the pleader of the
defendant.b
Where each defendant has a substantially different defence,
each should be allowed the whole vakeel's fee.c
Where there is only one real defendant, and the mere
formal defendants have without necessity acted separately,
though their defence is the same with that of the principal
defendant, or where several defendants employ the same
vakeel, only one set of costs ought to be given against the
plaintiff if he is unsuccessful: nor ought he to be ordered to
pay the costs of claimants or third parties with whom he had
no concern, and who have unnecessarily come forward,d nor
to pay for a copy of the decree for the heir of a party entitled
to it, when a copy had been previously given to the ancestor.e
If costs be not awarded to the winning party, or be out of pro-
portion to the sum decreed, the Court must record the reason.f
And where a defendant is declared not liable for any part
of the sum demanded, it is highly improper to charge him
with costs, upon a mere conjecture that he had himself a
dispute with the plaintiff on a similar subject, and might
probably have been concerned in doing him the injury complained
of.g If the plaintiff has valued his claim too high, he and not

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c Agra, 1856, pp. 68, 243.  
e See Sect. 4 of this Chapter.  
g S. D. 1850, p. 70.
the defendant must pay all the additional costs of the defence caused by this excessive valuation.

Where a person is improperly made defendant in a suit with which he has no concern, or in which he ought not to be a party, but a witness, his costs must be paid by the plaintiff.

And generally speaking the Courts are disposed to award costs against all parties who behave fraudulently or otherwise improperly in a cause.

If the plaintiff has been induced by the requisition of a defendant to name other parties as co-defendants who ought not to be so, the defendant who made this requisition must pay the costs occasioned by their being defendants.

Where a man is made defendant solely in his representative character, the decree ought never to award costs against him personally unless he has acted vexatiously in the suit.

Where the defendant offered to the plaintiff, before suit, all that the plaintiff ultimately obtained a decree for, the Court gave no costs against the defendant.

Where a Collector has been illegally made a defendant in his official capacity, and has filed his answer through the Government Vakeel, the Court ought to dismiss the plaintiff's claim with costs; and it should proceed, as in all other cases, to order the payment of the Government Vakeel's fees in the first instance by the Collector on the part of the Government, leaving the Collector ultimately to recover the amount from the plaintiff in the usual manner.

In all suits, other than suits actually determined upon the merits, the pleaders of the plaintiffs and defendants are

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* See S. D. 1850, p. 1.

b S. D. 1849, p. 440; S. D. 1851, p. 245.

c S. D. 1851, p. 99; S. D. 1850, p. 467.

d S. D. 1851, p. 150.

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* S. D. Agra, 1856, p. 249.

f S. D. 1855, p. 245.

s Reg. XI, 1822, Sect. 38.

h Con. 1192, West C. 21st December, 1838, Cal. C. 18th January, 1839.
entitled respectively to only one-fourth of the established fee which they would have received had the suit been brought to a regular decision on the merits.a

If, however, in any instance the payment of the pleader's fees, according to the preceding rules, should not appear to be just and equitable, the Courts exercise their discretion in charging the fees of the pleaders to the parties respectively, in such proportions as may appear equitable and proper, upon consideration of all the circumstances of the case.b

A losing defendant should pay all the costs necessarily attaching under the law to a suit for the amount which has been decreed against him. If a suit originally laid for that amount would have required a stamp and pleader's fees of the same amount as those actually employed, the losing defendant must pay the whole. But if a lower stamp and fees would have been sufficient, the defendant is only charged with such lower stamp and fees. Expenses which do not vary with the amount of suit, such as tulubana of witnesses, and the stamped paper upon which vakalutnamahs are written, are borne in all cases by the defendant against whom costs are decreed.c

If the plaintiff's claim be dismissed, or be not in any considerable proportion established against the defendant, all expense and loss to the defendant, which may arise from the attachment of his property in consequence of such claim, shall be reimbursed to him by the plaintiff, as part of the costs of suit.d

Litigants may make any agreement they think fit, with their vakeels, for the remuneration of the latter, and the performance of such agreements can only be enforced by

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a Act I., 1846, Sect. 7.
b Reg. XXVI., 1814, Sect. 31, Cl. 3. See S. D. 1857, p. 1948; S. D. 1858, p. 192.
c S. D. 1853, p. 902; supra, p. 305.
d Reg. II., 1806, Sect. 5, Cl. 3; Agra, 1853, p. 777.
regular suit. But those who are ordered to pay costs have nothing to do with the arrangements which the successful party may have made with his pleader: and when costs are awarded to a party in any regular suit, decided on the merits, against another party, the amount to be paid on account of fees of pleaders is calculated according to the rules following:—

In suits for money, effects, or personal property, or for land or other immovable property of any description, if the amount or value of the claim, estimated according to the provisions of Regulation X., 1829, shall not exceed five thousand Sicca rupees, pleader’s fees amount to five per cent. b

If the amount or value shall exceed five thousand rupees, and shall not exceed twenty thousand Sicca rupees: on the first five thousand as above, and on the remainder, two per cent. c

If the amount or value shall exceed twenty thousand rupees, and shall not exceed fifty thousand rupees; on twenty thousand as above, and on the remainder, one per cent.

If the amount or value shall exceed fifty thousand Sicca rupees, and shall not exceed eighty thousand rupees; on fifty thousand as above, and on the remainder, eight annas per hundred rupees, or one-half per cent. d

If the amount or value shall exceed eighty thousand rupees, the fee to the vakcel shall be one thousand rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakcel may be employed.

In all the preceding calculations, where the amount or value may be in fractions of rupees, such fractions are to be rejected in computing the fees. e

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a Act L, 1846, Sect. 7; S. D. 1849, p. 334.

b Reg. XXVII., 1814, Sect. 25, Cl. 1.

c Reg. XXVII., 1814, Sect. 25, Cl. 1.

d Ibid.

e Ibid., Cl. 2.
The remuneration of pleaders in Madras is the same as in Bengal. In the Bombay presidency it is somewhat lower. The fee on a suit for 5000 rupees is only 120 rupees; on 80,000 rupees it is 620 rupees. But the rate is one-half per cent. on the whole sum above 20,000 rupees, whatever may be the amount of the matter in issue.\(^a\)

The parties in a suit are respectively permitted to entertain two or more pleaders, who shall either divide the authorized fee between them, in an equal, or in any other proportion, which may have been previously agreed upon between them and their constituent; or shall each be entitled to receive the full established fee—as may be specified in the vakalutnamah; but all stipulations to this effect must be distinctly stated in the vakalutnamah, which is otherwise construed to entitle the whole of the vakeels appointed by it to an equal division of the established fee, and no more.\(^b\)

If the party agrees to pay to each of the vakeels employed by him the full amount of the authorized fee, the opposite party in the suit can in no case be required to make good more than the fee of one of those pleaders, or such part of that fee as may be adjudged against him by the Court. The fees of the other pleader are considered as a separate expense, to be defrayed exclusively by the party entertaining him, and for which he is not to be reimbursed in any case whatever.\(^c\)

If a pauper plaintiff succeed, the Court orders the defendant to pay the fees of the plaintiff’s vakeel, or such part of them as it shall think fit, and such fees are calculated on the ordinary scale, since there is no reason why he who has resisted a just demand should pay less because the man whom he injured was poor.\(^d\) And so where a pauper defendant succeeds.

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\(^a\) See Appendix A., p. cxxxiv.  
\(^b\) Reg. XXVII, 1814, Sect. 30, Cl. I.  
\(^c\) Reg. XXVII, 1814, Sect. 30, Cl. 3.  
\(^d\) Ibid., Sect. 10, Cl. 1.
It is directed by the Code,\(^a\) that, on the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

The vakeel of a pauper plaintiff whose claim has been dismissed, is not entitled to receive any part of his fees from the defendant.\(^b\)

Where the suit of a pauper plaintiff has been dismissed with costs, and his property (if any) sold, the proceeds are first applied in payment of the fees of the vakeels on both sides, next to the money due to Government for stamps, and the residue to the costs of the opposite party, and any costs of Government (distinct from stamp dues).\(^c\)

A party dissatisfied with his pleader, may before judgment withdraw the powers delegated to him, and appoint another. In such cases he presents a petition to the Court, notifying that he has withdrawn the management of the suit from his late pleader, and he files a new vakalutnamah in the name of the new pleader.

All acts done by the first pleader on the part of his client, previously to his dismissal, are held valid.\(^d\)

Until the first pleader has been formally removed, a second pleader cannot be appointed in his room.\(^e\)

The rule in the North-West Provinces is, that if a pleader is unable to attend the Court, in consequence of indisposition, or other sufficient reason, he notifies the circumstances in writing to the Court on unstamped paper, and the hearing

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\(^a\) Code, Chap. V., Sect. 309.
\(^b\) Con. 749, 7th December, 1832.
\(^c\) Con. 621, 21st January, 1831; Con. 1258, Cal. C. 1st November.
\(^d\) Reg. XXVII., 1814, Sect. 12, Clause 2; Act L, 1846.
\(^e\) S. D. 1851, p. 545.
of any cause in which he is employed is postponed to a future day, unless the party or his authorized agent commits the management of the cause to any other pleader of the Court, or unless the party himself is present and willing to plead the cause in person. If the management of the cause be entrusted to any other pleader of the Court, instead of filing a new vakalutnamah, it is sufficient for the party, or his mooktar duly authorized, to endorse on the original vakalutnamah, a declaration, that he has appointed some other vakeel of the Court to conduct the cause, either permanently or during the absence of the pleader first appointed.

Whenever a pleader originally entertained by a party may have commenced the pleadings and prosecution or defence of a suit, and from any cause not originating in the misconduct of such pleader, another pleader shall be employed in his stead, it is competent to the Court in which the suit is decided or terminated, to adjudge to the pleader so employed at the commencement of the suit (or if he be dead, to his heirs or legal representatives), such part of the established fee, as may appear to be an equitable remuneration for the trouble which he has undergone.

The Judge is not authorized to deprive pleaders of their fees on account of their having appeared to him to be ignorant of the case.

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* Reg. XXVII., 1814, Sect. 13; Cl. 5
Act I., 1846; Act XVIII., 1852
Reg. XXVII., 1814, Sect. 18

Cl. 5:
S. D. 1856, p. 179.
SECTION IV.

DECREES—COPIES FURNISHED TO THE PARTIES.

Every decree and final order of a Zillah Judge ought to be prepared and ready for transcription within ten days after it is passed. The time allowed to the subordinate Judges is seven days.

For the purpose of obtaining an authenticated copy of the decree, the party desiring it furnishes to the Court a supply of the stamped paper prescribed in Regulation X., 1829.

When such stamped paper is furnished, the Sherishtadar or other principal officer, authorized by the Court, endorses on it a memorandum showing when and on whose account, and in what suit it has been furnished, and grants a corresponding receipt for it on unstamped paper; the copy is then prepared, authenticated, and delivered or tendered within a month from the date of the paper being supplied: if there be any delay, an explanation of its cause must be added to the endorsement.

It is not necessary that every sheet required for engrossing decrees should be of stamped paper; it is sufficient that for each copy of a decree one or more stamped papers of the value of 1, 2, or 4 rupees should be given, according to the grade of Court in which they are passed.

The stamped paper should be given in at once by the party applying for the copy. The decree writer certifies on the back of each decree, as soon as it is ready to be transcribed, the date on which it was ready.

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*a Cir. Ord. Cal. and West. C., 20th September, 1839.
*b Reg. XXVI., 1814, Sect. 8, Cl. 8; Reg. X., 1829.
*c Reg. XXVI., 1814, Cl. 9; Cir. Ord. Cal. and West. C. 18th May, 1832.
On the stamped copy of every decree or order, or roobukary, there ought to be endorsed the following particulars, as the nature of the case may require.

On copies of decrees or judgments—

On the of 1852, the original of this decree was signed.

On the of 1852, A. B. (plaintiff or defendant, as the case may be) gave in stamped paper of rupees value for a copy of the decree.

On the of 1852, the decree was signed and sealed.

On the of 1852, the copy was delivered to

On the of 1852, the copy of the decree was prepared and delivered to the pauper party, or, owing to his refusal to take it when tendered, was deposited among the records: or,

On the day of 1852, the pauper failed to attend after due notice, in person or by vakeel, and the copy was accordingly deposited among the records.*

All these particulars ought to be entered on the back of the decree, &c., not only in figures but in words at length, and not only on the copies delivered to the parties, but on the original decree, &c., which is intended to be kept with the record of the case.\b

Copies of proceedings and orders, accounts, statements, or other papers made for records of Court, or for transmission to other Courts, or public offices, are written on unstamped paper, except in cases in which it may be otherwise especially provided by the Regulations.\c

The stamp laws are not intended to preclude individuals from making for their private use, and at their own expense, 

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*a Cir. Ord., No. 20, 8th August, 1851, para. 13.
*b Cir. Ord., 12th February, 1847.
*c Reg. XXVI., 1814, Sect. 16, Cl. 3.
copies of judicial papers, with the permission of the Court or public officer having charge thereof, on any paper which they may prefer; but if such copies be not made on stamped paper, they cannot be authenticated by the seal or signature of any Court, or public officer, and cannot be received as evidence in any Court of Justice or in any public office whatever.

* Reg. XXVI. 1814, Sect. 16, Cl. 4.
CHAPTER XXVI.

EXECUTION OF DECREES.

The execution of decrees is very minutely regulated by the Fourth Chapter of the Code, to which it may be useful to add a few particulars tending to illustrate the subject practically. The cases to be cited were of course decided under the old system, but upon principles which equally apply to the new.

Execution cannot be granted against a party whose name has been omitted, though by manifest error, from the decree. Application must first be made to correct the decree.\(^a\)

An order passed on the execution of a decree, in regard to interest, wasilat, or any other matter in dispute between the parties to the suit, and carrying out the original intention of the decree, is considered a proceeding in the original suit.\(^b\)

According to the practice now prevailing in Bengal, a decree not carried into execution at the time of its being passed, or within a year from that time, may be executed on application being made for that purpose, within twelve years from its date, after the opposite party has been personally called upon\(^c\) to show cause why it should not be carried into effect.

It frequently happens that many successive applications are necessary before execution of a decree can be completed. It is held that the twelve years run, not from the date of the

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\(^a\) S. D. 1855, p. 612.  
\(^b\) Cir. Ords., 11th September, 1829, 11th January, 1839, 12th August, 1842.  
decree, but from that of the last application for execution process.\(^a\)

The time hereafter will be three years.\(^b\)

The date of passing the decree, means, for this purpose, the date of the decree in the Court of first instance if there has been no appeal, and the date of the decree of the Court of ultimate appeal if there has been an appeal.\(^c\)

If the application be not made within twelve years, it cannot be entertained, unless the applicant satisfies the Court that there has been good and sufficient cause for the delay.\(^d\)

An application after twelve years for the execution of part of a decree will not be held to be within time because another party has taken out execution of another portion of the decree within the twelve years.\(^e\)

This rule appears\(^f\) to have been laid down by analogy to the twelve years' rule of limitation; and although it does not form part of the law enacted by the legislative authority, yet it is sanctioned by the long and uniform practice of the tribunals.\(^g\) The delay is accounted for, if the applicant can prove that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money, or that he directly preferred his claim within that period for the matters in dispute, to a Court of competent jurisdiction to try the demand; and shall assign satisfactory reasons to the Court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress.\(^h\)

\(^{a}\) S. D. 1857, p. 1167.  
\(^{b}\) See Act XIV. of 1859; supra, p. 211–213.  
\(^{c}\) R. S. C. 5th July, 1851.  
\(^{d}\) Con. 136, 28th October, 1813.  
\(^{e}\) S. D. 1856, p. 248. See ibid., p. 1207.  
\(^{f}\) Con. 3, 8th April, 1802; Sel. Rep. v. 2, p. 280; R. S. C. 9th April, 1839.  
\(^{g}\) S. D. 1852, p. 67.  
\(^{h}\) See supra, p. 63; S. D. 1851, p. 17; S. D. 1856, p. 1207.
The extended period of sixty years given to the Government for the prosecution of its claims, has reference only to the hearing, trying, and determining of those claims, and not to the enforcement of rights already determined; and if the Government applies for execution after the lapse of twelve years, it must, like a private individual, account satisfactorily for the delay which has occurred.

A petition to enforce a decree, presented after an interval of several years, is not subject to the institution fee, as on a new suit; for the proceedings on such petition are not with a view to try the merits of the cause, but to determine on the enforcement of the decree.

Execution may be awarded against debtors jointly and severally, if the decree is against them jointly and severally: and if an application be made by the decreeholder for execution against them severally in specific shares, and be disallowed, he may proceed against them jointly and severally as before.

Or, if the decree is against them all, the creditor may take out execution against such of them as he chooses; and if his debt be satisfied out of the property of one, the execution must not be carried further.

The Courts will not decree execution of a foreign judgment, as such.

A foreign judgment is, generally speaking, considered as a *prima facie* ground of action in the Civil Courts of the East India Company, and a party who wishes to enforce such a judgment within any district subject to the jurisdiction of those Courts, must institute an action founded thereon, in the proper Court of the district: and the decree which he may obtain, is executed as a decree of that Court.

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* R. S. C. 18th January, 1848.  
* S. D. 1857, p. 1061.
The judgment of a Court, acting under the authority of any foreign State, such as the Court at Chandernagore; or the judgment of a Court in Great Britain, is upon the same footing in this respect as a foreign judgment.\(^a\)

The merits of a foreign decree, or at least the circumstances under which it has been obtained, and its obligations on the parties, are in some degree open to examination in the Civil Courts.\(^b\)

The judgments of Her Majesty's Supreme Courts, however, have always been held to be conclusive as to the rights of the parties, and to afford, when sued upon, sufficient ground for a similar adjudication.\(^c\)

Judgments of any Civil Court within any part of the British territories in India, or established by the authority of the Governor-General in Council in the territories of any foreign prince or state, which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other Civil Court in the manner prescribed by the Code;\(^d\) and judgments of the Supreme Court are comprised within this provision.\(^e\)

By the law in force before the promulgation of the Code, and which it is presumed was not intended to be superseded by the Code,—

Writs for the sale of property situated in Calcutta, are forwarded for endorsement by a Judge of the Supreme Court, and are executed by the Sheriff, in like manner as if the writ had been issued by that Court,\(^f\) to which alone he is responsible for the due execution thereof; and in order to facilitate such execution, the Judge of the Supreme Court, who may endorse

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\(^a\) Con. 1133, Cal. and West. C. 16th February, 1838; R. S. C. 16th December, 1842.
\(^b\) Supra, p. 256.
\(^c\) Supra, pp. 57, 58.
\(^d\) Code, Sects. 284—296.
\(^e\) Ibid., Sect. 382.
\(^f\) Cir. Ord. 15th July, 1842; supra, p. 175.
the process, is invested by Act XXIII., 1840, with certain powers as to its correction and as to other particulars. The Sheriff proceeds in the regular course to seize the right and title of the defendants in execution, in any property pointed out to him on the part of the plaintiffs. That right and title may be none at all, or may be qualified or subject to mortgage, prior seizures, or the like. As the Sheriff seizes and sells at his own peril, or refuses at his own peril to do so (by return of nulla bona, &c.,) he, in practice, calls upon the parties requiring him to seize, or pointing out the property, to indemnify him, whenever a third party claims an interest; and if both parties offer indemnity, he may, at his own peril, elect which indemnity he thinks the best, and either sell or release accordingly; being liable in damages to the opposite party, if the latter shall make out his case to be the true one.\(^a\) The Mofussil Judges ought to avoid interference with this process, and to leave it to the parties interested to give the needful directions and information to the Sheriff, which of course they must do at their own charge and risk.

The execution must be according to the terms of the decree, when specific; and not according to the terms of the documents upon which it is founded, unless they be repeated in the decree, nor can the execution extend to that for which the decree does not provide.

Where costs have not been awarded by the decree, the Court, even where it considers the omission to have been made through mistake, cannot order execution for costs without first correcting the decree on the motion of the decreeholder.\(^b\)

So, possession must be given according to the boundaries laid down in the decree, although a subsequent survey may have shown them to be inaccurate.

\(^a\) Cir. Ord. 15th July, 1852, and see Civil Guide, p. 266.
\(^b\) R. S. C. 5th July, 1847.
If the decree mention only the name of the village within which the land is situated, and the quantity of land, without specifying the boundaries, and if the plaint be equally indefinite, no execution can be had, but a review of judgment must be applied for.

A decree is considered to be executed when its terms have been actually fulfilled: there can be no execution of articles which are merely inscrutable from the decree. Thus, if the plaintiff has obtained a decree declaring his right to claim the performance of certain ceremonies by the members of his family, and awarding damages for the past omission to perform them, this decree can only be enforced with respect to the damages actually awarded, and the costs of the suit; and a new action must be brought in respect of any subsequent refusal to perform the ceremonies.

Where part only of the property claimed is awarded by a judgment, possession of the residue cannot be given in execution of that judgment, although it has in the meantime descended to the claimant by a perfectly clear title.

And where the rights and interests of a putneedar are sold in execution, only that which was actually held by him in putnee, and which was in his possession, will pass to the purchaser, and the latter cannot claim lakhiraj land situated within the putnee talook, but held by a grant prior to the putnee.

Where, however, an act is clearly contrary to the principle, and object, and spirit of a decree, the Court will in executing its decree prevent the commission of such act: where a thing is forbidden by the decree merely as instrumental to a wrongful end, any other act which tends to that end will be prohibited.

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*b* R. S. C. 5th January, 1842.


*d* Sel. Rep. v. 6, p. 281.
Thus where A. had erected an embankment by which the influx of water into certain property belonging to B. was prevented; and B. instituted a suit expressly to try the question of A.'s right to prevent such influx, and obtained and executed a decree for the removal of the embankment; and A. then erected another on a different spot, but which had the same effect of keeping the water out of the property of B.;—the Principal Sudder Ameen considered that as the decree had been literally fulfilled, he had no power to interfere with the second embankment: but the Sudder Dewany Adawlut declared that the mere removal of the former embankment was not sufficient to carry out the purposes of the decree, and that the erection of another by the defendant for the same purpose must be prevented.\(^a\)

But the Court may, in the execution of a decree, pass orders not adding to or varying the decree itself, but consequential upon it, and carrying into effect its intention in regard to profits, interest, or other matters in dispute between the parties to the suit, which may be involved in the decision already pronounced.\(^b\)

A fresh action, however, for such purposes, is forbidden, only where there has been a judicial ruling, upon hearing of the parties, as to the intent and effect of the original decree,\(^c\) or a judicial determination of facts upon inquiry, in execution proceedings.

It seems that an order passed in the execution of a decree, giving possession of particular lands under that decree, does not bar a subsequent suit between the same parties for the same lands, if it can be distinctly made out to the satisfaction of the Court, that the land given in the execution of the

\(^a\) R. S. C. 2nd February, 1841; see p. 46 supra, and Agra, 1853, p. 140.
\(^b\) Con. 1129, 9th February, 1838; Cir. Ord. Cal. and West. C. 11th
\(^c\) S. D. 1851, pp. 471, 807; see S. D. 1854, p. 125.
decree was altogether distinct and separate from the land claimed in the former suit, and which the Court intended to award by the first decree.\footnote{S. D. 1848, pp. 29, 371.}

A minor born after decree passed, even although the property adjudged be of such a nature that he is entitled to share it with those in whose favour the decree was pronounced, cannot be summarily admitted to the benefit of the decree, but must institute a separate suit for that purpose.\footnote{R. S. C. 30th December, 1834.}

Summary execution of a decree will not hold, beyond the right of the party against whom it may have been passed, and those claiming under him: for instance, A. cannot be ousted from his land in execution of a decree passed in favour of B. in a suit instituted by B. against C., to which suit A. was not a party.\footnote{Con. 744, 21st December, 1832.}

When a decreeholder seeks to execute his decree against property to which he considers the debtor to be entitled, but which is in the possession of third parties, a regular suit must be instituted to enforce the sale of such property.\footnote{S. D. 1848, p. 320.}

The holder of a decree against two defendants is entitled to enforce his decree, although they may be litigating, as between themselves, their liabilities under the decree.\footnote{R. S. C. 18th January, 1842.}

A debtor declared by a decree jointly responsible with others for a specific sum, cannot claim exemption from further liability on depositing what he alleges to be his share of the debt.\footnote{R. S. C. 6th April, 1841; 23rd August, 1841.}

The Court, ordering execution against several defendants who are not all liable in the same degree, will direct the order in which the decree or decrees shall be executed against them. Thus where a plaintiff obtained a decree against A., and his estate proving insufficient, the plaintiff brought an
action and obtained a decree against the sureties who had bound themselves for A.’s performance of the final judgment, and against the heirs of the Nazir, who had falsely reported those sureties to be sufficient, when in fact they were not so: the Court directed that the execution should proceed first against the principal in the original decree, then against the sureties, and then against the heirs of the Nazir, only in the event of failure to recover the amount from the principal and the sureties.a

A decreetholder may assign to a third party, by endorsement or otherwise, the benefit of the decree passed in his favour.b

The instrument of transfer, whether endorsed or not, must bear a stamp as required for conveyances by Reg. X. of 1829, Art. XVIII., Sch. A.c

And although a party may transfer his interest, he cannot, as between himself and the other parties, divest himself of his liabilities.d

The transferree takes the decree subject to all its incidents.

Thus where A.e brought an action against B., but was nonsuited and ordered to pay costs; and afterwards A. obtained a decree against B. in another case; but before A. applied for execution, B. assigned to a third party the benefit of the order against A. for costs: it was held that A. might nevertheless set off an equivalent portion of the amount due to him on the second decree, against the amount due by him on the first. The assignment in this case was manifestly an act of collusion with a view to defraud the plaintiff.

After decree, a defendant may sue out execution, if he pleases. For then the rights of the parties are ascertained, f

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a R. S. C. 14th April, 1841; S. D. 1838, p. 92.

b Code, Chap. IV., Sect. 208.

c S. D. 1851, p. 405.

d S. D. 1856, p. 154.

e R. S. C. 27th October, 1846.

Execution in favour of assignee of decree.

It passes subject to all its incidents.

Defendant may sue out execution.
and plaintiffs and defendants are equally entitled to the benefit of the decree.\footnote{a}{Code, Sect. 207.}

The proceeding adopted for this purpose merely substantiates the suit, and brings before the Court the parties necessary to see to the execution of the decree, and to be the objects of its operation. It does not deal with the claims made by the several parties originally, except in so far as they remain undecided. Sometimes, from the neglect of parties or some other cause, it becomes impossible to carry a decree into execution without the further decree of the Court. This happens generally in cases where the parties having neglected to proceed upon the decree, their rights under it become so embarrassed by a variety of subsequent events, that it is necessary to have the decree of the Court to settle and ascertain them.

The Court in these cases in general only enforces and does not vary the decree.

Where the decree awards a sum of money, together with interest until it shall be paid, it is not competent for the Court, in issuing execution, to deprive the decreeholder of the benefit of the award of interest, on the ground of his delay in suing out execution.\footnote{b}{S. D. 1857, p. 530.}

In the Code, Chapter IV. Section 205, the various kinds of property which are liable to attachment and sale are enumerated.

It is not legal to attach or to sell in execution of a decree, for a private debt, property dedicated as \text{wuqf};\footnote{c}{Con. 1166. West. C. 20th July, Cal. C. 17th Aug. 1838.} or land belonging to a Mahomedan, which, though not so dedicated, is actually occupied by tombs;\footnote{d}{Sel. Rep. v. 5, p. 136; R. S. C. 21st November, 1842.} or the profits of the term of worship of a Brahmin officiating at a temple, which profits are received not for the Brahmin's private use, but for the pur-
poses of the worship,\(^a\) or the pay of a sepoy,\(^b\) the salary of a military officer,\(^c\) or a pension granted by Government for past service.\(^d\)

The ghatwalee tenure of Beerbboom, not being the private property of the ghatwals, but lands assigned by the State as a remuneration for the performance of certain police services, can neither be sold in execution of a decree, nor even attached with a view to the gradual liquidation from their profits, of the sum decreed.\(^e\)

Crops grown on lands allotted to village chowkeedars for their maintenance are liable to be sold in execution of a decree.\(^f\) And so are implements of agriculture; although the latter are protected from sale for arrears of rent or revenue.\(^g\)

A cultivating ryot's interest in his jote is saleable under a decree, and the consent of the zemindar is not essential to the validity of the sale. What the ryot's interest in his jote really amounts to seems doubtful.\(^h\)

The property taken in execution must be really the property of the judgment debtor himself. Money which has been paid into the Collector's office to his credit, is not, therefore, liable to his debts if he be not the true owner, but has merely lent his name for the convenience of the true owners (from considerations founded on the revenue laws—the transaction being a fair one).\(^i\)

Where a decreesholder is proceeding to make certain lands of the debtor liable in execution of his decree, but is prevented by the opposition of the debtor, and the land is sold in the meantime for arrears of revenue, the Court considers the

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\(^a\) R. S. C. 19th May, 1841.  
\(^b\) Con. 1175, West. C. 31st August, Cal. C. 27th September, 1838.  
\(^c\) Con. 902, West C. 26th September, Cal. C. 24th October, 1834.  
\(^d\) Con. 788, 3rd May, 1833; R. S. C. 6th April, 1839, p. 19.  
\(^e\) S. D. 1853, p. 900.  
\(^f\) Con. 1212, West. C. 19th April, Cal. C. 12th July, 1839.  
\(^g\) Con. 962, West. C. 26th June, Cal. C. 31st July, 1835.  
\(^h\) S. D. 1857, p. 1488.  
\(^i\) S. D. 1857, p. 198.
proceeds (after payment of arrears) to be merely the same property in another form, and will give the decreeholder the same relief in respect of it as he was entitled to in respect of the land.\footnote{a}

It was lately held, by two out of three Judges, that, where a decree of Court has pronounced certain land liable to make good a debt, the land may be sold in execution notwithstanding an intermediate sale to a purchaser without notice of the decree.\footnote{b}

It was thought in this case that the decree having expressly bound the land in question, no further notice was necessary to prevent alienation, as is required when the decree is general in its terms.

Where, after a decree has passed against a party, but before execution, he is adjudicated insolvent under the Act for the Relief of Insolvent Debtors, the decree cannot be executed against his property in the possession of the assignee appointed by the Insolvent Court.\footnote{c}

A mere decree made before the adjudication of insolvency will not authorize the complainant to seize the property of the insolvent; but he must prove his debt in common with other creditors. But if the property has actually been sold in execution of the decree, before the adjudication of insolvency, the party who has executed the decree is entitled to the payment of his debt out of the proceeds.\footnote{d}

Lands which the Supreme Court has attached through the Sheriff of Calcutta,\footnote{e} or of which it has assumed the management by appointing a Receiver, cannot be meddled with while in that custody.

The position of the latter Officer closely resembles that of

\footnotesize{\begin{tabular}{ll}
\footnote{a}{S. D. 1856, p. 808.} & \footnote{b}{S. D. 1858, p. 609.} & \footnote{c}{R. S. C. 4th April, 1836. See Cir. Ord. Cal. C. 25th August, West C.} & \footnote{d}{Cir. Ord. Cal. C. 25th August, West C. 30th October, 1837.} & \footnote{e}{Supra, pp. 58, 59.} \\
\end{tabular}}
the manager whom the Civil Courts sometimes cause to be appointed, for property which has been attached to secure the eventual execution of a decree. Lands thus attached by the Civil Courts, even where no manager has been appointed, are protected from sale by the Sheriff.

A Receiver is a person, indifferent between the parties, appointed by the Supreme Court, to receive the rents, issues, and profits of the lands, or other property in question in a cause, where it does not seem reasonable to the Court that either party should do it. This charge is commonly, though not in all cases, imposed upon an Officer who is known as the Receiver of the Court. The Receiver, whether he be the ordinary Receiver of the Court, or a private individual, is an Officer of the Court, and acts under its direction. His possession is that of the Court, and any attempt to disturb it without the leave of the Court first obtained, is treated as a contempt of Court. But any person who conceives himself prejudiced by the Receiver's possession, may obtain leave from the Court to contest its validity, though not a party to the suit.

If A. be in possession of land, subject only to a right in B. to pay A. a specific sum of money and thereupon to take over the land, the proper order to pass in the execution of a decree against A. is, that the right and interest of A. in the property be sold: and it is erroneous to order the sale of his contingent interest in the sum of money which B. may hereafter pay. The purchaser of A.'s right and interest will, as a matter of course, be entitled to the money when B. comes to pay it.\textsuperscript{a}

A forfeited deposit on a revenue sale, which the Government has ordered to be refunded to the party who made the deposit, may be attached\textsuperscript{b} in the hands of the Collector by

\textsuperscript{a} R. S. C. 8th July, 1844. \textsuperscript{b} R. C. S. 11th July, 1843.
the Civil Court in execution of a decree; and the Collector is not afterwards at liberty to apply it even to the discharge of the Government revenue due on estates belonging to the party to whom the refund was ordered to be made.

So the surplus proceeds of an estate sold for arrears of revenue, may be attached in the hands of the Collector.\footnote{R. S. C. 18th April, 1842; Code, Chap. IV., Sects. 205, 207.}

A judgment creditor may seize upon any of the assets of his debtor which he may prefer.\footnote{S. D. 1851, p. 178.} He may sell, in execution, the claims which the defendant may have against third parties, whether they be claims under a judgment actually passed in his favour, or claims not yet established.\footnote{Con. 1248, West. C. 6th September, 1839, Cal. C. 3rd January, 1840; Con. 999, Cal. C. 8th January, West. C. 5th February, 1836.}

Land which has been adjudged to a party by a decree of Court may be taken in execution, although it has in the interval been resumed and assessed, for that process is not intended to affect the proprietary right.\footnote{R. S. C. 5th April, 1847.}

So, if, after a decree awarding possession of land, the land be sold for revenue, and the defendant obtain a reversal of the sale, the decreeholder may still obtain possession under his decree.\footnote{R. S. C. 14th April, 1841.}

If a plaintiff has obtained a money decree against a defendant, the right and interest of the defendant in any landed property may be sold in execution, although a suit may have been instituted by a third party to recover the land from the defendant; such sale does not affect the interests of the third party.\footnote{2 Sev. R. 191.}

If a decree be pronounced against a Hindoo widow personally, execution will not be summarily ordered, after her death, against the estate of her husband in possession of a son.
adopted by her with her husband's permission: the decreeholder must bring a regular suit to establish the liability of the property, on the ground of the debt having been incurred to protect it from sale, or for other sufficient cause.\textsuperscript{a}

It has been held that, in execution of a money decree against a Hindoo widow, in possession, as such, of her late husband's land, the land cannot be sold, even although the debt may have been contracted by her for the purpose of paying Government revenue.\textsuperscript{b}

If the Sheriff of Calcutta seize land in execution of a judgment of the Supreme Court, and afterwards sell the land, not having quitted possession between the seizure and the sale, the purchaser has a good title against a party claiming by virtue of the execution process of a Mofussil Court, whose decree was prior in date to that of the Supreme Court, but the attachment not made until after the Sheriff's seizure.\textsuperscript{c}

Alienations of property by a man against whom a suit is pending are valid, unless process of attachment has previously issued and been fully executed.\textsuperscript{d}

After judgment has been given against a party generally, and not for specific property, he retains his power to dispose of his property until the decreeholder induces the Court to depute an officer to attach the property of the debtor; and the power of disposal is not determined\textsuperscript{e} by the mere fact that the property has been included in a list given in by the decreeholder, with a view to its being lotted for public sale in execution of a decree; the private sale, if made honestly and in good faith, is valid; and it cannot, under any circum-

\textsuperscript{a} R. S. C. 26th May, 1841; R. S. C. 16th July, 1849.
\textsuperscript{b} S. D. 1856, p. 596.
\textsuperscript{c} S. D. 1849, p. 385.
\textsuperscript{d} Reg. II., 1806; S. D. 1848, p. 591.
\textsuperscript{e} See S. D. 1854, p. 449; Code, Chap. IV., Sect. 240; Agra, 1853, p. 372; \textit{ibid.}, 1854, p. 578.
stances, be summarily set aside; but such sales are viewed with jealousy by the Courts, and will be set aside if they appear to be fictitious and not real sales.\(^a\)

No person can be compelled to take charge of property attached in execution of a decree, but any one who does take charge of it becomes responsible for its safe custody, and liable to a regular suit for damages, if he fail to keep it safe.\(^b\)

The person at whose instance the property is attached, is generally considered answerable for its safe custody during the period of attachment.\(^c\)

All sales of property of whatever kind, in execution of a decree or other process of Court, though conducted in public, are strictly in the nature of private transfers: not in the nature of public sales for revenue. They convey to the purchaser nothing beyond that which belonged, up to the moment of the sale, to the person whose interests are sold, and they confer no right or privilege which was not vested in that person. They give no warranty of title, and they only place the purchaser in the same position, with respect to the thing sold, in which they found the defendant.\(^d\)

Even where the sale has taken place in execution of a decree, which adjudged payment of a loan previously advanced to protect the same property from public sale for arrears of revenue, it has not the same effect as such public sale would have had, in cancelling leases granted by the late proprietor.

As a sale in execution of decree transfers to the purchaser only the rights and interests of the debtor, it does not affect

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\(^a\) S. D. 1847, p. 483.
\(^b\) Con. 958, West. C. 19th June, Cal. C. 17th July, 1845, para. 2.
\(^c\) Ibid. para. 5; S. D. 1853, p. 201.
\(^d\) Reg. VII, 1825, Sect. 3, Cl. 7; Act IV., 1846, Sect. 10; Cir. Ord. 10th June, 1842, Rules 5 and 6.
or impair leases during the period of the farming engagements concluded with the late proprietor.\(^a\)

There is a general disposition to imagine that a judicial sale conveys some warranty of title, and it cannot be too distinctly made known to the bidders and to all concerned, that the sale can only have the effect of putting the purchaser in the place of the defendant, that it does not affect the interests of strangers, and that no man can be ousted of his lands because the Court has, in a suit to which he was not a party, adjudged them to another,\(^b\) or because they have been advertised for sale, in execution of a decree against another.\(^c\)

The reason of the provision as to forfeiture of deposit and resale of the property\(^d\) is, that it was found that judgment debtors used clandestinely to bid for their own property—to pay the deposit, which on the noncompletion of the purchase was credited to the decreeholder,—and to repeat the same trick on the resale: thus in fact gaining time to pay the debt by instalments, and keeping real purchasers out of the field. The deposit being now carried to account of Government and not to that of the decreeholder, the judgment debtor has no interest in the continuance of such practices.

Where property is sold in execution of a decree against \(\Lambda\), and the purchaser is afterwards evicted by a third party who proves that the estate did not belong to \(\Lambda\),—the purchaser cannot recover from \(\Lambda\) the price he paid. Nor can he recover it from the decreeholder.

All persons ought to be permitted without previous question to bid for the property exposed to sale, and no payment, except of the deposit, can be required on that occasion.\(^e\)

Property sold in execution of a decree, ought not to suffer any detriment before the sale. Even if no purchaser be forth-

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\(^a\) R. S. C. 30th June, 1841.

\(^b\) Con. 744, 31st December, 1832.

\(^c\) Con. 10, 18th September, 1805.

\(^d\) Code, Chap. IV., Sect. 254.

\(^e\) S. D. 1857, p. 1396.
coming for a house as it stands, and if individuals should signify their willingness to purchase the materials, separately, it is not legal to detach or cause them to be detached from the building for the purpose of bringing them to separate sale, neither is it legal to cut down trees till after they shall have been sold.

If all the forms are carried through in the lifetime of the judgment debtor, it seems that the sale will not be invalidated by the fact that he was dead (though not known to be so) at the time when it took place,—no one being injured by the sale.

A sale cannot be set aside for irregularity, where the judgment debtor has appeared and applied for and obtained a postponement of the sale, with a view to enable him to make good the amount of the decree. Such a proceeding is held to be a waiver of any irregularity previously committed.

It is not competent for the Court to postpone a sale and then to cause the sale to take place on the day originally fixed—whether the new day shall have been proclaimed or not. For it is likely that the sale will be injured by such a proceeding.

The cases decided under the old system, on the question what irregularities will vitiate a sale, are not very consistent with each other, nor with justice; but it is to be hoped that under the new Code the Courts will be enabled to deal upon broad principles with this vexatious head of litigation, and to discourage the spirit of chicanery which has been particularly active in this field.

Judicial sales are treated, not only as between private

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* Con. 1227, Cal. and West, C. 2nd August, 1839.
*b S. D. 1856, p. 20.
*c S. D. 1856, p. 1091.
*d Agra, 1856, p. 322.
* See S. D. 1855, p. 443; S. D. 1857, pp. 743, 1005; Agra, 1856, pp. 332, 391.
* See Sections 252, 256.
parties, but also so far as Government is concerned, as mere private transfers; and it is erroneous to deduct from the sale price any arrears of revenue due from the mehal, in which the rights and interests of any person may be brought to sale, for the Government can always, without respect to ownership, resort to the land itself for satisfaction of its dues.\(^a\)

Where an estate is sold\(^b\) in execution of a decree, and the owner receives the surplus proceeds of sale after the decree is satisfied, he cannot sue for the reversal of the sale on the ground solely of irregularities in the conduct of it, for his receipt is considered to operate as a waiver to any objection he may have to the conduct of the sale.

But such receipt does not prevent him from taking proceedings to set aside the decree itself, and consequently all that has been done under it, including the sale; and if the decree be reversed, he is entitled to recover the property sold through the erroneous decision of the Court, and neither the original purchaser nor any one claiming through him can resist such a claim. The surplus proceeds of sale, received by the owner of the property, must of course be refunded by him.

A judgment creditor is entitled to interest on a sum of money realized by the sale of his debtor's property and deposited in Court, but of which payment to him has been delayed in consequence of frivolous objections raised by the debtor.\(^c\)

If a sum of money is likely to be detained in Court for a considerable time, any party interested may apply to the Court for an order that it be invested in Government Securities.\(^d\)

Money deposited in Court as payable to a party, should

\(^a\) Cir. Ord. Sud. Board of Revenue, 15th October, 1841, para. 1.
\(^b\) S. D. 1857, p. 308.
\(^c\) R. S. C. 27th December, 1842.
\(^d\) S. D. 1848, p. 555.
never be paid to a vakeel, save under specific authority con-
tained in the vakalutnamah: and an officer making such
unauthorized payment is personally responsible.

A Judge paying away money from his treasury contrary to
the Regulations of Government, or to the express orders of the
Sudder Court, makes himself personally responsible for the
same.

Vakeels have no lien upon the fund in Court for payment
of their fees, unless there has been a special agreement to that
effect.

An estate sold under a decree passes (so far as the judgment
debtor owned it) according to the terms in which it was sold,
and the interest which passed thereby cannot be limited by a
subsequent explanation of the presiding officer that he only
intended to sell a limited interest, less than the whole that
was owned by the judgment debtor.

When one of several judgment creditors institutes a suit for
the purpose of removing an obstruction to the sale of property
in execution, obstruction which if not removed (e.g., a collusive
transfer to a third party) prevents effectually the sale of the
property,—he is entitled to have all his expenses incurred in
prosecuting successfully that suit through the Courts, paid in
the first place from the proceeds of the sale of the property
which may eventually take place.

If an estate has been sold, in disregard of a known mort-
gage, or lien, upon it, it remains subject in the hands of the
purchaser as it was in those of the judgment debtor, and the
mortgagee cannot be ousted of his remedies, nor be decreed to
satisfy himself out of the surplus proceeds of sale, remaining
deposited in Court, when that fund is insufficient.

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* Con. 1360, West. C. 5th August,
Cal. C. 9th September, 1842.

b Cir. Ord. Cal. and West. C. 2nd
January, 1836, para. 1.

c S. D. 1857, p. 200.

d Agra, 1856, p. 348.

e S. D. 1857, p. 1366.

Where the proceeds realized in execution of a decree become the subject of conflicting claims by persons who were not parties to the suit, but who allege that they have purchased the rights of the original decreeholders, a regular suit must be instituted for the determination of such claims.

When a sale in execution is reversed upon regular action, the purchase-money must be repaid to the purchaser before he is ordered to deliver up possession, where there has not been unreasonable delay in suing. If the action is brought after long delay, the Court will not give a degree for the wasilat or mesne profits, nor will it on the other hand allow the purchaser interest upon his money.\(^a\)

The Mofussil Courts are entitled to the assistance of the Sheriff of Calcutta, (under endorsement of a Judge of the Supreme Court,) in the execution of writs of execution against the person. But if the writ be vague and informal, (as if it purports to be for the levy of “rupees 500 and costs,” omitting the amount of the costs which are to be levied,) the Judges of the Supreme Court will not endorse the writ, but will remit it for rectification.\(^b\)

Plaintiffs are not required to pay any allowance to defendants, who may be committed to custody for disobedience to an order of the Court.\(^c\)

A judgment creditor is so far interested in the realization of judgment debts owing to his debtor, that he is entitled to advance the subsistence money of a prisoner confined in execution of the suit of the debtor, and so to prevent the prisoner from obtaining his discharge.\(^d\)

A civil prisoner cannot be confined in fetters merely to

\(^a\) S. D. 1850, p. 462.  
\(^b\) In re Stewart, 2 Taylor and Bell’s Reports, p. 69.  
\(^c\) Reg. IV., 1793, Sect. 8.  
\(^d\) R. S. C. 15th June, 1841.
Civil prisoners not to be put in fetters.

May petition on plain paper.

secure his safe detention in gaol. If indeed he has broken out of gaol and has been criminally sentenced for that offence, he may be put in fetters.

Civil prisoners may petition the Judge on plain paper, on those matters only which relate to their treatment in gaol.

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a Con. 624, 25th February, 1831.  
b Con. 553, 28th May, 1830.
CHAPTER XXVII.

APPEAL.

SECTION I.

REGULAR APPEAL.

The whole system of appeals and review of judgment has been revised and simplified by the framers of the Code of Civil Procedure, Chapters 8—11. The Courts to which, and the amount for which appeals may be had in the Presidencies of Madras and Bombay, are stated in Appendix A.

In that of Bengal, any person who is dissatisfied with the decision of a Moonsiff, or a Sudder Ameen, passed in any original suit, or with the decision of a Principal Sudder Ameen in an original suit below five thousand rupees in estimated value, is entitled to obtain a reconsideration of the cause, by a regular appeal to the Judge of the Zillah in which the lower Court is situated.

An appeal may be brought for costs alone.

In all suits exceeding the amount of five thousand rupees which shall be tried by a Principal Sudder Ameen, the appeal lies to the Court of Sudder Adawlut, and is conducted in all respects like an appeal from the decision of a Zillah Judge.

The amount at which the suit is laid, not the amount

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* Reg. XXIII., 1814, Sects. 46, 73; Reg. V., 1831, Sect. 28, Cl. 2; Cir. Ord. Cal. and West. C. 6th February, 1835; Act XXV., 1837, Sect. 4; Act

VI., 1843, Sect. 2.

b S. D. 1861, pp. 556, 763; S. D. 1853, p. 59.

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awarded by the decree, determines the tribunal to which the appeal lies.

Thus, in a suit laid at a sum exceeding five thousand rupees, but in which the Principal Sudder Ameen gives a decree for a sum less than that amount, the appeal lies to the Sudder Adawlut and not to the Zillah Court.a

Any person upon whom the rights and interests of a party may have devolved, by inheritance, or purchase, or otherwise, may appeal from any decision adverse to such party. b

A judgment creditor is entitled to intervene in a case in which his debtor is defendant, to assert the right of the latter, and the liability of the contested property to satisfy his own claim. His interest in his debtor’s solvency also entitles him to prefer an appeal from a judgment which has been pronounced against his debtor, or to defend an appeal preferred by the opposite party against a judgment in the debtor’s favour; or where the debtor, appellant or respondent, has died, to prosecute the appeal or the defence. c

No deduction is made on account of any Hindoo or Mussulman holiday, or of any established vacation which may occur within the period fixed for preferring appeals, but when the period expires during an adjournment of the Court on account of any holiday or vacation, the appellant is not considered to be in default, if his petition be presented immediately on the re-opening of the Court. d

Should the period allowed for the appeal expire on a Sunday, the petition may be admitted on the following day.e

A party who has applied to the lower Court for review of judgment, and who, having failed in that application, presents

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a Con. 1282, Cal. C. 7th West. C. 26th August, 1840.
b S. D. 1848, pp. 215, 293.
c Sel. Rep. vol. 5, pp. 296, 304; ibid., v. 7, p. 86.
d Reg. VII., 1832, Sect. 2, Cl. 4.
ese Cir. Ord. 16th November, 1849, in which the holidays for A.D. 1850 are specified, amounting to about ten weeks in all, exclusive of Sundays. See S. D. 1855, p. 4.
* R. S. C. 29th May, 1843.
a petition of regular appeal from the original decision, is not entitled as of right, in calculating the period allowed for appeal, to deduct the time during which his application for review was pending.

But where such application is assigned as the reason of his having delayed his petition of appeal beyond the period prescribed, the Appellate Court will take such plea into consideration, and will admit it or not, as may seem just under the circumstances.ᵃ

Generally speaking, every person who was a party to the decree or order appealed against and may be affected by the decision in appeal, ought to be made a party to the appeal either as appellant or respondent,ᵇ and this rule applies as well to third parties who have voluntarily intervened in the proceedings in the Court of first instance, as to those who were originally named as complainants or respondents,ᶜ and the Courts of appeal are reluctant to withhold their decision, even in cases where the record of the Court below shows parties who need not have been made parties to the suit.ᵈ

But a man is not obliged to include, as respondents, those co-defendants (or other parties) against whom he seeks no relief.ᵉ

The memorandum of appeal is written upon paper bearing a stamp in proportion to the value of the property claimed in appeal, according to the scale laid down in Regulation X., 1829.ᶠ

In estimating the value of the claim, the costs of suit are not added to the original amount.ᵍ

ᵃ Con. 1127, 2nd February, 1838.
ᵇ S. D. 1851, p. 556.
ᶜ S. D. 1851, p. 32. N.B.—This applies to the old system; the Code does not recognise the intervention of persons who are not parties, but it provides for the addition of all proper parties; see Sect. 73.
ᵈ S. D. 1851, p. 214.
ᶠ Beg. XXVI., 1814, Sect. 8, Cl. 2; Reg. X., 1829; Civil Guide, p. 211; and see the new Act of 1859, upon this subject.
ᵍ Con. 1190, 14th December, 1838; S. D. 1853, p. 847.
And if any one does so, he must himself bear the cost of it.\(^a\)

If plaintiff has obtained a decree for possession of land and also for mesne profits, and defendant complains only of that part of the decree which awards mesne profits against him, the appeal is valued at the amount of the mesne profits decreed.\(^b\)

If a party appellant includes in his valuation of the appeal the amount awarded by a portion of the decree which he does not contest, he must bear, though successful in his appeal, the extra costs, occasioned by the excess of valuation.\(^c\)

In an action for damages, the defendant may appeal from the decree of the lower Court, valuing his appeal at the amount of the sum decreed against him, and not at the amount of the damages laid by the plaintiff. The plaintiff, if he thinks the damages awarded him are not enough, should appeal upon that ground, and he must of course value the appeal at the whole amount he claims.\(^d\)

Where there are several defendants, and the decree is given against all, without any specification of what is due from each, the person who first appeals must, in his petition, estimate his appeal at the full amount of the decree; the appeal would not be admissible were he to write on it the amount of his alleged share. If it be stated in the decree, or can be gathered from the proceedings, what is the share of each defendant, each may appeal separately in respect of his own share.

If a co-sharer who has sued or has been sued along with others in the Court of first instance, appeals singly, he is bound to specify the exact amount of his own share, and to make his co-sharers, not joining in the appeal with him, respondents, so that the decree finally given in the appeal may be definite and clear in regard to the precise interest of the one appellant.\(^e\)

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\(^a\) S. D. 1852, p. 2.  
\(^b\) S. D. 1850, p. 310.  
\(^c\) S. D. 1850, p. 564; S. D. 1852, p. 19; R. S. C. 7th June, 1852; S. D. 1853, p. 708.  
\(^d\) R. S. C. 20th September, 1841.  
\(^e\) S. D. 1851, pp. 656, 670, 723.
Where defendants hold under distinct titles, and are liable in different amounts, it is the duty of every Judge to insert in his decree the amount due by each defendant, in order that they may not be deprived of their individual right of appeal.

When the whole matter of a memorandum of appeal cannot be comprised in a single sheet of stamp paper, the additional sheets need not be stamped.

The case set up in appeal must be the case presented by the same party in the Court below, and not a new case.

The Sudder Court has authority to direct that the cognizance of an appeal which may be brought before any Zillah Court, subordinate to it, shall be transferred to any other of its subordinate Zillah Courts: recording on its own proceedings the reason for such transfer.

The Zillah Judges ought, as far as may consist with their other duties, to revise all appeals from the decisions of the Sudder Ameens and Moonsiffs, or at all events to retain a certain portion of the decisions passed by each officer on their own files; but when the accumulation of such appeals, or the arrears of business depending in the Zillah Court, render it impracticable for the Judge to dispose of the appeals with reasonable dispatch, he obtains from time to time the sanction of the Sudder Court for referring a specified number of these cases to the Principal Sudder Ameen attached to his Court.

He need not himself review the proceedings of the Court below before making such transfer.

A Principal Sudder Ameen cannot try appeals, unless they have been transferred to him by the Judge with the sanction of the Sudder Court. Nor can a Judge take back, without

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*a* Con. 849, 20th December, 1833.

*b* Con. 860, West. C. 21st February, Cal. C. 27th March, 1834.

*c* Act III., 1837, Sect. 1.

*d* Reg. V., 1831, Sect. 16, Cl. 2;

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Cir. Ord. Cal. and West. C. 6th February, 1835, para. 2.

*e* Ibid., para. 3.

*f* Con. 676, 24th February, 1832.
the sanction of the Sudder Court, any appeal which has thus been transferred to a Principal Sudder Ameen.

Where both parties appeal against a decision, both the appeals ought to be heard by the same officer; and they ought not to be referred by the Zillah Judge to different authorities.\(^a\)

A person who intervened and was heard in the lower Court, and whose rights were there adjudicated upon, is entitled to intervene and to be heard in the Court of appeal, whether he is named as respondent or not.\(^b\)

An Appellate Court cannot alter the decree of the lower Court to the disadvantage of parties not appealing therefrom, and not named as respondents, nor otherwise before it, but if an appellant thinks that the decision bears unfairly upon himself, relatively to other parties (as where one of several defendants thinks that he has been ordered to pay more and his co-defendants less than was just), he must summon them before it as respondents, and afford them an opportunity of urging their own claims.\(^c\)

When only a part of the amount claimed has been decreed to the plaintiff, if he does not appeal or appear as respondent on the appeal of the defendant, the Court cannot amend the decree in his favour.

Where on the death of a respondent, the name of his son is substituted on the record, the usual notice must be issued to the son.\(^d\)

Any one who would be entitled to appeal, may be admitted to defend a suit.\(^e\)

The Court of Appeal ought not either to confirm or to reverse a judgment without stating its reasons.\(^f\)

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\(^a\) S. D. 1848, p. 557.  
\(^b\) S. D. 1852, p. 549.  
\(^d\) S. D. 1848, p. 730.  
\(^f\) S. D. 1850, pp. 219, 353; S. D. 1848, pp. 140, 274, 331.
A man may have disentitled himself to urge his appeal, and in that case it will not be gone into. Thus a party having acknowledged the justice of a decree given against him, by obtaining from the lower Court an extension of time to enable him to pay the money decreed, is not allowed to impeach it in an appeal preferred subsequently to such acknowledgment.\(^a\)

Where an appeal is preferred jointly by two appellants, it ought not to be struck off the file on application of one of them.\(^b\)

The Court of Appeal is reluctant to entertain any point not raised in the Court below; it does not, however, refuse to entertain important legal questions, properly raised, although they may not have been submitted to the lower Court.\(^c\)

The Court of Appeal will not receive in evidence a document dishonestly suppressed by a party in a suit, and directly contradicting the plea on which his original defence rested.\(^d\)

Although a party is not entitled to be heard as of right in the Appellate Court, upon evidence which he has neglected to file in the lower Court, yet the occurrence of such neglect does not affect his right to be heard upon the evidence which he had previously filed in the lower Court.\(^e\)

The Appellate Court refers to its own Pandit or Kazee for information on points of Hindoo or Mahomedan law.\(^f\)

If the lower Court has pronounced upon a matter in which it has no jurisdiction (as where a Moonsiff tries a suit in which the cause of action did not arise, and the defendant does not reside within his district)—the decision is an absolute nullity, and cannot be confirmed on appeal by the Court.

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\(^a\) Sel. Rep. v. 7, p. 44.
\(^b\) R. S. C. 20th April, 1841.
\(^c\) S. D. 1851, pp. 227, 261 ; S. D. 1853, pp. 77, 358, 558, 892.
\(^e\) S. D. 1847, p. 203.
\(^f\) S. D. 1850, p. 168.
of the Principal Sudder Ameen, though that tribunal has original jurisdiction over such questions: because the Principal Sudder Ameen would thus be exercising original jurisdiction without appeal, which the law does not empower him to do.

If evidence, which might have been objected to, has been received without objection in the lower Court—such as a copy of a deposition made before another tribunal by a man who is still alive and capable of being produced—it seems, upon principle, that such evidence may be used in the Court of Appeal, for if it had been objected to below, the party might have proved his case by other evidence, and this was the opinion, in a recent case, of one Judge of the Sudder Court. But two other Judges were of opinion that under an invariable rule of law, such evidence could not be received in appeal.\footnote{S. D. 1848, p. 341; S. D. 1850, p. 120; S. D. 1856, pp. 579, 769.}

The Appellate Court must not, without reference to the grounds of judgment of the lower Court, reverse it on the report of an officer deputed to make local inquiry.\footnote{Cir. Ord. No. 32, 14th November, 1851; S. D. 1854, p. 405.}

It is not sufficient for an Appellate Judge to state generally that the petition of appeal contains nothing which leads to a doubt of the propriety of the judgment of the lower Court. He should show what the leading pleas in appeal are, and distinctly record his opinion on them.\footnote{S. D. 1856, p. 341.} It is the duty of the Judge\footnote{S. D. 1847, pp. 17, 250, 514; S. D. 1848, pp. 2, 515.} in appeal to go fully into the case as set forth in the judgment of the lower Court, and to record his opinion upon all the material grounds of decision, \textit{seriatim}, in the same manner as Judges are by law required to record their decision in original causes; and to dispose of the reasons which have
weighed with the lower Judge for or against the claim, in such a manner that the higher Court may be able to judge of the validity of his own reasons. Where the lower Court has come to the conclusion that, for various reasons recorded at length in its decision, the principal document is a forgery, and the whole claim founded on a conspiracy, it is not sufficient for the Appellate Judge simply to remark that the witnesses adduced have proved the execution of the document; he must show how they have proved it, and on what ground he dissents from the unfavourable conclusions of the Court below. The Appellate Court should assign its reasons for admitting evidence which has been rejected by the lower Court;¹ and if it discredits, as contradictory, the evidence on which the lower Court has relied, it should clearly set forth the point in which it perceives the contradiction.²

The decree of the Appellate Court should state distinctly whether it affirms or reverses that of the Court below, or how much of it is affirmed and how much is reversed.³

Where the plaintiff’s claim has been partly allowed and partly dismissed by the lower Court, and the Judge of the Appellate Court dismisses the appeal, the effect of his order is to affirm the decree of the lower Court.⁴ Indeed it is impossible, by the order, to dismiss the appeal and to reverse the decree of the lower Court, and an order purporting to do both is inconsistent with itself and cannot be acted upon.⁵ But where an order dismissing the appeal is grounded on reasoning adverse to the decision of the lower Court, it becomes uncertain what the Judge of the Appellate Court really means to decide. Hence it is necessary that he should distinctly state in his judgment whether he affirms or reverses the decree of the inferior Judge, and if he gives any direction

¹ S. D. 1847, p. 2.
³ S. D. 1847, p. 2.
⁴ S. D. 1847, p. 2.
⁵ S. D. 1847, p. 568.
inconsistent with that decree, he should state whether he affirms the rest of the decree or not, and if he makes any alteration in the decree, he ought to state precisely the grounds of that alteration.

Where the judgment of the lower Court is expressly affirmed in appeal, any inconsistent words, subjoined to the decretal order of the Appellate Court, should be treated as surplusage, not operating to the benefit or prejudice of either party.

Where the Court of first instance has decided that a tenure was exempt from assessment, the Appellate Court, in deciding that it is not exempt, should remand the case in order that the rates may be fixed by the lower Court.

An Appellate Court, in sending back a case for re-trial, ought not to dictate to a lower Court what decision it should pass.

The Court of Appeal ought to correct, if it sees fit, the order pronounced by the Court below, and, even leaving the order unaltered, it may record its dissent from the reasons on which the lower Court has relied; but it is not competent to direct any part of the reasoning upon which that order is founded to be expunged, even though it may deem the reasons inaccurate. The reasons are not in themselves orders, and there can be no appeal from them.

Costs in appeal, as in original suits, generally follow the event of the suit.

When a principal sum, and interest thereon, claimed in an original suit, are adjudged to be due, the Court of first instance decrees the principal with interest from the date on which the loan was made, or on which the sum claimed became due, up to the date of the decree, together with further interest on the

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a S. D. 1847, p. 488.
b S. D. 1849, p. 145.
f S. D. 1851, pp. 420, 671.
sum thus decreed, until the day of payment. If, however, the interest exceeds the principal, a sum equal to the principal is allowed by way of interest, and no more can be allowed except where the excess has occurred after the creditor commenced his suit to enforce payment, and where it cannot, therefore, have arisen from his delay.\(^a\)

If the decision be confirmed in appeal, the Appellate Court awards interest at the rate of one per cent. per mensem, from the date of decree to the day of payment, on the aggregate of the principal, interest, and costs, awarded by the original decree.\(^b\)

If the claim was dismissed by the lower, but decreed by the Appellate Court, interest is calculated on the principal sum up to the date to the decision of the lower Court as before, and on that consolidated sum of principal and interest, and the costs of suit, up to the day of payment.\(^c\)

It is erroneous to allow interest on the consolidated amount of principal and interest from any date prior to the decree.\(^d\)

The Appellate Court is not competent to impose a fine on an appellant for having brought a litigious regular appeal, nor on the respondent for having instituted in the lower Court a suit which the Appellate Court may consider to have been vexatious.\(^e\)

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\(^a\) Cir. Ord. 4th March, 1836; Cir. Ord. 12th August, 1842; Con. 359, 19th December, 1823; Sel. Rep. v. 1, p. 242; v. 3, p. 270; v. 4, p. 261; S. D. 1847, p. 276.

\(^b\) Cir. Ord. Cal. and West. C. 4th March, 1836, para. 3; Reg. XIII., 1796, Sect. 3; Reg. IV., 1803, Sect. 7; Cir. Ord. Cal. and West. C. 2nd October, 1835; Cir. Ord. Cal. C. 7th April, West. C. 5th May, 1837; Sel. Rep., v. 1, p. 154; S. D. 1851, p. 37.

\(^c\) Cir. Ord. Cal. and West. C. 4th March, 1836, para. 4. See further as to interest, Civil Guide, pp. 596, 600; S. D. 1852, pp. 867, 1037.

\(^d\) S. D. 1852, p. 556.

\(^e\) S. D. 1850, p. 251; S. D. 1852, p. 1037; Cir. Ord. Cal. and West. C. 25th January, 1833, para. 5; S. D. 1853, pp. 279, 787; S. D. 1854, pp. 240, 392; S. D. 1855, p. 344; S. D. Agra, 1854, p. 484. It might almost be inferred from the frequent appeals against orders by which Zillah Judges have taken upon themselves to inflict fines for litigious appeals, that those officers do not read the decisions of the Sudder Courts.
The East India Company's highest Court of Civil Judicature is the Court of Sudder Dewanny Adawlut. In the Presidency of Fort William, there is a Court of Sudder Dewanny Adawlut for the Lower Provinces, and another for the North-Western Provinces. The former holds its sittings at Calcutta, the latter at Agra. The former at present consists of eight Judges, the latter generally of three; their number is regulated from time to time according to the exigencies of the public service. As to the Sudder Courts of Madras and Bombay, see Appendix A.

These tribunals are not only Courts of Judicature; they may also be considered as boards for superintending the administration of justice and the conduct of judicial officers, but it is in the former capacity alone that they fall within the scope of the present treatise.

The Sudder Court is empowered by law to transfer to its own file, and to try and decide, any causes of the value of Sicca rupees 43,103 or upwards, which may have been instituted in a Zillah Court, but which may, in the opinion of the Sudder Court, be more conveniently or expeditiously tried by itself than by the lower Court: but this original jurisdiction is never exercised, and the Sudder is practically known only as an Appellate Court.

As a general rule, in all causes originally decided by the Zillah Judge, and in all causes of more than five thousand rupees' value originally decided by the Principal Sudder Ameer, a regular appeal lies direct to the Sudder Dewanny Adawlut, as well from the final decision of the Courts below, as from their orders, passed in the course of execution of the decree, and from decrees of fine or forfeiture for resistance of process.

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350 APPEAL. CHAP. XXVII.

Constitution of the Court.

Original jurisdiction.

Where appeal lies to Sudder Court.
Sect. I.  REGULAR APPEAL.  

If a suit be decided by the Court of first instance, and afterwards be decided by the Zillah Judge on regular appeal, and if the Sudder Court on special appeal set aside both decisions as incomplete, and if the Zillah Judge then decides the case himself without further reference; the appeal to the Sudder Court from his decision, is considered as an appeal from a judgment in an original suit, and is admissible as a matter of course.*

It is enacted by Section 332 of the Code, that, "Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of three or more Judges of that Court." It has been thought inconvenient, however, to fix the number of Judges absolutely; and it is probable that before this work is published, the 332nd Section will have been repealed. I proceed to state the practise as it existed before the Code became law.

A single Judge of the Sudder Court may, in general, and for most purposes, exercise the whole power of the Court. But when a single Judge, trying a case in appeal, regular or special, from any subordinate Court, is of opinion that the decision appealed from ought to be reversed or altered, he must call in two other Judges of the Court to sit with him, and the appeal is then heard by the three Judges sitting together, and is decided by them without any additional voices. In such cases the decree or final order is signed by the three Judges, if they agree; but, if one of them dissent from the view taken by the majority, by the two Judges who agree; and the signature of the third Judge is not considered requisite, but his opinion is recited in the decree or final order.\(^b\)

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* R. S. C. 6th July, 1842.  \(^a\) Act II, 1843, Sect 1.  \(^b\)
It is the practice at present for three Judges to sit together to hear regular appeals, and this is a just and fair arrangement, since it is not right that suitors should be harassed and the public time wasted by two trials instead of one; that causes should be gone through and argued before a tribunal which has not full power to pronounce, at the conclusion of the argument, any decision which justice may require.

The Senior Judge present is considered the organ of the Court, and conducts the proceedings of the Court, and communicates their decision: when the Senior Judge present may happen to be in minority, the decision of the Court is communicated by the next senior Judge present, but each Judge may, in his turn, deliver his opinion in order of seniority.

It may be worth while to mention, although the point is of no practical importance under the system at present pursued, that a difference between the higher and the lower tribunal as to some of the reasons of the decree of a lower Court, while there is agreement as to others, does not constitute the difference of judgment, which requires a single Judge partially differing with the Judge of the Court below, to refer the case for the decision of a full Court; he cannot be considered as practically dissenting unless he proposes to alter the decree.\(^a\)

Where a single Judge found part of a judgment of the lower Court untenable, and concurred in the rest—the party benefiting by such untenable part having consented—a final judgment was passed, which amounted in effect to an amendment of the original decree.\(^b\)

In a case, in which a *razeenamah* and *soolehnamah* were executed by both parties, a decision in conformity therewith,

although in reversal of the judgment of the lower Court, was
passed by a single Judge of the Sudder Court.*

In both these cases, the jurisdiction of the single Judge to
alter the decree of the lower Court was derived from the con-
sent of the parties.

It seems necessary here to notice the general powers of a
single Judge of the Court, and the course pursued when the
Judges differ in opinion.

It may be laid down as a general rule, subject to several
exceptions, one of which has been already stated,—that all the
powers of the Sudder Dewanny Adawlut may be exercised by
a single Judge.b

It seems that a Judge sitting alone may not determine any
appeal, whether regular or special, if the judgment or order
appealed from was passed by himself in the Court below.c

But no Judge of either of the Courts of Sudder Dewanny
Adawlut is disqualified from being one of three Judges sitting
for the hearing and decision of an appeal, by reason of his
having passed the decision in the lower Court against which
the appeal is made.d

If a Judge passes a decree for land and wasilat, but does
not fix the amount of wasilat, and is then promoted to the
Sudder Court—if in the execution of the decree a question
arise as to the amount of wasilat, the Judge who passed the
decree below is not precluded from passing his judgment upon
the question of wasilat.*

The sitting Judge may perfect interlocutory decrees and
orders passed by himself in conformity with Section 2, Regu-
lation XIII., 1810, or by any other Judge or Judges in pur-
suance of the Regulations in force. But it is not in any case

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*b Reg. II., 1801, Sect. 6; Reg. XIII., 1810, Sect. 4; Reg. IX., 1831, Sect. 2, Cl. 1; Reg. VII., 1832,
Sect. 15.
*c Reg. XIII., 1810, Sect. 8, Cl. 2.
*d Act II. 1851.
*e Con. 497, 13th March, 1829.

2 a
competent to a single Judge to reverse or alter the decree or order of any other Judge, or Judges of the Court.\(^a\)

A single Judge, in any case of difficulty or importance, in which he may deem it expedient and proper that the matter at issue should be decided by two or more Judges of the Court, may record his own opinion thereon and refer the case to another Judge.\(^b\)

If only one Judge is present in the Sudder Dewanny Adawlut of the North-Western Provinces, or if a difference of opinion should arise when only two Judges are present, in any matter requiring the concurrent voices of two Judges, the question is referred to the determination of one of the Judges of the Calcutta Court.\(^c\)

Whenever there are four Judges and no more present at the Court at Calcutta, if there be an equality of voices in cases which require a decision by the majority, the Court may, in like manner, refer the question for decision to a Judge of the Sudder Court in the Western Provinces.\(^d\)

In such cases, it is considered sufficient that the Judge to whom the point is referred should form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakalees.\(^*\)

The decrees of the Sudder Court are final in all suits whatever, except where the value of the matter in dispute amounts to the sum of ten thousand Company’s rupees at least; in which case the parties may appeal to the Queen in her Privy Council from decrees, but not from interlocutory orders of the Sudder Court.\(^e\)

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\(^a\) Reg. XIII., 1810, Sect. 4.
\(^b\) Reg. IX., 1831, Sect. 2, Cl. 6.
\(^c\) Reg. VI., 1831, Sect. 7, Cl. 1.
\(^d\) Reg. IX., 1831, Sect. 9.
\(^e\) Reg. VI., 1831, Sect. 7, Cl. 2.

\(^*\) Reg. VI., 1793, Sect. 29; see Civil Guide, p. 840; R. S. C. 29th June, 1840, p. 45.—N.B. The security required is ordinarily for four thousand rupees.
The Sudder Court, in all cases wherein it may confirm the decree of a Zillah Court, is authorized to punish appeals which may appear litigious, by a fine to Government, proportionate to the condition of the party and the circumstances of the case: this very invidious power, however, has not been exercised of late years, and the Code is silent on the subject.

Where a portion or the whole of the value of the stamp is returnable to the parties, the treasurer of the Court pays it to the vakeel, if he be authorized to receive it by a special clause in his vakalutnamah; otherwise it remains in deposit until the party applies to the Court for an order for payment.

Vakeels of the Court are held responsible for the correctness of all representations made by them to the Court.

Vakeels are required to write on all petitions presented by them in cases or matters which are pending before, or belonging to, any particular Judge, the name of the Judge, in order that it may be referred to him direct.

Any person (whether generally amenable to the Civil Courts or otherwise) using menacing gestures or expressions, or otherwise obstructing justice in the presence of any superior or inferior Court, is liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding two hundred rupees, or, in case such fine be not paid, to be imprisoned for any period not exceeding one month. He may appeal from this sentence within one month to the authority appointed by law to hear appeals, generally, from the decisions of the Officer by whom the fine was imposed.

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*a Reg. XIII., 1796, Sect. 3.; Con. 1096, Cal. and West. C. 7th July, 1837. See supra, pp. 407, 529, 534, 542.

*b Rules S. D. A. 3rd January, 1834.

*c Rules S. D. A. 8th June, 1842.—N.B. By Reg. X., 1829, Sect. 18, they were liable to a heavy fine for filing papers of any kind without the stamp required by law. But this harsh rule has been (by Act XVIII. of 1852) repealed so far as regards the Lower Provinces.

*d Rules S. D. A. 8th August, 1834.

*e Act XXX., 1841, and see Reg. IV., 1798, Sect. 21, which of course is applicable only to the Zillah Judge.
SECTION II.

SPECIAL APPEAL TO THE SUDDER COURT.

Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sudder Courts from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court, on the ground of the decision being contrary to some law, or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case, which may have produced error or defect in the decision of the case upon the merits, and on no other ground.\footnote{Code, Chap. X, Sect. 372. See S. D. 1854, p. 420.}

Parties engaging pleaders to present applications for the admission of special appeal must distinctly state in their vakalutnamahs, whether the pleader is merely to make the preliminary application or to conduct the case to its final issue. The deputy registrar is forbidden to receive a vakalutnamah without this clause. The vakeel endorsing his acceptance is to state the stage of the case up to which he accepts it; but if the acceptance is general, the cause is brought on for hearing without any delay on that account.\footnote{Rulea, Sudder Dewanny Adawlut, 25th November, 1842; Resolution of S. D. A. 26th June, 1851.}

In applications for special appeal, no exhibit fee is leviable on documents filed with the petition, until the appeal is admitted.

On the special appeal being admitted, the exhibit fees due under the general Regulations are to be paid upon the day of admission on all papers (whether copies or original) which are not comprised in the lower Court's record of the case appealed, and are put on record in the appeal proceedings.\footnote{Con. 961, West. C. 26th June, Cal. C. 7th August, 1835.} In the
event of failure of payment, the case will not be placed upon the file of the Court.\(^a\)

If a copy of a decree which has been filed with an application for admission to special appeal be withdrawn from the record in the (Sudder) Court, a copy on stamped paper of eight annas value per sheet, must be substituted for the document so withdrawn.\(^b\)

Six different actions having been instituted, for as many villages, to set aside a single deed of conveyance of the whole, and having been decided together by the Courts of original jurisdiction and of first appeal, the Sudder Dewanny Adawlut allowed the cases to be consolidated, and admitted one special appeal from the six decrees.\(^c\)

The object of special appeal is very different from that of regular appeal.

In regular appeal the object is to enable suitors, who are dissatisfied with the decision of the Court of first instance, to lay the whole merits of the case before a higher tribunal.

The law has not provided machinery for a third trial of the case upon the merits at large. But it has created, under the head of special appeal, a certain superintending authority, which does not, like the jurisdiction on regular appeal, propose to itself the examination of the correctness or incorrectness of the conclusion which the Court below has adopted as to the merits of the case; but which exists for the purpose of maintaining uniformity in the law and in the decisions of the Courts.\(^d\)

To the lower Court belongs the task of inquiring into the

\(^a\) Rules, Sudder Dewanny Adawlut, 7th May, 1841; Resolution of S. D. A., 26th June, 1851, 3 Sovestre's Rep.
\(^b\) S. D. 1851, p. 645.
\(^c\) R. S. C. 3rd June, 1835.
\(^d\) See the article "Cassation" in the "Dictionnaire de Procédure Civile et Commerciale" of M. Bioche, 1847; and "Les Codes" by MM. Teulet and Loiseau, 1846.
truth of facts, and of declaring what are the relative rights accruing from those facts to the parties litigant.

If there be miscarriage in the discharge of these functions, there ought to be a revision.

Where a material error is perceptible in the mode of inquiry, the usual remedy is a remand.

It may be laid down, subject to the qualification mentioned above (p. 356), that a special appeal lies when evidence is irregularly admitted or rejected, when the legal effect of evidence is misconceived, and when, in consequence, there is a misdirection as to the evidence to be adduced.*

So if the whole property of a Hindoo who has died intestate, leaving sons and daughters, be awarded to his daughters by the decree; or if the sentence be contrary to some Act or Regulation, such as the Law of Limitation; or has been pronounced in the absence of some person materially interested, and who ought to have been a party to the suit; or if it gives to a man more than he has sought by his plaint; or if it awards the disputed property to a stranger who has never claimed it; or if it is wholly inconsistent with itself, as where defendants were decreed to pay a debt contracted by their brother, on the ground of the family being undivided and the money having been applied to the benefit of the family generally; but the decree at the same time allowed them to sue for the recovery of the sum so adjudged, from the estate of their brother."

So where the Judge decides without reference to an award of arbitration; or awards final damages on the scale fixed by a particular enactment, after the lapse of the period within

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* S. D. 1852, p. 499.
* S. D. 1849, p. 142.
* S. D. 1849, pp. 269, 322.
* S. D. 1849, pp. 144, 240.
* S. D. 1847, p. 458.
* S. D. 1847, p. 458.
which the penalty ought to have been sued for; or awards costs upon a principle not sanctioned by the laws.

The law is violated and a special appeal lies, wherever the Judge of the Court below has exceeded his power: when he has done that which the law forbids or does not permit him to do, or refuses to do what the law orders him to do; as where he refuses to examine a witness legally tendered for examination.

If the allegation of the appellant be, that the lower Court has passed a decision contrary to some written law, the violation must be clear and express; it must be in contravention of the text and not merely of the preamble of the law, and the violation must be in the order actually made, and not merely in the reasoning of the Judge.

In order to judge whether the decision impugned is contrary to law, the Court of Appeal takes, as proved, the facts found by the judgment which is attacked. Its office is to examine whether the judgment rightly applies the law to those facts; and if it finds the contrary to be the case, it reforms the judgment.

When it is said that the Sudder Court will take, as proved, the facts found by the Court below, this is to be understood of the findings of fact of the Court below, on issues of fact, contested before it.

The Sudder Court will not take upon itself to review the judgment of the Court below as to the effect of evidence of facts, relevant to the correct and true issues in a cause: and a decision resting upon the Judge's belief of the evidence adduced before him, cannot be interfered with on special appeal.

If, however, the issues of fact have been fixed erroneously, and not so as to enable the Court to deal with the points of law which the case presents, the Court of Appeal will interfere for

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* S. D. 1849, p. 147.  
* S. D. 1849, p. 418.  
* S. D. 1850, p. 170.
the purpose of having a correct settlement of the issues of fact, upon which the questions of law may be afterwards argued.

And if the Court of first instance has selected and tried the right issues, but the lower Appellate Court has disposed of the case on wrong issues, the Sudder Court will admit a special appeal.*

When the lower Court decides that certain facts, which it finds to be proved, constitute such and such a contract between the parties, or have such and such a legal effect, the justness of this conclusion may be examined by the Sudder Court. The facts indeed are taken to be true, but the higher Court will judge for itself of their legal effect.

Thus a special appeal will lie, if the judgment, having recognised in fact the existence of all the constituent elements of a contract, has refused to give it the qualification and the effects which the law gives to such a contract; as for instance, if the judgment finds, as matter of fact, that one of the parties had engaged to deliver to the other, and that the other had accepted, a certain article for a stipulated price, and then goes on to treat this contract as a hiring, and not as a sale.

If the Court below has found that an ancestral estate was at a certain date in the possession of one member of a joint undivided Hindoo family; but has not held this to be, for the purposes of the suit, the possession of the family,—the Sudder Court may pronounce, on special appeal, the true legal effect of the possession so found.\footnote{Agru, 1854, pp. 386, 395.}

So, if the judgment of the Court below has materially mis-described any legal proceedings or any compromise that has been relied upon, or if it has treated as a will, a document which only amounts to a donation \textit{inter vivos}; a compromise or adjustment as an abandonment of claim; or if it has put

\footnote{S. D. 1849, p. 319. See Code, Sect. 353.}
a wrong construction on a marriage contract or other legal instrument, or has wrongly decided that some form was sufficiently complied with, or has erroneously declared a sentence of arbitrators to be null as having been carried beyond the terms of the submission.

There is no special appeal merely because a reason has been assigned which is bad in law, if it be not necessary to support the actual decision, as for instance where three out of four reasons for the judgment are bad, but the fourth is based on a finding of facts sufficient to support the judgment.

Even if the decree contains an illegal direction, this will not afford ground for special appeal, if the illegal direction makes no difference in the final disposal of the case.

Thus, where a decree purported to cancel the sale of certain property, and also to declare the property liable, in the hands of the purchaser, to satisfy a judgment debt of date prior to the sale, and owing to a defect of parties, the cancellation of the sale was illegal; the Sudder Court, passing by that part of the decree as mere surplusage, which could not affect the interests of the judgment creditor, rejected the application for a special appeal.

The Court of Appeal will not interfere with the finding of the Court below upon a proposition of fact which is in truth one entire proposition, though resulting from various particular facts proved in the cause.

The Courts below may conclusively find as a fact of this sort, whether the possession of a certain party has been bona fide possession or not; whether it has been a possession as proprietor or as agent: so far as the solution of this question depends only on the appreciation of the facts and circumstances of the case, or the interpretation of the exhibits filed

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\[ \text{Sect. II. SPECIAL APPEAL TO THE SUDDER COURT.} \]

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\( ^a \) S. D. 1850, p. 317; S. D. 1849, p. 479.

\( ^b \) S. D. 1847, p. 497.

\( ^c \) R. S. C. 22nd April, 1848.
in the cause. So they may finally decide whether work was properly executed, or whether bodily injuries were severe.

But the Court of Appeal may examine, not the main fact established by a number of minor facts, but the legal consequences of facts on which the Judge below has founded himself; it may, e.g., decide whether these facts do or do not constitute a habitual state of legal imbecility.

So the Court of Appeal will judge for itself whether the lower Court has rightly found a Mahomedan to be legitimate, upon the facts found as to his birth, and the facts found as to his acknowledgment by the alleged father.

Where a decree awards land to a party, as laid down according to its boundaries in a map which is embodied in the decree, and the Judge has pronounced his opinion that the lands, as defined by the Ameen deputed to give possession, correspond with the lands laid down in the map; there can be no special appeal against the finding of the Judge, although the land defined by the Ameen falls short of the quantity awarded by the decree.¹

¹ S. D. 1847, p. 457.  
² R. S. C. 19th June, 1848.
CHAPTER XXVIII.

REVIEW OF JUDGMENT.

The new law on this subject is contained in the eleventh chapter of the Code.

Although petitions presented after the lapse of ninety days are liable to a higher stamp duty, yet the exaction of this higher duty is founded merely on the inconvenience attending the delay, and the payment of it does not at all entitle the petitioner to the privilege of a review of judgment, unless he be able to show just and reasonable ground to the satisfaction of the Court, for not having preferred his application within the limited period.\(^a\)

It is scarcely possible to enumerate the circumstances which may be deemed to constitute good and sufficient reason for a review of judgment; but any manifest oversight of the Court, by which injustice may have been done, affords such reason. Thus a review has been granted where a plea of insanity set up by the plaintiff, had not been investigated;b and where a decision awarded to an auction purchaser, possession of certain lands, which lands, not being specified among the auction papers or in the plaint under the denomination given them in the decree, were apparently different from those claimed.\(^c\)

Where the Judge has recorded it in his decision, as a fact, that either party has made certain admissions before him, the

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\(^a\) Con. 490, 15th December, 1828, Hunter and Co. v. Govind Chund, S. D. A. 16th July, 1850.
\(^b\) Sel. Rep. v. 3, p. 162.
accuracy of the record can only be questioned by an application to the Judge to review his judgment.\(^a\)

If the Judge whose decision is sought to be reviewed dismissed the suit on the strength of a decree of a higher Court, and the latter decree has subsequently been reversed on appeal, this is a good ground for a review of judgment.\(^b\)

Where the Sudder Court has rejected an application for a special appeal from the decision of the lower Court, the latter is still at liberty to entertain an application for review of judgment.\(^c\)

When, on the other hand, the decision of a Zillah Judge has been confirmed by the Sudder Court or by a single Judge of that Court, in any form in which an order of confirmation may legally be passed, the order is a judgment of the Sudder Court, and is open to review by it only.\(^d\)

If the petition for a review of judgment is rejected as not containing sufficient grounds for the review desired, the petitioner is not entitled to receive back the amount of the stamp duty, paid for the paper on which the petition may have been written; but in the event of its having been written on an *ad valorem* stamp, the Court, rejecting the petition, is invested with a discretionary authority, in any particular instance wherein the forfeiture of the entire stamp duty may appear excessive, on due consideration of the circumstances of the case, to order the refund from the public treasury, of any portion, not exceeding three-fourths, of the total amount.\(^d\)

When the petition for a review of judgment is admitted, the Court reviewing the case will, on deciding it, pass such order relative to the stamp duty paid by the petitioner as may

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\(^a\) S. D. 1852, p. 28; *supra*, p. 260.
\(^b\) Con. 551, 7th May, 1830.
\(^c\) Con. 1057, Cal. C. 11th, West. C.
\(^d\) 25th November, 1836, para. 3.
\(^d\) Reg. II., 1825, Sect. 2, Cl. 2.
appear just and proper, whether for his reimbursement by the opposite party as part of the costs of suit; or for the refund of any portion of it, not exceeding three-fourths, by the Government.\textsuperscript{a}

Documents filed with applications for a review of judgment are considered as exhibits, and are liable to stamp duty as such, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.\textsuperscript{b}

\textsuperscript{a} Reg. II., 1825, Sect. 2, Cl. 4.
\textsuperscript{b} Con. 1058, Cal. C. 21st October, West. C. 18th November, 1836.
CHAPTER XXIX.

OF CHANGES DURING THE PROGRESS OF A SUIT.

Where a plaint has been rightly framed, and all proper persons have been named as parties, it ought to be carried on to the conclusion, between the original plaintiffs and defendants, or those who derive title from them respectively.

If by any means any interest of a party in the matter in litigation becomes vested in another, the proceedings are rendered defective in proportion as that interest affects the suit; so that, although the parties to the suit may remain as before, yet the end of the suit cannot be obtained.

If any property or right in litigation vested in a plaintiff, is transmitted in whole or in part to another, the person to whom it is transmitted is entitled to supply the defects of the suit, and to continue it and to have all the benefit of it. He is admitted to prosecute the suit, or to defend any appeal, in the place of the original plaintiff, or along with him if the interest transmitted is only partial.

If any property or right, before vested in a defendant, becomes wholly or partially transmitted to another who was not originally a party to the suit; as where a suit is brought against A. as Hindoo widow and representative of B., and A. pending the suit, duly adopts a son; the plaintiff is entitled to render the suit perfect, and to continue it against the person to whom the property or right is transmitted: and, on the other hand, the new proprietor may come in and be admitted,

* S. D. 1847, p. 609; Sel. Rep., v. 7, p. 279.
upon his petition, to continue the defence, or to prosecute an appeal.

For the purpose of supplying defects which have thus occurred in a suit subsequently to its commencement, the Court ought to exercise at any stage of the suit the powers committed to it by Section 73 of the Code.

The voluntary alienation of property, pending a suit, by any party to it, is not permitted to affect the rights of the other parties, if the suit proceeds without disclosure of the fact; except in so far as the alienation may disable the party from performing the ultimate decree of the Court.

Generally, in case of alienation *pendente lite*, the alienee is bound by the proceedings which are had in the suit, after the alienation and before the alienee becomes a party to it; and depositions of witnesses taken after the alienation, but before the alienee becomes a party to the suit, may be used by the other parties against the alienee, as they might have been used against the party under whom he claims.

When a minor, in whose name a suit is prosecuted or defended by his guardian, comes of age, while the suit is pending, he may apply by petition to be admitted as plaintiff or defendant; but his neglect to do so does not vitiate the decree which may be passed.*

If any third person considers that his interest will be affected by a cause which is depending, he is not bound to leave the care of his interest to either of the litigants, but he has a right to intervene, or to be made a party to the cause, and to take upon himself the defence of his own rights, provided he does not disturb the order of the proceedings. It will be for the Court to say whether he is entitled, under s. 73, to be made a party.

A man cannot intervene, if his right be dependent upon

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* S. D. 1848, p. 551.
that of a litigant party, whose laches has already put him out of Court.∗

It was the law before the enactment of the Code, that if, either before or after the institution of the suit, a third person has become interested in the solvency of one of the parties to the suit, or in the property sued for, by obtaining judgment against such party, either for a sum of money, or for the property sued for, or for some interest in it; such third person may, upon presenting a petition, obtain from the Court permission to prosecute or to defend the suit, especially if there be any reason to apprehend collusion between the parties to the suit. But it may be questioned whether this could be allowed under Section 73.

As it is perfectly settled that a decree cannot be enforced against a person who is not a party to it, and who does not derive his title under or through such party; it seems reasonable, whether under the old law or the new, to infer that (subject to the right of the defendant to require for his own safety that a certain interest shall be represented in the suit), no person who is not originally named as a party, and who does not claim under an original party, is bound, or ought to be permitted, to intervene between the plaintiff and the defendant.

Accordingly where A. sued B. and others for land and profits, and C. presented a petition claiming rights as against both parties, C.'s petition was rejected, on the ground that the decree to be pronounced could only affect the parties to the suit; the defendant retains the property in dispute if the plaintiff does not make out his title, and the plaintiff obtains it if he does make out his title, and C. must institute a regular suit if his title is superior to that of the successful party.∗

* 1 Knapp, P. C. C., 83.
+b Sel. Rep., v. 5, pp. 296, 304; ibid., v. 7, p. 32. See ibid., p. 163.
+c R. S. C., 15th March, 1842.
+ S. D. 1845, p. 121.
The Court has refused to entertain the claims of a third party intervening, where it was clear that the decision could not affect his rights;—one man having sued another for possession of lands, and the Government having claimed the lands as belonging to neither party, the suit was decided as between the parties, and the Government was left to bring a regular suit against the occupants.\(^b\)

Where A. sued B. on a bond granted by B. to A., the Court refused to listen to a third party, C., who appeared and alleged that he had really advanced the consideration money of the bond, and that A. was merely a trustee for him; it was held that the decree must pass, as between A. and B., and that C. must bring a separate suit.\(^c\).

Nor can any injustice be thus done; for if it appears in the course of the execution of the decree, that the third party has a good title to the property against which execution is prayed, the property will be dealt with according to the execution rules.

A suit is said to abate when it becomes defective, and incapable of being prosecuted. It abates as a matter of necessity on the plaintiff's death, if its object be to obtain damages for defamation or for some personal injury, as claims of this sort are not transmissible to a man's representatives, and are therefore said not to survive. Sections 99-106 of the Code are devoted to the subject of the Death, Marriage, and Bankruptcy or Insolvency of parties.

Where a suit is dismissed solely on the ground of default, it is not competent for the Judge to enter upon the consideration of any other point.\(^d\)

\(^a\) S. D. 1851, p. 53.
\(^b\) Sel. Rep., v. 2, p. 219; see ibid., v. 7, p. 33. It would seem that in both these cases the third party only appeared in appeal. See S. D. 1846, p. 219.
\(^c\) S. D. 1848, p. 368; see ibid. p. 247; S. D. 1849, p. 349.
\(^d\) S. D. 1853, p. 86.
Where an irregularity has been committed, and where the opposite party knows of the irregularity, it is just that he should come in the first instance to complain of it, and that he should not allow the other party to go on with his suit and incur further expense; and therefore if a party, after such an irregularity has taken place, acquiesces in a proceeding which by insisting upon the irregularity he might have prevented, he is considered to have waived all exceptions to the irregularity.

In accordance with this well-known principle, it is provided by Act XVII. of 1847* that every default of a plaintiff shall be held to be cured, whenever the opposite party, passing over the default, shall have taken any step in the suit; and whenever the Court shall have passed judgment in the suit, whether such opposite party shall or shall not have taken any such step.

It is necessary, however, to distinguish between a proceeding which is merely irregular, and one which is completely defective and void. When any proceeding, taken by one of the adverse parties, is altogether unwarranted and different from that which ought to have been taken, then the proceeding is a nullity, and cannot be waived by any act of the party against whom it has been taken.\(^b\)

The Courts cannot legalize a default by granting retrospective sanction for excess of time.\(^c\)

A default cannot be considered as cured under Act XVII., 1847, merely through the omission of the presiding Judge to notice objections distinctly urged against it.\(^d\)

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* S. D. 1852, p. 918. See Chap. XLIV., infra.
\(^b\) S. D. 1852, p. 1052.
\(^c\) S. D. 1849, p. 430.
\(^d\) S. D. 1849, p. 430.
CODE OF CIVIL PROCEDURE.

ACT No. VIII. of 1859.

[Received the Assent of the Governor General on the 22nd March, 1859.]

AN ACT FOR SIMPLIFYING THE PROCEDURE OF THE COURTS OF CIVIL JUDICATURE NOT ESTABLISHED BY ROYAL CHARTER.

WHEREAS it is expedient to simplify the Procedure of the Courts of Civil Judicature not established by Royal Charter, It is enacted as follows:

CHAPTER I.

OF THE JURISDICTION OF THE CIVIL COURTS.

1. The Civil Courts shall take cognizance of all suits of a Civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras and Bombay respectively, or by any Act of the Governor General of India in Council.

2. The Civil Courts shall not take cognizance of any suit brought on a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.

Preamble.

Civil Courts have cognizance of all suits unless specially barred.

Unless suits previously heard and determined.
3. The judgments of the Civil Courts shall not be subject to revision, otherwise than by those Courts under the rules contained in this Act applicable to reviews of judgment, and by the constituted Courts of Appellate Jurisdiction.

4. No person whatever shall, by reason of place of birth, or by reason of descent, be in any Civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

5. Subject to such pecuniary or other limitations as are or shall be prescribed by any law for the time being in force, the Civil Courts of each grade shall receive, try, and determine all suits hereby declared to be cognizable by those Courts, if in the case of suits for land or other immovable property such land or property shall be situate within the limits to which their respective jurisdictions may extend, and in all other cases if the cause of action shall have arisen, or the defendant at the time of commencement of the suit shall dwell, or personally work for gain, within such limits.

6. Every suit shall be instituted in the Court of the lowest grade competent to try it. But it shall be lawful for the District Court to withdraw any suit instituted in any Court subordinate to such District Court, and to try such suit itself, or to refer it for trial to any other Court subordinate to its authority and competent in respect of the value of the suit to try the same, whenever it may see sufficient cause for so doing. In like manner the Sudder Court may order that the cognizance of any suit or appeal which may be instituted in any Court subordinate to such Sudder Court shall be transferred to any other Court subordinate to its authority and competent in respect of the value of the suit or appeal to try the same.

7. Every suit shall include the whole of the claim arising out 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. If a plaintiff relinquish or omit to
sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

8. Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

9. If two or more causes of action be joined in one suit, and the Court shall be of opinion that they cannot conveniently be tried together, the Court may order separate trials of such causes of action to be held.

10. A claim for the recovery of land and a claim for the mesne profits of such land shall be deemed to be distinct causes of action within the meaning of the two last preceding Sections.

11. If the suit be for land or other immovable property situate within the limits of a single District, but within the jurisdiction of different Courts, the suit may be brought in the Court within the jurisdiction of which any portion of such land or other immovable property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court; but in such case the Court in which the suit is brought shall apply to the District Court for authority to proceed with the same.

12. In like manner, if the property be situate within the limits of different Districts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other immovable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Sudder Court for authority to proceed with the same; if the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate.
13. If the Districts within the limits of which the property is situate, are subject to different Sudder Courts, the application shall be submitted to the Sudder Court to which the District, in which the suit is brought, is subject; and the Sudder Court to which such application is made, may, with the concurrence of the Sudder Court to which the other District is subject, give authority to proceed with the same.

14. If, in a suit for land situate on the borders of the Court's local jurisdiction, the defendant object to the hearing of the suit on the ground that the land is not included within the local jurisdiction of the Court, the Court shall have power to determine the point; and if the Court shall find that the land is included within its local jurisdiction, it shall proceed to try the suit. Provided that, if it be shown that the land in dispute has been adjudged by competent authority to belong to an estate, village, or other known division of land situate within the local jurisdiction of another Court, the Court in which the suit is brought shall reject the plaint, or return it to the plaintiff in order to its being presented in the proper Court.

15. No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief.

CHAPTER II.

PRELIMINARY RULES.

16. All applications to any Civil Court, and all appearances of parties in any Civil Court, except when otherwise specially provided by this Act, shall be made by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.
17. The recognized agents of parties by whom such applications and appearances may be made are—

1st. Persons holding general powers of attorney from parties not within the jurisdiction of the Court, authorizing them to make such applications and appearances on behalf of such parties.

2ndly. Persons carrying on trade or business for and in the name of parties not within the jurisdiction of the Court in matters connected with such trade or business only, where no other agent is expressly authorized to make such applications or appearances.

3rdly. Persons being ex-officio or otherwise authorized to act for Government in respect of any suit or judicial proceeding.

4thly. Persons specially appointed by order of Government at the request of any Sovereign Prince, or Independent Chief, whether residing within or without the British territories, to prosecute or defend a suit on his behalf.

Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognised agent, unless the Court shall otherwise direct; and anything which by this Act is required or permitted to be done by a party in person may be done by his recognized agent. Notices given to or processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct; and all the provisions of this Act relative to the service of notices or processes on a party to a suit shall be applicable to the service of notices and processes on such recognized agent.

18. The appointment of a pleader to make any such application or appearance as aforesaid shall be in writing, and shall be filed in the Court. When so filed, it shall be considered
to be in full force until revoked by a writing filed in the Court. All notices given to, or processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

19. When an officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any member of his family or any other person to commence, conduct, and manage the suit or the defence, as the case may be, in his stead. The authority shall be in writing, and shall be signed by the officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed in the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

20. Any person who may be authorised, as in the last preceding section mentioned, by an officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader of the Court to prosecute or defend the suit on behalf of such officer or soldier. And all notices or processes relative to the suit which may be served upon any person who shall be so authorised as aforesaid by an officer or soldier, or upon any pleader who shall be appointed as aforesaid by such person to
act for or on behalf of such officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

21. Women, who according to the custom and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

22. The Government may at its discretion exempt from personal appearance in Court any person whose rank in the opinion of the Government entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the Principal Civil Court of each District shall from time to time be forwarded to such Court by the local Government, and a list of such persons (if any) shall be kept in such Court and in the several subordinate Courts of the District.

23. Every process required to be issued under this Act, shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court; and the sum required to defray the cost of such service shall be paid into Court before the process is issued.

24. If any plaint, written statement, or declaration in writing required by this Act to be verified shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence.
CHAPTER III

OF A SUIT TILL FINAL DEGREE.

OF THE INSTITUTION OF SUITS.

25. All suits shall be commenced by a plaint which, except when otherwise specially provided by this Act, shall be presented to the Court by the plaintiff in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf.

26. The plaint shall be distinctly written in the language in ordinary use in proceedings before the Court and shall contain the following particulars:—

1.—The name, description, and place of abode of the plaintiff.

2.—The name, description, and place of abode of the defendant, so far as they can be ascertained.

3.—The relief sought for, the subject of the claim, the cause of action and when it accrued: and, if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed.

The following are instances:—

If the suit be for money due on a bond or other written instrument:—Payment of due on (a bond or other written instrument as the case may be), for the sum of , bearing date the day of , and payable on the day of , namely,—

Principal .........

Interest .........

Amount paid (if any) ............

Balance due ............
Sect. 26. OF THE INSTITUTION OF SUITS.

If the plaintiff claim exemption from any law of limitation, say—"The plaintiff was an infant (or as the case may be) from the day of to the day of ."

If the suit be for the price of goods sold:—Payment of on account of maunds of (rice, indigo, sugar, or as the case may be) sold on the day of , and the price of which became payable on the day of , as per account at foot.

If the suit be for damages for an injury done:—Payment of on account of injury done to the plaintiff, [here set out the nature of the injury, and state the particulars of the pecuniary loss (if any)].

4.—When the claim is for any property other than money, its estimated value.

The following is an instance:—

If the suit be for an estate or for a share in an estate paying revenue to Government:—Possession of the estate or of share in the estate, called situate in the Zillah of the sudder jumma of which is and estimated value (of which the plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so) on the day of ; or to which the plaintiff became entitled by inheritance from (or by gift, purchase, or otherwise, as the case may be) on or about the day of .

5.—When the claim is for land or for any interest in land, the nature of the tenure or interest must be specified; and if the claim be for land forming part of a village or other known division, or for a house, garden, or the like, its situation shall be described by the setting forth of boundaries, or in such other manner as may suffice for its identification.
6.—In all suits by or against the Government, or one of its officers in his official capacity, or any Corporation, or any Company authorised to sue and be sued in the name of an officer or trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or the name of the Corporation, or the name or names of the officer or trustees of the Company, shall be inserted in Nos. 1 and 2 instead of the name and description of the plaintiff or defendant. But in all other cases it shall be necessary to specify the names of all the parties.

27. The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following or to the like effect:

I (A. B.) the plaintiff named in the above plaint do declare that what is stated therein is true to the best of my information and belief.

28. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the Court may allow the plaint to be subscribed and verified on behalf of the plaintiff by any person whom the Court may consider competent to make the verification. In suits by a Corporation or a Company authorised to sue and be sued in the name of an officer or trustees, the plaint shall be subscribed and verified on behalf of the Corporation or Company by any Director, Secretary, or other principal officer of the Corporation or Company who may be able to depose to the facts of the case.

29. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the Court may reject
the plaint, or at its discretion may allow the plaint to be amended.

30. If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court, the plaint shall be returned to the plaintiff in order to its being presented in the proper Court.

31. If it appear to the Court that the claim is improperly valued, or being properly valued that the plaint is written upon stamped paper of inadequate value, and the plaintiff, on being required by the Court to correct such improper valuation or to supply such additional stamp paper as may be necessary, shall not comply with the requisition, the Court shall reject the plaint.

32. If upon the face of the plaint, or after questioning the plaintiff, it appear to the Court that the subject matter of the plaint does not constitute a cause of action, or that the right of action is barred by lapse of time, the Court shall reject the plaint. Provided that the Court may in any case allow the plaint to be amended, if it appear proper to do so.

33. If it appear to the Court that the cause of action did not arise, or that the defendant is not dwelling or personally working for gain within the limits of the jurisdiction of the Court, or, if the claim relate to land or other immovable property, that such land or other property is not situate within such limits, the Court shall return the plaint to the plaintiff in order to its being presented in the proper Court.

34. A suit by a party ordinarily residing out of the British territories in India, and not possessing any land or other immovable property within those territories independent of the property in suit, shall not be entertained unless the plaintiff, at the time of presenting the plaint or within such time as the Court shall order, furnish security for the payment of all costs that may be incurred by the defendant in the
suit. In the event of such security not being furnished, the Court shall return the plaint to the plaintiff.

35. If in any stage of a suit it shall appear to the Court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the Court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit. In the event of such security not being furnished within the time so fixed, the Court shall pass judgment against the plaintiff by default, unless he be permitted judgment against the plaintiff by default, unless he be permitted to withdraw from the suit under the provisions of Section 97.

36. Whenever a plaint is rejected under any of the foregoing Sections, an appeal shall lie from the order rejecting the plaint. The rejection of a plaint on any of the grounds mentioned in Sections 29 and 31 shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action.

37. If the suit be for land or other immoveable property situate partly within the jurisdiction of the Court and partly within the jurisdiction of some other Court or Courts, the Court shall proceed according to the rules contained in Section 11, Section 12, or Section 13, as the case may be.

38. If the Court consider the plaint admissible, the particulars mentioned in Section 26 shall be entered in a book to be kept for the purpose, and called the Register of Civil Suits; and the entries shall be numbered in every year according to the order in which the plaint is presented. The Register shall be kept in the form contained in the Schedule (A) hereunto annexed.

39. When the plaintiff sues upon any written document or relies upon any such document as evidence in support of his claim, he shall produce the same in Court when the plaint is
presented, and shall at the same time deliver a copy of the
document to be filed with the plaint; if the document be an
entry in a shop-book or other book, the plaintiff shall pro-
duce the book to the Court together with a copy of the entry
on which he relies. The Court shall forthwith mark the
document for the purpose of identification; and after examin-
ing and comparing the copy with the original, shall return
the document to the plaintiff. The plaintiff may, if he think
proper, deliver the original document to be filed instead of the
copy. The Court may, if it see sufficient cause, direct any
written document so produced to be impounded and kept in
the custody of some officer of the Court, for such period and
subject to such conditions as to the Court shall seem meet.
Any document not produced in Court by the plaintiff when
the plaint is presented, shall not be received in evidence on
his behalf at the hearing of the suit without the sanction of
the Court.

40. If the plaintiff require the production of any written
document in the possession or power of the defendant, he
may, at the time of presenting the plaint, deliver to the
Court a description of the document, in order that the defen-
dant may be required to produce the same.

OF SUMMONING THE DEFENDANT.

41. When the plaint has been registered, a summons under
the signature of the Judge and the seal of the Court shall be
issued to the defendant to appear and answer the claim, on a
day to be therein specified, in person or by a pleader of the
Court duly instructed and able to answer all material ques-
tions relating to the suit, or by a pleader who shall be accom-
panied by some other person able to answer all such questions.
The Court shall determine at the time of issuing the summons
whether it shall be for the settlement of issues only or for the

And copy filed with plaint.

Original to be marked and returned.

If plaintiff wish, original may be filed in stead of copy. Court may order document to be impounded.

Document not produced when plaint filed, to be inadmissible in evidence.

If plaintiff require production of document in possession of defendant.

On plaint being registered, summons to issue to defendant.

Summons to be either to settle the issues, or for the final disposi-
final disposal of the suit, and the summons shall contain a direction accordingly.

42. If the Court see reason to require the personal attendance of the defendant, the summons shall order the defendant to appear personally in Court on the day therein specified. If the Court see reason to require the personal attendance of the plaintiff on that day, it may make an order for such attendance. Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is bond fide residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the limits of the jurisdiction of the Court.

43. The summons to appear shall order the defendant to produce any written document in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.

44. The summons shall be in the Form contained in the Schedule (B) hereunto annexed or to the like effect.

45. The day for the appearance of the defendant shall be fixed by the Court with reference to 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 a sufficient time to enable him to appear and answer in person or by a pleader on such day.

46. In suits against a Corporation or a Company authorised to sue and be sued in the name of an officer or trustees, the Court may, if it think proper, require the personal attendance of any Director, Secretary, or other principal officer of the Corporation or Company who may be able to answer all material questions relating to the suit.

SERVICE OF SUMMONS ON THE DEFENDANT.

47. The summons shall be delivered to the Nazir or other
proper officer of the Court to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

48. Service of the summons shall be made by delivering or tendering a copy thereof under the signature of the Judge and seal of the Court; and when there are more defendants than one, service of the summons shall be made on each defendant.

49. Whenever it may be practicable the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

50. Besides the recognized agents described in Section 17, any person residing within the jurisdiction of the Court may be appointed an agent to receive the service of summonses and other processes.

51. The appointment of such agent shall be in writing, and the original appointment, or a copy thereof if the appointment be a general one, shall be filed in the Court.

52. The Government pleader in each Court shall be accounted the agent of the Government for the purpose of receiving services of summonses and other judicial processes against the Government, issuing out of the Court in which he may be the pleader of Government.

53. When the defendant cannot be found, and has no agent empowered to accept the service of the summons, it may be made on any adult male member of his family residing with him.

54. In all cases where the summons is served on the defendant personally or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons or on a copy
thereof under the seal of the Court. If such person refuse to
sign the acknowledgment, the service of the summons shall
nevertheless be held sufficient, if it be otherwise proved to the
satisfaction of the Court.

55. When the defendant cannot be found, and there is no
agent empowered to accept the service, nor any other person
on whom the service can be made, the serving officer shall fix
the copy of the summons on the outer door of the house in
which the defendant is dwelling; and if he is not dwelling in
the place mentioned in the summons, the serving officer shall
return the summons to the Court from whence it issued, with
an endorsement thereon that he has been unable to serve it.
Provided that, if the serving officer is informed that the de-
fendant is to be found or has his dwelling in a place within
the jurisdiction of the Court other than that indicated in the
summons, the officer may proceed to that place to serve the
summons.

56. The serving officer shall, in all cases in which the sum-
mons has been served, endorse on the original summons or on
a copy thereof under the seal of the Court, the time when
and the manner in which it was served.

57. When a summons is returned to the Court without
having been served, if the plaintiff shall satisfy the Court that
there is reasonable ground for believing that the defendant is
keeping out of the way of its officer for the purpose of avoid-
ing the service of the summons, the Court shall order the
summons to be served by fixing up a copy thereof upon some
conspicuous place in the Court-house, and also upon the door
of the house in which the defendant shall have last resided, if
it be known where he last resided; or that the summons shall
be served in such other manner as the Court shall think
proper. And the service which shall be substituted by order
of the Court, shall be as effectual to all intents and purposes
as if it had been effected in the manner above specified.
58. Whenever service shall be substituted by order of the Court by virtue of the power contained in the last preceding section, the Court shall fix such time for the appearance of the defendant as the case may require.

59. If the defendant be resident within the jurisdiction of any Court other than that in which the suit is instituted, and have no agent empowered to accept the service, the Court in which the suit is instituted shall transmit the summons, either by an officer of the Court or by post, to any Court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require; and the Court to which the summons is transmitted, shall, upon receipt of the summons, deliver the same to the Nazir or other proper officer of such Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be re-transmitted to the Court from whence it originally issued.

60. If the defendant be resident out of the British territories in India, and have no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: in such case the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is held and the place where the defendant resides; and if, on the day fixed for the hearing of the suit, or on any day to which the hearing may be adjourned, the defendant shall not appear in person or by pleader, the plaintiff may apply to the Court, and it shall be lawful for the Court to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to the Court may seem meet.

61. When the suit is for land or other immovable property,
and the summons for any reason cannot be served on the
defendant in person, and the defendant has no agent em-
powered to accept the service, the summons may be served
on any agent of the defendant in charge of such land or other
immovable property.

62. When the defendant is in the service of the Govern-
ment, the Court may transmit a copy of the summons to the
head officer of the office in which the defendant is employed,
for the purpose of being served on him, if it shall appear to
the Court that the summons may be most conveniently so
served. If the defendant be an officer or soldier, the Court
shall transmit a copy of the summons to the commanding
officer of the corps to which the defendant belongs, for the
purpose of being served on him. The officer to whom the
summons is transmitted, after causing the summons to be
served on the person to whom it is addressed, if practicable,
shall return it to the Court with the written acknowledgment
of such person endorsed thereon. If from any cause the
summons cannot be served upon the person to whom it is
addressed, it shall be returned to the Court by which it was
transmitted with information of the cause which has prevented
the service. In such case the Court shall adopt such other
means of serving the summons as it may deem proper.

63. When the suit is against a corporation or a company
authorised to sue and be sued in the name of an officer or
trustees, the summons may be served by leaving the same
at the registered office (if any) of the company, or sending it
through the post-office by a letter addressed to such office, or
by giving it to any director, secretary, or other principal
officer of the corporation or company.

64. Nothing contained in the preceding rules shall be con-
strued to prevent the Court from substituting for the summons
a letter or other appropriate communication under the signa-
ture of the Judge and seal of the Court, when the person
whose appearance is required is of a rank which entitles him to such mark of consideration. The letter or other communication shall contain all the particulars required to be stated in the summons, and shall be treated in all respects as a summons.

65. When a letter or other communication is substituted for a summons under the authority of the last preceding section, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner which the Court may deem sufficient; unless the party shall have an agent empowered to accept service of judicial process, in which case delivery to such agent shall be deemed sufficient service.

66. Whenever it is provided that any summons, letter, or other communication may be transmitted to the person to whom it is addressed through the post-office, proof that the same was correctly addressed to such person at his place of residence, and that it was duly posted and registered according to Section XXXVIII. of Act XVII. of 1854 (for the management of the post-office, for the regulation of the duties of postage, and for the punishment of offences against the post-office), shall be sufficient proof of the due service and delivery of the summons, letter, or other communication, in the absence of evidence to the contrary.

OF SUITS AGAINST GOVERNMENT AND PUBLIC OFFICERS.

67. If the suit be against the Government, the summons shall be served on the Government pleader. The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government, and may extend the time at its discretion on the application of the
Government pleader. The Court may also, if it think proper, direct the attendance of a person who may be able to answer all material questions relating to the suit.

68. If the suit be against an officer of the Government for an act which the plaintiff alleges to have been done by such officer in his official capacity, the summons shall be served upon such officer in the manner hereinbefore provided.

69. If the officer on receiving the summons shall consider it proper to make a reference to Government before answering to the plaint, he may move 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 channels; and the Court upon such motion may extend the time for so long as shall appear to it to be requisite.

70. If the Government shall undertake the defence of the suit, the Government pleader shall be furnished with authority to appear and answer to the plaint; and, upon motion made by him, the Court shall order a note to that effect to be entered in the Register.

71. If such motion shall not be made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment.

72. If in any such suit the Court shall require the personal appearance of the defendant, and the defendant shall satisfy the Court that he cannot absent himself from his duty without injury to the public service, the Court shall exempt him from such appearance, but he shall be liable to be examined in any way in which an absent witness may be examined.
HOW PERSONS NOT BEFORE THE COURT MAY BE MADE PARTIES TO A SUIT.

73. If it appear to the Court, at any hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in the subject matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the Court may adjourn the hearing of the suit to a future day to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit as the case may be. In such case the Court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.

OF ARREST BEFORE JUDGMENT.

74. If in any suit, not being a suit for land or other immoveable property, the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay the execution of any decree that may be passed against him, is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction of the Court his property or any part thereof, the plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the suit.

75. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction with the intent of avoiding or delaying the plaintiff, or that he has disposed of or removed from the jurisdiction of the Court his property or any part thereof with the intent to obstruct or delay the execution of any decree, it shall be lawful for the Court to
issue a warrant to the proper officer, enjoining him to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.

76. If the defendant fail to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs. Any order made by the Court, under the provisions of this section, shall be open to appeal by the defendant.

77. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit.

78. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant until the execution of the decree, if the Court shall so order.

79. If it shall appear to the Court that the arrest of the defendant was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand rupees, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of such arrest. Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in
an action for damages. An award of compensation under this section shall bar any suit for damages in respect of such arrest.

80. If in any suit the defendant is about to leave the British territories in India, with intent to remain absent so long that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant, the plaintiff may make an application to the Court to the effect and in the manner aforesaid, and the procedure thereupon shall be in all respects the same as hereinbefore provided.

81. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, the plaintiff may apply to the Court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property, moveable or immovable, belonging to the defendant, shall be attached until the further order of the Court.

82. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof; and the plaintiff shall, at the time of making the application, declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

83. If the Court, after examining the applicant, and making such further investigation as it may consider necessary, shall...
be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to issue a warrant to the proper officer, commanding him to call upon the defendant, within a time to be fixed by the Court, 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 fulfil the decree, or to appear and show cause why he should not furnish security. The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property specified in the application.

84. If the defendant fail to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause, or furnish the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

85. The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding section shall be open to appeal by the defendant.

86. In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money.
87. In all cases of attachment before judgment, the Court which passed the order for the attachment shall at any time remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment.

88. If it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in an action for damages. An award of compensation under this section shall bar any suit for damages in respect of such attachment.

89. Attachments before judgment shall not affect the rights 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.

90. If it shall appear to the Court by whose order the property may have been attached before judgment, that there is reasonable ground for supposing that the decree, in satisfaction of which the sale of the property is applied for, was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution, if the decree be a decree of that Court; or if it be a decree of another Court, may stay the proceedings for a reasonable time to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.
91. Whenever lands paying revenue to Government or a
tenure liable to summary sale under the provisions of
Regulation VIII. 1819 of the Bengal Code (to declare the
validity of certain tenures and to define the relative rights of
Zemindars and Putnee Talookdars, &c.) form the subject of a
suit, if the party in possession of such lands or tenure shall
neglect to pay the Government revenue or the rent due to
the proprietor of the estate, as the case may be, and a public
sale shall in consequence be ordered to take place, the party
not in possession shall, 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 lands or tenure; and the Court in its decree may
award against the defendant the amount so paid, with interest
thereupon at such rate as to the Court may seem fit, or may
charge the amount so paid, with interest thereupon, at such
rate as the Court may order, in any adjustment of accounts
which may be directed in the final decree upon the suit.

OF INJUNCTIONS.

92. In any suit in which it shall be shown to the satisfaction
of the Court that any property which is in dispute in the
suit is in danger of being wasted, damaged, or alienated by
any party to the suit, it shall be lawful for the Court to issue
an injunction to such party, commanding him to refrain from
doing the particular act complained of, or to give such other
orders for the purpose of staying and preventing him from
wasting, damaging, or alienating the property, as to the
Court may seem meet. And in all cases in which it may
appear to the Court to be necessary for the preservation or
the better management or custody of any property which is
in dispute in a suit, it shall be lawful for the Court to appoint
a receiver or manager of such property, and, if need be, to
remove the person in whose possession or custody the pro-
property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper. If the property be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be receiver and manager of such land, unless the Government shall by any general order prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

93. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court for an injunction to restrain the defendant from the repetition, or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance: provided always that 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.
94. Any order made under either of the last two preceding sections shall be open to appeal by the defendant.

95. The Court may in every case before granting an injunction direct such reasonable notice of the application for the same to be given to the opposite party as it shall see fit.

96. If it shall appear to the Court that the injunction was applied for on insufficient grounds, or if the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction. Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in an action for damages. An award of compensation under this section shall bar any suit for damages in respect of the issue of the injunction.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

97. If the plaintiff at any time before final judgment satisfy the Court that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, it shall be competent to the Court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.
98. If a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith. On the application of the plaintiff reciting the substance of such agreement, compromise, or satisfaction, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorizing him to receive back from the Collector the full amount of stamp duty paid on the plaint if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness has been examined. Provided however that no such certificate shall be granted if the adjustment between the parties be such as to require a decree to pass on which process of execution can be taken out.

Proviso.

99. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survive.

100. If there be two or more plaintiffs or defendants and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

101. If there be two or more plaintiffs, and one of them die, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone but shall survive to them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representa-
tive in the Register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall be interested in and shall be bound by the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

102. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the Register of the suit, and the suit shall thereupon proceed; if no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent for the Court to pass an order that the suit shall abate, and to award to the defendant the reasonable cost which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

103. If any dispute arise as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly deter-
mined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

104. If there be two or more defendants, and one of them die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and whom he desires to be made the defendant in his stead; and the Court shall thereupon enter the name of such representative in the Register of the suit in the place of such defendant, and shall issue a summons to him to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

105. The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which 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 the permission of the Court, be issued upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree.

106. The bankruptcy or insolvency of the plaintiff in any suit which the assignee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignee shall decline to continue the
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suit and to give security for the costs thereof within such reasonable time as the Court may order; if the assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit.

OF NOTICES TO PRODUCE, AND HOW THEY ARE TO BE SERVED.

107. Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he believes to be in the possession or power of another of the parties there-to, should be produced at any hearing of the suit, and the production of such document, writing or other thing has not previously been required, under the provisions of Sections 40 and 43, he shall at the earliest opportunity deliver to the Court two notices in writing to the party in whose possession or power he believes the document, writing, or other thing to be, calling upon him to produce the same; and one of such notices shall be filed in Court, and the other shall be delivered by the Court to the Nazir or other proper officer, to be served upon such party.

108. In all cases in which a party to a suit has not appointed a pleader to act for him, all notices and other judicial processes shall be served upon such party in the manner hereinbefore provided for the service of a summons upon a defendant to appear and answer.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCES OF NON-APPEARANCE.

109. 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 a pleader, and the suit shall then be heard, unless the hearing be adjourned to a future day which shall be fixed by the Court.
110. If, on the day fixed for the defendant to appear and answer, or any other day subsequent thereto to which the hearing of the suit may be adjourned, neither party shall appear either in person or by a pleader when duly called upon by the Court, the suit shall be dismissed. Whenever a suit is dismissed under the provisions of this section, the plaintiff shall be at liberty to bring a fresh suit, unless precluded by the rules for the limitation of actions; or if he shall within the period of thirty days satisfy the Court that there was a sufficient excuse for his non-appearance, the Court may issue a fresh summons upon the plaint already filed.

111. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was duly served, the Court shall proceed to hear the suit ex parte. If the defendant appear on any subsequent day to which the hearing of the suit is adjourned, and shall assign good and sufficient cause for his previous non-appearance, he may, upon such terms as the Court may direct as to payment of costs or otherwise, be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.

112. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall not be proved to the satisfaction of the Court that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.

113. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the Court that the summons was served on the defendant, but not in sufficient
time to enable the defendant 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 may direct notice of such day to be given to the
defendant.

If defendant only appear,
Court to pass judgment by
default against
plaintiff, unless defendant admit
the claim.

No fresh suit
after such judg-
ment.

Where there are
several
plaintiffs or de-
fendants, each
may authorize
the other to ap-
pear for him.

Consequence
of non-appearance
of one or
more of several
plaintiffs.

Consequence
of non-appearance
of one or
more of several
defendants.

114. If the defendant shall appear in person or by a
pleader, and the plaintiff shall not appear in person or by a
pleader, the Court shall pass judgment against the plaintiff
by default, unless the defendant admit the claim, in which
case the Court shall pass judgment against the defendant
upon such admission. When judgment is passed against a
plaintiff by default, he shall be precluded from bringing a
fresh suit in respect of the same cause of action.

115. When there are two or more plaintiffs, any one or
more of them may be authorized to appear, plead, and act
for the other or others of them; and in like manner, when
there are two or more defendants, any one or more of them
may be authorized to appear, plead, and act for the other or
others of them; provided that the authority shall in all cases
be in writing, and shall be filed in the Court; when so filed,
it shall be as effectual to all intents and purposes as if the
person so authorized to appear, plead, and act, were a pleader
of the Court.

116. If there are two or more plaintiffs, and one or more
of them shall appear in person or by a pleader or by a co-
plaintiff duly authorized, and the other or others of them
shall not appear in person or by a pleader or by a co-plain-
tiff duly authorized, it shall be competent to the Court to
proceed with the suit at the instance of the plaintiff or plain-
tiffs who shall have appeared, in the same way as if all the
plaintiffs had appeared, and to pass such order as may be
just and proper in the circumstances of the case; and if
there are two or more defendants, and one or more of them
shall appear in person or by a pleader or by a co-defendant
duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-defendant duly authorized, the Court shall proceed with the suit to judgment, and shall at the time of passing judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

117. If any plaintiff or defendant who shall have been ordered or summoned to appear personally under the provisions of Section 42, shall not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, such plaintiff or defendant shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants respectively, who do not appear either in person or by pleader.

118. In support of the cause shown by a plaintiff or defendant for failure to appear in person, the Court shall receive any declaration in writing on unstamped paper, if signed by such plaintiff or defendant and verified in the manner hereinbefore provided for the verification of plainta.

119. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all cases in which judgment may be passed *ex parte* against a defendant, he may apply, within a reasonable time, not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the
suit. In all cases of judgment against a plaintiff by default, he may apply, within thirty days from the date of the judgment, for an order to set it aside; and if it shall be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the suit. But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party. In all cases in which the Court shall pass an order under this section for setting aside a judgment, the order shall be final; but in all appealable cases in which the Court shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper of the value prescribed for petitions to the Court where a stamp is required for petitions.

OF WRITTEN STATEMENTS.

120. The parties or their pleaders may tender at the first hearing of the suit written statements of their respective cases, and the Court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions.

121. If in a suit for debt the defendant desire to set-off against the claim of the plaintiff the amount of any debt due to him from the plaintiff, he shall tender a written statement containing the particulars of his demand, and the Court shall thereupon inquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognisable by the Court, the defendant shall not be allowed to set-off the same unless he abandon the excess.
122. No written statement shall be received after the first hearing of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties. When such statements are called for by the Court, they shall be received on plain paper.

123. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court. Written statements shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and no written statement shall be received unless it be so subscribed and verified.

124. If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Court may reject the same, and return it to the party with the order of rejection endorsed thereon; and it shall not be competent to a party whose written statement has been rejected for any of these causes to present another written statement, unless it shall be expressly called for or allowed by the Court.

OF THE EXAMINATION OF THE PARTIES.

125. At the first hearing of the suit, and if necessary at any subsequent hearing, any party who appears in person or is present in Court, or the pleader of any party who appears by a pleader, or if the pleader be accompanied by another
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person able to answer all material questions relating to the suit, then such other person may be examined orally by the Court. Such examination shall (unless the pleader be the person examined) be upon oath or affirmation or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses. The substance of the examination shall be reduced to writing and form part of the record.

126. If any party who appears in person or is present in Court shall, without lawful excuse, refuse to answer any material question relating to the suit which the Court may think proper to put to such party, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

127. If the pleader of any party who shall appear by a pleader shall refuse or be 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 attend in person on such day; and if the party so directed to attend shall, without lawful excuse, fail to appear in person on the day to be so appointed, the Court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

OF THE PRODUCTION OF DOCUMENTS.

128. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit to be produced when called upon by the Court, all their documentary evidence of every description which may not already have been filed in Court, and all documents, writings, or other
things which may have been specified in any notice which may have been served on them respectively within a reasonable time before the hearing of the suit; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production thereof at the first hearing.

129. All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection.

130. If the exhibit be a deed, instrument, or writing, chargeable with stamp duty under any Regulation or Act for the time being in force, and it shall appear to the Court that the deed, instrument, or writing, although written on stamp paper, does not bear a sufficient stamp, the Court shall notwithstanding receive the same in evidence, saving all just exceptions on other grounds, if the party producing it or requiring its production shall pay into Court the deficiency of the stamp duty and a penalty equal to ten times the amount of the deficiency. Provided that, if it shall appear to the Court that there are reasonable grounds for believing that the deed, instrument, or writing was not properly stamped with the intention of evading the stamp laws, the Court may reject the same.

131. An entry of the fact of such payment and of the amount thereof shall be made in a book to be kept in the Court, and shall also be endorsed on the back of such deed, instrument, or writing under the signature of the Judge of the Court. The Court shall, at the end of every month, make a return to the Collector of Revenue of the District of the monies (if any) which it has so received by way of duty
or penalty, distinguishing between such monies, and stating
the number and title of the suit, and the name of the party
from whom such monies were received, and the date (if any)
and description of the document, for the purpose of identify-
ing the same; and the Court shall pay over the said monies
to the Collector of Revenue, or to such person as he may
appoint to receive the same; and the Collector of Revenue
or other proper authority shall, upon production of the deed,
instrument, or writing, with the endorsement hereinbefore
mentioned, cause such additional stamp as may be necessary
to be affixed to such deed, instrument, or writing in respect of
the sums so paid as aforesaid.

132. When an exhibit is received by the Court and ad-
mitted in evidence, it shall be endorsed with the number and
title of the suit, the name of the party producing it, and the
date on which it was produced, and shall be filed as part of
the record. Provided that, if the exhibit be an entry in any
shop book or other book, the party on whose behalf such
book is produced shall furnish a copy of the entry, which
copy shall be endorsed as aforesaid, and shall be filed as part
of the record, and the book shall be returned to the party
producing it.

133. No stamp duty shall be leviable in respect of the
production or filing of any exhibit, anything contained in
any Regulation or Act notwithstanding.

134. When an exhibit is rejected by the Court, it shall be
endorsed in the manner specified in Section 132, with the
addition of the word "rejected," and the endorsement shall
be subscribed by the Judge. The exhibit shall then be
returned to the party who produced it, unless the Court shall
think proper, for special reasons (as on suspicion of forgery),
to detain it.

135. When the time for preferring an appeal from the
decision passed in the suit has elapsed, or if an appeal has
been preferred from such decision, then after the appeal has been finally disposed of, any person, whether a party to the suit or not, who may be desirous of receiving back any exhibit produced by him in the suit, shall be entitled, on application to the Court in which such exhibit may be, to receive back the same unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice.

136. Any exhibit may be returned before the time mentioned in the last preceding section, if the Court in which the document may be shall think proper, for special reasons, to order its return. But in every case a copy, properly certified, and made at the expense of the applicant, shall be substituted for the original in the record of the suit.

137. Whenever an exhibit once received by a Court of Justice and admitted in evidence is returned, a receipt shall be given by the party receiving it in a receipt-book kept for the purpose.

138. Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own record or from any other public office or court, the record of any other suit or case, or any other official papers (not being documents relating to affairs of State, the production of which would be contrary to good policy), and inspect the same, when the inspection of such record or papers shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

OF THE SETTLEMENT OF ISSUES.

139. At the first hearing of the suit the Court shall enquire and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the issues of law and fact on which the right
decision of the case may depend. The Court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations of fact contained in the written statements, if any, tendered by the parties or their pleaders.

140. If the Court shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court or without the reading of some document not produced by any of such persons, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by summons or other suitable process.

141. At any time before the decision of the case, the Court may amend the issues or frame additional issues on such terms as to it shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

OF ISSUES BY AGREEMENT OF PARTIES.

142. When the parties to a suit are agreed as to the question or questions 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, which shall not be subject to any stamp duty, that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that upon such finding 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 that upon such finding
one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act, specified in the agreement, and having reference to the matter in dispute.

143. If the Court shall be satisfied, after an examination of the parties or their pleaders, and taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that the parties have a bonâ fide interest in the decision of such question, and that the same is fit to be tried and decided, it may proceed to record and try the same, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court, and may, upon the finding or decision on such issue, give judgment for the sum so agreed on or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

WHEN THE SUIT MAY BE DISPOSED OF AT THE FIRST HEARING.

144. If at the first hearing of a suit it shall appear that the parties are not at issue on any question of law or fact, the Court may at once give judgment.

145. When the parties are at issue on some question of law or fact, and issues have been framed by the Court as hereinbefore provided, if the Court shall be satisfied that no further argument or evidence than such as the parties or their pleaders can at once supply is required upon any such of the issues of law or fact as may be sufficient for the decision of the suit, the Court, after hearing such argument and evidence, may proceed to determine such issue or issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons shall
have been issued for the settlement of issues only or for the
final disposal of the suit; otherwise the Court shall postpone
the further hearing of the suit, and shall fix a day for the pro-
duction of such further evidence or for such further argument
as the case may require. Provided that if the summons
shall have been issued for the final disposal of the suit and
either party shall fail without sufficient cause to produce the
evidence on which he relies, the Court may at once give
judgment.

OF ADJOURNMENTS.

146. The Court may, if sufficient cause be shown, at any
stage of the suit, grant time to the parties, or to either of
them, and may from time to time adjourn the hearing of the
suit; and in all such cases the Court shall fix a day for the
further hearing of the suit. Provided that in all such cases
the party applying for time shall pay the costs occasioned by
such adjournment, unless the Court shall otherwise direct.

147. If, on any day to which the hearing of the suit may
be adjourned, the parties or either of them shall not appear
in person or by pleader, the Court may proceed to dispose
of the suit in the manner specified in Section 110, Section 111,
or Section 114, as the case may be, or may make such other
order as may appear to be just and proper in the circum-
stances of the case.

148. If either party to a suit to whom time may have
been granted shall fail to produce his proofs, or to cause the
attendance of his witnesses, or to perform any other act for
which time may have been allowed, the Court shall proceed
to a decision of the suit on the record, notwithstanding such
default.

OF SUMMONING WITNESSES.

149. The parties or their pleaders may, at any time after
the issue of the summons to the defendant, if the summons
be for the final disposal of the suit, or after the issues have been recorded if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

150. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate. The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear 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 goods of the person ordered to pay the same, or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other 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 may be sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

152. Every summons for the attendance of a witness or other person 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 witness or other person may be called on to produce, shall be described in the summons with convenient certainty.

153. Any person, whether a party to a suit or not, 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 cause such document to be produced instead of attending personally to produce the same.

SERVICE OF SUMMONS ON A WITNESS.

154. Every summons to a witness or other person shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

155. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult male member of his family residing with him.
156. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

157. The serving officer shall, in all cases in which the summons has been served, endorse on the original summons the time when, and the manner in which it was served.

158. If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Court in which the suit is pending, to any Court having jurisdiction at the place where the witness resides by which it can be most conveniently served; and the Court to which the summons is sent shall, upon receipt thereof, deliver the same to the Nazir or other proper officer of such Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Court from whence it originally issued.

159. If the summons for the attendance of any person either to give evidence or to produce a document, cannot be served in either of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of the party on whose application the summons was issued, make an order for the attachment of the
moveable and immovable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following section.

160. If, on the attachment of the property, such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it shall deem fit. If such witness or other person shall not appear, or appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of the summons. If the witness or other person shall pay into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

OF THE EXAMINATION OF PARTIES AS WITNESSES.

161. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

162. If any party to a suit shall require to enforce the
attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the Court for an order requiring the attendance of the party, and shall show to the satisfaction of the Court sufficient grounds in support of such application, otherwise a summons shall not be issued.

163. The Court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

164. In support of the cause shown, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed by him and verified in the manner hereinbefore provided for the verification of plaints, and delivered into the Court by himself or his pleader.

165. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

166. If the Court shall think it necessary for the ends of justice to examine any party to the suit or to inspect any document in his possession or power, the Court may of its own accord in any stage of the suit cause such party to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power on a day to be appointed in the summons, and may examine such party as a witness in open Court, or may cause such party to be examined in such other manner as the Court may direct.
ATTENDANCE OF WITNESSES, AND CONSEQUENCE OF NON-ATTENDANCE.

167. Any person who shall be summoned to appear and give evidence in a suit shall be bound to attend at the time and place named in the summons for that purpose.

168. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155, shall, without lawful excuse, fail to comply with the summons, the Court may order such person to be apprehended and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160 with respect to a witness or other person on whom the service of a summons cannot be effected.

169. If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to produce the document. If after the expiration of such time the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law for the time being in force for the punishment of persons refusing to give evidence.

170. If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document...
in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

171. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court.

WHEN AND HOW WITNESSES ARE TO BE EXAMINED.

172. On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before 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, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit or their pleaders, or such of them as are in attendance, and shall, if necessary, be corrected, and shall be signed by the Judge. If the evidence be taken down in a different language from that in which it has been

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given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given. Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand. It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it. If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination. In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record. In cases in which an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable shall cause
such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

173. If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinafter prescribed; and the deposition so taken down may be read in evidence at any hearing of the suit.

174. All witnesses shall be examined upon oath or affirmation, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

OF COMMISSIONS TO EXAMINE ABSENT WITNESSES AND MAKE LOCAL ENQUIRIES.

175. When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court; the Court may, of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, order a Commission to issue for the examination of such witness on interrogatories or otherwise; and may, by the same or any subsequent order, give all such directions for
taking such examinations as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Court issuing the Commission may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of Her Majesty's Supreme Court, but within the jurisdiction of the Sudder Court, the Commission shall ordinarily be issued to the Court within whose jurisdiction the witness may reside, and which can most conveniently execute the same; but, under special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

176. If the witness be resident within the local jurisdiction of Her Majesty's Supreme Court, the Commission shall ordinarily be issued to the Court of Small Causes held under Act IX. of 1850 (for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay), but may, under special circumstances, be directed to any person or persons whom the Court issuing the Commission may think proper to appoint.

177. When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the Sudder Court or of Her Majesty's Supreme Court, but within the British territories in India or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness; provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a District, such subordinate Court shall not issue the
Commission, but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court.

178. When the evidence of a witness is required, who is resident at some place beyond the said territories and not within the territories of a Native Prince or State in alliance with the British Government, the Sudder Court, if the suit in which the evidence of the witness is required be pending in that Court and the Court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission to examine the witness; if the suit be not pending in the Sudder Court, that Court may issue the Commission on the application of the Court in which the suit is pending. In all such cases, the Commission may be issued to any person or persons whom the Sudder Court may think proper to appoint.

179. After the Commission has been duly executed, it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued, unless otherwise directed by the order for issuing the Commission, in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the
above circumstances, or shall authorise the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

180. In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a Commission to an officer of the Court appointed to execute such Commissions, or, if there be no such officer, to any suitable person, directing him to make such investigation and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of inquiry; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit and shall form part of the record; but it shall be competent to the Court, or to the parties to the suit or any of them, with
the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation.

181. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Court to appoint such officer or other person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance, 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 investigation. The proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them; in which case the Court shall make such further inquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

182. Whenever a Commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the expenses of the Commission to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.

OF JUDGMENT AND DEGREE.

183. When the exhibits have been perused, the witnesses examined, and the parties heard in person or by their re-

A Commissioner may be appointed to investigate and adjust accounts.

In cases of local investigation, or investigation into accounts, expenses of Commission to be paid into Court, before issue thereof.

When judgment is to be pronounced.
spective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court either immediately or on some future day of which due notice shall be given to the parties or their pleaders.

184. The judgment shall be written in the vernacular language of the Judge. Provided that if the vernacular language of the Judge be not English and the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

185. The judgment shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. Whenever the judgment is written in any other language than that which is in ordinary use in the Court, the judgment shall be translated into the language in ordinary use in the Court, and the translation shall also be signed by the Judge.

186. In all suits in which issues have been framed, the Court shall state its finding or decision on each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

187. The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Court shall have full power to award and apportion costs in any manner it may deem proper.

188. Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies
of documents, fees of pleaders, charges of witnesses, and expenses of Commissioners either in taking evidence or in local investigations or in investigations into accounts.

189. The decree shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit, and by what parties and in what proportions they are to be paid; and shall be signed by the Judge and sealed with the seal of the Court.

190. When the suit is for land or other immovable property with specified boundaries, if the decree be for the recovery of a portion only of such property, it shall specify the boundaries of the land or property adjudged.

191. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

192. When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the Court with the consent of the plaintiff may decree the specific performance of the contract within a time to be fixed by the Court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not performed.

193. When the suit is for a sum of money due to the plaintiff, the Court may in the decree order interest to be paid on the principal sum adjudged from the date of suit to the date of payment at such rate as the Court may think proper.

194. In all decrees for the payment of money, the Court
may for any sufficient reason order that the amount shall be paid by instalments with or without interest.

195. If the defendant shall have been allowed to set-off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The decree of the Court with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

196. When the suit is for land or other property paying rent, the Court may provide in the decree for the payment of mesne profits or rent on such land or other property from the date of the suit until the date of delivery of possession to the decree-holder with interest thereupon at such rate as the Court may think proper.

197. When the suit is for land and for mesne profits which have accrued thereon during a period prior to the date of suit, and the amount of such profits is disputed, the Court may either determine the amount prior to passing a decree for the land, or may pass a decree for the land and reserve the enquiry into the amount of mesne profits for the execution of the decree according as may appear most convenient.

198. Certified copies of the decree and judgment shall be furnished to the parties or their pleaders on application to the Court, and on the production of the necessary stamps where stamps are required by any law for the time being in force. The application may be made either orally or by writing on unstamped paper.
CHAPTER IV.

EXECUTION OF DECREES.

199. If the decree be for land or other immovable property, the same shall be delivered over to the party to whom it shall have been adjudged.

200. If the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by the seizure, if practicable, of the specific moveable and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment if necessary; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money.

201. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this chapter against a defendant. When the decree is against Government or against any officer acting on behalf of Government, if the officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government, and execution shall not issue on the decree unless the same shall remain unsatisfied for the space of three months from the date of such report.
202. If the decree be for the execution of a conveyance or for the endorsement of a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court, for execution upon the proper stamp (if any is required by law), and the signature thereof by the Judge shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

203. If the decree be against a party as the representative of a deceased person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or, if no such property can be found and the defendant fail to satisfy the Court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against the defendant personally.

204. Whenever a person has become liable as security for the performance of a decree or of any part thereof, the decree may be executed against such person to the extent to which he has rendered himself liable, in the same manner as a decree may be enforced against a defendant.

205. The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public company or corporation, and all other property whatsoever, moveable or immovable, be-
longing to the defendant, and whether the same be held in his own name or by another person in trust for him, or on his behalf.

206. All monies payable under a decree shall be paid into the Court, whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred.

APPLICATION FOR EXECUTION.

207. When any party in whose favour a decree has been made is desirous of enforcing the same, he shall apply to the Court whose duty it is to execute the decree either in person or through his pleader in the suit or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make the application, if the Court shall see sufficient cause for allowing him or them to make such application; and the Court shall in such case pass such order as it may deem necessary for protecting the interests of the other decree-holders.

208. If a decree shall be transferred by assignment or by operation of law from the original decree-holder to any other person, application for the execution of the decree may be made by the person to whom it shall have been so transferred or his pleader; and if the Court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.

209. If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger
sum, and for so much only as shall remain 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, and if both sums shall be equal, satisfaction shall be entered upon both decrees.

The above rules shall apply to decrees sent to a Court for execution as well as to decrees in the same Court.

Whenever a suit shall be pending in any Court against the holder of a decree of such Court, by the person or persons against whom the decree was passed, the Court may, if it appear just and reasonable to do so, stay execution on the decree either absolutely or on such terms as it may think just, until a decree shall be passed in the pending suit.

210. If any person against whom a decree has been made shall die before execution has been fully had thereon, application for execution thereof may be made against the legal representative or the estate of the person so dying as aforesaid; and if the Court shall think proper to grant such application, the decree may be executed accordingly.

211. If the decree be ordered to be executed against the legal representative it shall be executed in the manner provided in Section 203 for the execution of a decree for money to be paid out of the property of a deceased person.

212. The application for execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely, the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, or other relief granted by the decree; the amount of costs, if any were awarded; the name of the person against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is
required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person named, or attachment of his property, or otherwise as the case may be.

213. When the application is for an attachment of any land or other immovable property belonging to the defendant, it shall be accompanied with an inventory or list of such property, containing such a description of the property as may be sufficient to identify it, together with a specification of the defendant’s share or interest therein, to the best of the applicant’s belief and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to Government or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the Register of the Collector’s Office, specifying the revenue of such estate, and the names and (where registered) the shares of the registered proprietors.

214. Where the application is for an attachment of the defendant’s moveable property or any part thereof, it may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description thereof; or the applicant may apply for a general attachment of the defendant’s moveable property wheresoever the same can be found, to the amount of the judgment and costs.

215. The Court, on receiving any application for execution of a decree containing the particulars above mentioned, or such of them as may be applicable to the case, shall cause the same to be compared with the original decree contained in the record of the suit, and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made, in the register of the suit. If the particulars shall not be found to correspond with the original decree, the Court shall either return the application for cor-
rection to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

MEASURES REQUIRED IN CERTAIN CASES PRELIMINARY TO THE ISSUE OF THE WARRANT.

216. If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be applied for against the heir or representative of an original party to the suit, the Court shall issue a notice to the party against whom execution may be applied for requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. Provided that no such notice shall be necessary in consequence of an interval of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution; and provided further that no such notice shall be necessary in consequence of the application being against an heir or representative, if upon a previous application for execution against the same person, the Court shall have ordered execution to issue against him.

217. When such notice is issued, if the party shall not attend in person or by a pleader, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by a pleader, and shall offer any objection to the enforcement of the decree, the Court shall pass such order as in the circumstances of the case may appear to be just and proper.

218. Where the application is for a general attachment of
the moveable property of the defendant, it shall be competent to the Court, if it shall think proper, before issuing an order for such attachment, to require the applicant to give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

219. Before granting the order for a general attachment or at the instance of the plaintiff at any time after judgment and before complete execution of the decree, the Court may summon the person against whom the application is made and examine him as to the property liable to be seized in satisfaction of the judgment. The Court may also, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it may think necessary and examine him in respect to such property, and may require the person summoned to produce all deeds and documents in his possession or power relating to such property.

220. In all cases in which a summons may be issued for the attendance of a party to a suit or any other person at any time after judgment, the rules applicable to the summoning and examination of parties and witnesses after issues recorded, shall apply to the party or witnesses so summoned.

ISSUE OF THE WARRANT.

221. When all necessary preliminary measures have been taken, where any such are required, the Court, unless it see cause to the contrary, shall issue the proper warrants for the execution of the decree.

222. Every warrant for the execution of a decree shall bear the date of the day on which it is issued, and shall be signed by the Judge and sealed with the seal of the Court, and delivered.
to the Nazir or other proper officer of the Court. A day shall be specified in the warrant on or before which it must be executed, and the Nazir or other proper officer shall endorse upon the warrant the day and the manner in which it was executed, or if it was not executed the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

OF THE EXECUTION OF DECREES FOR IMMOVABLE PROPERTY.

223. If the decree be for a house, land, or other immovable property in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and if need be, by removing any person who may refuse to vacate the same.

224. If the decree be for land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the warrant in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property.

225. If the decree be for the division of an estate or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made by the Collector under the orders of the Court according to the rules in force for the partition of an estate paying revenue to Government.
226. If in the execution of a decree for land or other immoveable property, the officer executing the same shall be resisted or obstructed by any person, the person in whose favour such decree was made may apply to the Court at any time within one month from the time of such resistance or obstruction. The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

227. If it shall appear to the satisfaction of the Court, that the obstruction or resistance was occasioned by the defendant, or by some person at his instigation on the ground that the land or other immoveable property is not included in the decree, or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as may be proper under the circumstances of the case.

228. If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the plaintiff and without prejudice to any proceedings to which such defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, commit the defendant or such other person to close custody for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

229. If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person, other than the defendant, claiming bona fide to be in possession of the property on his own account or on account of some other person than the
defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the Court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case.

230. If any person other than the defendant shall be dispossessed of any land or other immovable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was bonâ fide in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossess; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

231. The decision passed by the Court under either of the last two sections shall be of the same force as a decree in an ordinary suit, and shall be subject to appeal under the rules applicable to appeals from decrees; and no fresh suit shall
be entertained in any Court between the same party or parties claiming under them in respect of the same cause of action.

OF THE EXECUTION OF DECREES FOR MONEY BY ATTACHMENT OF PROPERTY.

232. If the decree be for money, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the Court shall cause the property to be attached in the manner following.

233. Where the property shall consist of goods, chattels, or other moveable property in the possession of the defendant, the attachment shall be made by actual seizure, and the Nazir or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof.

234. Where the property shall consist of goods, chattels, or other moveable property to which the defendant is entitled, subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

235. Where the property shall consist of lands, houses, or other immovable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise.

236. Where the property shall consist of debts not being negotiable instruments, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomever, until the further order of the Court, or prohibiting the person in whose name the shares
may be standing from making any transfer of the shares or receiving payment of any dividends thereof, and the manager, secretary, or other proper officer of the company or corporation from permitting any such transfer or making any such payment until such further order.

237. Where the property shall consist of money, or of any security, in deposit in any Court of Justice or in the hands of any officer of Government, which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or officer requesting that the money or security may be held subject to the further order of the Court by which the notice may be issued. Provided that, if such money or security is in deposit in any Court of Justice, any question of title or priority which may arise between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the Court in which such money or security is in deposit.

238. Where the property shall consist of a negotiable instrument, the attachment shall be made by actual seizure, and the Nazir or other officer shall bring the same into Court, and such instrument shall be held subject to the further orders of the Court.

239. In the case of goods, chattels, or other moveable property not in the possession of the defendant, the written order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property. In the case of lands, houses, or other immovable property, the written order shall be read aloud at some place on or adjacent to such lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court-house; and when the property is land or any interest in land, the written order shall
also be fixed up in the office of the Collector of the zillah in which the land may be situated. In the case of debts, the written order shall be fixed up in some conspicuous part of the Court-house, and copies of the written order shall be delivered or sent registered by post to each individual debtor. And in the case of shares in the capital or joint-stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the manager, secretary, or other proper officer of the company or corporation.

240. After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends or shares to the defendant during the continuance of the attachment, shall be null and void.

241. In every case in which a debtor shall be prohibited from making payment of his debt to the creditor, he may pay the amount into Court, and such payment shall have the same effect as payment to the party entitled to receive the debt.

242. In all cases of attachment under the preceding sections, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank-notes, or a sufficient part thereof, shall be paid over to the party applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank-notes, so far as may be necessary for the satisfaction of the decree, shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.
243. When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immovable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immovable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

244. When in any district, where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 248, the property attached shall consist of any such land, or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.
245. If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it and shall deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

OF CLAIMS TO ATTACHED PROPERTY.

246. In the event of any claim being preferred to, or objection offered against the sale of lands or any other immovable or moveable property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the Court shall, subject to the proviso contained in the next succeeding section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section 220. And if it shall appear to the satisfaction of the Court that the land or other immovable or moveable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself 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, the Court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land
or other immovable or moveable property was in possession of the party against whom execution is sought, 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 ryots or cultivators or other persons paying rent to him at the time when the property was attached, the Court shall disallow the claim. The order which may be passed by the Court under this section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

247. The claim or objection shall be made at the earliest opportunity to the Court which shall have ordered the attachment; and if the property to which the claim or objection applies, shall have been advertized for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding section. Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice. The order disallowing the investigation shall not be subject to appeal, and the claimant shall be left to prosecute his claim by a regular suit.

OF SALES IN EXECUTION OF DECREES.

248. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned. Provided that if the property to be sold shall consist of negotiable securities or of shares in any railway, banking, or other public company or corporation, it shall be competent to the Court, instead of directing the sale to be made by public auction, to authorize the sale of such securities
or shares through a broker at the market-rate of the day. If
the property to be sold shall be land paying revenue to
Government and the Government shall so direct, the sale
shall be conducted by the Collector on the requisition of the
Court.

249. In all cases of intended sale by public auction, whether
of moveable or immovable property, in execution of a decree,
a proclamation of the intended sale, specifying the time and
place of sale, the property to be sold, the revenue assessed
upon the estate when the property to be sold is an estate or a
part of an estate paying revenue to Government, and the
amount for the recovery of which the sale is ordered, together
with any other particulars that the Court may think necessary,
shall be made in the current language of the district. The
proclamation shall also declare that the sale extends only to
the right, title, and interest of the defendant in the property
specified therein. Such proclamation shall be made on the
spot where the property is attached by beat of drum or in
such other mode as may be customary; and a written notifi-
cation to the same effect shall be affixed in the Court-house
of the Judge who shall have ordered the sale, and in some
conspicuous spot in the town or village in which the attach-
ment may have taken place. When the property ordered to
be sold may consist of land or of any right or interest in land,
the written notification shall also be affixed in the office of the
Collector of the district in which such land is situate and in
the Court-house of the principal Civil Court of the district
where the Court which ordered the sale is subordinate to such
Court. The sale shall not take place until after the expira-
tion of at least thirty days in the case of immovable property,
and of at least fifteen days in the case of moveable property,
calculated from the date on which the notification shall have
been affixed in the Court-house of the Judge ordering the
sale.
The process for attachment and sale may, in certain cases, be issued simultaneously.

Mode of payment on sale of moveable property.

Irregularity not to vitiate sale of moveable property, but any person injured may recover damages by suit.

Deposit by purchaser in case of sale of immovable property.

When full amount of purchase money to be made good.

Procedure on default.

Defaulting purchaser answerable for loss by re-sale.

250. The usual process for attachment and sale when the property to be attached consists of goods, chattels, or other personal estate other than debts, may be issued either successively or simultaneously as the Court directing the sale may in each instance think proper.

251. In all cases of sale of moveable property, the price of every lot shall be paid for at the time of sale or as soon after as the officer holding the sale shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

252. No irregularity in the sale of moveable property under an execution, shall vitiate the sale; but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in Court.

253. In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

254. The full amount of purchase money shall be made good by the purchaser before sunset of the fifteenth day from that on which the sale of the property took place, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day; and in default of payment within such period, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be resold 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. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be
leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

255. Every re-sale of immoveable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales.

256. No sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

257. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to appeal; and such order, unless appealed from, and if appealed from then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

258. Whenever a sale of immoveable property is set aside, the purchaser shall be entitled to receive back his purchase money with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

259. After a sale of immoveable property shall have be-
Certificate to be granted to the purchasers of land.

Certificate to state the name of actual purchaser.

Delivery of moveable property in the possession of defendant.

Delivery of moveable property to which defendant is entitled subject to lien.

Delivery of immovable property in the occupancy of defendants, &c.

come absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

260. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

261. Where the property sold shall consist of goods, chattels, or other moveable property in the possession of the defendant, or to the immediate possession of which the defendant is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

262. Where the property sold shall consist of goods, chattels, or other moveable property to which the defendant is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

263. If the property sold shall consist of a house, land, or other immovable property, in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.
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264. If the property sold shall consist of land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

265. Where the property sold shall consist of debts not being negotiable instruments or of shares in any railway, banking, or other public company or corporation, the delivery thereof shall be by a written order of the Court prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons except the purchaser, or prohibiting the person in whose name the shares may be standing, from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary, or other proper officer of the company or corporation from permitting any such transfer or making any such payment to any person except the purchaser.

266. Where the property sold shall consist of negotiable securities of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

267. If the endorsement or conveyance of the party in whose name any negotiable security or any share in a public company or corporation is standing, shall be required to transfer the same, the Judge may endorse the security or the certificate of the share, or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form or to the like effect—"A. B. by C. D. Judge of the Court of (or as the
case may be); in a suit by E. F. versus A. B.” Until the transfer of such security or share, the Judge may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same; and any endorsement made or document executed or receipts signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or executed or signed by the party himself.

268. If the purchaser of any immovable property sold in execution of a decree shall be resisted or obstructed in obtaining possession of the property, the provisions contained in Sections 226, 227, and 228 relating to resistance or obstruction to a party in whose favour a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction.

269. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid shall be dispossessed, the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession as the case may be, shall enquire into the matter of the complaint and pass such order as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

270. Whenever property is sold in execution of a decree, the person on whose application such property was attached shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.
271. If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who prior to the order for such distribution may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

272. If it shall appear to the Court, upon the application of a decree-holder, that any other decree under which property has been attached was obtained by fraud or other improper means, the Court may order that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose if such other decree be a decree of that Court, or, if it be a decree of another Court, may stay the proceedings to enable the applicant to obtain a similar order from the Court by which the decree was made.

OF ARREST IN EXECUTION OF DECREES FOR MONEY.

273. Any person arrested under a warrant in execution of a decree for money may, on being brought before the Court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the Court. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found,
or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner hereinbefore prescribed for subscribing and verifying plaints.

274. Upon such application being made, the Court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances, and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged; and should the plaintiff fail to show such cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the officer of the Court to whom the service of the warrant was entrusted, on the defendant making the necessary deposit for paying the fees of such officer; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security.

275. The discharge of the defendant under the last preceding section shall not protect him from being arrested again and imprisoned if it should be shown that, in the application made by him, he had been guilty of any concealment or of willfully making any false statement respecting the property belonging to him, whether in possession or in expectancy or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith; nor shall such discharge exempt from attachment and sale any
property then in the possession of the defendant, or of which he may afterwards become possessed.

OF THE EXECUTION OF DECREES BY IMPRISONMENT.

276. When a defendant is committed to prison in execution of a decree, the Court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding four annas per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court or of the gaol where the defendant may be in custody, by monthly payments in advance, before the first day of each month; the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

277. The Court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as shall appear necessary. The order fixing such allowance may from time to time be revised and altered on due cause being shown.

278. A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding five hundred rupees, or for a longer period than three months if the decree be for the payment of money not exceeding fifty rupees.

279. Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the property of the defendant under the foregoing rules; but the
defendant shall not be detained in custody or arrested on account of any sums so disbursed.

280. Any person in confinement under a decree may apply to the Court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

281. On such application being made, the Court shall cause the plaintiff to be furnished with a copy of the account of the defendant’s property, and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith. If within such period the plaintiff shall fail to make such proof, the Court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Court that the defendant has been guilty of any of the acts abovementioned, the Court shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if it shall think proper, send the defendant to the Magistrate to be dealt with according to law.
282. A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding section, but his property shall continue liable, under the ordinary rules, to attachment and sale until the decree shall be fully satisfied, unless the decree shall be for a sum less than one hundred rupees and on account of a transaction bearing date subsequently to the passing of this Act. When the decree shall be for a sum less than one hundred rupees, and on account of a transaction bearing date as above, the Court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree.

283. All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be made payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, shall be determined by order of the Court executing the decree and not by separate suit; and the order passed by the Court shall be open to appeal.

OF EXECUTION OF A DEGREE OUT OF THE JURISDICTION OF THE COURT BY WHICH IT WAS PASSED.

284. A decree of any Civil Court within any part of the British territories in India, or established by the authority of the Governor General of India in Council in the territories of any foreign Prince or State, which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other such Court in the manner following.
285. The plaintiff in such case may apply to the Court whose duty it is to execute the decree, to transmit a copy thereof, together with a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, and a copy of any order for execution of such decree that may have been passed, to the Court by which the applicant may wish the decree to be executed.

286. The Court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared: and the same, after being signed by the Judge and sealed with the seal of the Court, shall be transmitted to the Court indicated by the applicant if that Court be within the same district, otherwise to the principal Civil Court of original jurisdiction in the district in which the applicant may wish the decree to be executed; and the Court to which such copies and certificates are transmitted shall cause the same to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless it shall, under any peculiar circumstances to be specified in an order, require such proof.

287. The copy of any decree, or of any order for execution, when filed in the Court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the district, be executed by such Court, or any Court subordinate thereto, to which it may entrust the execution of the same.

288. When application shall be made to any Court to execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to execute the same according to its own rules in the like cases; provided that such Court shall have no power to
inquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was made had no jurisdiction to make the same.

289. The Court to which such application is made or referred for execution as aforesaid, shall take cognizance of and punish all wrongful acts or irregularities done or committed in executing such decree; and all persons disobeying or obstructing the execution of such decree shall be punishable by such Court in the same manner as if the decree had been made by such Court.

290. The Court to which such application is made may, upon good and sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant 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 the execution, or for any other order relating to the decree or the execution thereof, which such Court of first instance or Court of Appeal might have made if execution had been issued by such Court of first instance, or if application for execution had been made to such Court; and in case the property or person of the defendant shall have been seized under an execution, the Court which issued the execution may order the restitution of the property or the discharge of the person of the defendant pending the result of such application.

291. Before making an order to stay execution, or for the restitution of property, or the discharge of the defendant under the last preceding section, the Court may require such security from, or impose such conditions upon the defendant as it may deem reasonable.

292. Any order of the Court in which the decree was passed, or of such Court of Appeal as aforesaid, shall be binding upon the Court to which the application for execution was

Wrongful acts or irregularities in executing decree to be punished by Court applied to.

Court applied to may, in certain cases, stay execution or order restitution of property or discharge of defendant.

Before staying execution, Court may require security from, or impose conditions upon defendant.

Order of Court passing decree, or of Appellate Court, to be binding upon Court applied to.
made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last-mentioned Court.

293. No discharge of a defendant under the provisions of Section 290, shall prevent him from being retaken in execution of the decree.

294. All orders of a Court for executing the decree of another Court shall be subject to the same rules, in respect to appeal, as if the decree had been originally passed by the Court making such order.

295. If, in execution of a decree, a warrant of arrest or other process is to be enforced within the limits of a garrison, cantonment, military station, or military bazaar, the officer entrusted with the execution of such warrant or other process shall carry the same to the Commanding Officer, or, in his absence, to the Senior Officer actually present in the garrison, cantonment, station, or military bazaar; and the Commanding Officer, or such Senior Officer, upon such warrant or other process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command and delivered, according to the exigency of the warrant, to the civil officer charged with the execution thereof.

296. The rules contained in this chapter shall be applicable to the execution of any judicial process for the sale of property, or for the payment of money which may be ordered by a Civil Court in any civil proceeding.
CHAPTER V.

OF PAUPER SUITS.

297. A suit may be brought in *formâ pauperis* in the Court having jurisdiction over the claim, subject to the following rules:—

298. No pauper-suit shall be brought for the recovery of any sum of money on account of damages for loss of caste, slander, abusive language, or assault.

299. The application to the Court for permission to sue in *formâ pauperis* shall be by petition, which shall be written on a stamp paper of the value of eight annas.

300. The petition shall contain the particulars required by Section 26 of this Act, in regard to plaints, and shall have annexed to it a Schedule of any moveable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

301. The petition shall be presented to the Court by the petitioner in person; but if the petitioner satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female, who, according to the custom and manners of the country, ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.
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OF PAUPER SUITS.

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302. If the petition be not framed or presented in the manner laid down in the last two preceding sections, the Court shall reject the petition.

303. If the petition be in form and duly presented, the Court shall proceed to examine the petitioner, or the agent of the petitioner, as the case may be, regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent, the Court may also, if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses.

304. If it appear to the Court upon such examination that the defendant, or the matter of the suit, is not within the jurisdiction of the Court, or that the claim is barred by the Statute of Limitations, or that the allegations of the petitioner do not constitute a reasonable ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently, or with a view to obtain the benefit of this chapter, the Court shall refuse to allow the petitioner to sue as a pauper.

305. If upon such examination the Court shall see no reason to refuse the application on any of the grounds stated in the last preceding section, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the petitioner may adduce in proof of his pauperism, and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

306. On the day appointed for the hearing, or as soon after as the business of the Court will permit, the Court shall con-
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Consider any objections made by the opposite party, and shall examine any witnesses produced by either party, and make a memorandum of the substance of their evidence, and shall either allow or refuse to allow the petitioner to sue as a pauper.

307. Previously to passing a final order in the case, the Court may, if it deem fit, institute a local enquiry, in the manner laid down in Section 180 of this Act, regarding the property of the petitioner, or regarding the amount or value of the property claimed.

308. If the application of the petitioner be granted and numbered, it shall be registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

309. On the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

310. The refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

311. The orders passed by the Court under the provisions of this chapter shall not be subject to appeal.
CHAPTER VI.

REFERENCE TO ARBITRATION.

312. If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

313. The application shall be made by the parties in person, or by their pleaders, specially authorized in that behalf by an instrument in writing, which shall be presented to the Court at the time of making the application, and shall be filed with the proceedings in the suit.

314. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint the arbitrator or arbitrators.

315. The Court shall, by an order under its seal, refer to the arbitrator or arbitrators the matters in difference in the suit which he or they may be required to determine, and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

316. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or
by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree, as the Court may determine.

317. When a reference is made to arbitration by an order of Court, the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators or umpire may desire to have examined, as the Court is authorized to issue in suits tried before it; and persons not attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrator or arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

318. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order, from the want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to the Court or to the umpire a notice in writing stating that they cannot agree. Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators or umpire, or unless the award shall have been made after the issue of an order.
by the Court superseding the arbitration and recalling the suit.

319. If, in any case of reference to arbitration by an order of Court, the arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators or umpire, in the place of the person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court, upon the application of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this section, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

320. When an award in a suit shall be made either by the arbitrator or arbitrators, or by the umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the suit.

321. It shall be lawful for the arbitrator or arbitrators or umpire, upon any reference, by an order of Court if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof, in the form of a special case for the opinion of the Court.

322. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, provided such part can be separated from the other part, and
does not effect the decision on the matter referred; or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision. The Court may also on such application make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

323. In any of the following cases the Court shall have power to remit the award or any of the matters referred to arbitration to the reconsideration of the same arbitrator or arbitrators or umpire, upon such terms as it may think proper (that is to say)—

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration.

If the award is so indefinite as to be incapable of execution.

If an objection to the legality of the award is apparent upon the face of the award.

324. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within ten days after the same has been submitted to the Court.

325. If the Court shall not see cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the Court shall have refused such application, the Court shall proceed to pass judgment according to the award, or according to its own opinion on the special case if the award shall have been submitted to it in the form of a special case; and upon the judgment which shall be so given decree shall follow and shall be carried into execution in the same manner as other decrees of the Court.
In every case in which judgment shall be given according to the award, the judgment shall be final.

326. When any persons shall by an instrument in writing agree that any differences between them or any of them shall be referred to the arbitration of any person or persons named in the agreement, or to be appointed by any Court having jurisdiction in the matter to which it relates, application may be made by the parties thereto, or any of them, that the agreement be filed in such Court. On such application being made, the Court shall direct such notice to be given to any of the parties to the agreement, other than the applicants, as it may think necessary, requiring such parties to show cause, within a time to be specified, why the agreement should not be filed. The application shall be written on a stamp paper of one-fourth of the value prescribed for plaints in suits, and shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff, and the other parties as defendants. If no sufficient cause be shown against the agreement, the agreement shall be filed and an order of reference to arbitration shall be made thereon. The several provisions of this chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court, and to the award of arbitration and to the enforcement of such award.

327. When any matter has been referred to arbitration without the intervention of any Court of Justice, and an award has been made, any person interested in the award may, within six months from the date of the award, make application to the Court having jurisdiction in the matter to which the award relates, that the award be filed in Court. The Court
shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application shall be written on the stamp paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the award, the award shall be filed, and may be enforced as an award made under the provisions of this chapter.

CHAPTER VII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

HOW QUESTIONS MAY BE RAISED FOR THE DECISION OF A CIVIL COURT BY ANY PERSONS INTERESTED.

328. Parties interested or claiming to be interested in the decision of any question of fact or law, may enter into an agreement, which shall be subject to the same stamp duty as prescribed for plaints in suits, that upon the finding of a Court in the affirmative or negative of such question of fact or law, a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or that some property, moveable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act specified in the agreement. Where the agreement is for the delivery of some property moveable or immovable, or for the doing or performing, or the refraining to do or per-
form any particular act, the estimated value of the property to be delivered, or to which the act specified may have reference, shall be stated in the agreement.

329. The agreement may be filed in any Court having jurisdiction in the matter, and, when so filed, shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

330. After the agreement shall have been filed, all the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

331. The case shall be set down for hearing as an ordinary suit; and if the Court shall be satisfied, after an examination of the parties or their pleaders, or taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that they have a bonâ fide interest in the question of fact or law stated therein, and that the same is fit to be tried or decided, it shall proceed to record and try, or hear the same, and deliver its finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon its finding or deciding upon the question of fact or law, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement, and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.
CHAPTER VIII.

OF APPEALS.

332. Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. If the appeal lie to the Sudder Court it shall be heard and determined by a Court consisting of three or more Judges of that Court.

HOW APPEALS ARE TO BE PREFERRED.

333. Appeals shall be made in the form of a memorandum which shall be presented in the Appellate Court within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of the Appellate Court for not having presented it within such limited period; that is to say, within thirty days if the appeal be to a District Court, and within ninety days if the appeal be to the Sudder Court. The days shall be reckoned from and exclusive of the day on which judgment was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree appealed against.

334. The memorandum of appeal shall set forth concisely, and under distinct heads, the grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant.
335. The memorandum of appeal shall be in the following form, or to the following effect, and shall be accompanied by a copy of the decree appealed against:

**Memorandum of Appeal.**

(Name, &c., as in Register.) Plaintiff.
(Name, &c., as in Register.) Defendant.

[Name of Appellant] Plaintiff [or Defendant] above-named appeals to the Sudder Court at [or Zillah Court at __________, as the case may be], against the decree of in the above suit, dated the __________ day of __________; for the following reasons, namely, [here state the reasons.]

336. If the memorandum be not drawn up in the manner hereinbefore prescribed, the Court may reject it, or may return it to the party for the purpose of being corrected. If the memorandum be not presented within the prescribed period, and no sufficient cause be shown for the delay, the appeal shall be rejected.

337. If there be two or more plaintiffs, or two or more defendants in a suit, and the decision of the Lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants.

**OF STAYING AND EXECUTING DECREES UNDER APPEAL.**

338. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against such decree; but the Appellate Court may, for sufficient cause shown, order that execution be stayed. If application for execution be made before the time allowed for appeal has expired, and the Lower Court has not received intimation of an appeal having been preferred, the Lower Court, if sufficient cause be shown, may stay the execution. Before making an order
to stay execution, the Court making the order shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

339. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the Appellate Court.

340. In suits instituted or defended under the authority and at the expense of Government, no such security as is mentioned in the last two preceding sections shall in any case be required from Government or from any Public Officer.

OF PROCEDURE IN APPEALS FROM DECREES.

341. When a memorandum of appeal is presented in the prescribed form and within the time allowed, the Appellate Court, or the proper Officer of that Court, shall endorse thereon the date of presentment, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals. Such Register shall be in the form contained in the Schedule (C.) hereunto annexed.

342. It shall be in the discretion of the Appellate Court to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to appear and answer. Provided that the Court shall demand such security in all cases in which the appellant is residing out of the British territories in India, and is not possessed of any land or other immovable property within those territories independent of the property to which the appeal relates; and in the event of such security not being furnished at the time.
of presenting the memorandum of appeal, or within such time as the Court shall order, the Court shall reject the appeal.

343. When the memorandum of appeal has been registered, the Appellate Court shall send intimation thereof to the Lower Court. If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Lower Court shall, upon the receipt of the intimation, transmit to the Appellate Court, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court. Either party may give notice in writing to the Lower Court, specifying any exhibits of which he requires copies to be made and deposited in the Lower Court, and copies of such exhibits shall be prepared at the expense of the party giving the notice, and shall be deposited in the Lower Court.

344. A day shall be fixed by the Appellate Court for the hearing of the appeal. The day shall be so fixed, with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear in person or by a pleader on such day.

345. Notice of the day which has been fixed for hearing the appeal shall be affixed in the Appellate Court, and a like notice shall be sent by the Appellate Court to the Lower Court, and shall be served on the respondent in the same way as hereinbefore provided for the service of a summons to a defendant to appear and answer, and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice. The notice to the respondent shall contain an intimation that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided ex parte in his absence. Provided that, if the re-
spondent has appointed a pleader to appear in his behalf in the Appellate Court, the service of the notice on such pleader shall be sufficient.

346. If on the day fixed for hearing the appeal, or any other day subsequent thereto to which the hearing of the appeal may be adjourned, the appellant shall not appear in person or by a pleader, the appeal shall be dismissed for default. If the appellant shall appear in person or by a pleader, and the respondent shall not appear in person or by a pleader, the appeal shall be heard ex parte in his absence.

347. If an appeal be dismissed for default of prosecution, the appellant may, within thirty days from the date of the dismissal, apply to the Appellate Court for the re-admission of the appeal; and if it shall be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court may re-admit the appeal.

348. Upon the hearing of the appeal, the respondent may take any objection to the decision of the Lower Court which he might have taken if he had preferred a separate appeal from such decision.

349. The Appellate Court, after hearing the appeal, shall proceed to give its judgment in the manner hereinbefore prescribed for giving judgment in Courts of original jurisdiction.

350. The judgment may be for confirming or reversing or modifying the decree of the Lower Court. But no decree shall be reversed or modified, nor shall any case be remanded to the Lower Court, on account of any error, defect, or irregularity, either in the decision or in any interlocutory order passed in the suit not affecting the merits of the case or the jurisdiction of the Court.
351. If the Lower Court shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Appellate Court essential to the rights of the parties, and the decree of the Lower Court upon such preliminary point shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remand the case, together with a copy of the decree in appeal, to the Lower Court, with directions to restore the suit to its original number in the Register, and proceed to investigate the merits of the case and pass a decree therein.

352. It shall not be competent to the Appellate Court to remand a case for a second decision by the Lower Court, except as provided in the last preceding section.

353. When the evidence upon the record of the Lower Court is sufficient to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

354. If the Lower Court shall have omitted to raise or try any issue, or to determine any question of fact which shall appear to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question of fact, the Appellate Court may frame an issue or issues for trial by the Lower Court, and may refer the same to the Lower Court for trial. Thereupon the Lower Court shall proceed to try such issue or issues, and shall return to the Appellate Court its finding thereon, together with the evidence. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of any objection to the finding; and after the expiration of the period so fixed, the Appellate Court shall proceed to determine the appeal.
355. It shall not be competent to the parties in an appeal to produce additional evidence in the Appellate Court, whether of exhibits or witnesses; but if it appear that the Lower Court refused to admit competent evidence, or if the Appellate Court require any exhibits to be produced or witnesses examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the Appellate Court may allow additional exhibits to be received and any necessary witnesses to be examined, whether such witnesses shall have been previously examined in the Court below or not; provided that, whenever additional evidence is admitted by an Appellate Court, the reasons for the admission shall be recorded on the proceedings of such Court.

356. Whenever additional evidence is permitted to be received, it shall be competent to the Appellate Court to take such evidence before itself, or to require the Lower or any other Court or to empower any person to take such evidence, and to transmit the evidence so taken to the Appellate Court. It shall also be competent to the Appellate Court to prescribe the manner in which such evidence shall be taken.

357. In all cases where additional evidence is permitted to be taken, the Appellate Court shall define the point or points to which the evidence is to be confined, and record the same on its proceedings.

358. The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the suit, examining the parties or their pleaders, and awarding costs, or otherwise, as are hereinbefore contained in regard to Courts of original jurisdiction.

359. The judgment of the Appellate Court shall be pronounced in open Court. It shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the Judge or...
by the Judges concurring therein at the time of pronouncing it. The judgment shall be written in the English language; but if the Judge shall not be able to write an intelligible judgment in that language, the judgment shall be written in the vernacular language of the Judge. When the language in which the judgment is written is not the language in ordinary use in proceedings before the Court, the judgment shall be translated into such language, and the translation shall be signed by the Judge or Judges. Any Judge dissenting from the judgment of the Court shall state his opinion in writing, which shall form part of the record.

360. The decree of the Appellate Court shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and description of the parties appellant and respondent, and the memorandum of appeal, and shall specify clearly the relief granted or other determination of the appeal. It shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the original suit are to be paid. The decree shall be signed by the Judge or Judges who passed it, and shall be sealed with the seal of the Court. If there be a difference of opinion among the Judges of the Court, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree, but the opinion of such Judge shall be recited in the decree. Certified copies of the decree shall be furnished to the parties in the same manner as hereinbefore provided in regard to the decrees of Courts of original jurisdiction.

361. A copy of the decree or other order disposing of the appeal, certified by the Appellate Court or the proper Officer of such Court, and sealed with the seal of the Court, shall be transmitted to the Court which passed the first decree in the suit 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 original Register of the suit.

362. Application for execution of the decree of an Appellate Court shall be made to the Court which passed the first decree in the suit, and shall be executed by that Court, in the manner and according to the rules hereinbefore contained for the execution of original decrees.

APPEALS FROM ORDERS.

363. No appeal shall lie from any order passed in the course of a suit and relating thereto prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

364. No appeal shall lie from any order passed after decree and relating to the execution thereof, except as is hereinbefore expressly provided.

365. All orders as to fines or the levying thereof, or as to imprisonment under this Act (except when the imprisonment is in execution of a decree), shall be subject to appeal.

366. When an appeal from any order is allowed, the period for preferring the appeal and the procedure thereon shall be in all respects the same as in an appeal from a decree.

CHAPTER IX.

OF APPEALS IN FORMA PAUPERIS.

367. Any party to a suit who may be unable to pay for the stamps required for the prosecution of an appeal from the
decision passed therein, may be allowed to appeal as a pauper from such decision, subject to all the rules contained in the last preceding chapter and in Chapter V. in so far as they are applicable.

368. The application to be allowed to appeal in formâ pauperis shall be written on a stamp paper of the value of one rupee if the appeal lie to the District Court, and on a stamp paper of the value of two rupees if the appeal lie to the Sudder Court, and shall be presented in the Appellate Court within the period allowed for the presentation of a memorandum of appeal.

369. The application shall contain the particulars required to be set forth in the memorandum of appeal, and shall be drawn up in the like manner. It shall have annexed to it a Schedule of any moveable or immovable property belonging to the applicant, with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made.

370. If the Appellate Court, upon a perusal of the application and of the judgment and decree of the Court below, shall see no reason to think that the decision of that Court is contrary to law, or to some usage having the force of law, or is otherwise erroneous or unjust, it shall reject the application. If the application be not rejected upon any of the grounds above mentioned, enquiry shall be made into the alleged pauperism of the applicant, and such enquiry may be conducted either by the Appellate Court or by the Court from whose decision the appeal is made under the orders of the Appellate Court. Provided that, if the applicant was allowed to sue in formâ pauperis in the Court below, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court shall see special cause to direct such enquiry.
371. The order passed by the Appellate Court on an application to be allowed to appeal in *forma pauperis*, whether for the admission or rejection of the application, shall be final; but, if the application be rejected, the Appellate Court may, if it think proper, allow the applicant a reasonable time for preferring an appeal on a stamp of the value prescribed for appeals from decrees.

CHAPTER X.

OF SPECIAL APPEALS.

372. Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.

373. The application for the admission of a special appeal shall be presented in the Sudder Court within the period prescribed for the presentation of a memorandum of appeal, and shall be accompanied by copies of the judgments and decrees of the Lower Appellate Court and of the Court of first instance. The application shall be written on a stamp paper of the value prescribed for regular appeals; but if the applicant be unable to pay for the stamps required for the prosecution of the appeal, the Sudder Court may admit him to appeal as a pauper, subject to all the rules contained in Chapter IX. in respect to appeals from decrees *in forma pauperis* in so far as the same may be applicable.
374. The application shall set forth concisely the grounds of objection to the decision appealed against, without argument or narrative, and such grounds shall be numbered consecutively. The applicant shall not, without the leave of the Court, be heard in support of any other ground of objection; but the determination of the Court may be upon any ground on which a special appeal would lie.

375. If the application be not drawn up in the manner hereinbefore prescribed, the Court may reject it or may return it to the party for the purpose of being corrected. When the application is correctly drawn up, it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule (D.) hereunto annexed, and the case shall proceed in all other respects as a regular appeal, and shall be subject to all the rules hereinbefore provided for such appeals, so far as the same may be applicable.

CHAPTER XI.

REVIEW OF JUDGMENT.

376. Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a District Court in appeal, from which no special appeal shall have been admitted by the Sudder Court—or by a decree of the Sudder Court, from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council—and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good
and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a review of judgment by the Court which passed the decree.

377. The application shall be made within ninety days from the date of the decree, unless the party preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the application be made within the period above-mentioned, it shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required; but, if made after the expiration of that period, it shall be written on the stamp paper prescribed for plaints.

378. If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application; but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final. Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited.

379. If the Court to which the application for a review of its judgment has been presented be a Court consisting of two or more Judges, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering the judgment to which the application refers,
it shall not be competent to any other Judge or Judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

380. When an application for a review of judgment is granted, a note thereof shall be made in the Register of Suits or appeals (as the case may be), and the Court shall give such order in regard to the re-hearing of the suit as it may deem proper in the circumstances of the case.

CHAPTER XII

MISCELLANEOUS.

381. The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of the Subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force.

382. Except so far as relates to the examination of witnesses under Commission and to the execution of decrees out of the jurisdiction of the Courts by which they were passed, this Act shall not extend to any suit instituted in any Court of Judicature established by Royal Charter, or in any Court for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.

383. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in Civil cases of Village Moonisifs or Village or District Punchayets, under the provisions of the Madras Code; or the jurisdiction or procedure of Military
Courts of Request; or the jurisdiction or procedure of a single officer duly authorized and appointed under the rules in force in the Presidencies of Fort St. George and Bombay respectively, for the trial of small suits in military bazaars at cantonments and stations occupied by the troops of those Presidencies respectively; or by Punchayets in regard to suits against military persons, according to the rules in force under the Presidency of Fort St. George.

384. Nothing in this Act shall be held to affect the jurisdiction exercised by certain Jagheerdars and other authorities invested with powers under the provisions of Regulation XIII. 1830 of the Bombay Code (for vesting certain Jagheerdars, Surinjameedars, and Enamdars with the power of deciding suits within the boundaries of their respective estates) and Act XV. of 1840 (for extending Regulations XV. 1827 and XIII. 1830 of the Bombay Code to the Agents of Foreign Sovereigns), or their procedure in the exercise of such jurisdiction; or to affect suits instituted under Regulation XI. 1816 of the Bengal Code (for receiving, trying, and deciding claims to the right of inheritance or succession in certain Tributary estates in Zillah Cuttack), or cases of the nature defined in Regulation XXIX. 1827 (for bringing under the operation of the Regulations the Bombay Territories in the Dekkan and Khandesh), Regulation VII. 1830 (for bringing under the operation of the Regulations the Territories comprised in the Southern Mahratta Country), Regulations I. and XVI. 1831 of the Bombay Code (for extending the jurisdiction of the Agent of Government in the Dekkan and Khandesh and of the Political Agent in the Southern Mahratta Country over suits in which certain privileged persons are concerned), Act XIX. of 1835 (relating to the jurisdiction and authority of the Assistant to the Agent for Sirdars in the Dekkan), and Act XIII. of 1842 (to enable the holders of revenue which has been alienated to them by the state to collect that revenue within the Presidency of Bombay), except that
such suits and cases and the regular and special appeals to the Civil Courts allowed therein, shall be received, heard, and determined under the rules laid down in this Act, unless where those rules are inconsistent with any specific provisions contained in the Regulations and Acts above quoted.

385. This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor General of India in Council, or by the Local Government to which such territory is subordinate, and notified in the Gazette.

386. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The local jurisdiction of a Principal Civil Court of original jurisdiction shall be deemed a district for the purposes of this Act; and the words "District Court" shall mean such Court.

In any part of the British territories in India to which this Act may be extended under the provisions of Section 385, the expression "Sudder Court" shall be deemed to include the highest Civil Court of Appeal in such part of the said territories.

387. This Act shall come into operation in the Presidency of Bengal from the 1st day of July 1859, and in the Presidencies of Madras and Bombay from the 1st day of January 1860, or from such earlier day as the Local Government in those Presidencies respectively shall fix, and shall publicly
notify in the Gazette of the Presidency three months at least before the date so fixed. But if in any suit pending at the time when this Act shall come into operation it shall appear to the Court that the application of any provision of this Act would deprive any party to the suit of any right in reference to the procedure of the suit, whether of appeal or otherwise, which but for the passing of this Act would have belonged to him, the Court shall proceed according to the law in force before this Act takes effect.

388. From and after the time when this Act shall come into operation in any part of the British territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and, except as otherwise provided by this Act, by no other Law or Regulation.
SCHEDULE A. referred to in the foregoing Scheme of Procedure.

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REGISTER OF CIVIL SUITS in the year 18

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<th>Defendant</th>
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<th>Appearance</th>
<th>Judgment</th>
<th>Appeal</th>
<th>Execution</th>
<th>Return of Execution</th>
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SCHEDULES.
SCHEDULE B.

No. of Suit.

In the Court of at

Plaintiff.

Defendant.

(Name, description, and address.)

Whereas [here enter the name, description, and address of the Plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the Register]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [if not specially required to appear in person, state—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [If the summons be for the final disposal of the suit, this further direction shall be added here: "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [here mention any document the production of which may be required by the plaintiff] which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.
SCHEDULE C. to the foregoing Scheme of Procedure.

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REGISTER of APPEALS from DECREES in the year 18

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SCHEDULE D. to the foregoing Scheme of Procedure.

Sudder Court at

REGISTER OF SPECIAL APPEALS.

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W. Morgan, Clerk of the Council.
APPENDIX A.

OUTLINE OF THE CONSTITUTION AND PROCEDURE OF THE EAST INDIA COMPANY'S COURTS OF CIVIL JUDICATURE IN THE PRESIDENCY OF MADRAS.

THE JUDGES.

There are two orders, Covenanted and Uncovenanted, as in Bengal.

The Covenanted Judges are Judges of—

1st. The Sudder Adawlut.—This Court is stationed at the town of Madras, and is composed of a Chief Judge who is a member of Council, and three Puisné Judges, selected from among the "Company's covenanted servants;" but the members may be increased by the Local Government.

Reg. V. of 1802, s. 3. Reg. III. of 1807, s. 3. Reg. III. of 1825, s. 4.

2nd. The Zillah Courts.—These Courts are presided over by a single Judge, who is called the Civil and Session Judge. By a proclamation of the Governor in Council, dated 28th July, 1843, Zillah Courts were established at the following stations, viz.:—

1, Bellary; 2, Cuddapah; 3, Chittoor; 4, Chingleput; 5, Cuddalore; 6, Nellore; 7, Guntoor; 8, Masulipatam; 9, Rajahmundry; 10, Chicacole; 11, Trichinopoly; 12, Combaconum; 13, Madura; 14, Tinnevelly; 15, Coimbatore; 16, Salem; 17, Mangalore; 18, Calicut; 19, Tellicherry; 20, Honore.

Reg. VII. of 1843, s. 2.

3rd. The Subordinate Courts.—These Courts are presided over by a single Judge, who is called the Subordinate Judge; and by the proclamation above referred to, Subordinate Courts were established at nine of the above stations, numbered respectively 1, 2, 3, 9, 12, 13, 16, 17, and 18.

Reg. I. of 1827, s. 3. Act VII. of 1843, s. 2.

The Uncovenanted Judges are—

1st. The Principal Sudder Ameens.—Of these, one was appointed by the same proclamation to eight of the remaining stations above referred to, numbered respectively 4, 5, 6, 7, 8, 11, 14, and 15; and one at each of the three following stations, viz., Itchapoor, Vizagapatam, and Cochin.

Reg. VII. of 1827, s. 2. Act XXIV. of 1836, s. 1.

2nd. The Sudder Ameens.
3rd. The District Moonsiffs.

4th. The Village Moonsiffs.—The head man of the village is, ex officio, the Village Moonsiff. When there is more than one head man, the person who collects the revenue, and under whose authority the village servants act, is to be considered the head of the village.

JURISDICTION.

The Village Moonsiff has primary jurisdiction. 1st. In suits for sums of money or other personal property, the amount of which does not exceed 10 Arcot rupees. 2nd. He may summon a village Punchayet for the decision of any such suit without limitation as to amount, in the two following cases: 1st. Where the plaintiff and defendant agree that the matter in issue shall be decided without appeal by a village Punchayet, and prefer a request in writing to that effect to the Moonsiff, whether the parties reside in the village or not. 2nd. Where one party to a suit prefers such a request in writing, and the other, being an inhabitant of the same village, on being summoned, signs his assent in writing. 3rd. The Village Moonsiff is further authorised to try and determine as arbitrator suits relating to money or personal property not exceeding 100 Arcot rupees, when voluntarily referred to him by the parties. Village Moonsiffs are prohibited from trying any suit in which they, or any of their immediate servants, are personally interested, or suits against any person or persons not actually residing within their jurisdiction at the time when such suit shall be preferred.

The Village Punchayet is to consist of an odd number, not less than five, nor more than eleven, and is to be composed of the most respectable inhabitants of the village, who are called upon to serve in rotation under a penalty not exceeding 5 Arcot rupees, if they refuse. The majority decides.

The District Moonsiff has primary jurisdiction over suits against any native inhabitant of his jurisdiction under the following limitations:—For land exempt from the payment of rent to Government, the annual produce of which does not exceed 100 rupees; for land subject to the payment of rent to Government, or other property, where the value of the matter in dispute does not exceed 1000 rupees. 2nd. He may summon Punchayets within his jurisdiction for the decision of suits for real and personal property, without limitation as to amount or value, in the same two cases
as the Village Moonsiff is authorized to summon village Punchayets. He is also authorized to hear and determine as arbitrator all suits which may be voluntarily referred to him by both parties, whether for real or personal property, of the value or amount before specified. He is prohibited from receiving or trying any suit for damages on account of personal injuries, or for personal damages of any nature, without an order of reference from the Zillah Court. He is also prohibited from hearing and trying any suits in which himself or his relatives, or dependents, or other persons employed in his cutcherry, are parties, or any British subject, or an European foreigner, or an American, is a party.

The District Punchayet is to be composed in the same manner as the Village Punchayet, but out of the inhabitants of the whole district, who are to serve in rotation under penalty of a fine not exceeding 10 Aroth rupees, if they refuse. The decision is with the majority.

The number of District Moonsiffs in each Zillah is fixed by the Government, and their local jurisdictions may be modified from time to time by the Zillah Judge, with reference to the quantity of business, and the convenience of the population.

The Sudder Ameen has primary jurisdiction in suits for land exempt from the payment of revenue, the annual produce of which shall not exceed 250 rupees, and in all other cases where the amount or value of the property in dispute does not exceed 2500 rupees.

When there is more than one Sudder Ameen in a Zillah, it is the duty of the Judge to appoint from time to time the several Moonsiffs' divisions which shall constitute his special local jurisdiction, and then his power is limited to the cognizance of suits within these limits, unless when others are specially referred to him.

The Principal Sudder Ameen has primary jurisdiction in suits where the amount or value of the property in dispute does not exceed 10,000 Company's rupees. His local jurisdiction is determined by the Governor in Council.

When there is more than one principal Sudder Ameen in a Zillah, the Judge is to appoint the several Moonsiffs' divisions, which are to form his special local jurisdiction in the same manner as in the case of the Sudder Ameen.

The Subordinate Judge has the same primary jurisdiction as the

Reg. VI. of 1816, s. 57.
Ibid. s. 12.
Reg. VII. of 1816, s. 3.
Reg. VI. of 1816, s. 5.
Reg. II. of 1829, s. 2.
Reg. III. of 1833, s. 4.
Act IX. of 1844, s. 3.
Act VII. of 1843, s. 4.
Reg. VII. of 1827, s. 2. Act IX. of 1844, s. 3.
Act VII. of 1843, s. 4.
principal Sudder Ameen, that is, to the extent of 10,000 Company's rupees.

The local jurisdiction of this Judge, when one is appointed, is fixed by the Governor in Council.

The Zillah Judge has primary jurisdiction in suits where the amount or value of the property in dispute is above 10,000 Company's rupees, exclusively of all other Judges; and from the terms in which subordinate jurisdictions are defined, in the different regulations applicable to them, it appears that he has concurrent jurisdiction with all subordinate Judges, and generally that every Judge has primary jurisdiction concurrently with all the Judges below him within his district.

**APPELLATE JURISDICTION.**

From decrees of the Village Moonsiffs there is no appeal.

From decrees of the Village Punchayets there is no appeal; but in cases of gross partiality the decision may be annulled by the Zillah Judge, on petition presented within thirty days from the date of the decree.

From all decisions of the District Moonsiff there is an appeal to the Zillah Judge in all suits for property in land, and in suits for money or other personal property, the amount or value of which exceeds 20 Arcot rupees; for money or personal property not exceeding that amount, the decree is final.

The appeal may be referred by the Zillah Judge to the Subordinate Judge, or the principal Sudder Ameen; or, when these Judges are stationed at places remote from the station of the Zillah Judge, the Sudder Adawlut, with the sanction of Government, may order such appeals to be preferred to these Courts direct.

From the decisions of District Punchayets there is no appeal; but the decree may be set aside for gross partiality, in the same way as that of the Village Punchayet.

From the decrees or orders of Sudder Ameens there is an appeal in all cases to the Zillah Judge.

The Governor in Council may appoint an Assistant Judge to any Zillah Court; and the Zillah Judge is authorized to refer to him appeals from decrees of Sudder Ameens as well as of Moonsiffs.

From the decrees or orders of the Subordinate Judges and principal Sudder Ameens there is an appeal to the Zillah Judge; these appeals he cannot refer to the Assistant Judge.
From decisions and orders of the Zillah Judge there is a regular appeal to the Sudder Adawlut. And there is a further or special appeal to that Court from all decisions passed on regular appeals in any of the Civil Courts subordinate to it, on any of the following grounds, viz. —1st. Where the decision has failed to determine all material points in difference, or has determined them contrary to law, or usage having the force of law; 2nd. Misconstruction of any document; 3rd. Ambiguity in the decision affecting the merits; 4th. Substantial error or defect in procedure, apparent on the record, and likely to have produced error or defect in the decision upon the merits of the case.

LANGUAGE.

The language of pleadings is either Persian or the language of the country where the Court is held. The language of so much of decrees as relates to the points to be decided, the decisions and the reasons for the decisions, when the decree is that of a Principal Sudder Ameen or Moonsiff, is the vernacular of the Judge; and when the decree is that of a Zillah Court, Subordinate Court, and Sudder Adawlut, the language is English.

SUBJECTS.

In the Madras territories, as well as in those of Bengal, much the larger number of suits is for debt, but the proportion of those for the rent of land is much less in the former than in the latter, as might be expected from the difference in the tenures of land. The suits of every description disposed of by all the Judges in the twenty Zillahs of the Madras Presidency (there are no complete returns for the three agencies of Ganjam, Vizagapatam, and Kurnool) in the year 1850, were 78,427, of which 64,092, or about 81 per cent., were for debt, being a larger proportion than in Bengal. Of these, 50,786 were secured by some instrument in writing, called a bond, while the remaining 13,306 were for simple debts. The distribution of the suits among the different Judges was as follows: 15 were by the Village Punchayets; 10,960 by the Village Moonsiffs; 9 by the District Punchayets; 51,322 by the District Moonsiffs; 11,354 by the Sudder Ameens; 2903 by the Principal Sudder Ameen; 1916 by the Subordinate Judges, and 54 by the Zillah Judges. The numbers of the different Judges were as follows: —District Moonsiffs, 98; Sudder Ameens, 34; Principal Sudder Ameens, 10; Subordinate Judges, 10; Zillah Judges, 20. Of the whole number of suits disposed
of, only 30,485 were decided on their merits, the remaining 47,942 having been either settled between the parties, or dismissed on default or otherwise. Of the former number 3588 were by the Village Moonsiffs, from whose decision there is no appeal; and 20,424 were by the District Moonsiffs, from whose decisions also, when the amount is under 20 rupees, there is no appeal. It seems that 9184 were in this predicament, as out of the whole 20,424 only 11,240 were appealable. So that in the Madras Presidency 12,772 cases, or more than one-third of the whole number decided on their merits, were not subject to appeal, while in the Bengal Presidency there is an appeal in all cases.

PROCEDURE.

This follows very closely that of Bengal, the Madras regulations on the subject being as noted on the margin. The institution stamp is at the same rate, and it is now required on suits before the District Moonsiffs, as well as in those before the superior Judges. There is no institution, stamp, or fee in cases tried by the Village Moonsiffs or Village Punchayets; but in cases referred to the District Punchayet there is an institution fee of 1 per cent. where the value of the property in dispute is not more than 100 Aroth rupees, 2 per cent. where it is not more than 200, and at the same rate for every succeeding hundred rupees.

On the subsequent pleadings no stamp is required in the Courts of the Moonsiffs, village or district; in the Court of the Sudder Ameen the stamp is 4 annas; in the Courts of the Principal Sudder Ameen and Subordinate Judge it is one rupee; and in the Zillah Court and Sudder Adawlut it is two rupees.

PLEADINGS.

The pleadings are also generally the same as in Bengal. In the Courts of the Village and District Moonsiffs they are limited to the plaint and answer. The same rule is applicable to cases referred to the Village and District Punchayets. Points in dispute are to be recorded by the Judge before calling for evidence, as in Bengal.

EVIDENCE.

There is little to be noticed under this head. Documentary evidence, as in Bengal, must be proved by witnesses, if disputed. By a recent Act of the Legislature of India, a party to a suit is declared competent and entitled to give evidence as a witness
on his own behalf, or on behalf of any other party to the suit; and any party to the suit may be compelled, on the requisition of the other, to give evidence, if so ordered by the Judge. But the provisions of this Act are confined to Bengal.

HEARING OF THE CAUSE.

Under this head there seems to be nothing which requires particular notice, except that there is no provision for the employment of assessors in civil cases in the Madras Presidency. The returns of cases decided by the different Courts do not afford the means of distinguishing the number of suits that may have been decided according to Hindoo or Mahomedan law, or by special rules contained in the regulations, or according to justice, equity, and good conscience.

JUDGMENT.

All that requires special notice under this head refers to the language of the Judgment, and has been already specified under the head of Language.

EXECUTION.

The decisions of the Village Moonsiff, either as Moonsiff or arbitrator, cannot be carried into execution in less than thirty days after delivering or tender of copy of the decree. If a petition is presented within this time charging the Moonsiff with corruption or gross partiality, the Judge may stay execution; and if the charge be proved to his satisfaction he may annul the decree. If the sum decreed is not discharged within the above period, or the execution stayed, the Village Moonsiff may proceed to execute his decree by attachment of the property of the person cast to the value of the sum decreed.

Decrees of Village Punchayets, when the amount or value of the money or property decreed does not exceed 100 Aroth rupees, are to be carried into execution by the Village Moonsiff. Decrees exceeding that amount or value, and not exceeding 200 Aroth rupees, are to be executed by the District Moonsiff; and in all other cases by the Zillah Judge.

Decrees of District Moonsiffs may be carried into execution by themselves, but thirty days from the date of tender of the copy of the decree are allowed to the party against whom it may have passed to discharge it. If not discharged within that time, the decree is to be executed in the same way as decrees are executed.
in Bengal; and if the decree be for money, by attachment of the property or person, or both if necessary.

Decrees of District Punchayets, if for land exempt from payment of rent to Government the annual produce of which does not exceed 20 rupees, or for land subject to the payment of rent to Government the annual produce of which does not exceed 200 rupees, or for sums of money or other personal property, the amount or value of which does not exceed 200 rupees, are carried into execution by the District Moonsiff; in all other cases by the Zillah Judge. Applications for execution of these decrees may be referred by the Zillah Judge to the Subordinate Judges and Principal Sudder Ameens.

The decrees of Sudder Ameens are carried into execution by themselves, according to the rules for the execution of decrees applicable to the Court to which they are attached.

The decrees of the Principal Sudder Ameens, the Subordinate Court, the Zillah Court, and the Sudder Adawlut, are carried into execution by the Court in which the decree was passed. The process for execution of decrees of the Sudder Adawlut is directed to the Judges of the Zillah Courts; but these Judges may refer the execution of the decrees of the Sudder Adawlut, as well as the decrees of their own Courts, to the Subordinate Judges or Principal Sudder Ameens.

REVIEW OF JUDGMENTS.

The rules regarding reviews of judgment are the same in the Madras as in the Bengal Presidency; but it is only the Judges of the Sudder Adawlut, the Zillah Court, the Subordinate Court, and the Principal Sudder Ameen, that are allowed to review their own judgments. In all cases, the order of the Judge refusing the review is final; but when the application for review of judgment is made to a Zillah Judge, Subordinate Judge, or Principal Sudder Ameen, and he is of opinion that the review should be granted, he is to report the same to the Sudder Adawlut with the grounds of his opinion, and that Court is empowered to grant the review if it should think proper.

APPEAL.

The petition of appeal may, in all cases, be presented either to the Court in which the decree was passed, or to the Court having appellate jurisdiction. Thirty days are allowed for the appeal from the Moonsiffs, Sudder Ameens, Principal Sudder Ameens,
and Subordinate Judges, to the Zillah Court, and three calendar months for the appeal from the Zillah Court to the Sudder Adawlut; the time to be computed in all cases from the date on which the decree is sealed and signed: provided that if a copy of the decree or translation of the abstract of it be applied for within the time, and be not delivered or tendered on the same day to the party applying, then for every day of the delay so occasioned a day shall be added to the period allowed for appealing.

SUSPENSION OF EXECUTION.

If an appeal is preferred from the decree of a District Moonsiff, execution of the decree shall be suspended, or otherwise, according to the orders he may receive from the Zillah Judge. If the appeal be from the decision of a Sudder Ameen, Principal Sudder Ameen, or Subordinate Judge, to the Zillah Judge, the rules in regard to execution or suspension are the same as in Bengal. In all cases where the appeal is to the Sudder Adawlut, a single Judge of that Court may stay execution till final judgment, whenever he may think it expedient. In other respects the practice is the same as in Bengal; a single Judge of the Sudder, and the Judges of Zillah Courts, Subordinate Judges, and Principal Sudder Ameens, having power to confirm the decision of the lower Court without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, if they shall be of opinion that no sufficient grounds have been shown for impugning the correctness or justness of the decree.

PRACTICE OF THE SUDDER ADAWULT IN APPEALS.

This is the same in regard to the pleadings as in Bengal, but the Judges sit separately; one Judge being empowered, under certain restrictions, to exercise the powers of the whole Court. The restrictions are, that it is not competent to a single Judge to reverse any order or decision of one or more Judges of the Court, or any order or decision of a Subordinate Court; but a single Judge is competent to confirm the decision of the Subordinate Court; and when he is of opinion that the decision or order appealed from ought to be altered or reversed, as being unjust, or at variance with some regulation in force, or the Hindoo, Mahomedan, or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue; it is competent to a single
Judge to give an injunction, pointing out the illegality, irregularity, or defect, and requiring the Subordinate Court to revise the case and proceed thereon according to the regulations.

GENERAL BUSINESS OF THE SUDDER ADAWLUT.

The business disposed of by the Sudder Adawlut at Madras, during the year 1850, comprised 54 cases of regular appeals, 597 petitions, and 205 applications for special appeals. Of the regular appeals 2 were dismissed for default, and 52 decided on the merits, among which 12 were decided in favour of the appellants, 9 in favour of the respondents, and the remaining 31 were remanded.

APPEALS TO THE PRIVY COUNCIL.

The rules for the admission of appeals from the Sudder Adawlut at Madras, and in regard to the execution of decree, security, and expense of translations, are the same as in Bengal. The regulations on the subject are noted on the margin.

OUTLINE OF THE CONSTITUTION AND PROCEDURE OF THE EAST INDIA COMPANY'S COURTS OF CIVIL JUDICATURE IN THE PRESIDENCY OF BOMBAY.

THE JUDGES.

These are Covenanted and Uncovenanted, as in the other Presidencies.

The Covenanted are—

1st. The Judges of the Sudder Dewanny Adawlut.—This Court consists of three or more Judges, the senior of whom is denominated Chief Judge, and the other puisne, or second, third, fourth, &c.

The Chief Judge is a member of Council, and his judicial functions are limited to his officiating as Chief Judge when a competent Court for the decision of the matter under consideration cannot otherwise be had.

2nd. The Judges of the Zillah Courts.—There is one such Court in each Zillah, and it is presided over by a single Judge. The numbers and limits of the Zillahs may be altered at all times by the Government. At present there are eight, and their names are as follows:—Ahmedabad, Surat, The Konkun or
Tannah, Poonah, Sholapoor, Ahmednuggur, Khandesh, and Dharwar.

3rd. *The Judges of the Subsidiary Courts.*—These are the Courts of the Assistants to the Zillah Judges; and each Zillah Judge may, if necessary, have one or more Senior Assistant Judges, and one or more Junior Assistant Judges. The Senior Assistant Judges hold their Courts either at the Sudder Station, or at a detached Station within the Zillah.

The Uncovenanted Judges are—

1st. *The Principal Sudder Ameens.*
2nd. *The Sudder Ameens.*

The Uncovenanted Judges were at first termed Native Commissioners. They were then divided into three grades, and called Native Judges, and Principal and Junior Native Commissioners. Finally, their names were changed as above.

The whole of the preceding may be distinguished as the ordinary Judges, from other officers who are vested with judicial powers of a special character, and who may also be divided into Covenanted and Uncovenanted.

The Covenanted officers of this class are—

1st. *The Collectors of Revenue.*—The local jurisdiction of a Collector is sometimes co-extensive with a Zillah; sometimes a Zillah comprises two Collectorates: thus the Zillah of Ahmedabad comprises the Collectorates of Ahmedabad and Kaira; Surat comprises Surat and Broach; The Konkun or Tannah comprises Tannah and Rutnageree; Ahmednuggur comprises Ahmednuggur and Nassick; and Dharwar comprises Dharwar and Belgaum.

2nd. *Sub-Collectors.*—In such Zillahs as the Governor in Council deems expedient, he may appoint a Principal Collector and one or more Sub-Collectors. At present there is no Principal Collector, and only two Sub-Collectors; viz., of Nassick, under the Collector of Ahmednuggur; and of Colaba, under the Collector of Tannah.

3rd. *Assistants to the Collectors.*—Each Collector may have as many assistants as the Governor in Council may deem it expedient to appoint, to be called first, second, &c., as may be expressed in the order of appointment.

4th. *Agent for the Sirdars in the Dekkan,* who are exempted from the jurisdiction of the Civil Courts.
5th. The Political Agent in the Southern Mahratta country. The Uncovenanted officers of this class are—
1st. Deputy Collectors.
2nd. The Native Collectors, termed Komavisdar or Mamludtar.
3rd. Jageerdars, Surinjamdars, and Enamdars.

RENUMERATION OF PLEADERS.

The rates of remuneration in the Bombay Presidency are somewhat lower than in Bengal and Madras. Thus, in a regular suit for 5000 rupees, the fee is only 120 rupees in Bombay, while it is 250 rupees in the others; and on 80,000 rupees it is only 620 rupees in Bombay, while it is 1000 rupees in the other Presidencies. But, on the other hand, the Pleader’s fee can never exceed the last sum in these Presidencies, whatever may be the amount of the suit, while in Bombay the rate is half per cent. on the whole sum above 20,000 rupees, whatever may be the amount of the matter at issue. It is only when costs are awarded to a party in a regular suit or appeal, decided on the merits against another party, that the fees of Pleaders are calculated by these rates. As between parties and their own Pleaders, fees are determined by private agreement.

ORIGINAL JURISDICTION.

The Moonsiff has original jurisdiction in all suits to the amount of 5000 rupees, except in regard to matters which fall under any of the special jurisdictions hereinafter mentioned, and with the exception of suits against public servants for acts done in their official capacity; and also of suits to which his near relation, or one of his immediate servants or dependents, is a party; provided, however, that in all suits tried by the Moonsiff the defendant resides within the limits of his jurisdiction. The plaint is to be presented at the Sudder station in the Court of the Zillah Judge, or elsewhere in the Court of the Moonsiff himself.

The Sudder Ameen is authorized to try all suits to the amount of 10,000 rupees, with the same exceptions as are applicable to the Moonsiff; but it is not necessary that the defendant should in all cases be resident within his jurisdiction. All suits within the competency of the Sudder Ameen are ordinarily to be instituted in his own Court. When there is more than one Sudder Ameen in a Zillah, it is the duty of the Judge to appoint from time to time the several Moonsiffs’ divisions which shall constitute the local jurisdiction of each Sudder Ameen.
The Principal Sudder Ameen.—When there is more than one in a Zillah, his local jurisdiction is to be fixed in the same way as that of the Sudder Ameen. He is authorized to try all suits, without any limit as to amount, but subject to the same exceptions above mentioned; and in other respects, as in the case of the Sudder Ameen.

The Zillah Judge.—His jurisdiction extends to the cognizance of all original suits and complaints within his Zillah, with the exception of such cases as fall within the special jurisdiction of the Collectors, and with the further exception in particular Zillas of cases coming within the special jurisdictions of the Agents for Sirdars, the Political Agent in the Southern Mahratta country, and the Jageerdars, Surinjamdars, and Eamdars, as hereinafter more particularly mentioned. In practice, it is understood that the Zillah Judge exercises no original jurisdiction, except in cases which subordinate judicial officers are not competent to try.

The Zillah Judge is empowered to refer original suits to the Principal Sudder Ameen, Sudder Ameen, and Moonsiff, respectively, according to the amount of the property in dispute; provided the suits are such as these officers are respectively competent to try, as not falling under any of the exceptions specified under the jurisdiction of the Moonsiff.

For special reasons he may refer a suit to two or more Principal Sudder Ameens, Sudder Ameens, or Moonsiffs; and though suits, within the competency of these Judges to decide, are ordinarily to be instituted in their own Courts respectively, it is competent to the Judge to withdraw any suit from the Court in which it may have been instituted, and to try it himself, or to refer it for trial to any other Court subordinate to his authority, and competent in respect to the value of the property.

The Joint Judge.—Whenever the state of business in any Zillah may require it, the Governor in Council of Bombay may, with the consent of the Governor-General of India in Council, appoint a Joint Judge, who shall be vested with co-extensive powers and a concurrent jurisdiction with the Zillah Judge, except that he shall not keep a file of civil suits, but shall transact such civil business only as he may receive from the Judge.

The Assistant Judges.—Their jurisdiction is limited to suits referred to them by the Judge; but the Judge is forbidden to refer any original suit to his assistants, with the exception of those
which he cannot refer to the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as falling within those which they are not competent to try. Such suits may be referred to the extent of 5000 rupees ordinarily, and 10,000 rupees specially, to the Senior Assistant Judge, and of 500 rupees, to a Junior Assistant Judge.

The Collector. — This officer has original jurisdiction. 1st. Of all disputes regarding the rent of lands. 2nd. Of all questions regarding the use of wells, tanks, watercourses, and roads to fields. 3rd. Of all disputes regarding boundaries. 4th. He has a summary jurisdiction to give immediate possession of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed thereof, provided application be made by such party within six months from the date of dispossession — the party to continue in possession until ejected by a decree of the Court of Adawlut. 5th. The Collector is vested with full powers for examining into and deciding upon all claims to exemption from the payment of land revenue, and for discontinuing such exemptions when not duly established.

The Sub-Collector. — His functions and duties are the same as those of the Collector, and he is to be governed by the same rules in the districts placed under his charge.

The Deputy-Collector. — He is to discharge such of the duties, and exercise such of the powers of the Covenanted Assistants as shall be prescribed from time to time in each case by the Governor in Council.

The Komavisdar or Mamlutdar. — The Collectors and Sub-Collectors are authorized to refer to the several Komavisdars of their districts, or other equal and similar officer, suits under Chapter VIII. of Regulation XVII. of 1827, when the value of the matter at issue does not exceed 500 rupees.

The Agent for Sirdars in the Dekkan. — Certain Sirdars, or persons of rank in the Zillahs of Poonah and Ahmednuggur, are exempted from the jurisdiction of the Civil Courts. A list of these persons is furnished to the Judge of the Zillah, and comprises three classes, with regard to whom different modes of procedure are adopted. An agent of Government is specially appointed for trying and deciding all complaints of a Civil nature which would,
under the ordinary rules, be cognizable by either of the Judges of Poonah and Ahmednuggur against any of those persons.

Assistant Agent.—The Governor in Council may appoint the Assistant Judge of Poonah to be his Assistant to the Agent for Sirdars in the Dekkan, and the Agent may refer to his Assistant original suit against the Sirdars for amounts not exceeding 5000 rupees.

Political Agent of the Southern Mahratta Country. — The Sirdars in the Zillah of Dharwar are exempted from the jurisdiction of the Civil Courts, and subjected to the jurisdiction of this Agent; by whom all suits against them are tried in the same manner, and under the same rules, as are enacted for the Agent of Sirdars' claims for the Dekkan.

Jageerdars, Surinjamdars, and Enamdars. — The Governor in Council is empowered to grant sunnuds to persons of this description whose names are enumerated in a list furnished by Government, conferring on them authority to try and determine all original suits, of whatever amount that may be, either filed in their Court, or referred to them by the Agent or Judge within the territory defined in their sunnuds. Such sunnuds are to be granted only for life, and may be withdrawn by Government at pleasure. Without such sunnud no Jageerdar, Surinjamdar, or Enamdar, has authority to hear and decide Civil actions, unless on arbitration or by consent of the parties. The same powers may be conferred by the Governor in Council on the Agents of foreign sovereigns having lands in the territory of the Bombay Presidency, or on guardians, or such other persons as he may consider it expedient to invest with these powers.

APPELLATE JURISDICTION.

From original decisions of the Principal Sudder Ameen, Sudder Ameen, and Moonsiff, there is an appeal to the Zillah Judge. Such appeals, when the amount does not exceed 5000 rupees, may be referred for trial to a Senior Assistant Judge, stationed elsewhere than at the Sudder Station.

When the state of judicial business requires it, the same jurisdiction to try such appeals may be extended to the Senior Assistant at the Sudder Station, by order of the Governor in Council, communicated through the Sudder Dewanny Adawlut.

Appeals from decisions of Sudder Amecens and Moonsiffs, if not
exceeding 100 rupees, may be referred by the Judge to the Principal Sudder Ameen.

From original decisions of an Assistant Judge there is an appeal to the Judge.

From decisions in appeal by the Principal Sudder Ameen there is a further appeal to the Judge, who may refer them to a Senior Assistant Judge.

The decisions of Senior Assistant Judges in appeals from the decisions of Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, are subject to a further appeal, according to the following rules:

When the decision is that of a Senior Assistant Judge of the Sudder Station, and it is in confirmation of the decision of the lower Court, there is an appeal in all cases to the Zillah Judge, if the matter at issue do not exceed 2000 rupees, and to the Sudder Dewanny Adawlut if it exceed that sum. When the decision alters or reverses that of the lower Court, there is, in like manner, an appeal which lies to the Zillah Judge, if the matter in issue do not exceed 1000 rupees, and to the Sudder Dewanny Adawlut if it exceed that sum.

When the decision is that of the Senior Assistant Judge at a detached station, and it is in confirmation of the decision of the lower Court, it is final, if the matter in issue do not exceed in value 1000 rupees; and when it alters or reverses the decision of the lower Court, the decision of the Assistant Judge is final, if the matter at issue does not exceed 500 rupees. Though the decision be final in these cases, it is still subject to a special appeal to the Sudder Dewanny Adawlut. When the matter at issue in an appeal is above the amount of the Assistant Judge’s final jurisdiction, it may be re-appealed to the Zillah Judge, if it do not exceed 5000 rupees; if it be above that sum the appeal will be to the Sudder Dewanny Adawlut.

From all decisions and orders of the Zillah Judge there is an appeal to the Sudder Dewanny Adawlut.

From the decisions of Assistant-Collectors, Komavisdars, or other similar officers, there is an appeal to the Collector or Sub-Collector.

From the decisions of the Collector or Sub-Collector, there is an appeal to the Sudder Dewanny Adawlut, when, if the decree of the Assistant-Collector, Komavisdar, or other similar officer was confirmed, the sum adjudged, or at issue, amounted to or
exceeded 1000 rupees; or, if modified or reversed, the sum dis-
allowed, or at issue, amounted to or exceeded 200 rupees.

From decisions of the Agent of the Sirdars and the Political
Agent in Dharwar, there is an appeal, when the decision is
against Sirdars of the two first classes, to the Governor in Council;
when the decision is against a Sirdar of the third class, the appeal
is to the Sudder Dewanny Adawlut.

From the decisions of Jageerdars, Surinjamdars, and Enam-
dars enumerated in the Government List, there is no appeal.

From the decisions of all others than those enumerated in the
list there is an appeal which lies to the Agent of the Sirdars, if
the Jageerdars are in the first and second class of Sirdars of the
list provided for by clause 2, section 3, Regulation XXIX. of
1827; if they are in the third class of the said list, the appeal
from their decision is to the Zillah Judge.

There is a special appeal to the Sudder Dewanny Adawlut
from all decisions passed in regular appeals in any of the Civil
Courts subordinate to it, on the grounds detailed in the outlines
for Bengal and Madras. There is also a special appeal to the
Zillah Judge from the decisions of an Assistant Judge, at a de-
tached Station.

LANGUAGE.

The regulations are silent as to the language of pleadings.
The language of decrees, in so far as relates to the points to be
decided, is the same as in the other Presidencies, as detailed in
the outline for Madras. In other respects all processes, orders,
sentences and decrees of any Zillah, or inferior Court, are in the
language and character used in the Court. The ordinary process
of the Sudder Dewanny Adawlut is in the language and character
used in the suit or proceeding to which such process relates; but
the whole of the decree is in English, with a translation in the
language used in the suit.

SUBJECTS OF SUIT.

The returns for the Bombay Presidency do not show the char-
acter of the litigation, except in so far as that may be gathered
from the amount or value of the matters in dispute; and the
abstracts relating to Civil Justice which were submitted to the
Committee of the House of Commons in 1852 are for the year
1849, instead of the year 1850. During the former year, out of 95,286 suits disposed of, 88,983 were under 100 rupees; and of these 82,292 were under 50 rupees, and 38,068 under 10 rupees. From the abstracts of 1850, since received at the India House, it appears that the number of suits disposed of in that year were 95,054; of which 91,975 were connected with debt, wages, &c., 2011 connected with land, 952 with caste, religion, &c., and 116 with land rent.

PROCEDURE.

The rules of procedure are applicable to the proceedings before the Collectors and their subordinates, when exercising judicial powers, as well as to proceedings before the ordinary Judges; but the proceedings before the other officers exercising special judicial powers seem to be of a less formal character.

In original suits, where the amount or value in dispute is under 100 rupees, there is no stamp; but in appeals, regular and special, there is a stamp on any amount or value above 1 rupee, which varies from 2 anas where the amount or value is no more than 2 rupees, to 7 rupees where it is 100 rupees; above 100 rupees, original suits and appeals, regular or special, require institution stamps of the same amount; and where the amount or value is 300 rupees, the stamp is 20 rupees; from that to 6000 rupees, it is 50 rupees, being somewhat higher than in the other Presidencies; and on 50,000 it is 1000 rupees, being still higher; while above 100,000 it is the same, or 2000 rupees. On the subsequent pleadings and applications to the Courts, the stamps also vary according to the amount or value of the matter at issue, but can never exceed 4 rupees.

Suits cognizable before the Collector are subject to the same rules in regard to stamps as are in force for the Courts of Civil Judicature.

Suits in the Dekkan generally, and also in the Zillah of Dharwar, are brought under the operation of the stamp laws; and there does not appear to be any exception of suits brought before the Agent for Sirdars or the Jageerdars, Surinjamdars, and Enamdars.

PLEADINGS.

These are limited to the plaint and answer; but with the leave of Court, to be applied for verbally, a reply may be filed, and in the same way a rejoinder. The points to be established by the
parties are to be defined, ascertained, and recorded; and evidence received in the same way as in the other Presidencies.

HEARING OF THE CAUSE.

The Judge determines both fact and law; and every Court where an European authority presides is allowed to avail itself of the assistance of respectable natives in any of the three ways mentioned in the outline for Bengal; and the decision is vested exclusively in the authority presiding in the Court.

The laws to be observed in the trial of suits are Acts of Parliament and Regulations of Government applicable to the case. In the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience.

When, in any matter depending on the peculiarities of Hindoo or Mahomedan law, a doubt arises regarding such case, the Court, in aid of its judgment, is to consult the officer or officers appointed to expound these laws. The returns of cases decided by the different Courts do not afford the means of distinguishing the number of suits that may have been decided according to Acts of Parliament and Regulations of Government, or by Hindoo or Mahomedan law, or according to justice, equity, and good conscience.

EXECUTION OF DECREE.

The application for enforcing the decree of a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, must be addressed to the Zillah Judge, who may either decide on it himself or delegate authority for that purpose to an Assistant Judge. There does not seem to be any special rule for the execution of the decrees of Assistant Judges; and the application must apparently be made to the Zillah Judge in that case also, as well as when the final decree is his own.

The decrees of the Sudder Dewanny Adawlut are executed by the Judge of the Zillah in which the suit was originally tried, in the same manner as decrees of his own Court.

No decree against a Sirdar of the first class can be carried into execution without the sanction of the Governor in Council.

The Collector executes his own decrees on verbal application by the party interested.
Jageerdars have also authority to execute their own decrees, and applications for execution of decrees refused by them may be received by the Agent or Judge, and such order passed thereon as justice and the regulations may require.

REVISION OF JUDGMENT.

All Courts, original and appellate, receive applications for revisions of judgment. The grounds for the application are error or omission apparent on the face of the decree, or the discovery of new matter or evidence which could not be adduced at the time when the decree was passed. The order of the Court rejecting the application is final, as in the other Presidencies. If, on the other hand, the Court should think the grounds adequate, the application, if made to a subordinate Court, is to be referred, with the sentiments of the Court, to the Zillah Judge; and if made to the Zillah Judge, it is to be referred, in like manner, to the Sudder Dewanny Adawlut for final decision by these authorities respectively. If an application be made to the last mentioned Court for a revision of its own judgment, it is finally decided upon in all cases by that Court.

APPEAL.

The petition of appeal is to be presented to the Appellate Court, that is, to the Collector or Sub-Collector when the appeal is from the decree of an Assistant Collector, Komavisdar, or other similar officer; to the Agent of Sirdars and the Political Agent when the appeal is from decrees of the Sirdars; to the Zillah Judge when the appeal is from the decree of any of the subordinate Courts; and to the Sudder Dewanny Adawlut when the appeal is from a decree of the Judge. If the appeal be to the Judge, the petition is to be presented within thirty days; and the rule is apparently the same for appeals to the authorities above mentioned, except the Sudder Dewanny Adawlut. When the appeal is to that Court, the petition is to be presented within ninety days from the date of the decree. The appellant, along with his petition, is to deliver good and sufficient security for payment of the costs that may be awarded on the appeal to the respondent, except in cases of appeal which are carried on under the authority and at the expense of Government. In other cases no petition of appeal can be admitted without such security, or proof that the appellant is a pauper.
JUDGMENT.

All that requires special notice has been already mentioned under the head of Language.

SUSPENSION OF EXECUTION.

When an appeal has been admitted, no order for enforcing the decree shall be issued during the appeal; and if an order for enforcing the decree has been issued, the execution of the order, so far as it may be unexecuted, shall be suspended pending the appeal. But the Judge, if applied to by the respondent, shall require the appellant, if in possession, to give good and sufficient security for one year's produce of the land, or other immoveable property, or with respect to other property, for the performance of the decree which may be passed upon the appeal. If the appellant fail to give such security, the decree may be enforced as in ordinary cases.

PRACTICE OF THE SUDDER DEWANNY ADAWLUT IN APPEALS.

After the petition of appeal, a second petition may be filed by the appellant offering specific objections to the judgment. The further pleadings are to be conducted generally according to the rules prescribed for original suits.

All appeals are to be referred in the first instance to one Judge, who shall pass judgment thereon, provided such judgment confirm the decree appealed from. But if the Judge is not prepared to confirm the decree, he shall record his opinion that a full Court is required, and the suit shall thereafter be tried by a Court consisting of any three or more Judges.

GENERAL BUSINESS OF THE SUDDER DEWANNY ADAWLUT.

The number of appeals disposed of in the year 1849 was 110, of which 6 were dismissed for default, 54 confirmed, and 50 reversed. There were besides 785 petitions for the admission of special appeals, of which 181 were admitted, 160 dismissed on default, and 444 rejected.

APPEALS TO THE PRIVY COUNCIL.

The rules for the admission of appeals from the Sudder Dewanny Adawlut at Bombay, and in regard to the execution of decree, security, and expense of translations, are substantially the same as at the other Presidencies. The Bombay Regulations on the subject are noted on the margin.
APPENDIX B.

DRAFT OF A BILL TO AMEND ACT VIII. OF 1859 (FOR SIMPLIFYING THE PROCEDURE OF THE COURTS OF CIVIL JUDICATURE NOT ESTABLISHED BY ROYAL CHARTER.)

(Read a first time July 2, 1859.)

Preamble.

WHEREAS it is expedient to amend Act VIII. of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter): It is enacted as follows:—

I. From and after the passing of this Act so much of the 332nd Section of Act VIII of 1859 as enacts that "If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of three or more Judges of that Court," shall be repealed, and in lieu thereof the following shall form portion of the said Section:—

"If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court. If the Court consist of two Judges only, and there is a difference of opinion upon the evidence, and one Judge concur in opinion with the Lower Court as to the facts, the case shall be determined accordingly: if in a Court so constituted there is a difference of opinion upon a point of law, the Judges shall state the point upon which they differ, and the case shall be re-argued upon that question before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges of the Sudder Court."

II. From and after the passing of this Act the 215th Section of the said Act shall be repealed, and in lieu thereof the following shall be the 215th Section:—

"The Court, on receiving any application for execution of a decree containing the particulars above mentioned, or such of them as may be applicable to the case, shall enter a note of the application, and the date on which it was made, in the Register of the suit. If it shall be shown to the Court that the particulars do not correspond with the original decree, the Court shall either return the application for correction to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted,
the Court shall order execution of the decree according to the nature of the application.”

III. When under the provisions of Section 385 of the said Act, the Act is extended to any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, it shall be lawful for the Government to which the territory is subordinate to declare that the Act shall take effect therein, subject to any restriction, limitation, or proviso which it may think proper. In such case the restriction, limitation, or proviso, shall be inserted in the declaration or notification of such extension. When the Act is extended by the Local Government to any territory subordinate to such Government, and such extension is made subject to any restriction, limitation, or proviso, the previous sanction of the Governor-General of India in Council shall be requisite.

ANNEXURE TO BILL TO AMEND ACT VIII. OF 1859.

STATEMENT OF OBJECT AND REASONS.

This Bill proposes to modify the following Sections of the new Code of Civil Procedure contained in Act VIII. of 1859, namely, Section 215, Section 332, and Section 385.

The 1st Section of the Bill refers to the concluding clause of Section 332 of the Code, which provides that appeals in the Sudder Court shall be heard and determined by a Court consisting of three or more Judges.

With the present number of Judges in the Sudder Courts at Calcutta, Madras, and Agra, it is found that, if every appeal instituted in those Courts is heard by three Judges, it will be impossible for the Courts to keep pace with their work, and a speedy and large accumulation of arrears must be the consequence. To prevent this it is proposed that two Judges sitting together may form a Court for the disposal of appeals. The substitution of the word “two” for the word “three” in the last line but one of the Section is all that is necessary to make the change in the law; but as differences of opinion on points both of law and of fact will frequently arise between the two Judges, the new Section proposes further to enact that, when the Court shall consist of two Judges only, and there is a difference of opinion upon the evidence, and one Judge concur in opinion with the Lower Court as to the facts, the case shall be deter-
mined accordingly: if in a Court so constituted there is a difference of opinion upon a point of law, the Judges shall state the point upon which they differ, and the case shall be re-argued upon that question before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges of the Sudder Court. Under the new Section there will be nothing to prevent three Judges from sitting together to hear an appeal whenever they may see fit to do so.

Section II. of the Bill has reference to Section 213 of the Code. Under that Section the Courts are required, on receiving an application for the execution of a decree, to compare the application with the original decree contained in the record of the suit; but as the whole or nearly the whole of the records of the Civil Courts in the North-Western Provinces were destroyed during the late mutinies, it will often be found impossible to comply with this requirement of the law. There will also be a difficulty in conforming strictly to it, when a Court which may have primarily decided a suit is required to execute a decree passed in appeal in the same case for which the Code makes provision. It is proposed, therefore, to strike out all that part of the Section which contains the rule above mentioned, and to leave it to the discretion of the Court to satisfy itself in every case, either by comparing the application with the original decree when that is forthcoming, or in some other way, that the application is correct, and should be allowed. This modification of the original Section appears unobjectionable, and its adoption will no doubt be attended with considerable convenience both to the Courts and to the public.

Lastly, the third Section of the Bill proposes an alteration of Section 385 of the Code, in order to admit of the extension of the Code to the Non-Regulation Provinces, with any restrictions or limitations which the local Government, with the previous sanction of the Governor-General in Council, may see fit to order. As the Section is now worded, it would seem that the Code must be extended wholly or not at all; and as its partial extension, or its extension with some exceptions or restrictions, may sometimes be desirable, it appears proper to invest the local Governments with power so to extend it, subject to the orders or with the previous sanction of the Supreme Government.

The 2nd July, 1959.

H. B. Harington.
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