

Butwal Chhote Court of Dis- trict Butwal Bazar.	.....	Shohratganj (District Basti).
Under the Butwal Taulihwa Khajni Goshwara Court- Taulihwa Amini Court of Khajahni.	.....	Shohratganj (District Basti).
Shiuraj Chhoti Court of Shiuraj.	.....	Shohratganj (District Basti).
Dhudhwa Pabar Amini Court.....		Jwrwa (District Gonda).
Under the Nepalganj Bankey Bardia Goshwara Court- Bankey Amini Court of Dis- trict Bankey.	.....	Rupaidiha (District Bahraich).
Bardia Amini Court of Dis- trict Bardia.	.....	Katarniaghat (District Bahraich).
Under the Trinagar Goshwara Court- Kailali Amini Court of District Kailali.	.....	Dudhuaghat (District Kheri).
Kanchanpur Amini Court of District Kanchanpur.	.....	Paliyakalan (District Pilibhit and Tanakpur (District Pilibhit).
Darchula Amini Court of District Baitadi.	.....	Jhula Ghat (District Almora).
Under the Dhankuta Gaunda Ilaq- Taplejung Amini Court	.....	Sukhia Pokhari (District Darj- eeling).
Under the Ilam Guanda Ilaq- Ilam Amini Court	.....	Sukhia Pukhari (District Dar- jeeling).

PART II**RULES RELATING TO ACTS OTHER THAN THE CIVIL
PROCEDURE CODE AND THE COURT-FEES ACT****CHAPTER 15****1. The Provincial Small Causes Courts Act, 1887 (IX of 1887)**

270. The following Rules of Practice shall be observed in Courts of Small Causes-

- (1) The summons shall ordinarily be served on the defendant seven clear days before the day on which the Court shall be held at which the cause is to be tried, unless the Court shall otherwise order, but a summon may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.
- (2) The cause of action shall be transcribed from the plaint into the Small Cause Sheet [Form No. (R)9-A] and the substance of the cause of action shall be entered in the Register of Small Cause Court Suits [Form No. (R)8].
- (3) The substance of the evidence, the judgment, and the decree shall be entered in the Small Causes Book referred to above by the presiding Judge himself.

Note- In case of review or applications under Order 9, Rules 3, 9 and 13, the substance of evidence and judgment or order shall also be entered in the Small Causes Book. If necessary, separate foolscap sheets should be attached to the book.

- (4) In cases in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, a very early date of hearing shall be fixed not exceeding fifteen days and the case should be disposed of as expeditiously as possible.

Note- For rules regarding the maintenance, etc. of records of Small Cause Court, see Rule 2 *et seq.*

2. The Administrator-General's Act, 1913 (III of 1913)

271. Where a subject of a State dies in India and it appears that there is no one in India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of

administration shall, on the application to such Court of any Consular Officer of such State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to the following rules, think fit to impose, namely—

- (i) Where the deceased has not left in India any known heirs or testamentary executors, by him appointed, the local authorities, if any, in possession of the property of the deceased, shall at once communicate the circumstances to the nearest Consular Officer of the State of which the deceased was a subject in order that the necessary information may be immediately forwarded to persons interested;
- (ii) Such Consular Officer shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or creditors of the deceased until they are otherwise represented (Government of India, Home Department Notification No. F-620/32-Judicial, dated the 25th July, 1932, issued under section 57 of the Administrator-General's Act, 1913).

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

3. The Guardian and Wards Act, 1890 (VIII of 1890)

272. Whenever the petition made under Section 10 of the Guardian and Wards Act, 1890, states that the property of the minor consists of land or any interest in land, a copy of the petition shall be sent free of charge to the Collector of the district in which such property or any part of it is situate.

273. In uncontested proceedings under the Guardian and Wards Act, 1890, it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct except when otherwise provided by any law or rule for the time being in force, that any particular fact or facts may be proved, or evidence upon any application may be given, by affidavit.

274. In cases where accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of Section 34, or otherwise, the Court shall observe the following rules as to the class of persons who should be appointed to examine the accounts and the scales of remuneration to be granted to them.

(1) Where the net annual income of the ward's property exceeds Rupees two thousand the Court may appoint either (i) persons who are holders of certificates granted by the Central Government under Section 144 of the Indian Companies Act, 1913, or (ii) persons who are members of any institution or association who have been declared by the Central Government to be entitled to be appointed and to act as auditors of Companies through out the whole of India except Part B States, or (iii) any legal practitioner who in the opinion of the Court is qualified in examining accounts.

(2) In a case where the net annual income does not exceed Rupees two thousand, the Court may appoint either (i) any officer of the Court, or (ii) a legal practitioner who in the opinion of the Court is qualified in examining accounts.

(3) The amount of remuneration of the officer, or certified auditor or legal practitioner, as the case may be, will not exceed two percent. Where the net annual income is below Rupees two thousand and in cases where the income is above Rupees two thousand the remuneration shall be two percent upto Rupees two thousand and one percent thereafter and will be payable out of the funds of the ward's estate.

(4) In a case where the estate is a very big one and the accounts are heavy, the court may appoint any certified auditor and fix such remuneration as may be reasonable in the circumstances.

275. Monies belonging to wards shall not, without the leave of the District Judge, be invested in securities other than these mentioned in clauses (a), (b), (bb), (c) and (d) of Section 20 of the Indian Trusts Act, 1882, or be deposited in any Bank other than a Government Savings Bank.

276. Monies payable to wards shall be paid to their guardians direct if possible, or by post, if direct payment is not possible. When for special reasons, to be recorded in writing, payment of an amount

is made to the Advocate or pleader of a guardian, the Court shall insist on filing by the Advocate or pleader of a proper receipt from the guardian showing that the amount has been paid to him.

Note 1— An advocate or a pleader failing to file the receipt within a reasonable time shall be required to deposit into the Court the amount received by him.

Note 2— The receipt shall be kept with the record of the case to which it relates. During examination of the accounts of the ward's properties, the genuineness of the receipt shall be inquired into by the person appointed to examine the accounts.

4. The Indian Succession Act, 1925 (XXXIX of 1925)

A— Uncontested Probate and other Proceedings

277. In uncontested proceedings under the Indian Succession Act, 1925 it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for the time being in force that any particular fact or facts may be proved, or evidence upon any application may be given by affidavit.

Note— When a District Delegate, acting under Section 288 of the Indian Succession Act, 1925, returns the petitions and any documents filed therewith to the person by whom the application was made, he should forward to the District Judge, and not to the Record room such other papers in connection with the application as may have been produced before him [For classification of such papers, see Note 1 to clause (d) of Rule 343].

B— Government Regulations relating to the preservation and inspection of wills under Section 294 of the Succession Act

Custody and preservation of wills of which probate or Letters of Administration with the will annexed have been granted.

278. All original wills presented to the District Judge or District Delegate, in accordance with the provisions of Section 276, shall, immediately upon the passing of the order of granting Probate or Letters of Administration under Sections 289 and 290 be entrusted to the care of the head clerk or the chief ministerial officer of the District Judge's or District Delegate's Court, who shall be responsible for their safe custody.

279. The said officer shall, on the receipt of each original will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and after the copy has been examined by him and found to be a true copy, he shall certify the copy to be a

true copy. The said officer shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and page of the register in which a copy of the Will is entered, shall be recorded in Form No. (R)10.

Note 1— Every volume of the register in which copies of Wills are made must be ruled and the pages numbered before it is taken into use, a note being made at the beginning of the volume of the number of pages it contains. Each copy should follow immediately upon that which precedes it, and should be written in a clear hand, corrections being written above the line and initialled by the officer who compares the copy with the original, and no erasures being permitted. All copies should be made immediately on receipt of the original by the Sheristadar or head clerk, who should certify at the bottom of each page and at the end of the copy that such comparison has been made and that the copy is correct, should the number of pages at the end of a register be insufficient to include a copy of the will which would ordinarily be inserted there, a fresh volume should be taken into use and the blank sheets scored across, a note being added at the beginning of the volume "Pages to blank."

Note 2— Each volume of the register should be legibly marked on the back with its own serial number, with the year to which it relates and with the serial numbers of the first and last copies contained in it.

280. The original Will shall, after being copied, be placed in a sealed cover (to be sealed in the presence of the District Judge or District Delegate), and the sealed cover containing the original will shall be deposited in a fire-proof safe, which shall be kept in the office room of the head clerk or other officer aforesaid to whom the safe custody of the will may have been entrusted.

Note 1— Each original Will shall have endorsed upon it the number and page of the volume in which its copy is entered and shall be kept in a separate envelope marked outside with the same particulars and with the testator's name and the year of execution. Wills should be kept in the safe or box in their proper serial order.

Note 2— Wherever an original Will is removed from the custody of the officer responsible for its a note of the date of despatch and return should be made against the entry in the Index prescribed in Rule 279, and for such entries sufficient space should be left in the form.

Note 3— In all cases when an original Will is removed from the custody of the officer-in-charge, he should note upon the envelope (which should be retained in its proper place) the date and place of removal, scoring out the entry, with a note of the date, on return. Careful examination should be made, of all Wills so returned, to ensure that no alterations have been made.

281. As soon as possible after the 31st December and not later than the 31st January of every year, each District Delegate shall

transmit to the Court of the District Judge all the original Wills in respect of which a grant of Probate or letters of Administration have actually been made during the year, together with the register containing the copies thereof and the alphabetical index, and these shall then be preserved along with the Wills deposited in the Court of the District Judge subject to the same regulations as to custody, inspection, etc.

Inspection of Wills

282. The District Judge or District Delegate may, upon an application in writing for inspection of the register and of any Will mentioned in such register, make an order permitting the inspection of the same :

Provided that no such order shall be made unless in such application are set forth the names, residences and occupations of the applicant and of the person or persons, if any, to be present on his behalf at the inspection, and the reason for which an order of inspection is desired.

283. The order for inspection shall state the date on and the hours within which the inspection may be had. No inspection shall be allowed under these regulations otherwise than in the presence of the District Judge or District Delegate or of the Chief Ministerial Officer of his Court or such other officer who may have charge of the Will as the District Judge or District Delegate shall direct. The officer present at the inspection shall be responsible for the will not being taken out of sight during the inspection and also that no erasure or alteration or mark is made on it. No person inspecting a will under these regulations shall be permitted during the inspection to have in his possession or have access to a pen and ink, but a person so inspecting may be permitted to make short notes in pencil on a slip of paper to be supplied by the officer present at the inspection.

284. The following fees shall be levied in court-fee stamps for the inspection of Wills—

- (i) For the inspection of an original Will, court-fee stamp of the value of one rupee;
- (ii) For the inspection of a copy of a Will in the register, court-fee stamp of the value of fifty Naya Paisa.

C- High Court Rules relating to the custody and preservation, production and copy of Wills in general

285. All Wills as soon as they are filed in a Court for the purpose of being proved, shall be made over for safe custody, in the presence of the District Judge either to the Head Asstt. or to the Sheristadar of the Court, who shall give a receipt for them. The said officer shall, on receipt, copy or cause the wills to be copied in the register kept for that purpose and entered in the alphabetical index where a note shall subsequently be made showing, as to each Will, whether Probate or Letters of Administration with the Will annexed have been granted or not.

286. All Wills of which Probate or Letters of Administration with the Will annexed are not granted shall be preserved in the manner indicated in Rule 280 notes :

Provided that when an application for Probate or letters of Administration with the Will annexed is withdrawn, or dismissed for default or non-prosecution, the Will may be returned to the party filing it, on his application except where there is any provision of the law requiring the Court to retain it. If any forgery is suspected, the Court may keep the Will pending such action as it may deem proper.

287. No original Will after being placed in the fireproof safe as provided for in Rule 279-A above shall be removed therefrom except under an order in writing of the District Judge made for the purpose of—

- (1) its being produced in Court on the hearing of the application for the purpose of which it was filed, or on the hearing of an application for the revocation of a grant or Probate or Letters of Administration with the Will annexed, or on the hearing of a case in the District Judge's Court in which it is necessary to put such Will in evidence.

Note— The Sheristadar or the Head Assistant of the Court having custody of the will shall personally produce the Will before the Court on the day of hearing, and if the Will has to be retained in Court, shall take a written receipt from the Bench Assistant. The latter officer shall be responsible for the custody of the Will so long as it remains in the Court.

- (2) its being copied;
- (3) an inspection of such Will;

(4) Complying with the requisition under Rule 288.

288. (1) Upon a requisition from any Court at a different station for the production of an original 'Will' in a case pending in such Court, the District Judge shall, whether the original 'Will' has been proved or not, forward the 'Will' in a sealed packet by registered post with acknowledgment due, addressed to the presiding Judge of the Court making the requisition. When the court making the requisition is located at same station as that of the District Judge, the 'Will' shall be sent in a sealed packet in the custody of a responsible officer to the said Court for production. The officer to whom an original 'Will' is so entrusted shall deliver the same to the presiding Judge of the Court.

Note- When the record of a case referred to in Rule 343(d) post or an original 'Will' is called for in connection with an appeal or case pending in the High Court, the District Judge shall, whether the original 'Will' has been proved or not forward the same separately in a sealed packet by registered post, with acknowledgment due, addressed to the Deputy Register.

(2) The Presiding Judge shall, on receipt of the 'Will' whether sent by post or through a responsible officer, take all necessary precautions for the safe custody and preservation of the 'Will' until he has returned the same in a sealed packet through the officer to whom it was entrusted for production, or by registered post, with acknowledgment due, to the District Judge in whose Court the 'Will' was filed for the purpose of the application for the grant of Probate or Letters of Administration.

Note- When the 'Will' is called for, production at the instance of a party in any Court, the District Judge shall not comply with the requisition for the same unless it is certified that a sum sufficient to cover all the necessary expenses for transmission and re-transmission thereof has been deposited.

289. (1) Application for a copy of an original Will shall be submitted to the District Judge, and such copy shall only be granted subject to the conditions which attach to the inspection of original Wills.

(2) For copies, the same fee as for inspection shall be levied in Court-fee stamps in addition to the copying charges at the usual rate obtaining in the Civil Courts which shall be levied in the same way as such charges are levied under the copying rules in Chapter 25, Part IV.

Note- The following fees shall be levied in Court-fee stamp for the inspection of Wills-

- (i) for the inspection of an original Will, Court-fee stamp of the value of one rupee;
- (ii) for the inspection of a copy of a Will in the register, Court-fee stamp of the value of fifty Naya Paise.

290. All application for copies or inspection of Wills and registers of Wills shall be entered in the register prescribed by the High Court for applications for copies.

291. In cases where the fees collected for inspection and copy exceed Rs.5 per mensem, District Judges may assign a moiety to the officer entrusted with the custody of the Wills, the balance being credited to Government. In cases where the collections do not average more than Rs.5 per mensem in one year, District Judges may sanction the payment to such officer of the full amount realised upto Rs.30.

Note- (a) The following certificate should be appended to each bill in which the charges referred to in this rule are drawn-

"Certified that the charges included in this bill have been drawn in accordance with the scale laid down by the High Court, and that each Court-fee stamp for which commission is drawn in defaced with the words 'Commission allowed'. Certified also that the fees drawn on previous bills (with the exception of those deducted above) have been disbursed to the proper person and his receipt taken in the acquittance roll filed in my office."

(b) As there is a separate Budget allotment for the expenditure, the charges should be drawn on separate bills showing the allotment and expenditure up-to-date of each drawal. (A. G. B. No. T. M. 163, dated 6th May, 1892, and C. O. No. 16 of 18th August, 1892).

292. (1) A register of caveats containing the following columns shall be maintained in manuscript in the office of the District Judge-

- (i) Serial Number.
- (ii) Date of ----- filing the caveat,
receipt of copy of caveat
- (iii) Name, description and residence of the caveator.
- (iv) Name, description and residence of the testator.
- (v) Action taken.
- (vi) Remarks.

(2) In this register shall be entered all caveats lodged and all

copies of caveats received under sub-section (2) and (3) of Section 284, Indian Succession Act, before application is made for the grant of Probate or Letters of Administration.

(3) Such caveats and copies shall be kept in a guard file and preserved in the office until the filing of a connected application for Probate or Letters of Administration. Upon the filing of any such application, the relevant caveat or copy shall be removed from the guard file and made part of the record of the proceeding relating to the application. When this is done, the fact should be noted in Column 6 of the register.

5. The Provincial Insolvency Act, 1920 (Act V of 1920)

293. (1) The following rules may be cited as "The Provincial Insolvency Rules". The forms prescribed by these rules with such variations as circumstances may require, shall be used for the matters to which they severally relate.

(2) Every insolvency petition shall be entered in the Register of Insolvency Petitions [Form No. (R)3] to be maintained in all Courts exercising Insolvency Jurisdiction, and shall be given a serial number in that register, and all subsequent proceeding in the same matter shall bear the same number, except proceeding which have to be registered as Miscellaneous Judicial cases under the Note to clause (38) of Rule 740.

(3) All insolvency proceedings may be inspected at such times, and subject to such restriction as the Court exercising insolvency jurisdiction may prescribe, by the Receiver, the debtor, and any creditor who has proved, or any legal representative on their behalf.

Notices

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

["(4-a) The insolvency notice to be issued by the creditor under Section 6(2) of the Act shall be in the prescribed Form No.A appended before the insolvency notice to be issued by the creditor under Section 6(2) of the Act shall be in the prescribed Form No.A

appended before the Insolvency form at page 96 and shall be sent by Registered post with acknowledgment due to the Debtor at his last known residence or the last known place in which the Debtor resides or works for gain"]¹.

(5) Notice of an order fixing the date of the hearing of a petition under Section 19(2) shall be published in the official *Gazette* and advertised in such newspapers as the Court may direct. A copy of the notice shall also be forwarded by the Court by registered letter to each creditor to the address given in the petition. The same procedure shall be followed in respect of notices of the date for the consideration of a proposal for composition or scheme of arrangement under Section 38(1). Notice of an order of adjudication under Section 30 may in addition to the publication in the official *Gazette* required by the Act, be published in such newspapers as the Court may direct. When the debtor is a Government servant a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under Section 37(2).

Note- If the insolvent has no assets wherefrom the cost of the publication of the notice of the order made under Section 43(1) can be met, the Court should send the notice with a certificate to that effect to the Superintendent, Assam Government Printing, Shillong, whereupon the notice will be published in the *Assam Gazette* free of charge.

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

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

(9) Notices of the date of hearing of applications for discharge under Section 41(1) shall be published in the official *Gazette* and in such newspapers as the presiding Judge may direct, and copies shall be sent by the Court by registered post to all creditors whether they have proved or not.

1. Inserted as new sub-rule (4-a) in Rule 293 *vide* C.S. No. 14 Notification No. HC.XI-1/69-79/6762/RC, dated 9th April, 1980 [Published in the *Assam Gazette* Part-IIB, dated May 14, 1980 (with effect from 9-4-1980)] pp-889-890.

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

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

Receivers

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

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

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

(14)(i) The Receiver shall keep a cash-book and such books and other papers as are necessary to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as the Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. These shall include costs incurred on journeys necessary to the proper administration of the estate. The costs of the audit shall be fixed by the Court, and shall be paid out of the estate.

(ii) Any creditor may apply to the Court for an order directing the Receiver to hold a local enquiry in order to ascertain whether the debtor has excluded any of his properties from his schedule. The Court may before passing such an order call upon the creditor to deposit the costs likely to be incurred by the Receiver on account

of journeys made for the purpose may thereafter direct that such deposit shall be a first charge on the assets after payment of the Receiver's remuneration as provided by sub-rule (13).

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

(16) In any case in which a meeting of creditors is necessary and in any case in which the debtor proposes a composition or scheme under Section 38, the Receiver shall give 7 days' notice to the debtor and to every creditor of the time and place appointed for such meeting. Such notices shall be served by registered post.

Proof of debts

(17) A creditor's proofs should be in Form No. (M)46 in volume II, with such variations as circumstances may require.

(18) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor or by some other persons on behalf of all such creditors. Such proof should be in Form No. (M)47 in Volume II.

Procedure where the debtor is a firm

(19) Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his own signature, *e.g.*, "H. Barman & Co. by Subodh Barman".

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

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

(22) Where a firm of debtors file an insolvency petition the same shall contain the names in full of the individual partners, and if such petition is signed in the firm name the petition shall be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in the filing of the same.

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

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

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

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

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

Sale of immovable property of insolvent

(28) If no Receiver is appointed and the Court, in exercise of its powers under Section 53 of the Act, sells any immovable property of the insolvent the deed of sale of the said property shall be prepared by the purchaser at his own cost, and shall be signed by the presiding Judge of the Court. The cost of registration (if any) will also be borne by the purchaser.

Dividends

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

Summary administration

(30) When an estate is ordered to be administered in a summary manner under Section 74 of the Act, the provisions of the Act and Rules shall, subject to any special direction of the Court, be modified as follows, namely—

- (i) There shall be no advertisement of any proceeding in the local official *Gazette* or any newspaper;
- (ii) The petition and all subsequent proceedings shall be endorsed "Summary Case";
- (iii) The notice of the hearing of the petition to the creditors shall be in Form No. (P)72, Volume II;
- (iv) The Court shall examine the debtor as to his affairs, but shall not be bound to call a meeting of creditors, but the creditors shall be entitled to be heard and to cross-examine the debtor;
- (v) The appointment of a Receiver will often not be necessary and the Court may act under Section 58 of the Act in order to reduce the cost of the proceedings.

(31) All proceedings under the Act down to and including the making of an order of adjudication shall be at the cost of the party prosecuting the same but when an order of adjudication has been made the reasonable cost of the petitioning creditor shall be payable out of the estate.

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

(33) Where no receiver being appointed the Court itself exercises all the powers of a receiver under Section 58, an account in the accompanying form should be maintained to show all amounts received and disbursed—

Debts proved	Date of challan	No. of challan	Amount received	Disbursement	Initial of Judge	Remarks
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Rs. nP.

Rs. nP.

294. (1) The following rules may be cited as the Provincial Insolvency (Supplementary) Rules, 1940.

(A) Official Receivers

(2) The Official Receiver shall charge such commission and furnish such security as the State Government in consultation with the District Judge may direct.

(3) The Official Receiver shall be under the administrative control of the District Judge, who shall fix a time and place for the performance of his duties.

(4) Subject to the operation of these rules, the provisions of Rule 287, Civil Rules and Orders, shall apply to the Official Receiver as to any other Receiver.

(5) The provisions of Rules 65-96, inclusive of Order XXI, Civil Procedure Code, 1908 and of Rules 187, 188 and 192, Civil Rules and Orders, shall, *mutatis mutandis*, apply to all sales of property conducted by the Official Receiver, who directly or indirectly shall neither bid at any such sale nor acquire an interest in any such property.

(6) The accounts of the Official Receiver shall be audited annually by the Accountant-General, Assam, who shall submit an audit report through the District Judge to the State Government; and the cost of such audit shall be met by charging upon the gross annual realisation of such estate in the hands of the Official Receiver an audit fee to be fixed by the State Government.

(7)(a) The Official Receiver shall maintain the following registers—

- (i) Diary (Form No. 1);
- (ii) Tour Diary (Form No. 2);
- (iii) Register of Insolvency cases (Form No. 3);
- (iv) Register of receipts and payments on account of immovable property (Form No. 4);
- (v) Register of receipts and payments on account of movable property (Form No. 5);
- (vi) Cash Book (Form No. 6);
- (vii) Estates Ledger Account (Form No. 7);
- (viii) Register of realisations and refunds on account of commission, travelling allowance and audit fee (Form No. 8);
- (ix) Dividend Register (Form No. 9).

(b) The Official Receiver shall issue printed and numbered receipt for all monies realised by him, and shall, to facilitate the audit of his accounts, retain printed and numbered counterfoils of all receipts so issued;

(c) The Official Receiver shall, once in every half year, prepare an abstract of Estates Ledger Account balances, and the Sheristadar of the District Judge shall compare such abstract with the balances shown in the Official Receiver's Cash Book, and shall reconcile the difference, if any, between the abstract and the Cash Book balances.

(8) All monies realised by the Official Receiver shall be paid by him into the Government Treasury on the day of receipt if possible, or on the morning of the next working day; provided that monies realised on tour shall be so paid not later than on the morning of the working day next following his return to headquarter.

(9) Collections representing audit fees or the commission and travelling allowance fees of the Official Receiver shall be credited by chalan to such account as the State Government may direct; and all other collections shall be separately credited by chalan to a personal ledger account to be opened in the name of the District Judge.

(10)(a) The Official Receiver shall draw his commission and

travelling allowance from the Government account by submitting in duplicate, for refunds of revenue, bills in Form T.R. 12 annexed to the Treasury Rules;

- (b) Every such bill shall, before submission to the Treasury, be checked by the District Judge's accountant, and sanction for such refund of revenue shall be accorded on each bill over the countersignature of such authority as may be vested with the powers to sanction refunds of revenue by the State Government in this behalf;
- (c) One copy of every bill so countersigned shall be retained by the Official Receiver for the purposes of audit.

(11)(a) No expenditure above Rs. 10 from the personal ledger account shall be incurred except on the written order of the District Judge; and no expenditure shall be incurred for any estate without sufficient liquid assets to meet such expenditure, unless a creditor deposits the required amount;

- (b) The Official Receiver shall, for the purposes of audit, maintain in manuscript form a record of the receipt and refund of every such deposit.

(12) All payment above Rs. 10 from the personal ledger account shall be made by cheque drawn by the District Judge.

(13) Dividends shall ordinarily be paid by cheques drawn in favour of creditors, but may be paid by cheques drawn in favour of the Official Receiver, who shall thereafter distribute the amount drawn, either in cash or by money order.

(14) Cheques drawn in favour of creditors shall as soon as drawn be posted in the Cash Book and Estates Ledger Account and shall then be made over to the actual payees or their accredited agents, and in all cases in which cheque is issued, the dated receipt of the recipient shall be taken on the order-sheet of the case record and also on a voucher which shall for the purposes of audit, be retained by the Official Receiver in accordance with the order of entries in the Cash Book.

(15) The Treasury shall in respect of the personal ledger account standing in the name of the District Judge, issue a pass-book in which entries shall be made twice in every month and at the close

of every month, the Sheristadar of the District Judge shall compare such entries with the entries in the Official Receiver's Cash Book, and shall reconcile the difference if any, between the pass-book and the Cash Book entries.

(16) All cheques not cashed within ninety days of the date of issue shall be cancelled and stopped by the District Judge, and no fresh cheque shall be issued until the cancelled cheque has been returned by the payee.

(17) From the personal ledger account, the Official Receiver shall have a permanent advance of Rs. 100, or such lesser sum as the District Judge may, after consultation with the High Court, direct, and shall recoup expenditure from such advance by presenting bills and vouchers to the District Judge, who after checking the same, shall issue in favour of the Official Receiver a cheque for the amount passed.

(18) When the Official Receiver carries on any business, belonging to a debtor, he shall keep a separate account of the trading, and shall incorporate in his Cash Book at the close of each week the net total receipts on account of such trading.

(B) Committees of Inspection

(19) A committee of Inspection shall consist of not more than five or less than three members (of whom two shall form a quorum), elected at a meeting conducted by the Receiver, who shall give fifteen day's clear notice thereof to those creditors who have proved their debts.

(20) A member of the Committee may resign his office by written notice delivered to the Receiver, and shall vacate it if he becomes insolvent or compounds or arranges with his creditors, or if he is absent from five consecutive meetings of the Committee, or if a majority of the insolvent's creditors who have proved their debts resolve that he be removed; and a vacancy occurring under this Rule shall be filled in the manner provided in Rule (19).

(21) No defect or irregularity in the election of any member shall invalidate any act done by him as a member in good faith.

(22) A meeting of the Committee may be called by the Receiver or by any member as required, and at least one meeting shall be held in every month.

(23) In the administration and distribution of the insolvent's assets the Receiver shall have regard to the directions of the Committee, and shall obtain its written consent before applying to the Court for leave to take action under Section 59 of the Act.

(24) The Receiver shall, when required, submit to the committee the Cash Book and other requisite papers, and at the end of every three months the Committee shall audit the entries in the Cash Book and Estates Ledger Account, and shall append thereto an audit certificate signed by each member.

(25) No member of the Committee shall, except with the permission of the Court, either directly or indirectly by himself or by any other person, purchase any part of the insolvent's estate, or derive any profit out of any transaction arising out of the insolvency, or receive from the estate any payment for services rendered or goods supplied by him in connection with the administration thereof, and the Court may disallow any such purchase and may recover from a member any such payment or profit.

(26) When services of a special nature, as distinct from ordinary duties have been rendered by a member of the Committee in connection with the administration of an estate, the Court may allow him such remuneration as it thinks fit.

(27) Any trading account maintained by the Receiver shall, at least once in every month, be submitted by him to the Committee, and shall be examined and certified by the Committee or by any member appointed by it for this purpose.

(C) Meetings of Creditors

(28) A meeting of creditors convened under Rule 293 Civil Rules and Orders, to consider a composition or arrangement proposed under Section 38 of the Act shall be presided over by the Receiver, who shall record and forward to the Court the decision arrived at. Where no Receiver has been appointed, the Court itself shall preside.

INSOLVENCY FORMS

FORM NO. 1

Diary

Attended Office at

Date

Left Office at

Day

Number of the Insolvency case in the Official Receiver's regis- ter (the number of the case in the Court's register should be given within brackets)	Object for which it is set down for the day	Short note of the work done	Realisa- tions with sources of such reali- sations	Number and date of the challan by which amounts realised during the day are remitted to Treasury and the amount of the challan	Date to which it is adjourned if at all	Remarks
1	2	3	4	5	6	7

N.B.— At the end of each day the Official Receiver shall note in red ink the balance in hand of the imprest and the unremitted balance of the realisations.

FORM NO. 2

Tour Diary.

Date or dates if the journey extends over several days	Details of journey including hours of departure from and return to the station	Details of the case or cases in connection with which the journey is under taken	Short note of the work done in connection with each case	Realisation with sources of such realisation	Remarks
1	2	3	4	5	6

N.B.—The amount entered in column 5 of this register shall also be shown in red ink column 6 of the diary in Form 1.

FORM NO. 3
Register of Insolvency cases

PERSONALITY

[illegible]

PERSONALITY																	
(iii) Money										(iv) Other movables							
Date of realisation		Remarks		Serial No.		In whose possession		Amount		Realisation		Date of realisation		Remarks			
19	20	21	22	23	24	25	26	27	28	29	30	31	32	33			
															Rs. P.	Rs. P.	Rs. P.

ROYALTY										
Serial No.	Description	Extent	Where situated	Nature of insolvent's interest	Value of insolvent's interest as stated in the petition	Nature of encumbrances, if any, and the name and the address of the owner of encumber-in-interest	Annual income if any	Income realised with dates of realisation	Price at sale	Date of sale
34	35	36	37	38	39	40	41	42	43	44
Rs. P.					Rs. P.					

Note.- Entries in this register in connection with cases where the Official Receiver is appointed interim Receiver should be made in red ink and in the remarks column in all cases the dates of discharge of the Official Receiver as Receiver or interim Receiver should be noted.

FORM NO. 4

Register of receipts and payments on account of immovable properties

(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's Register No. 3 and also the Court's Register of Cases should be noted on the top of each these pages)

RECEIPTS												
Number of item in Col. 6 of Register 3	Description of property	Tenant's name	Annual rent	Arrears of rent due at the beginning of the year	Other dues, if any	Date of receipt	Particulars of receipt					
							Amount received	Arrears still due	Amount received	Arrears still due	Number of receipt	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

PAYMENTS												
Landlord's name	Annual revenue of rent due to superior landlord	Arrears of rent due at the beginning of the year	Other dues	Date of payment	To whom paid	Amount paid	Arrears still due	To whom paid	Amount paid	Arrears still due	Number of voucher	Remarks
14	15	16	17	18	19	20	21	22	23	24	25	26

- N. B. (1) Arrears column numbers should be written up in red ink.
 (2) When one estate has been fully administered, an abstract of these accounts should be entered in red ink at the end and a copy of this abstract should be submitted to the Court, along with another abstract of the accounts in Register 5.

FORM NO. 5**Register of Receipts and Payments on account of movable properties**

(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's Register and in the Court's Register should be noted on the top of each such pages)

No. of item in Register No. 3	Date of receipt	From whom received	On what account received	Amount	Remarks	Date of payment	To whom paid	On what account paid	Amount paid	Remarks
1	2	3	4	5	6	7	8	9	10	11

A summary of the accounts should be entered in red ink when the movables of any particular estate have been fully disposed of and a copy of this should be submitted to the Court along with the abstract of the accounts in Form No. 4 when the estate of the insolvent has been fully administered.

FORM NO. 6**Cash Book**

RECEIPTS									
Date	Page number of the Estate's Ledger	Number of receipt	From whom received	Particulars of receipts	Government securities received or purchased (face value)	Permanent advance and its recoupment, if any	Cash in hand	Cash in Bank or Treasury	Remarks
1	2	3	4	5	6	7	8	9	10
DISBURSEMENTS									
Date	Page number of the Estate's Ledger	Voucher No.	To whom paid	Particulars of payment	No. of cheque issued, if any	Government securities issued or sold (face value)	Payment out of the permanent advance	Remittances to Bank or Treasury	Payment out of the Bank or Treasury balance
11	12	13	14	15	16	17	18	19	20

FORM NO. 7

Estate's Ledger Account

(Several pages of this register should be allotted to each estate and the insolvent and the numbers of the case in the Official Receiver's Register and the Court's Register should be entered on the top of each such page)

Receipt				Expenditure			
Date	Particulars of Receipt	Amount	Remarks	Date	Particulars of Expenditure	Amount	Remarks
		Rs. P.				Rs. P.	

FORM NO. 8

Register of Realisation and Refunds on account of commission, travelling allowance and Audit Fees

Realisation by Official Receiver					Refunds to Official Receiver				
No. and date of receipt	Details	Amount		Date and No. of challan	Date	Details	Amount		Date and No. of Bill
		Commission	Travelling allowance				Commission	Travelling allowance	
			Audit Fees					Audit	

By balance

FORM NO. 9

Dividend Register

(Several pages of this register should be allotted to each case and the particulars of the case with the name of the insolvent should be noted on the top of the first page)

Serial No.	Names of creditors	Amount of proved debt	First dividend at percent by order of the Court	Final dividend at percent by order of the Court	No. and date of the money-order receipt if the amount is sent by money order	No. and date of cheque	Signature of payee or his authorised agent	Signature of attesting witness	Remarks
1	2	3	4	5	6	7	8	9	10
		Rs.	P.						

FORM NO. 9A¹

Notice under Section 6(2) of the Provincial Insolvency Act, 1920 (Act 5 of 1920), as amended

To

Shri.
 Son of.
 Of.

Whereas I Shri son of of creditor have obtained a decree/an order against you the debtor, above named, for the payment of a sum of Rs. (Rupees.....) in case No. of the Court of at being a decree or an order which has become final and the execution where of has not been stayed.

You are hereby required to pay the same or furnish security for the payment of the said amount of Rs. to satisfaction of myself or of my agent, within a period of* from the date of receipt of this Notice by you, failing which you will be deemed to have committed as act of insolvency under sub-section (2) of Section 6 of the Provincial Insolvency Act, 1920.

Dated this day of 20...
 Name and address of the creditor.

Note. No. notice of Insolvency shall be served on a debtor residing.

(1) Permanently or temporarily, outside India unless the creditor obtains the leave of the District Court therefor.

*The creditor is to insert the period which shall not be less than one month from the date of the receipt of the notice.

1. Inserted New Form No. 9-A vide C.S. No. 14 Noti. No. HC. XI-1/69-79/6762/R.C. dated 9th April, 1980, Published in A.G. Part IIB dated 14th May, 1980, pp. 889-890.

6. *The Indian Stamp Act, 1899 (11 of 1899)*

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

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

297. In dealing with unstamped or insufficiently stamped instruments executed before the present Stamp Act came into force, the procedure to be adopted and the penalties to be levied should be regulated, not by the old Acts which have been repealed, but by the present Act.

298. The attention of all Courts is drawn to the provisions of Section 38 Stamp Act, 1899, which require that when an instrument is impounded and admitted in evidence, an authenticated copy of it, together with a certificate stating the amount of duty and penalty levied, shall be sent to the Collector.

Note—The presiding Officer should see that a copy of the impounded document together with a certificate of realisation of duty and penalty is sent to the Collector promptly and the amount realised is sent to the treasury with all possible despatch.

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

7. *The [Indian]¹ Registration Act, 1908 (XVI of 1908)*

300. In any case in which a registered document is discredited by the judgment of a Court on grounds connected with registration,

1. Omitted by the Act No. 45 of 1969.

such as false personation, forgery, want of execution, presentation or admission of execution beyond the statutory period, minority, idiocy or lunacy of the executant such Court shall send a copy of its judgment to the District Registrar within whose jurisdiction the instrument was registered.

8. *The Specific Relief Act, 1963 (No. 47 of 1963)*

301. (1) When any Court has passed a decree under Section 1[31 of the Specific Relief Act, 1963] for the cancellation of an instrument under the Indian Registration Act, or when an appellate Court reverses a decree which has been so passed and registered, the Court shall forthwith cause a copy of the decree to be forwarded to the Registering Officer concerned.

(2) When an appellate Court reverses or when the Court of second appeal restores the decree of a Court of first instance of which a copy has been transmitted to the registering officer under the provisions of the Act above mentioned, it shall transmit a copy of its decree to the Registering Officer.

9. *The Indian Companies Act, 1956¹*

302. The rules made by the High Court, from time to time, pursuant to [Section 246 of the Indian Companies Act, 1956]¹ apply to all District Courts subordinate to the High Court, empowered under sub-section (1) of Section 3, to exercise all or any of the jurisdiction conferred by the Act.

10. *The Indian Oaths Act, 1873 (X of 1873)*

303. (1) The following forms of oaths and affirmations are prescribed by the High Court under Section 7, Act X of 1873—

(I) Oaths for witnesses :

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

(II) Affirmation for witness :

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

1. Substituted *vide* C.S. No. 3 Notification No. HC.XI-1/69/8351/RC. dated 5th September, 1973. (The Companies Act, 1956 repealed by the Companies Act, 2013).

(I) Oath for interpreters :

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

(II) Affirmation for interpreters :

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

(2) The same forms shall be used in criminal as in civil case.

304. (1) Christian witnesses, interpreters and jurors to whom oaths are administered, are to be sworn upon the New Testament of the Holy Bible.

(2) In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

11. The Indian Divorce Act, 1869 (IV of 1869)

I - High Court Order under Section 17

305. The following Order has been made by the High Court under Section 17 of the Indian Divorce Act, IV of 1869—

The time within which a decree of a District Judge may not, under Section 17 of the Act, be confirmed shall be six months from the pronouncing thereof.

Note— The reference for confirmation should be made and the record of the divorce case should be sent by the District Judge to the High Court as soon as possible after the decree *nisi* is pronounced.

II - Rules under Section 17-A

306. The rules framed by the appropriate authority in exercise of the powers conferred by Section 17-A of the Act are reproduced below—

(1) These rules may be called the Indian Divorce (Domiciled Parties) Intervention Proceedings Rules, 1928.

(2) In these rules, unless there is anything repugnant in the subject or context—

"Act" means the Indian Divorce Act (IV of 1869);

"Officer" means an officer appointed under Section 17-A of the Act to exercise the like right to showing cause that a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's proctor;

"Pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court; and

"Proceeding" means a suit or proceeding under the Act.

(3) (i) If any person during the progress of a proceeding or before the decree *nisi* is made absolute gives information to the officer on any matter material to the due decision of the case, the officer may take such steps as he considers necessary or expedient;

(ii) If, in consequence of any such information or otherwise, the officer suspects that any parties to the petition are or have been in collusion for the purpose of obtaining a decree contrary to the justice of the case he may, after obtaining the leave of the Court, intervene and produce evidence to prove the alleged collusion.

(4) (i) When the officer desires to show cause against making absolute a decree *nisi*, he shall enter appearance in the proceeding in which such decree *nisi*, has been pronounced and shall, within a time to be fixed by the Court, file his plea setting forth the ground upon which he desires to show cause as aforesaid, and a certified copy of his plea shall be served upon the petitioner or person in whose favour such decree has been pronounced or his pleader. On entering an appearance the officer shall be made, a party to the proceedings and shall be entitled to appear in person by pleader;

(ii) Where such plea alleges the petitioner's adultery with any named person, a certified copy of the plea shall be served upon each such person omitting such part thereof as contains an allegation in which the person so served is not named;

(iii) All subsequent pleadings and proceedings in respect of

such plea shall be filed and carried on in the same manner as in respect of an original petition under the Act, except as hereinafter provided;

- (iv) If the charges contained in the plea of the officer are not denied or if no answer to the plea of the officer is filed within time allowed or if an answer is filed and withdrawn or not proceeded with, the officer may apply forthwith for the rescission of the decree *nisi* and dismissal of the petition.

(5) Where the officer intervenes and shows cause against a decree *nisi* in any proceedings for divorce, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any cost incurred by any of the said parties by reason of his so doing as may seem just.

12. The Arbitration Act, 1940 (X of 1940)*

[Rules framed by the Gauhati High Court under Section 44 of the Arbitration Act, 1940]

307. (1) The following rules shall be cited as the Arbitration Rules. All references therein to "Act" shall be read as meaning the Arbitration Act, 1940.

(2) The forms prescribed by these rules shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require Form No. I, II and III referred to in the rules have been appended thereto while Forms No. (J)17, (J)18 and (P)9 will be found in Volume II, Civil Rules and Orders.

(3) Every application made to a Court under the Act shall be verified in the manner prescribed by Order VI, Rule 15, Code of Civil Procedure, 1908, or if the court so directs, supported by an affidavit. The application shall be divided into paragraph numbered consecutively and shall contain the name, description and place of residence of the petitioner and the opposite party, a statement in summary form of the material facts, the facts showing that the Court to which the application is presented has jurisdiction to

* **Note**— The Arbitration Act, 1940 (X of 1940) has been repealed by the Arbitration and Conciliation Act, 1996 (No. 26 of 1996), which came into force on 22-8-1996.

deal with it, and the nature of the relief asked for and shall specify the persons liable to be affected thereby.

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

(5) Every special case for the Court's opinion under Section 13(b) of the Act shall be made in Form No. 1. The Arbitrators or Umpire, as the case may be, shall at the same time give notice of such action to the parties. When the Court has pronounced its opinion under Section 14(3), it shall be the duty of the Arbitrator or Umpire concerned to have a certified copy of such opinion added to and made part of the award.

(6) Every application under Section 14(2) of the Act for filing an award in Court, shall be in writing and the Court on being satisfied that the application is in order, shall cause it to be numbered and registered as a suit.

(7) Every application made to a Court under Section 20(1) of the Act shall be accompanied by the original arbitration agreement or if the same be not in the possession of the applicant then by a copy thereof. The Court on being satisfied that the application is in order shall cause it to be numbered and registered as a suit.

(8) Every application under Section 21 of the Act shall be made in Form No. II with due regard to the provisions of Rule (4) above.

(9) The rules in Chapter 14 *ante* shall, so far as they are applicable, apply to appeals under Section 39 of the Act.

(10) Form No. (P)9, so far as it can be made applicable, shall be used with necessary modifications in issuing the notice required to be given by the Court under the Act, *e.g.*, Section 8(2), 14(2), 14(3), 20(3).

(11) Fees for the service of notices and processes issued by the Court shall be levied according to Rule 549 post.

(12) The order of reference under Sections 20(4) and 23(1) of the Act shall be made in Form No. (J)17 and the order of appointment of an Arbitrator or Umpire under Sections 8(2) and 12 shall be made in Form No. (J)18.

(13) In making an award under the Act, the Arbitrators, or Umpire, as the case may be, shall use Form No. III for the purpose.

(14) With regard to the preservation, interim custody or sale of any goods which are the subject-matters of a reference, Courts shall be guided by the relevant provisions of the Civil Procedure Code and of the rules in Chapter 10 *ante*.

FORM NO. (J)17

Order or reference to Arbitration under Section 20(4) and 23(1) of the Arbitration Act, 1940

District

IN THE COURT OF AT

Suit/Case No. of 20.....

In the matter of an Arbitration Agreement, dated the day of 20..... Between A. B. (State name, description and place of residence)

..... Plaintiff(s)

and

..... Defendant(s)

C.D. (state name, description and place or residence)

Upon reading the application of verified by of the day of 20 and filed on the day of 20 and a notice dated the day of 20 issued upon the filing of the said application and the Arbitration Agreement, dated the day of 20 entered into by and between the plaintiff(s) and the defendant(s).....

And upon hearing Pleader/Advocate for the plaintiff(s) and Pleader/Advocate for the defendant(s) it is ordered that the said agreement be filed. And it is further order that the following matters in difference specified in the said agreement/arising in this suit, namely, (state the matters in difference), be referred for determination to X and Y, or in case of difference of opinion between them to the determination of Z, who is hereby appointed to be Umpire. And it is further ordered that the said arbitrators shall make and submit their award in writing together with all proceedings had, depositions recorded and exhibits filed before them on or before the

day of 20 and in case of difference of opinion between the said arbitrators as to the award they shall forthwith give notice of such difference to the said Umpire who shall make and submit his award in writing together with all proceedings had, depositions recorded and exhibits filed before him within the day of 20

And the parties are to be at liberty to apply from time as they make have occassion.

Given under my hand and the seal of the court, this day of 20

FORM NO. (J)18

Order of application of Arbitrators or Umpire under Section 8(2) and 12 of the Arbitration Act, 1940

District

IN THE COURT OF OF

Suit/Case No. of 20.....

Plaintiff(s)/Petitioner

-Versus-

Defendant(s)Opposite party

Whereas by an Arbitration Agreement/Order, dated the day of 20 (state terms of the agreement or order, of reference relating to the matter and failure to appoint or death, refusal, etc., of arbitrator or Umpire), it is ordered that Z be appointed in the place of X (deceased or as the case may be) to act as arbitrator with Y, the surviving arbitrator(s) under the said Agreement order or Z be appointed to act as Umpire. And it is further ordered that the award of the said Arbitrator(s)/Umpire be made and submitted in writing on or before the day of 20

Given under my hand the seal of the court, this day of 20

JUDGE.

FORM NO. (P)19**Notice to show cause (General form)**

District

IN THE COURT OF AT

Suit/Case No. of 20

.....Applicant

-Versus-

.....Opposite-party

To,

Whereas the above-named has made application to this court that

You are hereby warned to appear in this court in person or by a pleader duly instructed on the day of 20 at O'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex-parte*.

Given under my hand and the seal of the court this day of 20

JUDGE.

CASE LAW

Rule 307—Rules framed by the Gauhati high Court under the Arbitration Act, 1940 (X of 1940), are indicated in Rule 307 of the Civil Rules and Orders of the Gauhati High Court. Despite the rules framed the Art. 227 of the Constitution of India is held to be Supreme. High Court exercised its Jurisdiction under the said Art., in the order to remedy the defects for want of notice. **Union of India and others -vs- Partha Pratim Chakraborty, 1998 (2) GLJ 596.**

¹[12-A. The Arbitration and Conciliation Act, 1996**(Act No. 26 of 1996)**

[Rules framed by the Gauhati High Court under Section of the Arbitration and Conciliation Act, 1996]

307-A. (1) The following Rules shall be cited as the Arbitration Rules. All references therein to "the Act" shall be read as meaning the Arbitration and Conciliation Act, 1996.

(2) Every application made to a Court under the Act shall be signed and verified in the manner prescribed by Order 6 Rule 15 of the Code of Civil Procedure unless directed by the Court to be supported by an affidavit. The application shall contain a statement in summary form of the material facts showing that the Court has jurisdiction to deal with it and shall specify the nature of the relief sought from the Court.

(3) Without prejudice to the generality of the provisions of sub-rule (2) above an application under Section 8 of the Act shall specifically state whether the first statement before the Court has been filed and if so when. An application under Section 8 shall be registered as a Miscellaneous Judicial Case and shall be disposed of within a month of such registration on hearing the applicant and the opposite party on his objections if any. On referring the parties to arbitration in accordance with the prayer in the application the Court shall pass orders either dismissing the suit or staying it as it deems fit considering the submissions of the parties.

(4) Without prejudice to the generality of the provisions of sub-rule (2) herein above an application under Section 9 of the Act for interim measures shall be accompanied by a duly certified copy of the arbitration agreement. The relevant provisions of the Code of Civil Procedure and the rules in Chapter 2, 6 and 10 ante will apply *mutatis mutandis*. The application shall be registered as a Miscellaneous Judicial Case.

(5) Without prejudice to the generality of the provisions of sub-rule (2) above an application under Section 14(2) of the Act shall be

1. Added as a new sub-heading "12A" and a new Rule "307A", vide C.S.No. 22, Noti. No. HC.XI-4/81/255/RC, dated the 14th June, 2002 (w.e.f. 14-6-2002), [Published in the Assam Gazette, Part IIB (No. 29), dated 17th July, 2002] pp-309-321.

heard and disposed of with notice to the arbitrator and the opposite party.

(6) An application under Section 34 of the Act shall be accompanied by the original arbitration agreement or a duly certified copy thereof and shall clearly state the ground or grounds for setting aside the award and also state that the application has been made within the time prescribed in sub-section (3) of Section 34. The application shall be registered as a Miscellaneous Judicial Case and the notice of the application shall be served on the arbitrator and the opposite party.

(7) An application under Section 36 for enforcement of an arbitral award shall be dealt with as an application for execution of a decree under the Code of Civil Procedure. The application shall be accompanied by a copy of the award and shall be supported by an affidavit stating that the time for setting aside the arbitral award under Section 34 of the Act has expired or that such application having been made has been refused.

(8) An application under sub-section (2) of Section 39 of the Act shall be registered as a Miscellaneous Judicial Case and notice of the application shall be served on the arbitrator and the opposite party.

(9) An application under Section 45 of the Act shall be accompanied by the original arbitration agreement or a duly certified copy thereof and shall be supported by an affidavit stating besides the material facts stating facts showing that provisions of Section 44 of the Act have been fulfilled. The application shall be registered as a Miscellaneous Judicial Case and shall be disposed of by a reasoned order upon notice to the opposite party. On disposal of the application the suit in which the application is made shall either be dismissed or stayed depending on the submissions of the parties.

(10) An application under Section 45 of the Act shall be dealt with in accordance with Rule 9 herein above except that the affidavit in support of the applications shall state facts showing that the provisions of Section 53 of the Act have been fulfilled.

(11)(a) An application under Section 47 read with Section 49 of the Act for enforcement of a foreign award shall be dealt with as an application for execution of a decree under the Code of Civil Procedure;

(b) The application, besides being accompanied by the materials stated in Section 47 of the Act shall be supported by an affidavit stating facts that the award is enforceable under the Act;

(c) On registration of the application as an Execution case, a notice to show cause why the award shall not be enforced shall be served on the opposite party. The notice shall be, with necessary modification, in Form No. (P)22 used for purposes of Order 21 Rule 22 Code of Civil Procedure available in Vol.II Civil Rules and Orders;

(d) Objection, if any, filed under Section 48 of the Act by a party shall be registered as a Miscellaneous Judicial Case. The objection shall be supported by an affidavit stating the material facts supporting the ground or grounds on which the objection is based and shall be accompanied by the proof as stated in Section 48 of the Act.

(12) An application under Section 56 read with Section 58 of the Act for enforcement of a foreign award shall be dealt with in accordance with the provisions of Rule 11 herein above with the following modification — in Rule 11(b) in place of Section 47, Section 56 shall be read and in Rule 11(d) in place of Section 48 Section 57 shall be read.

(13) Rules in Chapter 14 ante shall so far as they are applicable, apply to appeals under Section 50(1)(a) and Section 59(1)(a) of the Act.

(14) Except where specially prescribed notice required to be given by the court shall be in Form (P)9 with necessary modifications available in Vol. II Civil Rules and Orders.

(15) Fees for the service of notices and processes shall be levied according to Rules 549 post.”]